
(2014) 02 OHC CK 0030
In the Orissa High Court
Case No : F.A. No. 53 of 1992

Nityananda Namtoar

APPELLANT

Vs

L.A. Officer-cum-Collector

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 23(1-A), 23(2), 24
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 1(3)

Citation : (2014) 1 ILR 785 : (2014) 2 OLR 144 Suppl. : (2014) 2 OLR 144

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

D. Dash, J.—In this appeal the appellants call in question the order passed by the Learned Sub-Judge, Champua (as it was then) in a referral proceeding u/s 18 of the Land Acquisition Act, 1894 (hereinafter called the Act) declining to enhance the compensation in respect of acquisition of Ac. 4.32 decimals of land. Admittedly, land measuring Ac. 4.320 decimal of Village: Matkambeda has been acquired by the State for the purpose of meeting the requirement of the factory M/s. Kalinga Iron Works. The Land Acquisition Collector assessed the compensation in total at Rs. 85503.60. The said assessed compensation having been received under protest, the reference came before the Civil Court for determination of just, proper and fair valuation of the land etc. and the compensation.

The appellants being the claimants advanced their claim that the market value of the land acquired as above has been determined by the Land Acquisition Collector on a lower side ignoring the potentiality of the land and its prevalent market price without taking into consideration all other relevant factors. They examined two witnesses. Out of whom P.W. 1 is the husband of original petitioner No. 1 and P.W. 2 is a witness in respect of a transaction of sale of land in the

vicinity. Ext. 1 and Ext. 2 the two sale-deeds said to have been executed on 10.12.1987 and 11.12.1988 respectively have also been admitted into evidence and proved from the side of the claimants. The Respondents having chosen not to lead any oral evidence have proved the lithographed notification dtd. 26.10.1987 u/s 4(1) of the Act regarding acquisition of land and the record of proceeding relating to acquisition of land which are marked Ext. A and Ext. B respectively.

It is pertinent to state here that during pendency of the referral proceeding original claimants having died, their legal representatives have been substituted and they pursued the proceeding and so also this appeal has been carried by them.

2. The learned referral judge refused to take into account the consideration of land as shown to have passed from vendee to vendor under the two sale deeds, Ext. 1 and Ext. 2 for the purpose of determination of the market value of the acquired land on the ground that those have come into existence after the factum of acquisition of the land was publicly known by virtue of the notification as shown under Ext. A.

3. I have heard the learned counsel for the appellant and learned Additional Government Advocate at length and have carefully gone through the order passed by the learned referral judge which has been impugned in this appeal.

4. The learned referral judge having stated the facts giving rise to the reference for the enhanced compensation advanced from the side of the claimants with regard to enhancement of the market value of the land on the ground of (i) the potential of the acquired land, (ii) damages done and (iii) the price of the land sold in the nearby area under Exts. 1 & 2; has straight way gone to discard Exts. 1 and 2 from being taken into consideration. Next having said that no other evidence being there from the side of the claimants to negate the valuation of the acquired land as assessed by the Land Acquisition Officer, has accepted the market value of the land made by the Learned land acquisition Collector as assessed to be correct. The reference has accordingly been answered.

On a careful reading of the order, with pain I am to say that the learned referral judge has gone to dispose of the reference without even taking slightest pain of going through the relevant provisions of law holding the field which can be found from the paragraphs to follow.

5. At the outset let me state the scope of a proceeding of this nature. The Court in a reference u/s 18 of the Act, does not sit over the appeal against the Collector's award. When a reference is made u/s 18 of the Act, the jurisdiction of the court springs up to determine the just, proper and fair and reasonable compensation in consequentially finding whether the compensation awarded by the Collector needs enhancement which is secondary. The language of Section 18 of the Act is very clear that any person interested who has not accepted the award may by written application to the Collector require the matter to be

referred to the Civil court for determination of the amount of compensation and wording is not for redetermination which is with a definite purpose and reflects the intent of the legislature in clear terms whereas the wording in Section 28A of the Act is for redetermination as under that circumstance, the land losers who had not sought for reference are being given the benefit of the determination of valuation of land covered under same notification u/s 4(1) of the Act done in a reference at the instance of another land owner for their lands also. So on receiving the reference, the referral court is under the obligation to determine the compensation payable taking the compensation assessed by the Collector as the base and nothing more. The scope is for determination as original authority.

It is also the settled position of law that the claimant seeking determination of compensation in a reference u/s 18 of the Act is required to adduce evidence in showing his entitlement to the higher market value of the land and compensation there to. In the present case, although it is seen that the claimants adduced evidence with regard to potentiality of the land with reference to all the relevant factors standing in support of the same, the learned referral judge has not gone to discuss that aspect at all and having simply discarded the two Sale Deeds which has been proved from the side of the appellant under Ext. 1 and 2, has simultaneously held that the compensation as assessed by the Collector as correct. This approach in disposing of the reference appears to be not in accordance with the provision of law as well as the principles settled thereunder.

6. It has been held that the provisions of the Act are self-contained and it is a Code in itself providing for a complete procedure and steps which are required to be taken by the authorities concerned, for acquisition of land and payment of compensation. Part II and Part III of the Act deals notification in terms of Section 4 of the Act, whereafter objections for acquisition are invited by the Collector and he shall conduct an inquiry in accordance with law. Having disposed off the objections after hearing the concerned parties, the Collector is expected to make an award. The possession of the acquired land has to be taken in accordance with the provision of the Act. Part III deals with the procedure of making a reference to the Court of specified jurisdiction and the procedure to be adopted thereupon. It also spells out what factors are to be taken into consideration by the Court and what should be ignored while determining the compensation. It is a compulsive acquisition and the lands are acquired without the voluntary action or consent of the land owners as they are left with no choice. The legislature in its wisdom has laid down the procedures and the guidelines which have to be adopted by the authorities concerned and subsequently by the Court of competent jurisdiction in regard to the acquisition of land and payment of compensation thereof. It is expected of the State to pay just and fair compensation and that too expeditiously. Thus, it is obligatory on the part of the Court to follow the legislative intent in exercise of its judicial discretion. The legislative intent is of definite relevance when the court is interpreting the law. Keeping in view the scheme of the Act, it will not be appropriate either to apply the rule of strict construction or too liberal construction to its provisions. The Act

has a unique purpose to achieve, i.e. fulfillment of the various purposes (projects) to serve the public interest at large, for which the land has been acquired under the provision of this Act by payment of compensation. The power of compulsive acquisition has an inbuilt element of duty and obligation upon the State to pay the compensation which is just, fair and without delay. Thus, it will be appropriate to apply the rule of plain interpretation to the provisions of this Act.

7. It is noticed that Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies which are available to them under the scheme of the Act. u/s 18 of the Act, the reference court determines the quantum of compensation payable to the claimants. Section 23 provides guidelines, which would be taken into consideration by the court of competent jurisdiction while determining the compensation to be awarded for the acquired land. Section 24 of the Act is a negative provision and states what should not be considered by the court while determining the compensation. In other words, Section 23 and 24 of the Act provide a complete scheme which can safely be termed as statutory guidelines and factors which are to be considered or not to be considered by the court while determining the market value of the acquired land. These provisions provide a limitation within which the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefits. Keeping in view the scheme of the Act and the interpretation which these provisions have received in the past, it is difficult even to comprehend that there is possibility of providing any straitjacket formula which can be treated as panacea to resolve all controversies uniformly, in relation to determination of the value of the acquired land.: This essentially must depend upon the facts and circumstances of each case.

8. It is settled principle of law that, the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of *Basant Kumar and Others Vs. Union of India (UOI) and Others*, , the Apex Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimant, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, the Apex court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by the Apex Court even in the case of *Gafar and Others Vs. Moradabad Development Authority and Another*, and the Court held as under:

As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged

by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award.

Thus, the onus being primarily upon the claimants, they are expected to lead evidence on that score, if they so desire. In other words, it can't be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings and during the exercise strike a balance individual interest vis-?-vis the interference of the State.

9. At the risk of some repetition, I must say that the provisions of Section 23 and 24 of the Act have been enacted by the Legislature with certain objects in mind. The intention of the Legislature is an important factor in relation to interpretation of statutes. The statute law and the case law go side by side and quite often the relationship between them is supplementary. In other words, interpretation is guided by the spirit of the enactment.

10. The provisions with which we are concerned primarily are the provisions of the statute which are coupled with obligations and limitations specified in them. The power is vested in the Collector to grant compensation; in courts to enhance the same in favour of the claimants whose lands are acquired, in case they are aggrieved. But this power has to be exercised while keeping in mind the guidelines and parameters stated in Section 23 and 24 of the Act. It will, thus, not be permissible for the authorities to go beyond the scope and purview of the provisions or the prerequisites stated in these provisions for determination of the fair market value of the land. The statutory law as well as the judgments pronounced by the courts has consistently taken the view that compensation has to be determined strictly in accordance with the provisions of Section 23 and 24 of the Act. The matters which are to be governed by the terms of Section 24 of the Act cannot be taken into consideration by extending discretion referable to the matters which should be considered by the courts in terms of Section 23 of the Act. To put it in another way, the court should apply the principle of literal or plain construction to these provisions, as the Legislature in its wisdom has not given to the court absolute discretion in matter relating to awarding of compensation but has intended to control the same by enacting these statutory provisions.

11. About the principle of plain meaning, it has been observed more than often, that it may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed [Refer- D. Saibaba Vs. Bar Council of India and Another,].

12. The discretion of the Court, therefore, has to be regulated by the legislative intent spelt out under these provisions. It is no more *res integra* and has been well settled by plethora of decisions of this Court as well as the Apex Court, requiring that the computation of compensation has to be in terms of Section 23 and 24 of the Act and that too from the date of publication of the Notification u/s 4 of the Act. Next stands the entitlement to the statutory benefits which would be available in terms of Section 23(1-A) and 23(2) of the Act.

13. Keeping the above in mind and in the back drop of above discussion let me advert to the case in hand. First coming to the question of considering the Exts. 1 and 2, the two sale Deeds proved from the side of the appellant to show that the land in the vicinity had been sold on higher valuation than what has been assessed by the Collector, it is seen that the learned referral judge has discarded the same for the reason that Ext. A (notification u/s 4(1) of the Act) finds mention the date prior to execution of the Ext. 1 and Ext. 2 and thus those have been found to have come into being after the factum of acquisition of the land coming to the knowledge of everybody.

14. In this connection, it may be stated that as provided in Section 23 of the Act that the land owner is entitled to the market value of the land acquired under the land as on the date of publication of the notification u/s 4(1) of the Act. Sub Section (1) of Section 4 reads that when ever it appears to the appropriate by Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and in two daily news papers circulated in that locality of which at least one should be in the regional language, and the Collector is also mandatorily obligated with the duties to cause public notice of substance of the notification to be given at convenient places. The last of the dates of such publication and the giving of such public notice is to be reckoned as the date of publication of the notification for the subsequent provisions of the Act wherever the date of publication of notice u/s 4(1) of the Act finds mention or referred to. The last date of such publication and giving of such public notice has to be treated as the date of publication of said notice. So provision of Section 4(1) of the Act while providing the various modes of publication of notification and causing the public notice further provides specifically as to which of the date has to taken as the date of publication of notification for the rest of the provisions of the Act wherever it has been so referred to. That is the date when either the publication in official Gazette or public notice which is made at last. Thus publication of notification is not an empty formality for being issued or dealt lightly and especially in the context of the provisions of the Act. Its with a definite purpose and that is the reason legislature without leaving any scope to interpret further have provided the modes as well as, to when the publication has to be reckoned with.

15. In case of Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., , the question that arose before the Supreme Court was whether mere publication of

the Notification in the Gazette is sufficient to fasten a person with civil liberty. Their Lordships referred to various dictionaries to ascertain the meaning of the word "publish". According to Webster's Comprehensive Dictionary, International edition, the word "publish" means "(1) To make known or announce publicly; promulgate; proclaim. (2) To communicate to a third person." In the Legal Glossary, published by the Legislative Department, Ministry of Law, Justice and Company Affairs, Government of India, in 1992, the word "publish" means "to make generally accessible or available, to place before or offer to public; to bring before the public for sale or distribution". So, in the opinion of the Court, the word "publish" connotes not only an act of printing but also taking further action of issuing or making it available to the public so that they can know about it.

16. The word "Notification", according to Webster's Third New International Dictionary, means: "1: the act or an instance of notifying: Intimation, Notice; etc: the act of giving official notice or information: 2: a written or printed matter gives notice". Reference was also made to the earlier decision in Harla Vs. The State of Rajasthan, , where their Lordships observed:

x x x x it would be against the principles of natural justice to permit the subject of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence.

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17. The Court also referred to another decision the case of State of Maharashtra Vs. Hans George, . In that case it was observed that individual service of a general notification on every member of the public is not necessary and all the subordinate lawmaking authority can or need do, would be to publish it in such manner that persons can, if they are interested, acquaint themselves with its contents. Decisions of Madras and Bombay High Court also attracted the notice of the Court. In Asia Tobacco Company Ltd. Vs. Union of India and Others, , the Madras High Court in paragraph 4 of the judgment observed:

The mere printing of the official Gazette containing the relevant notification and without making the same available for circulation and putting it on sale to the public will not amount to the "notification" within the meaning of Rule 8(1) of the Rules. The intendment of the notification in the Official Gazette is that in the case of either grant or withdrawal of exemption the public must come to know of the same. "Notify" even according to ordinary dictionary meaning would be "to take note of, observe; to make known, publish, proclaim; to announce; to give notice to; to inform". It would be a mockery of the rule to state that it would suffice the

purpose of the notification if the notification is merely printed in the Official Gazette, without making the same available for circulation to the public or putting it on sale to the public.....Neither the date of notification nor the date of printing, nor the date of Gazette counts for "notification" within the meaning of the rule, but only the date when the public gets notified in the sense, the concerned Gazette is made available to the public. The date of release of the publication is the decisive date to make the notification effective. Printing of the Official Gazette and stacking them without releasing to the public would not amount to notification at all.....The respondents are taking up a stand that the petitioner is expected to be aware of the Withdrawal Notification and that the words "publish in Official Gazette" and the words "put up for sale to public" are not synonymous and offering for sale to public is a subsequent step which cannot be imported into the Act, and the respondents are expressing similar stands. They could not be of any avail at all to the respondents to get out of the legal implications flowing from want of notification, as exemplified above. Printing the notification in the Official Gazette, without making it available for circulation to the concerned public, or placing it for sale to the said public, would certainly not satisfy the idea of notification in the legal sense.

18. The same view also taken by the Bombay High Court in *GTC Industries Limited, Bombay and another Vs. Union of India and another*, .

Reference was also made to the observations made in the case of *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, , where the Court held:

Whether law is viewed from the stand point of the "conscientious good man" seeking to abide by the law or from the stand point of Justice Holmes's "unconscientiously bad man" seeking to avoid the law, law must be known, that is to say, it must be so made it can be known.

19. The fact in case of *New Tobacco (supra)* was whether the respondent was liable to pay excise duty at enhanced rate as per the Notification dated 30th November, 1982. The stand of the respondent was that it did not know that such a Notification enhancing the excise duty was issued. Their Lordships relying upon various judicial pronouncements referred to above, held that when a Notification is issued to make it known to the public, it would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If the publication is through a Gazette, then mere printing of it in the gazette would not be enough. Unless the Gazette containing the Notification is made available to the public, the Notification cannot be said to have been duly published.

20. Similar view was also expressed by the Calcutta High Court in *Mahamed Sayeed Vs. Union of India and others*, . The learned Single Judge relying upon the decisions of Bombay and Madras High Courts referred to supra observed that even where a public notice has been issued, it would not be operative unless published in the Official Gazette and such publication cannot be equated with

mere printing of such notice. It is the availability of the printed material to the general public that constitutes publication required both under the law as well as under the rules of natural justice.

21. To state the extreme looking the purpose and object in Harla's case (supra) the Acts of Parliament are publicly enacted, debates are open to the public and the Acts are passed by accredited representatives of the people who in theory can be trusted to see that their constituents of know what has been done. They also receive wide publicity in papers and other modes, not so Proclamations and Orders of appropriate authorities. There must therefore, be promulgation and publication in their cases.

22. The above being the position of law land with that in mind the legislature have left no further room for deliberation on that issue and therefore in so many words with clear language, the provision stands and that obligates the functionaries to scrupulously follow both in letter and spirit. So the market value of the land as it stands on the date of publication of the notification u/s 4(1) of the Act stands as the entitlement of the claimant. Interestingly in the present case, from the side of the State, the notification that has been proved is a lithographed copy of the notification and marked as Ext. A which bears the date 26.10.1987 and it has been in the Department of Revenue and Excise Department of Odisha. This date put therein cannot be said to be the date of publication of the notification.

23. The date of publication of notification can under no circumstance be taken as the date put by the Government Department on the said publication, and as the substitute of the date as mandated under the provision of Section 4(1) i.e. the Act that the date when either it was published as per the mode prescribed therein or the public notice as mandated there in whichever is last. From the side of the claimants the notification published in the Official Gazette has been proved Ext. 3 wherein the date of notification although has been put as 26.10.1987 i.e. of the Government Department, it is seen to have been published in the Odisha Gazette dated 20.01.1988. So in the absence of any other evidence as regards publication of such notification in the news paper and service in the locality on any subsequent dates, or the public notice as per the provision of Section 4(1) of the Act, the date of publication of the notification u/s 4(1) of the Act in the Official Gazette can be taken to be so.

24. At this place I must take a short leisure from the case and putting a halt to that must record that the treatment from the side of the State in the matter has not been fair at all right from the initial assessment and the stand taken in the referral proceeding while contesting there up till this Court. Of course precisely it cannot be said here that it was a deliberate action or due to the ignorance of the officials of the State dealing with the matter. But with certainty it can be said to be an act of insensitivity or irresponsibility on their part as also on the part of the statutory forum i.e. the referral court created to put a check to it and all those who are entrusted with such onerous duty in implementing the legislation

concerning compulsive nature of acquiring the property of citizens against their will and volition. This with even its little magnitude perhaps stands as one of the glaring example to justify the public out cry against this legislation for which the Parliament in its wisdom was compelled to pass another new one not only covering the field of acquisition of land and payment of fair compensation but also concerning the field of Transparency in the matter as well as taking care of the Rehabilitation and Resettlement aspects i.e., Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 which has come into force with effect from 01.01.2014 by virtue of notification in accordance with the provision of Section 1(3) of the said Act. That is keeping further welfare and benefit of citizen in view as discharge of duty as a welfare state. So here I must also observe that the legislation whatever beneficial it may be and to whatever extent it is intended for the welfare of the subjects for good governance and with whatever replacement in that direction those may stand, but for the failure on the part of the implementing agency in discharging their duty keeping in mind the intent and spirit of the said legislation the same is put to rigorous test and then pushes it to jeopardy serving no good. Again after some time the outcry springs up like volcanic eruption necessitating the toppling of the legislation, substituting it with another when nothing substantial is on gain and in the process the development by fulfilling various projects gets the real jolt stalling the march of the State in the run of development and overall welfare of its citizens.

At this juncture, I must also record the appreciation that the Government of Odisha in the Department of R.D. & M. in the meantime have issued two clarification/instruction in the matter on 24.01.2014 and 07.02.2014 to all Collectors and Special Land Acquisition Officers and Land Acquisition Officers and the said immediate step shows the anxiety and concern of the Government in the matter. But mere issuance of those as has been experienced in past is not enough and much is needed to be done. All must be sensitized not only as regards the provisions but regarding their discharge of duty and function in terms of the provisions of the Act especially keeping in view the very object behind the legislation and the goal sought to be achieved thereby. The machinery has to be geared up accordingly to meet the challenges in carrying out the heavy tasks imposed under the said legislation and also by framing rules, constituting Monitoring Committee, Land Acquisition, Rehabilitation and Resettlement Authority etc.

Thus, I hope and trust that the top functionaries of the State would look further deep into the matter and take effective and suitable measure in the direction in respect of implementation of all such legislations in fair and proper manner looking through the spectrum of their object and reason at the earliest by fueling it with their further enlightened ideas and views for avoiding the blame from the posterity to come and looking at the history and the experience that where law ends, tyranny begins.

25. Adverting to the case, in view of the specific provision of the statute, it is not permissible to say that the factum of acquisition of land was known to public on 26.10.1987 and therefore any sale deed executed thereafter would be thrown out of the zone of consideration. The knowledge of the factum of acquisition of the land has to be presumed to be only there as on the last date of publication of the notification and public notice u/s 4(1) as per the prescribed modes as per the clear language therein and its not permissible to borrow the factum of knowledge from anything else. Here I find that these two Sale-Deeds Exts. 1 and 2 are prior to 20.01.1988. The learned referral judge has not even winked at gone through the provision of Section 4(1) and 23 of the Act and has erroneously accepted the date put on the Government notification as the date of publication of the notification perhaps by presuming it to be the date of knowledge of factum of acquisition of land in the locality. When the provision of law states that the market value has to be determined as on the date of publication of the notification u/s 4(1) of the Act, it is not permissible to say that prior to that date the person having derived knowledge about same and having gone for the transaction those would be kept aside from consideration unless of course it is shown through cogent evidence to be speculative and fictitious or in relation to non existent subject which is not the case here.

26. In the upshot of above discussion, I find that the learned referral judge has not disposed of the reference in accordance with law. On this ground, I would have remanded the matter back to the referral court for answering said reference afresh. But at this distant point of time, I refrain from doing so as I am afraid that it may ultimately amount to denial of justice to the claimants. They having fought the legal battle since the year 1989 up till now would again be asked to face the litigation from its inception for which they may even loose their fond hope out of utter frustration and sheer despair. Therefore, in exercise of power as the appellate Court, I feel it proper in adopting the recourse in proceeding to answer the reference on the available evidence.

27. In the present case the claimants base their claim of enhancement of compensation basing on Ext. 1 and 2. Having already held that the learned referral judge committed error in law and fact in discarding the Exts. 1 and 2 from consideration for determination of the market value of the land, let us have a close look at those documents. Ext. 1 is the Sale Deed dated 10.12.1987 and it is seen that Aco. 10 decimals of land has been sold there under for consideration of Rs. 5,000/- at the rate of Rs. 500/- per decimal. The other Sale Deed Ext. 2 dated 11.01.1988 shows that an area measuring Aco. 22 decimals has been sold for consideration of Rs. 11,000/-, wherein the rate of land also stands at Rs. 500/- per decimal. The appellants have adduced the evidence through P.W. 1 that this land covered under Ext. 1 situates on one corner of the village: Matkambeda wherein the acquired land is stated in the heart of the village. He has further deposed that the land covered under Ext. 2 adjoins the acquired land. Carefully glancing at the deposition of P.W. 1 it reveals that these factual aspects have not at all been challenged during cross-examination, nor any

evidence to the contrary has been laid from the side of the State. But the fact remains which cannot be brushed aside that the acquired land measuring Ac. 4.320 decimals of land under Exts. 1 and 2 are of small patches. As per the settled principle the valuation of the small patches of land cannot be taken as guide for determination of bigger chunk of land as when the intending purchasers throng more in number in respect of small patches of land, the purchasers for big areas of land to come forward to spend huge sum of money are less, and that is faced with no such competition. So, in view of that the market value of the acquired land is not permissible to be determined taking the price of the land sold under Exts. 1 and 2 as the guide. However, in the present case it is further found that the evidence has been led through P.W. 1 that the land in question situated by the side of the factory M/s. Kalinga Iron Works and is near the railway line near the municipality area of Barbil and the Industries are situated to the north of that road connecting the same. The Railway Station is stated to be at the distance of ? furlong and so also other official quarters to be at a little distance. These facts have not been challenged during the cross-examination nor any evidence has been tendered from the side of the State to the contrary. Therefore, when such evidence stands by reasonable guesstimation in my considered view it would be just, proper and fair to fix the market value looking at the evidence with regard to its potentiality as stated above at Rs. 500/- per decimal.

28. The claim advanced from the side of the claimants as regards the damages caused by running of the factory M/s. Kalinga Iron Works prior to the acquisition notification u/s 4(1) of the Act practically rendering the land useless and without fetching any income, the same is untenable in the eye of law being deher the provision of the Act. Any damage giving rise to the claim of compensation prior to the publication of notification is not cognizable within the frame work of the act and that they could have under the common law claimed against the wrongdoer. Under the Act, even when possession has been taken prior to the publication of notification u/s 4(1) the claimants are not entitled to any additional sum for the period prior to the publication of notification u/s 4(1) which has been clearly held by the Apex Court in case of Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, and the later decision to the contrary in case of Assistant Commissioner, Gadag Sub-Division, Gadag Vs. Mathapathi Basavannewwa and others, has been overruled in case of "Special Land Acquisition Officer vs. Karigowda and others" in Civil Appeal No. 3838 of 2010 decided on 26.04.2010.

29. Before parting, I want to put it on record that in such matter for determination of the market value of land, the learned referral judge has the duty to determine market value of the land which would be just and proper taking into account the relevant factors referring to the market value of the land as prevailing considering its future potentiality etc. The principle for the same has been time and again laid down by the Hon"ble Apex Court as well as this Court in several decisions and so also the methodology for computation of

market value and assessment of compensation. So, I do not feel to load this judgment by referring to those and quoting one by one. However, looking at the approach in the particular case and the manner in which the reference has been answered, I would be failing in my duty if I do not state that not only the referral judge without proper application of mind that reference was for determination of just, proper and fair compensation has failed to discharge the duty cast upon for determination of the market value of the land as on the date of publication of notification U/s. 4(1) of the Act and the compensation as per the provisions of the Act but also the settled principles of law set at rest have been overlooked. It should be kept in mind that the reference needs to be answered by determining just, proper and fair market value of the land and compensation in such a way that it should neither be a bonanza for the claimants nor it should give a feeling in the mind of the claimants that an act of pittance is shown to them..

30. For the discussion and reasons stated above, the market value of the land is hereby determined as per Rs. 500/- per decimal and the appellants are thus found entitled to receive compensation for the acquired land of Ac. 4.320 decimals at that rate together with all other statutory benefits as they are entitled under the law.

31. Resultantly, the order of the referral judge is hereby set aside, the appeal stands disposed of accordingly and in the circumstances with costs throughout. The Land Acquisition Collector, Keonjhar is hereby directed to pay the compensation to the appellants as indicated above together with cost of the litigation throughout within a period of two months from the date of receipt of the copy of the order or production of the certified copy thereof which ever is earlier. The Registry is directed to send copies of this judgment to all District Judges for onward circulation amongst the judicial officers under their judgship. Also the same be sent to the Chief Secretary and Principal Secretary, Revenue and Disaster Management of the State for onward action as deemed fit in the light of observations in the foregoing paras with emphasis to para. 25.