
(2016) 05 AHC CK 0141

In the Allahabad High Court

Case No : Civil Misc. Delay Condonation Application No. 351666 of 2011, Civil Misc. Modification Application No. 351669 of 2011, Civil Misc. Delay Condonation Application No. 123032 of 2014, Civil Misc. Recall Application No. 123034 of 2014, Civil Misc. Delay Condo

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APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Land Acquisition Act, 1894 — Section 11, 23(2)

Citation : (2016) 6 ADJ 321 : (2016) 119 ALR 841 : (2017) 134 RD 358

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : J.C. Srivastava, Baleshwer Verma, J.S. Srivastava, N. Lal, P.K.S. Paliwal, Advocates, for the Appellant; Satish Tandon, U.S. Awasthi, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri Y.D. Sharma, learned counsel for the applicant/ appellant and Sri Shivam Yadav, learned counsel for the respondent on Delay Condonation Application No.123032 of 2014 and Civil Misc. Recall Application No.123034 of 2014, Delay Condonation Application No.351666 of 2011 and Modification Application No.351669 of 2011, Delay Condonation Application No.4846 of 2015 and Civil Misc. Review Application No.4845 of 2015.

2. As per memorandum of appeal, this appeal was preferred by the claimant appellant on the following grounds:

"1. Because the learned District Judge has erred in not awarding the compensation at the rate of Rs.10/- per square yard or Rs.30,250/- per bigha.

2. Because the learned District Judge has committed error of law in not treating the sale deeds Ex.1 to Ex.7 filed by the claimant as exemplar sale deeds. The

said deeds were exemplar sale deeds and should have been relied upon in assessing the amount of compensation payable to the appellant.

3. Because it is settled by the decision of the Supreme Court that even if a small parcel of land is sold at a particular rate and thereafter the rest of the plot is acquired, the compensation should be given at the rate at which the small parcel of land had been sold earlier.

4. Because the learned District Judge has acted illegally in ignoring the fact that the compensation of land acquired by Noida in the adjoining village Raghunathpur had been awarded by the Special Land Acquisition Officer, Ghaziabad vide his award dated 28.09.1978 at the rate ranging between Rs.12,924.65 and Rs.24,450=53 per bigha. This fact furnished good exemplar for awarding the compensation to the appellant at the rate of Rs.10/- per square yard.

5. Because the learned District Judge has not considered the fact that the land being very near to Delhi and a number of coloneys and Industries existing near the land acquired, the land has a great potential value as a building site and as such compensation should have been awarded at the rate claimed by the appellant. 6. Because having held that the land acquired should be treated as potential building site, the learned District Judge has grossly erred in not awarding the compensation at the rate of Rs.10/- per square yard or Rs.30,250/- per bigha."

3. The appeal was allowed and the relief as prayed was granted by this court by order dated 29.03.2008 as under:

"Heard Shri P.K.S. Paliwal learned counsel for the appellant and Sri U.S. Awasthy learned counsel for NOIDA respondent No.2 and learned standing counsel for respondent No.1.

This appeal is directed against judgment award and decree dated 27.02.1982 given by District Judge, Ghaziabad in L.A. Reference No.157 of 1977. The said reference was decided along with 5 other references including L.A. Reference No.160 of 1977. The judgment in L.A. Reference No.160 of 1977 was challenged through first appeal No.83 of 1983 which has been allowed by me today holding that claimants-appellants are entitled to the compensation taking the market value of their acquired land at the relevant time to be Rs.30250/- per bigha.

For the reasons disclosed in the judgment of first appeal No.83 of 1983, this appeal is also allowed. Impugned judgment is modified and it is held that appellants are entitled to the compensation taking the market value of their acquired land at the relevant time to be Rs.30250/- per bigha or Rs.10/- per sq.yd. along with 15% solatium and 6% interest."

4. Learned counsel for the applicant/ appellant submits that Section 23(2) of the Land acquisition Act,1894, was amended by Act 68 of 1984. The acquisition was made by notification under Section 4 of the Act dated 30.04.1976. Possession

was taken on 21.07.1976. The award was passed on 08.03.1977. The reference was decided by the court of District Judge, Ghaziabad by judgment dated 27.02.1982. Therefore, the applicant/ appellant was entitled for solatium as per amended provision of Section 23-(2) of the Act, which was not granted by this court in the order dated 29.03.2008. Consequently, the aforesaid order dated 29.03.2008 deserves to be modified/ recalled/ reviewed.

5. In support of his submissions, he relies upon decisions of Hon''ble Supreme Court in the case of M/s Arti Spinning Mills Etc. v. State of Haryana and another, 2016 (2) Supreme 395 (paras-3 to 6), Mehrawal Khewaji Trust (Regd.), Faridkot v. State of Punjab and others, 2012 (4) Supreme 66 (paras-6, 13 and 15) and New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd., 2016 (1) Supreme 319 (para-19).

6. No other point has been argued on the aforesaid applications by learned counsel for the applicant/ appellant.

7. Sri Shivam Yadav, learned counsel for NOIDA- respondent No.2 submits that the modification/ review/ recall applications are wholly misconceived and the review/ recall of the order dated 29.03.2008 being sought by the applicant/ appellant is totally beyond scope of Order 47, Rule 1 of C.P.C. as well as settled principles of review. He submits that Section 23-(2) of the Act was amended prospectively and the benefit of this provision is not at all applicable to acquisition already completed and the award given, in view of Section 30(2) of the Amending Act 1984. He submits that even if a different view on merit has been taken in another decision, that cannot be made a ground for review of the order/judgment dated 29.03.2008, which was passed on merit after hearing the parties whereby the appeal was allowed. He submits that whatever relief was sought by the appellant was granted by the High Court by order dated 29.03.2008 and as such there is no question of modification/ recall/ review of the order.

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

DISCUSSION AND FINDINGS

Modification Application:-

9. Undisputedly, the first appeal was heard on merit and the relief as sought in the appeal by the appellant was granted by judgment dated 29.03.2008. It is not disputed by the applicant/ appellant that he was well aware of the aforesaid judgment. However, Modification Application No.351669 of 2011 was filed on 25.11.2011 for modification of the judgment dated 29.03.2008 on the ground that in First Appeal No.548 of 2001, a higher compensation of Rs.28.12 per square yard has been granted by a Division Bench by order dated 18.01.2011.

10. The aforesaid modification application has been filed along with a delay condonation application but it is not supported by any affidavit. Chapter XI Rule

12 of the Allahabad High Court Rules (hereinafter referred to as "the Rules") provides that the application under Section 5 of the Limitation Act for condonation of delay shall be supported by an affidavit setting out in the form of a narrative the material facts and circumstances of the case including the date on which the applicant/appellant relies. The delay of about three years has not been explained at all. Under the circumstances, the delay condonation application filed for condonation of delay in filing the modification application, is hereby rejected in the absence of any explanation for delay.

Recall Application:-

11. The Delay Condonation Application No.123032 of 2014 for condonation of delay in filing the Recall Application was submitted by the applicant/ appellant on 01.04.2014 after more than six years of the judgment dated 29.03.2008. A single affidavit has been filed in support of delay condonation application as well as recall application which is not as per Chapter XI Rule 12 of the Rules. In the aforesaid common affidavit, the applicant/ appellant has not explained the delay in filing the recall application even though he was well aware of the judgment dated 29.03.2008 and had earlier filed a modification application on 25.11.2011. In paragraph-7 of the affidavit, the applicant has merely stated that he could not file the recall application within time because he was not well versed of the judgment of Division Bench of this court and the judgments of Apex Court and other farmers whose lands were acquired, had got excess compensation. This is totally false inasmuch as in the affidavit filed in support of the above noted modification application, the applicant has given the same details of various judgments in paragraphs-3 to 5 and taken the same grounds for modification in paragraphs 3 to 7 of the affidavit. No other explanation has been offered by the applicant for condonation of delay in filing the recall application. Thus, in the absence of any proper explanation for delay in filing the recall application, the delay cannot be condoned and consequently, delay condonation application deserves to be rejected and is hereby rejected.

Review Application

12. The Delay Condonation Application No.4846 of 2015 for condonation of delay in filing the review application, was filed on 13.01.2015, i.e. after about seven years of the judgment dated 29.03.2008. In the affidavit filed in support of delay condonation application, the only explanation has been offered by the applicant in paragraph-2 that due to wrong advice of the advocate of the District Court, he could not file review application within time. The explanation offered is wholly false on the very face of it, inasmuch as the applicant has earlier filed modification application in the year 2011 and thereafter, filed a recall application in the year 2014. Both these applications were filed by the applicant through the same counsel who has filed review application. There is no allegation that any wrong advice was given to him by the High Court counsel or those applications were filed by him on the advice of the District Court counsel. That apart, there is absolutely no explanation for delay in filing the review application. Consequently,

in the absence of any proper explanation for delay, the delay condonation application deserves to be rejected and is hereby rejected.

13. Since above noted three delay condonation applications for condonation of delay in filing the modification, recall and review applications respectively have been rejected and as such the above noted modification, recall and review applications are also rejected. Petition filed on the basis of judgment in another case- Whether proper explanation for delay or ground for review:-

14. In the *Rup Diamonds v. Union of India*, 1989 (2) SCC 356 (para-8) Hon"ble Supreme Court laid down the law that petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided, then their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void.

15. In the case of *State of Karnataka v. S.M. Kotrayya*, (1996) 6 SCC 267, while considering the provisions of limitation under Section 21 of the Central Administrative Tribunal Act, 1985, Hon"ble Supreme Court held that the explanation offered was that the applicants/petitioners came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter, is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) of Section 21 was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). It was held that the Tribunal was wholly unjustified in condoning the delay.

16. In the case of *State of Orissa v. Mamta Mohanty*, 2011 (3) SCC 436 (para-54), Hon"ble Supreme Court rejected the delay condonation application holding where the petitioner approached the Court after coming to know of the relief granted in a similar case as the same cannot furnish a proper explanation for delay and laches.

17. In the case of *Mafatalal Industries Ltd. v. Union Of India*, 1997 (5) SCC 536 (para-79), nine Judges Constitution Bench of Hon"ble Supreme Court, held as under:

"79.We may now consider a situation where a manufacturer pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after a year, five years, ten years, twenty years or even much later, a decision is rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasise that while dealing with this situation we are keeping out

the situation where the provision under which the duty is levied is declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, we are dealing with a case where the duty was paid on account of misconstruction, misapplication or wrong interpretation of a provision of law, rule, notification or regulation, as the case may be.) Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the case may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17 (1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? Kanhaiya Lal is understood as saying that such a course is permissible. Later decisions commencing from Bhailal Bhai have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained. But what is happening now is that the duty which has been paid under a proceeding which has become final long ago - may be an year back, ten years back or even twenty or more years back - is sought to be recovered on the ground of alleged discovery of mistake of law on the basis of a decision of a High Court or the Supreme Court. It is necessary to point out in this behalf that for filing an appeal or for adopting a remedy provided by the Act, the limitation generally prescribed is about three months (little more or less does not matter). But according to the present practise, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law. The incongruity of the situation needs no emphasis. And all this because another manufacturer or assesses has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assesses succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/assesses all over the country are filing refund claims within three years of such decision, irrespective of the fact that they may have paid the duty, say thirty years back, under similar provisions - and their claims are being allowed by courts. All this is said to be flowing from Article 265 which basis, as we have explained hereinbefore, is totally unsustainable for the reason that the

Central Excises Act and the Rules made thereunder including Section 11-B /Rule 11 too constitute "law" within the meaning of Article 265 and that in the face of the said provisions - which are exclusive in their nature - no claim for refund is maintainable except of law which is violated by permitting the above situation is the sanctity of the provisions of the Central Excises and Salt Act itself. The Act provides for levy, assessment, recovery, refund, appeals and all incidental/ ancillary matters, Rule 11 and Section 11-B, in particular, provide for refund of taxes which have been collected contrary to law, I.e., on account of a misinterpretation or misconstruction of a provision of law, rule, notification or regulation. The Act provides for both the situations represented by Sections 11-A and 11-B. As held by a seven Judge Bench in Kamala Mills following the principles enunciated in Firm & Illuri Subbayya Chetty the words "any assessment made under this Act" are wide enough to cover all assessments made by the appropriate authorities under the Act whether the assessments are correct or not and that the words "an assessment made" cannot mean an assessment properly and correctly made. It was also pointed out in the said decision that the provisions of the Bombay Sales Act clearly indicate that all questions pertaining to the liability of the dealer to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct and whether a transaction is exigible to tax or not are all matters to be determined by the authorities under the Act. The argument that the finding of the authority that a particular transaction is taxable under the Act is a finding on a collateral fact and, therefore, resort to civil court is open, was expressly rejected and it was affirmed that the whole activity of assessment beginning with the filing of the return and ending with the order of assessment falls within the jurisdiction of the authorities under the Act and no part of it can be said to constitute a collateral activity not specifically or expressly included in the jurisdiction of the authorities under the Act and no part of it can be said to constitute a collateral activity not specifically or expressly included in the jurisdiction of the authorities under the Act. It was clarified that even if the authority under the Act holds erroneously, while exercising its jurisdiction and powers under the Act that a transaction is taxable, it cannot be said that the decision of the authority is without jurisdiction. We respectfully agree with the above propositions and hold that the said principles apply with equal force in the case of both the Central Excises and Salt Act and the Customs Act. Once this is so, it is un-understandable how an assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for reopening the concluded proceedings on the aforesaid basis. We must reiterate that the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said article. In short, no claim for refund is permissible except under and in accordance with Rule 11 and

Section 11-B. An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. It is, however, suggested that this result follows only in tax matters because of Article 265. The explanation offered is untenable, as demonstrated hereinbefore. As a matter of fact, the situation today is chaotic because of the principles supposedly emerging from Kanhaiya Lal and other decisions following it. Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265 surely could not have been meant to provide for this. We are, therefore, of the clear and considered opinion that the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be and ought to have been, filed only under and in accordance with Rule 11/Section 11-B and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee. (See the pertinent observations of Hidayatullah, C.J. in *Tilokchand Motichand* extracted in para 46.) The decisions of this Court saying to the contrary must be held to have been decided wrongly and are accordingly overruled herewith."

(Emphasis supplied by me)

18. Thus, the sole ground taken by the applicant/appellant in modification, recall and review applications on the basis of alleged subsequent decision of a Division Bench allegedly in respect of a similarly situated person, after three/six years of the decision in the above noted first appeal of the present applicant which attained finality, is neither a ground for condonation of delay nor a ground for modification or recall or review of the decision in the first appeal of the applicants. Thus, even on merit, such review or recall applications deserve to be rejected in view of law laid down by the Constitution Bench of Hon'ble Supreme Court in the case of *Mafatlal Industries* (supra).

Scope of Review:-

19. In the case of *Desraj v. Union of India*, 2004 (7) SCC 753 (paras-5, 6 & 14), Hon'ble Supreme Court considered the grounds for review in the matter of compensation for land acquisition and observed/ held as under:

"5. In the impugned judgments, the High Court has taken note of the fact that the appellants did not challenge the judgment of the High Court dated 11.10.1984 in appeal, as was done by Pratap Singh and others. As a result, judgment and decree dated 11.10.1984 in their cases became final. In the

impugned judgment, the High Court has stated thus:-

"It is pertinent to note that the applicants herein, namely, the appellants in RFAs Nos. 143/75 & 130/75, did not challenge the judgment dated 11.10.1984 in appeal, as was done by Pratap Singh and others. As a result, judgment and decree dated 11.10.1984 in their case became final."

6. The High Court also has noticed that although in the review applications reliance was sought to be placed on Section 28-A of the Act claiming re-determination of the amount of compensation equal to that awarded to other interested persons in the same village, however, during the course of the hearing, learned counsel for the appellants abandoned that plea in the light of the judgment of this Court in *Jose Antonio Cruz Dos R. Rodriguese & Anr. etc. v. Land Acquisition Collector & Anr.* [JT 1996 (10 SC 573)]. In this view, the High Court, by the impugned judgments, dismissed the review applications filed by the appellants.

"14. Admittedly, the appellants in these cases did seek for reference under Section 18 of the Act; filed appeals before the High Court and after the High Court delivered the judgment on 11.10.1984, did not challenge the same. The applications were not made under Section 28-A of the Act within the prescribed period of limitation also in these cases. At any rate, the grounds raised in the review applications were not the grounds which could be accepted to review or modify the judgment of the High Court dated 11.10.1984. In our view, the High Court was right in dismissing their review applications for the reasons stated in the impugned judgments."

20. That apart even on merit, the aforesaid review/ modification or recall applications are wholly misconceived inasmuch as the appellant/ applicant has completely failed to point out manifest error in the judgment dated 29.03.2008. He has further failed to bring his case within the purview of Order 47, Rule 1, C.P.C. Consequently, the aforesaid applications including the review applications are wholly misconceived in view of the law laid down by Hon"ble Supreme Court in the cases of *Raja Satraji v. Mohd. Ajmat Azim Khan*, 1971 (2) SCC 200 (para-13), *Delhi Pradesh Registered Medical Practitioner's Association v. Union of India*, 2011 (4) SCC 296 (paras-9 to 11) and *Surendra Koli v. State of U.P.*, 2014 (16) SCC 718.

21. The jurisdiction and scope of review is not that of an appeal and it can be entertained only when an error is apparent on the face of record. Once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step, therefore, the court should be reluctant to resort to it except where a glaring omission or patent mistake or like grave error has crept in the earlier judgment. A mere repetition of old arguments or minor mistakes of inconsequential import are insufficient for review. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the

face of the order, undermines its soundness or results in miscarriage of justice, which I do not find in the present set of facts. Review is not a routine procedure. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. Review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 C.P.C. In a review, it is not open to the Court to re-appreciate the evidence and lead a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is clear that there is an error apparent on the face of the record or for some reason akin thereto. It is not re-hearing of the original matter. The power of review cannot be confused with appellate power which enables an appellate court to correct all errors committed by a subordinate court. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

22. A review will be maintainable on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the appellant or could not be produced by him or there is mistake or error apparent on the face of the record or for any other sufficient reason. The phrase "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112 approved by Hon"ble Supreme Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors.*, (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rules". Same principles had been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, JT 2013 (8) SC 275.

23. A review will not be maintainable on repetition of old and overruled arguments, minor mistakes of inconsequential import, for original hearing of the case, in the absence of any material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice, possibility of two views on the subject, the error which has to be fished out and searched, for appreciation of evidence on record, when same relief as sought in review petition was negated at the time of arguing the main matter. These principles also find support from the law laid down by Hon"ble Supreme Court in the case of *Kamlesh Verma v. Mayawati*, 2013 (8) SCC 320. Whether Market Value can be determined on the basis of Market Value of another land of a subsequent acquisition:-

24. In the Review Application the applicant has relied upon a judgment of a division bench dated 19.05.2010 in First Appeal No.1056 of 1999, *Raghuraj Singh and others v. State of U.P. and others* relating to village Bhangel by which market value of land acquired in the year 1988 or 1989 was determined at Rs.297.00 per square yard. The said judgment has no relevance in the present set of facts for reasons that the acquisition in question was made in the year 1976 of lands of a different village. In the case of *Bhupal Singh v. State of*

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

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

(Emphasis supplied by me)

Whether relief can be granted beyond pleadings and relief prayed:-

25. There is yet another ground on which these applications deserve to be rejected. As already noted in preceding paragraphs of this judgment, whatever relief was sought by the appellant was granted by this court by judgment dated 29.03.2008. The relief attempted to be sought by means of the above noted three applications namely modification, recall and review applications, cannot be even entertained in the absence of any manifest error in the order dated 29.03.2008, on the settled legal proposition that a relief not founded on the pleadings, can not be granted. This view is well supported by the judgments of Hon"ble Supreme Court in *State of Orissa v. Mamta Mohanty*, 2011 (3) SCC 436 (para-55), *Trojan and Co. v. Nagappa Chettiar*, AIR 1953 SC 235, *Ishwar Dutt v. Collector (LA)*, 2005 (7) SCC 190 and *State of Maharashtra v. Hindustan Construction Co. Ltd.*, 2010 (4) SCC 518.

Applicability of amended Section 23(2):-

26. In the case of *Union of India and another v. Raghubir Singh (dead) by LRs. Etc.* (1989) 2 SCC 754 (paras-32, 33 and 34), Constitution Bench of Hon"ble Supreme Court considered the provisions of Section 23 and Section 11 of the Act and Section 30(2) of the Amending Act, 1984 and held that the enhanced solatium of 30% shall, by virtue of Section 30(2) shall apply only to the award by

the Collector or by the court made between 30.04.1982 and 24.09.1984. In the present set of facts admittedly the award by the S.L.A.O. was made on 08.03.1977 and by the court on 27.02.1982 which is prior to the cut off dates. Thus even on merit the judgment dated 29.03.2008 passed by this court in the present appeal awarding solatium @ 15% does not suffer from any error.

27. In view of the above discussions, all the above noted applications filed by the applicant/appellant, are dismissed.