(1995) 08 MAD CK 0090

In the Madras High Court

Case No : Review Application No''s. 5 to 7 of 1995 in Appeal No''s. 187 to 189 of 1992

Special Tahsildar, (Land Acquisition), Master Plan Complex, Virudunagar — APPELLANT

Vs

G. Rajendra Bose — RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 1(1), 114, 151
Constitution of India, 1950 — Article 141, 226
Evidence Act, 1872 — Section 13, 64, 65, 65(f)
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 24, 26(2)
Registration Act, 1908 — Section 57(5)

Citation : (1995) 08 MAD CK 0090

Hon'ble Judges : Srinivasan, J;Abdul Hadi, J;A.R. Lakshmanan, J

Bench : Full Bench

Advocate : R. Krishnamoorthy, A.G. for Mr. V. Dhanapathy, Additional Government Pleader, for the Appellant; K. Alagirisami, for Mr. A. Sivaji, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Lakshmanan, J.

(16-3-1995)

1. The matter arises under the Land Acquisition Act (hereinafter referred to as the Act). The lands in Survey Nos. 157/2A, 158/1A, 158/1B, 158/1C and 159/4 in Kooraikundu village were acquired by the State for the construction of Government offices and residential quarters for the District Head quarters of Kamarajar District. The Land Acquisition Officer awarded a sum of Rs. 11,638-15 to the claimant for Survey No. 157/2A of an extent of 1.05.0 hectares; a sum of Rs. 2,50,419-10 for an extent of 2.45.5 hectares in Survey Nos. 158/1 A, 158/1B and 159/4 at the rate of Rs. 7,410/- per hectare for Survey Nos. 158/1A and 158/1B and at the rate of Rs. 20,632/- per hectare for survey No. 159/4; and a

sum of Rs. 9,476-75 for an extent of 0.85.5 hectares in Survey No. 158/1C, besides solatium and interest from the date of the Notification u/s 4(1) of the Act to the date of taking possession of the lands. The claimant objected to the rate fixed by the Land Acquisition Officer. A Reference u/s 18 of the Act was made to the Sub Court, Srivilliputhur. Before the Sub Court, Exs. A. 1 and A-2 were filed on the side of the claimant and Exs. B. 1 to B.5 on the side of the State. No oral evidence was let in by either side. The learned Subordinate Judge, on a consideration of the entire materials placed and the documents marked before him, fixed the market value of the lands under acquisition at Rs. 1,500/- per cent. Aggrieved against the common order in L.A.O.P. Nos. 13 to 15 of 1989, the State preferred A.S. Nos. 187 to 189 of 1992. After hearing the arguments of both sides, we dismissed the appeals by confirming the amount of compensation awarded by the learned Subordinate Judge. We have held that the court below after considering all the circumstances as discussed in its order, has arrived at a fair estimate with reference to the surrounding circumstances and the documentary evidence. This judgment was delivered by us on 12.121994 (Since reported in 1995-2-L.W.99). While so, a batch of about 20 appeals came up for hearing before us arising out of the same notification and acquired for the very same purpose of construction of Government Offices and residential quarters for the District Head quarters of Kamarajar District. However, when the earlier appeals viz., A.S. Nos. 187 to 189 of 1992 came up for hearing, Mr. V. Dhanapathi, Additional Government Pleader, who argued on behalf of the State, and the Counsel for the claimants has not brought to our notice about the pendency of other batch of appeals filed by the State. We proceeded to hear the three appeals alone which were posted before us and delivered judgment on 12.12.1994, (1995-2-L.W.99) which is now sought to be reviewed.

2. Learned Advocate General who appeared for the State in the hatch of about 20 appeals, argued the matter for some time. At the time of hearing, he also informed us that Review Applications are being filed against the Common Judgment in A.S. Nos. 187 to 189 of 1992. However, the learned Advocate General fairly conceded that the learned Additional Government Pleader (Mr. V. Dhanapathi) who appeared on the earlier occasion in A.S. Nos. 187 to 189 of 1992, has failed in his duty to bring to the notice of this Court about the pendency of other appeals, which we came to know only after they are listed for hearing before us. We heard the arguments of the learned Advocate General and admitted the Review Applications. We directed Mr. A. Sivaji, Learned Counsel for the claimant, who was present in Court at the time of admission, to take notice on behalf of the respondent in the Review Applications.

3. We have heard the arguments of the learned Advocate General for the State/ review petitioner and Mr. K. Alagiriswamy learned Senior counsel for the claimant/ respondent.

4. The learned Advocate General raised the following points for our consideration:

(a) this Court passed the judgment dated 1 x. 12.1994 without considering the principles of law settled by the Apex Court due to the failure to bring to the Notice of this Court by inadvertence.

(b) this Court ought to have seen that the sales relied upon by the claimant were with reference to smaller extent of land, which appears to be intentional and entered into after knowing the proposed acquisition. Therefore, the basis adopted by this Court to fix the value at Rs. 1,500/- per cent relying on Ex. A2, whereunder a smaller extent was conveyed, is opposed to settled principles of law.

(c) No oral evidence was let in by the claimant is support of the claim for enhanced compensation and that the claimant has not discharged his burden of proof, which lies on him.

(d) The non-consideration of the case in the light of the various dictum of law warrants review of the judgment in the interest of justice.

e) The correct percentage of sale deeds relating to small bit of land was not brought to the notice of this Court which resulted in this Court holding that 90% of the sales relate to small bit of lands.

(f) The relevant factors such as the vastness of the area and the permissible deductions were excluded from consideration and therefore, interest of justice warrants review of the decision of this Court

(g) The land under acquisition is an undeveloped one and there are no basic amenities besides the categorical statement that there was no construction activity.

5. In support of his contention, the learned Advocate General cited the following decisions reported in:-

Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others,

Gulzara Singh and Others Vs. State of Punjab and Others,

Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala,

1989 T.L.N.J. 458;

Smt. Andem Laxmamma and others Vs. The Tahsildar (Land Acquisition Officer) Mothkur, Nalgonda Dist.,

Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury,

A.I.R. 1981 Himachal Pradesh 1;

A.I.R. 1978 Allahabad 270;

A.I.R. 1972 Mysore 44;

A.I.R. 1939 Madras 293;

1960 (II) M.L.J., 27;

The State of Tamil Nadu Vs. S. Mohammad Yousuff Sahib and Co.,

A.I.R. 1989 Calcutta 106;

79 L.W. 132 : 1966 (1) M.L.J. 302;

Sushil Kumar Sen Vs. State of Bihar,

1933-1- MLJ., 365;

A.I.R. 1926 Madras 764;

A.I.R. 1954 S.C. 526; and

1959-2-M.L.J. 201;

6. Mr. K. Alagiriswami, learned senior counsel appearing for the respondent/ claimant while opposing the Review Applications submitted that the review cannot be granted on the grounds now raised in these petitions, more particularly on the more ground that the learned Additional Government Pleader who appeared for the State failed to raise a particular point. According to him mere failure of the counsel who appeared at the previous stage of the case to lay opposite law before Court is by itself no ground for review according to Order 47, Rule 1 of the Code of Civil Procedure. It is further contended that the ingredients mentioned in Order 47, Rule 1, C.P.C, must be satisfied if review jurisdiction is to be exercised by this Court, and that Review Application must be treated with a considerable measure of caution. According to Mr. K. Alagtriswami, the points now urged by the State in the Review Applications were very well within the knowledge of the learned Additional Government Pleader who argued the matter earlier. It is not the case of the State that the materials which are now placed in the Review Applications were not within the knowledge of the counsel for the State. The State is not in a position to explain why these materials could not be placed or produced by the learned Additional Government Pleader at the time when the common judgment was delivered in the three appeals. He would further contend that the Review jurisdiction may not be exercised on the ground that the decision was erroneous on merits, which would be the province of a Court of Appeal, and that the power of review is not to be confused with the appeal power which may enable an appellate Court to correct all manner of errors committed by the Subordinate Courts. Since none of the ingredients as contemplated under Order 47, Rule 1, C.P.C, is satisfied, Mr. K. Alagiriswami would submit that it would not be open for the Court to review the judgment passed by it after hearing both parties. Mr. K. Alagiriswami, in support of his contention cited the following decisions reported in 1988 Volume II, AH India Land Acquisition and Compensation Cases, Page 661, (1988-2-L.A.C.C.661 : 1988-2-L.W.57):

A.I.R. 1962 Madras 304,

Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh,

Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh,

A.I.R. 1994 Bombay, 271 and

A.I.R. 1994 Allahabad 67,

A.I.R. 1989 P and H. 27.

7. There is no doubt that this Court being a Court of plenary jurisdiction, has the inherent power of review to prevent miscarriage of justice or to correct grave and palpable errors committed by it. We have, therefore, to see whether such plenary jurisdiction and inherent power of review is to be exercised in this case on the facts and circumstances and on the grounds raised in the Review Applications. Before we proceed further, let us see the scope and ambit of Order 47, Rule 1 of the Code of Civil Procedure. Order 47, Rule 1 of the CPC says that the following ingredients must be satisfied, if the review jurisdiction is to be exercised;

(1). From the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or

(2). Could not be produced by him at the time when the decree was passed or order made, or

(3). On account of some mistake or error apparent on the face of the record, or

(4). For any other sufficient reason,

Unless any one of these ingredients is satisfied, it would not be open for the court to review the judgment or order passed by it. It is well settled that the new important matters which are alleged by the applicant for review were not within his knowledge and, therefore, could not be produced by him at the time when the decree sought to be reviewed was made. It must be shown to the satisfaction of the Court. In the instant case, a conclusion was arrived at by us after a detailed probe into statutory provisions, documents, the facts and circumstances of the case and the findings were expressly recorded on each point. This, in our view, cannot be claimed to be a case of error apparent on its face. It is well settled that an error apparent on the face of the record should appear either in the order itself, or any other document which is incorporated in that order. Similarly, the bad advice of the Pleader, or non-production of document is no ground for allowing the applicant for rehearing of the case. A new plea is not a fit ground for interference in application for review. Likewise, a judgment cannot be reviewed merely because certain subsequent events took place. Once a question of fact is decided by the Court, may be wrongly, that would not be a point for review. It is also decided by a catena of decisions that the power to review is not an inherent power.

8. In the grounds of review, it is stated that the judgment of this Court, dated 12-2-1994 has been passed without considering the principles of law settled by

the Apex Court due to failure to bring to the notice of this Court, by inadvertence and that the non consideration of the case in the light of the various factum of law warrants review of the judgment and decree, in the interest of justice. It is also stated that there was no oral evidence let in support of the claim by the claimants for the enhanced compensation. It is not the case of the review-applicant that at the time of arguing the appeal by the Additional Government Pleader that those judgments and other facts were not within his knowledge and therefore, could not be produced by him at the time when the order was passed. The failure on the part of the counsel to bring to the notice of this Court the relevant materials/judgments, cannot in our view be a ground for review. The present Review Applications which have been filed on the sole allegation that the non consideration of the case in the light of the various dictum of law, which was discovered after the judgment, was not within the knowledge of the applicant, cannot be granted- No acceptable reason whatever has been adduced for such failure. As already stated, the scope of review is very limited and the power to review is also not an inherent power. Therefore, we are at a handicap to entertain the applications for review on the ground alleged.

9. Mr. R. Krishnamoorthi, learned Advocate General strongly relied on the decisions of the Supreme Court reported in:

(1) Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala,

(2) Gulzara Singh and Others Vs. State of Punjab and Others,

(3) Jawajeenasganatham v. Revenue Divisional Officer 4 SCC 595 : I994-2-L.W.14).

He has also relied on other judgments. He has also insisted that the documents marked as Exs. A1 and A2 and filed in the court below on behalf of the owners of the land shall be eschewed from consideration since those documents were not proved by oral evidence. We shall now take up the said decisions one by one:

Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , was a case decided on 6.9.1990 in Civil Appeal Nos. 543 to 570 of 1974, which arose from the judgment and order, dated 22nd January, 1973 of the Kerala High Court under the relevant notification issued u/s 6(1) of the Travancore Land Acquisition Regulation 1989. It is useful to extract the following portions from paragraph 18 of the said decision;

...Equally, it is statutory to note that ''he claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be recompensed for rehabilitation or to purchase similar lands elsewhere. In some cases, sales it may not possible to adduce evidence of sale transactions of the neighboring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of notification u/s 4(1). Therefore, it is the paramount duty of the Land Acquisition Judge/authority to keep before him always the even scales to adopt pragmatic approach without indulging in ''facts of imagination'' and assess the market value which is reasonably capable to fetch reasonable market value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. The guiding star would be, the conduct of a hypothetical willing vendor who would offer the lands and what a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal conditions as on the date of the notification u/s 4(1), but not an anxious buyer dealing at arm''s length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value.

10. In our opinion, the above is the ratio of the decision. It is also seen from paragraph 19 at page 208 of the said decision that the actual decision in this case is based on a concession made by the Advocate General of Kerala, who appeared before the High Court, Kerala. The relevant portion of the judgment reads thus:-

We are relieved to undertake that exercise in view of the fair stand taken by the learned Advocate General who appeared in the High Court. It is clear from the judgment that the learned Advocate General while arguing the case had stated across the bar, obviously on instructions or in fairness from record, that the market value can be fixed at Rs. 18 per cent, This is, therefore, a concession made by the learned Advocate General on behalf of the State. The High Court, therefore, was not justified in not taking into account this submission of the Advocate General....

11. The second case relied on by learned Advocate General was rendered by the Supreme Court on May 11, 1993 Gulzara Singh and Others Vs. State of Punjab and Others, , wherein Civil Appeals were filed against the judgment and Order, dated September 3, 1982 of Punjab and Haryana High Court. A notification u/s 4(1) of the Land Acquisition Act 1 of 1894 was published in the Punjab State Gazette on January 27, 1978. It is beneficial to extract the following portions (lines 18 to 34) at page No. 250 in the said judgment as hereunder:

In order to adjudge whether sales are bona fide sales between willing vendor and willing vendee and whether the consideration mentioned in the deed was, in fact and really passed on under transaction; whether the lands covered by sale deeds and relied on, possessed of same or similar potentialities or fertilities or advantageous features would be brought or record only by examining the vendor or the vendee, or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory (vide Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, wherein this Court surveyed the entire case law in that respect). Since none has been examined in the first batch the sale transactions referred to either by the State or by the claimants cannot be relied upon. In the second batch, since the evidence has not been referred to by the courts below nor discussed by them nor we have the advantage to go through the same, we cannot rely on the same to further enhance the market value. Therefore, we are left with no option, but to reject those sale deeds.

12. In the third case cited by learned Advocate General Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, Civil Appeals were decided by the Supreme Court on January 25, 1994. The Civil Appeals were filed against the judgment and order dated 29-10-1982 of the Andhra Pradesh High Court in Appeal No. 44 of 1981 and W.P. No. 6031 of 1979. In that case, a notification u/s 4(1) of the Act was published on April 17, 1975. The following passage in paragraph 5 of the said decision was relied on to prove and establish that the burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette u/s 4(1) of the Act with reference to the sale deeds of the same lands or neighbor''s land possessed of same or similar advantages and features executed between a willing vendor and a willing vendee or other relevant evidence in the Reference court:

In Director of Survey cum LAO v. Mohd. Ghouse ((1985) I MLJ 116 : 98 L.W. 18) relied on by Mr. Ganguli, the Division Bench of Madras High Court, relying upon the instructions issued by the Government to determine the market value for the purpose of registration of the instrument u/s 47-A, held that it would form basis to determine the market value u/s 23 in an appropriate case, subject to proof of the market value. What were the instructions issued by the Government and whether they had any statutory foundation, have not been stated by the Division Bench. If the broad proposition of law that u/s 47-A of Stamp Act such instructions could be issued, as contended for the appellant herein, as appears to be the view of the High Court, it is not correct law. As we have already noted Section 47-A being local amendment, made by each State legislature, did not find any such statutory basis. Like A.P. Act, Tamil Nadu Act is also referable to transactions inter vivos and not as general guidelines. If they are based on evidence interprets it would be consistent with Section 47-A. Accordingly, we hold that the basis value of registration has no statutory base. It cannot form any basis to determine the market value of the acquired lands u/s 23 of the Act.

This case is very important because it holds the decision in Director of Survey cum LAO ''5 case ((1985) I MLJ 116 : 98 L.W. 18), a case from Pondicherry, as not correct law. In the said decision, the State had not filed any appeal against the award of the Reference court. The Supreme Court has held that the court has to take into the guidelines prescribed to determine the market value of the land. In our considered opinion, learned Advocate General can derive no assistance from the three decisions referred to supra. We ourselves in a recent judgment, dated 22-12-1994 rendered in A.S. No. 1067/1986 following the judgment of the Supreme Court in Ranjee Dayalwala case (1981 SCC (1) 80) held that the proof of document is not proof of its contents.

13. In this context we have to take note of Section 51-A of the Act:

In any proceeding under this Act a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under S.57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Section 51 A of the Land Acquisition Act, 1894 has been introduced into the Act by Section 27 of the Act (68 of 1984), the Land Acquisition (Amendment Act). Section 51-A of the Act has been noticed by the Aurangabad Bench of the Bombay High Court in its decision reported in Osman Khan v. State (AIR 1994 Bombay 271). The relevant passage in paragraph 8 of the said decision is extracted hereunder:

Mr. Khader, Learned Counsel appearing for the appellants points out that the court below did not exhibit the sale deed, dated 5-8-1981 as in its view mere filing of the certified copy of the sale deed is not enough proof of its contents. That view however is not correct in view of the express provisions contained in Section 51 A of the Act.

It is true that the court below did not exhibit the third sale instance for want of proof despite Section 51A of the Act which provides for acceptance of certified copy of the sale deed as evidence of a document registered under the Registration Act, 1908. There is no dispute that the claimants have filed the certified copy of the registered document and therefore, same could be read in evidence.

The said Section 51 A of the Act was not brought to the notice of the Supreme Court in all the above three decisions cited supra. Therefore, the Honourable Supreme Court had no occasion to consider the scope of the said Section 51 A of the Act. Though the Supreme Court has observed that the sale deeds relied on can be proved in regard to potentialities or fertilities within reasonable time on the basis of the best evidence, in all the said three cases the Supreme Court has not set aside the findings of the High Court and the respective References made thereunder, and remitted the matters back for fresh consideration and also for letting fresh oral evidence. In fact, the Supreme Court itself has considered the documents and awarded the compensation.

14. Let us now see the "Objects and Reasons" for this Amendment Act, 1984. On a reading of the "Statement of Objects and Reasons" for this Amending Act, we come to notice that what was considered as most important by the Parliament was the interest of the common man, the owner, whose property was acquired. We can do no better than to quote the Statement of Objects and Reasons as could be seen in Volume 10 of "Current Central Legislation" 1984, at page 457 in the following terms:-

Prefatory Note to Statement of Objects and Reasons:- With the enormous expansion of the State''s role in promoting public welfare and economic development since Independence, acquisition of land for public purposes, industrialisation, building of institutions etc., has become far more numerous than even before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individuals and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act 1894, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill.

14-A. It will be observed that the thrust of the amending legislation is to speed up the process and render justice to the person whose property was being taken away by the state. In fact, provision has now been made in the Act even to compensate those who did not ask for a Section 18 Reference. As contended by Mr. R. Krishnamoorthi, learned Advocate General, if law were to insist on a claimant and for that matter even the State, to summon and examine before the Reference Court, in Section 18 proceedings parties to a document or its attesting witnesses who may not necessarily be within the local jurisdiction of the Reference court it will, in our opinion lead to enormous expenditure and time and money both for the individual, quando owner and the State. It is a matter of common knowledge that since 1967 or so, almost every State in India has enacted provision in its Stamp law to provide against undervaluation of instruments for evading stamp duty. It must be remembered that the whole exercise in a Reference proceeding is to ascertain that price which a willing seller and purchaser agree upon for the property in question. To determine this question instances of sales in the locality are considered as being likely to furnish a sound and proper basis. Any special characteristic of the property acquired, either positive or negative, may tend to tilt the approach. But, very often the property may be owner-occupied or may not fetch any return and may have only potential value. Attempting into fixing its value on the basis of the sales of the property in the neighbours is at best an approximation. To throw on the helpless owner who has lost his property the task of finding the parties to sale deeds to come and depose before the Court will be like throwing more burden on his shoulders than he can carry. A sale deed in law does not require attestation and a mere attestation cannot be attributed knowledge of the details of the transaction. The erstwhile owner and the State will have only to look out for the actual parties to the transaction to come to the court and speak about the same. This, it is our view the parliament has by enacting Section 27 of the Amending Act done away with. We therefore, overrule the contentions urged by learned Advocate General.

14-B. When the review is sought on the ground of discovery of new evidence, the evidence must be relevant, clear and conclusive, and though it need not be sufficient to show that the previous decision is wrong. Considering the right of Reference u/s 18 of the Act, it cannot usually be taken advantage of by the applicant, as it is usually exercised only by the comparatively affluent owners. Therefore, the argument of learned Advocate General that the non examination of the witnesses by the claimant entitles the petitioner to ask for review, cannot at all be countenanced, which will not be possible also in most of the cases.

15. In view of the above views expressed by us, there is absolutely no necessity or need to consider the other judgments cited by learned Advocate General, which are distinguishable on facts and on law. However, they were cited. We first deal with the decisions cited by learned Advocate General, appearing on behalf of the State:

(1) S. Nagaraj v. State of Karnataka ((1993 Supp. 4 SCC 595), wherein at page 619, the Supreme Court has observed thus:-

Review literally and even judicially means reexamination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet, in the realm of law, the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions, both statutorily and judicially, have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order, the Courts culled out such power to avoid abuse of process or miscarriage of Justice.

(2). Meera Bhanja v. Nirmala Kumari Choudhury (AIR 1995 SC 455), wherein the Supreme Court in paragraph 8 has observed as follows:-

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. in connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court in the case of Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, speaking through Chinnappa Reddy, J has made the following pertinent observations:-

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

(3) Commissioner of Sales Tax, State of Gujarat Vs. Union Medical Agency, whereunder a Full Bench of Himachal Pradesh High Court in paragraph 15 has held as follows:-

The second part of the question relates to a situation where a Court has failed to notice an existing contrary decision of the High Court or the Supreme Court on a point covered by its judgment. Now the failure to notice a decision on a question of law of the Supreme Court, which is the law of the land under Article 141 of the Constitution, is not the same thing as failure to notice a binding decision of the High Court. So, we would divide the question into two parts (a) failure to notice a decision of the Supreme Court (b) failure to notice a binding decision of the High Court.

4. In re: In Re: Mahamaya Banerjee, wherein the Calcutta High Court held that the phrase "sufficient reason" in Order 47 Rule 1 of the Code Civil Procedure did not include misconception of fact and/or law of the Advocate and inherent power could not be used to correct the erroneous view of the learned Advocate. It is further seen from the said judgment that the application was not entitled as one under Order 47, Rule 1 of the Civil Procedure Code, but however, the Calcutta High Court allowed the application u/s 151 of the Code of Civil Procedure.

(5). Nesamony Transport Corpn. Ltd. v. John Bright ((1993 I MLJ 365) was a case rendered by Venkataswami, J. (as he then was), who observed that so long as the Motor Accidents Claims Tribunal exercises judicial functions it should be held to possess power to review its judgment where due cause is shown.

(6) P. Logan & others v. The Spl. Tahsildar (A.D. W), Arani (1989 TNLJ 458), whereunder a Division Bench of this Court has evaluated the criteria for acquisition and fixation of the value of the land. Learned judges in the said decision have also followed the decisions of the Supreme Court in, Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, and Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another,

for that purpose.

(7). In Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, , the Supreme Court has held that for determining the market value of a large property on the basis of a sale transaction for smaller property a deduction should be given.

(8). In Smt. Andem Laxmamma and others Vs. The Tahsildar (Land Acquisition Officer) Mothkur, Nalgonda Dist., , the Andhra Pradesh High Court has he d that the claimant cannot gain any advantage on account of the non examination of any witnesses on behalf of the Referring Officer and that the burden lies on the claimants to substantiate their claim for enhancement.

9. In Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, the Supreme Court in paragraph 3, while constructing the scope of review under Article 226 of the Constitution of India held thus:-

It is true that there is nothing in Art. 226 of the Constitution of India to preclude the High Court from exercising the power to review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may be also exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not be confused with appellate power which may enable an Appellate Court to correct all manner of error committed by Subordinate Court.

10. In Ram Surat and Others Vs. Shitla Prasad, the Allahabad High Court has held as follows;-

Where an important piece of evidence showing the existence of the right of passage over the suit land was missed to be considered review was maintainable. The judgment initially made, held, rightly reversed.

(11). In S.R.T. Corpn. v. Najundappa (AIR 1972 Mys 44), the Division Bench of Mysore High Court has held as follows;-

Art. 141 of the Constitution provides that the law declared by the Court shall be binding on all courts within the territory of India. Hence, where there is a decision of the Supreme Court bearing on a point which has not taken a view on that point which is not consistent with the law laid down by the Supreme Court, it needs no elaborate argument to point to the error, and there could reasonably be no two opinions entertained about such error. Applying the test laid down by Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, such an error would clearly be an error apparent on the face of the record.

The Division Bench of Mysore High Court has also referred to the observations of the Federal Court in Jamna Kuer v. Lai Bahadur (AIR 1950 SC. 131), Mahajan, J. (as he then was), who spoke for the Federal Court. Learned judge said that where there is an error apparent on the face of the record the question as to how that error occurred, is of no relevance for the purpose of review and that it is immaterial whether such error occurred by reason of the counsel''s mistake or had crept in by reason of oversight on the part of the Court.

In the instant case, learned Advocate General has not pointed out what is the error apparent on the face of the record.

(12). In Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, the Supreme Court in paragraph 11 of its judgment has held as hereunder;-

There is a distinction which is real though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here, is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

As observed by the Supreme Court, a review would lie only when a patent error is found.

(13). In Sri Rajah Bommadevara Venkatarayulu Naidu Bahadur Zamindar Garu Vs. Sri Rajah Lanka Venkata Rattamma Garu, Wadsworth, J took the following view:

Where there is an error of law which obviously and without research into the rulings, involves a lack of jurisdiction to pass the order of which review is sought, it is eminently a case in which the error, though technically an error of law, is apparent on the face of the record and should be corrected at the earliest possible time without driving the parties to the expense of an appeal or revision petition to which there would be no answer.

(13a). In Chockalingam Chettiar v. Chidambaram Pillai (1960 II MLJ327 - 73 L.W.533), Anantanarayanan, C.J., has observed thus:-

While it is true that the expression for any other sufficient reason in Order 47 Rule 1 Civil Procedure code, should be construed ejusdem generis with the other provisions of the Rule laying down the limits of the exercise of the power of review, a too narrow interpretation of the words will not be in accord with equitable principles.

(14). In State of Tamil Nadu v. Mohammad Yousuff Sahib & Co. ((1989) 42 STC 335), a Division Bench of this Court, consisting of Ismail & Sethuraman, JJ. while entertaining a petition for review held that since their earlier order had not considered the decision of the Supreme Court, their earlier judgment is erroneous. Therefore, the Division Bench allowed the petition for review and set aside their earlier order. The earlier order in the said decision was the one passed on September 23, 1976 on a revision petition preferred by the State u/s 38 of the Tamil Nadu Act 1 of 1959 against the order of the Sales Tax Appellate Tribunal which was concerned with a turnover of Rs. 37,669.18 P. representing the sales effected by the respondent in favour of one V. Srinivas & Company, Madras. The contract that was entered into between the parties as extracted by the Tribunal in its order, made it clear that the property in ''the goods passed after the goods were shipped and the documents were obtained and the purchaser was liable to pay the value only on presentation of the documents and that in that see up, the Sales Tax Appellate Tribunal rightly relying upon the decision of this Court in Haji Abdul Gaff or Sahib and Company v. State of Madras ((1975) 36 STC 136) held that since the property in the goods passed after the goods had entered the export stream, the sales constituted sales in the course of export and, therefore the turnover was not liable to be included in the total turnover of the assessee. While dealing so, the Division Bench of this Court also held that the decision of the Supreme Court in Mohd. Serajuddin v. State of Orissa ((1969) 24 STC 481) did not touch the second limb of Section 5 (1) of the Act, viz., where the sale or purchase is effected by transfer of documents of title to the goods after the goods had crossed the customs frontiers of India. However, in the review petition filed by the State, it was contended that the decision of the Supreme Court in State of Madras v. Davar Co. ((1969) 24 STC 481) was not brought to the notice of the Division Bench, when the Division Bench passed the order which was sought to be reviewed then. The Division Bench on consideration of the entire materials placed before it, has passed the following order in that review petition:

On the basis of this decision, it will follow that mere shipping of the goods, after the goods have gone through the Customs barriers, will not constitute the goods having crossed the Customs frontiers because the Customs frontiers will take in the boundaries of the territory including the territorial waters also. Therefore, on the face of it, our order dated 23rd September, 1976 is erroneous, since it had not considered the decision of the Supreme Court referred to above. Hence, this petition for review is liable to be allowed and our order, dated 23rd September, 1976, is liable to be set aside and it is accordingly so done.

15. In Sushil Kumar Sen Vs. State of Bihar, the Supreme Court has held as follows:-

The effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree, originally passed is a new decree superseding the original one.

(16). In the decision in Dhanapalan v. The Assistant Collector ((1966 (1) MLJ

302=79 L. W. 132), Natesan, J. has observed as follows:-

An award passed by the Court on a reference under the Land Acquisition Act can, if the circumstances warrant, be reviewed by that Court u/s 114 read with Order of the Civil Procedure Code. Whatever might have been the position prior to the amendment of the Land Acquisition Act, 1894, by the Amendment in 1921, now that u/s 26 (2) of the Land Acquisition Act as amended in 1921, the award of the Court on a Reference under the Land Acquisition Act has to be deemed to be a decree of the civil court, it will attract the other provisions of the Civil Procedure Code. Once the award is deemed to be a decree all the consequences of its being a decree unless expressly limited will follow. The provisions for review to the extent it is allowed by the Civil Procedure Code, will be applicable to an award made on a Reference under the Land Acquisition Act, as review is not prohibited by the Land Acquisition Act.

(17). In Ramaswami Padayachi v. Shanmuga Padayachi ((1959) II MLJ 201), this Court, while dealing with the construction and scope of Order 47, Rule 1 of the Code of Civil Procedure, when a review is sought on the ground of new and important matter, new evidence, held that such new evidence must be (1) relevant and (2) of such a character that, if it had been given in the suit, it may possibly have altered the judgment. The new evidence must at least be such as is presumably be believed, and, if believed, would be conclusive in the following terms.

When a review is sought under Order 47, Rule 1, Civil Procedure Code, on the ground of the discovery of new evidence, such evidence must be (1) relevant, and (2) of such a character that, if it had been given in the suit, it might possibly have altered the judgment. The new evidence must at least be such as is presumably to be believed, and, if believed, would be conclusive. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made. The party seeking a review should prove strictly the diligence he claims to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive. A bare assertion in the affidavit that the party could not trace the documents earlier will not do. It is not the proper function of a review application to supplement the evidence or to make it serve the purpose of merely introducing evidence which might possibly have had some effect upon the result.

(18). In the decision in M.M.B. Catholicos v. M.P. Athanasius ((AIR 1954 SC 526), the Supreme Court points out the three specific grounds for allowing a petition for review, as hereunder:

(1) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the applicant''s knowledge or could not be produced by him at the time when the decree was passed:

(2) mistake or error apparent on the face of the record, and

(3) for any other sufficient reason.

(19). In Chinnappa v. Htichiamma (AIR Mad 764) a learned single judge of this Court has held as follows:-

R.1 of O.47 must be read as in itself definitive of the limits within which review is permitted and words'' any other sufficient reason'', In that rule mean a reason or grounds at least analogous to those specified immediately previously. If after exercise of due diligence, a pleader fails to lay his hand upon certain material rulings which are not to be found in the authorised reports, the situation is certainly analogous to one where new and important matter was not within the knowledge of the party. But, this would not conclude the question and there is good authority for holding that a judge should not review his judgment merely because a party has found fresh rulings on the matter. There must, generally speaking, be finality, but where it is not a question of right between the two parties, being a mere matter of Court-fees, and the matter is of general importance, review is justified.

16. Mr. K. Alagiriswamy learned senior counsel appearing for the claimant submitted that one of "the grounds urged by learned Advocate General affords sufficient reason for reviewing the judgment. He referred to the decision of Srinivasan, J in All India Land Acquisition and Compensation Cases (1988 LACC 661 = 1988 2 L.W. 57). whereunder learned judge has held as follows:-

The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered had escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong application of the law and a failure to apply the correct law have been held to be not a ground for review.

A wrong exposition of the law, a wrong application of the law and a failure to apply the correct law have been held to be not sufficient for review. If the Court was aware of what it was doing, even if the decision was erroneous, no review lies.

He also has cited the decision in Soosai Anthony D''Costa Nicholas D''Costa Vs. Francis Roche Anthony Kurush Roche (Died) and Others, by way of answer to ground No. 1 in the Review Applications while rejecting the plea of review Veeraswami, J. (as he then was) has observed as follows:-

A review cannot be granted on the mere ground that the particular counsel who appeared for a party failed to raise a particular point in spite of instructions.

The decision reported in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, was also cited by learned senior counsel appearing for the claimant, whereunder the Supreme Court has laid down the criteria and factors which must be etched on the mental screen, while considering a Reference u/s 18 of the Act. It is worthwhile to reproduce paragraph 4 of the said decision, which is very instructive:-

(4). The following factors must be etched on the mental screen:

(1) A Reference u/s 18 of Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon the Land Acquisition Officer in his award unless the same material is produced and proved before the Court.

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for maring him valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the Reference as an Original Proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act (date of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so, by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account (sometimes instances are rigged up in anticipation of acquisition of land).

(9) Even Post - notification instances can be taken into account (1) if they are very proximate, (2) genuine, and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) Proximity from time angle,

(ii) Proximity from situation angle.

(11) Having identified the instances which provide the index of market value, the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deducted by making suitable adjustments for the plus and minus factors vis a vis land under acquisition by placing the two in juxtaposition.

(12) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by leading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do.

There is also no indication in the above judgment that oral evidence must be let in by the claimants in a Reference u/s 18 of the Act. We have already referred to the decision in Osman Khan and another Vs. State of Maharashtra, , while construing the scope of Sections 23 and 51 of the Act.

As pointed out by us earlier, Section 51A of the Act was inserted by the Land Acquisition Amendment Act, 1984 which facilitates the use in evidence of any certified copy of any document or entries from Book No. 3 or the Index in any proceeding under the Act. It has been pointed out in Section 23 that in assessing the market value, sale deeds of similar lands of dates in the neighborhood of the date of publication of notification u/s 4 of the Act are relevant. It has also been pointed out that those deeds despite being not inter parties may be admitted in evidence u/s 13, Evidence Act while referring to the Section 51 A of the Act. Mr. Alagiriswami learned senior counsel contended that this Section (51 - A) puts the matter beyond any controversy and stated that such documents may be used in evidence.

16-A. The decision reported in Tata Chemicals Limited, Bombay Vs. Sadhu Singh and others,) was also referred to by Mr. Alagiriswami, learned senior counsel in support of his contention, whereunder in paragraph 9, the Allahabad High Court has observed thus:-

Coming now to the merits of the appeals, it may be noticed at the outset that the learned Additional District Judge relying upon collector, Kamrup v. Prabati Phukhan (AIR 1973 Gau 114) has held that the copies of these sale deeds (exemplars) of which the vendors or vendees had not been examined as witness in Court were inadmissible in evidence. The Land Acquisition Act, 1894 has undergone a major amendment by Act No. 68 of 1984 and a new Section 51-A has been incorporated. Section 51-A provides that in any proceeding under this Act, a certified copy of a document registered under the Registration Act including a copy given u/s 57 of the Act may be accepted as evidence of the transaction recorded on such document. Therefore, the view taken by the learned Additional District Judge is not correct and the certified copies of the sale deeds filed by the parties are admissible in evidence Sri J. C. Bharadwaj, Learned Counsel for the respondents also fairly conceded this legal position. Sri S. R Gupta, learned senior counsel for the appellant as well as Sri Bharwi, Learned Counsel for the respondents submitted that the cases should not be remanded for consideration of the copies of the sale deeds by the District Judge as that would cause great harassment to the parties specially to the claimant-tenure holders and this Court should finally decide the appeals.

The decision reported in Hukam Chand and Others Vs. Haryana State, was again rendered by a Division Bench of Punjab and Haryana High Court consisting of R. N. Mittal and M. M. Punchhi, JJ. His Lordship M. M. Punchhi, J (as he then was), speaking for the Bench while construing the scope of Section 51 A of the Act introduced by Parliament Act No. 68 of 1984, has observed as follows:-

Paragraph 20: Section 51 A. of the Act, introduced by Parliament Act No. ''? of 1984, permits the certified copies of the registered documents to be accepted as evidence of the transaction recorded in such document. Ex. PI is a certified copy of a registered sale deed relating to the sale on Dec. 31 1973 of 250 sq. yards of land for Rs. 16000/- and the approximate price per sq. yard comes lo Rs. 64/ Ex. P4 is a certified copy of the sale deed, dated Mar. 1, 1973, whereby 272 sq. yards of land was sold for Rs. 16,320/- and the approximate price per sq, yard comes to Rs. 60/-. The plots in these sales were adjacent to the acquired land and on the GT Road. In sale Ex. P1 only Rs. 11,000/- were paid before the Sub Registrar. In sale deed Ex. P4, only Rs. 13,320/- was received before the Sub Registrar. Though Section 51 A of the Act permits the courts to accept as evidence the transaction recorded in the certified copy of the document, yet, it lies within the discretion of the Court to cast doubt or suspicious portions of it for valid reasons. We need to express this because it is not unknown that sale considerations are inflated in order to scare away preemptors and at the time when these sales were gone into, the Punjab Preemption Act as applicable to Haryana, was operative....

17. In our judgment all the relevant acts have been fully set out. Although some new materials have now been placed before this Court in the present Review Petitions, learned Advocate General has failed to convince us as to why they

were not placed before us either inadvertently or otherwise on the earlier occasion. It is true that learned Advocate General has fairly conceded that the Additional Government Pleader, who appeared on the earlier occasion has failed to bring to the notice of this Court the principles of law settled by the Apex Court. He would further contend that the sale relied upon by the claimant was with reference to the smaller extent of land which appears to be intentional and entered into only after knowing the proposed acquisition. There is no evidence available on that plea. Likewise, it is also further submitted that there was no oral evidence let in support of the claim for the enhanced compensation and that the correct percentage of sale deeds pertaining to small bit of lands was not brought to the notice of this Court, which resulted in this Court holding that 90 percent of the sales relate to small bit of lands. It is not the case of learned Advocate General that all the above matters were not within ''their knowledge'' and therefore, the Additional Government Pleader was prevented by reasonable cause from placing the same before this Court on the earlier occasion. We have elaborately considered in our judgment the seven items of land taken in to consideration by the Special Tahsildar and the factum of his taking into account a small bit of land of an extent of 10 cents in Survey No. 21/2, for fixing the market value of the property. It cannot be disputed that Exs. A1 and A2 and B1 to 65 were all marked by consent. In fact, we have also observed that no oral evidence was let in by both parties. In paragraph 10 of our judgment we have extracted the arguments of learned Additional Government Pleader. We were fully aware and conscious of the fact that the purpose of acquisition of the land was for the construction of Government Offices and residential quarters for the District Headquarters of Kamarajar District. In paragraph 15 of our judgment, we have observed as follows (Appeal Nos. 187 to 189. of 1992, dated 12-12-1994, Since reported in 1995 2 L.W. 99):-

Admittedly, Virudhunagar Town is fastly developing and expanding and as a matter of fact, very many residential, industrial and office buildings has been constructed further south of the acquired lands. The registration sales statistics taken up by the Special Tahsildar for valuation clearly show that all the sales in the vicinity of the suit land have been sold only as sites for building purposes. It is also pertinent to notice that the very purpose of acquisition of land is for construction of Government Offices and residential quarters, which in our opinion, clearly establish that the area in and around the suit land have been fastly developing as residential and commercial areas. It is also seen from Ex. B2 that almost all the lands in the said area have been sold in small parcels, which would also go to show that there is heavy demand for the land in the area in question for building purposes and the acquired lands have all the potentiality of being sold as building sites. Therefore, the Special Tahsildar ought to have classified the suit land as building site and ought to have awarded compensation on that basis, which has now been done by the learned Subordinate Judge. The learned Subordinate Judge has taken into account all the relevant aspects of the matter and rightly arrived at the conclusion as could be seen from his order.

In paragraph 18 of our judgment, we have laid down the principles for determining the compensation in the following terms:-

General principles for determining compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. It is also seen from catena of decisions of this Court and also of the Apex Court, that the land acquired, therefore, has to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. Even though some methods are prescribed under Sections 23 and 24 of the Act, these methods, however do not preclude us from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible an estimate of the market value.

18. As pointed out by the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, The evaluation of the factors mentioned in the said judgment depends upon the facts of each case and there cannot be any hard or fast rules For the reasons stated earlier, all the twenty and odd other cases now pending before us have to be considered individually depending upon the facts and circumstances of each case. We feel that the Judgments now cited are distinguishable on facts, in view of introduction of Section 51 -A of the Act. In our considered view, the Government is trying to reargue under the guise of Order 47 Rule 1 of the Code of Civil Procedure. The Review Applications are not covered by the four corners of Order 47, Rule 1 of the Code of Civil Procedure. The said Rule has prescribed some limits to rehear the review petition.

In our opinion, judges would not review their judgments merely because parties have found some fresh materials or fresh rulings on the matter. It is now well settled that when a review is sought on the ground of discovery of new evidence, such evidence must be (1) relevant and (2) of such a character that if it had been given in the suit or proceedings, it might possibly have altered the judgment. The Government, in the instant case, have discovered the said judgments and the evidence only now. Even if they had been cited earlier at the time of hearing the appeal, it might not have altered the judgment, which is sought to be reviewed. Admittedly, the State was in possession of the documents now referred to. It is not the case of the State that the Additional Government Pleader who argued the case earlier could not trace these documents. The appeals were considered and disposed of by us on an elaborate consideration of the entire circumstances in arriving at the conclusion. The object of the State, in our view, is nothing more but adding of additional and supplementary evidence and trying their luck once again.

19. The end result is, that all the Review Applications are dismissed as none of the grounds urged in the Review Applications, particularly the grounds pertaining to the failure on the part of the learned Additional Government Pleader to bring to the notice of this Court the materials/judgments on the earlier occasion, would at all be sufficient grounds for granting review. Be that as it may, it is only our hope and belief that the cases of the State will be properly read and suitably handled...by the Government Advocates. The various decisions of the Supreme Court, which are now placed before us by the learned Advocate General, do not support the case of the State and are distinguishable on facts and on law. All the Review Applications are dismissed.

REVIEW APPLICATION Nos. 5 to 7 of 1995 in APPEAL Nos. 187 to 189 of 1992:

Abdul Hadi, J.

(21-3-1995)

1. I have had the benefit of going through the judgment of my learned brother AR. Lakshmanan, J. But, with due respect, I am unable to concur with certain observations made by him and the conclusion reached by him. Hence, I choose to pronounce this separate judgment of mine. I need not repeat the facts which led to the filing of these Review Applications since they have been already set out in paragraphs 1 to 3 of the above said Judgment of my learned brother. I may however add that while the rate of market value fixed by the Land Acquisition Officer is Rs. 30/- per cent, the said rate arrived at by the learned Subordinate Judge, which was confirmed by us, in our judgment dated 12.12.1994 was Rs. 1,500/- percent.

2. Then, coming to the questions raised in these Review Applications, so far as I could see, the point very much stressed by learned Advocate General, who appeared for the applicant in these Review Applications, was that the case would come under the latter part of Order 47 Rule, 1 (i), C.P.C. In other words, he did not argue that there was any "discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within his (petitioner''s) knowledge, or could not be produced by him at the time when the decree was passed or order made," (spoken to in former part of Order 47, Rule 1, C.P.C.); but, what he argued was that "on account of mistake or error apparent on the face of the record or for any other sufficient reason" (spoken to in the latter part of Order 47 Rule 1 C.P.C.) our judgment dated 12-12-1994, in the abovesaid three appeals has to be reviewed. According to him, the said error is clear from the fact that the above said our judgment dated 12-12-1984 did not take note of the fact that there was no oral evidence at all in all the three cases and in that context, no reliance could have been placed on Exs. A1 and A2 sale deeds to arrive at the market value of the acquired land, as has been done by the Reference Court u/s 18 of the Land Acquisition Act and ourselves in the

above referred to judgment dt. 12.12.1994.

2A. In this connection, learned Advocate General relied on the following passage in Gulzara Singh and Others Vs. State of Punjab and Others,

The question, therefore, is whether these sale transactions would reflect the prevailing market value of the land of the total extent of 90 acres.

It is seen that in the first batch no one was examined to prove the documents. In the second batch though witnesses were said to have been examined, the evidence is not on record. Neither the Reference court nor the High Court discussed the evidence and no finding was given. So, we do not have the advantage of any findings in that behalf.... It is settled law that to determine the market value of the land u/s 23(1) of the Act the sales of the land under requisition, if any, or the sales in the neighborhood lands that possessed of same or similar potentialities or fertility or other advantageous features would furnish basis to determine just and fair market value on the premise of a hypothetical willing vendor and willing vendee. The willing vendor who would offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of the notification or near about the date of the notification is the acid test. It is also settled law that the sale and purchase of lands at a throw away price at arm''s length or depressed sales or facade of sales brought into existence in quick succession to inflate the market value would not offer any basis to determine just market value. In order to adjudge whether sales are bonafide sales between willing vendor and willing vendee and whether the consideration mentioned in the deed was, in fact and really passed on under transaction; whether the lands covered by sale deeds and relied on, possessed of same or similar potentialities or fertilities or advantageous features would be brought on record only by examining the vendor or the vendee or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory (Vide: Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, wherein this Court surveyed the entire case-law in that respect. Since none has been examined in the first batch the sale transactions referred to either by the State or by the claimants cannot be relied upon. In the second batch since the evidence has not been referred to by the courts below nor discussed by them nor we have the advantage to go through the same, we cannot rely on the same to further enhance the market value. Therefore, we are left with no option, but to reject those sale deeds. Moreover, except Ex. P-9 all other sale deeds are of very small extents. Therefore, all the documents except P-9 are rejected. As stated earlier we have no evidence before us as to under what circumstances, this document (Ex. P9) came to be executed and what is the distance between the lands and for what purpose the land was sold and what is the comparable nature of the land, fertility and potentialities of the land, etc.

(Emphasis supplied).

3. Learned Advocate General also relied on the following passage in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, (which was relied on in the abovesaid passage extracted from Gulzara Singh and Others Vs. State of Punjab and Others,

In the light of these principles, the further contentions that having rejected the documents produced by the State, the High Court ought to have relied upon the documents produced by the appellant as comparable sale and would have confirmed the compensation awarded by the civil court, does not impress us as well founded. It is well settled law that the amount awarded by the Land Acquisition Collector forms an offer and that it is for the claimants to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value and the amount offered by the Land Acquisition Collector was inadequate and he proceeded on a wrong premise or principle.

(Emphasis supplied)

After the abovesaid passage, the Supreme Court in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, refers to several earlier decisions of Supreme Court and High Courts laying down the same propositions of law. I also quotes with approval, the following passage in The Collector, Raigarh Vs. Harisingh Thakur and Another,

It is equally well settled that where the claimant leads no evidence to show that the conclusions reached in the award were inadequate, or, that it offered unsatisfactory compensation, the award has to be confirmed.

4. I may also point out that even in the first referred to Supreme Court judgment, viz. Gulzara Singh and Others Vs. State of Punjab and Others, all the sale deeds relied on, including Ex. P9 therein (which related to a larger extent of land) were rejected by the Supreme Court. The Supreme Court observed finally in paragraph 7 of its judgment on the question as to what would be the reasonable and just market value, thus:-

In view of the fact that there is no evidence available and sine the High Court found that the lands are possessed of potential value the rate of Rs. 1,000/- per Biswa as awarded by civil court to the lands abutting adadi and the lands upto a depth of 100 ft. is upheld.

(Emphasis supplied)

5. As pointed out by learned Advocate General, even in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, the following passage emphasizes the relevant point-

The burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette u/s 4(1) of the Act with reference to the sale deeds of the same lands or neighbor''s lands possessed of same or similar advantages and features executed between willing vendor and willing vendee or other relevant evidence in the Reference court.

(emphasis supplied).

So far as I could recollect, learned Advocate General relied on only the abovesaid passage in the said judgment and not the other passage referred to by my learned brother in paragraph 13 of his judgment.

6. I also find the following significant passage in Smt. Andem Laxmamma and others Vs. The Tahsildar (Land Acquisition Officer) Mothkur, Nalgonda Dist.,

The burden lies on the claimants to substantiate their claim for enhancement. In this case the oral evidence that has been adduced in proof of the documents has to be excluded in toto. No cogent and convincing evidence is forthcoming in this case to arrive at a conclusion that what has been granted by the Land Acquisition Officer is not correct... the available material that has been produced by them is not sufficient to support their claim for enhancement of the compensation.

(Emphasis supplied)

7. In fact in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, while enumerating the several factors for determining the market value, the Supreme Court mentions the following two factors also:-

(1) "A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the court....

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(Emphasis supplied).

My learned brother, after extensively quoting from this judgment, has observed that there is also no indication in the above said judgment that oral evidence must be let in by the claimants in a Reference u/s 18 of the Land Acquisition Act. But, after going through the said judgment, I find that there was no necessity or occasion in the said judgment to deal with the said question whether oral evidence must necessarily be let in by the claimants in a Reference u/s 18 of the above said Act. However, the 17 factors, which were enumerated by the Supreme Court in paragraph 4 of the said decision (which have to be borne in mind,'' while determining the market value) would in my opinion, indicate that oral evidence may well be required in substantiating at least some of the abovesaid 17 factors.

8. In the above context, I am of the view that there is a clear error of Jaw apparent on the face of the record in our judgment dated 12.12.1994 since the

abovesaid non-existence of relevant oral evidence in relation to the abovesaid Exs.A-1 and A-2 vis a vis the acquired Land, was not considered at all by us in our said judgment, in Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, also, the Supreme Court points out as follows:-

...a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

Where without any elaborate arguments one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be two opinions entertained about it,- a clear case of error apparent on the face of the record would be made out.

9. I may also point out that a Full Bench of Himachal Pradesh High Court also has held in The Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh Vs. Beli Ram etc., thus:-

Failure to notice an existing decision of the Supreme Court on a question of law results in not applying the law which should have been applied. Therefore, a contrary decision given on such a question would amount to a mistake or error apparent on the face of the record. The error would be obvious and no elaborate reasoning would be necessary to find it," Similar is the view taken by this Court in State of Tamil Nadu v. Mohammad Yousuff Sahib & Co. (I 978) 42 STC 335).

9-A. As also pointed out by my learned brother, I may also quote the following passage in Sri Rajah Bommadevara Venkatarayulu Naidu Bahadur Zamindar Garu Vs. Kopalle Raghunadha Rao and Others,

Where there is an error of law which, obviously and without research into the rulings involves a lack of jurisdiction to pass the order of which review is sought, it is eminently a case in which the error, though technically an error of law, is apparent on the face of the records and should be corrected at the earliest possible time without driving the parties to the expense of an appeal or revision petition to which there would be no answer.

I may also add that when necessary oral evidence is not there in relation to Exs. A1 and A2, it can also be said that the Court will have no jurisdiction to enhance the compensation offered by the Land Acquisition Officer in his order.

10. Further in S. Nagaraj v. State of Karnataka (1993 Suppl (4) S.C.C. 595), I find the following passage:-

Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet, in the realm of law, the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions, both statutorily and judicially, have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice

No doubt, the above observation was in relation to a review in a writ proceeding. But, from the decisions in Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, and Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, it is clear to me that the principles of review are more or less same both in a regular civil proceeding and in a writ proceeding.

11. No doubt, Learned Counsel for the respondent relied on section 51-A of the Land Acquisition Act, which was introduced into the Act by Section 27 of the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) with effect from 24.9.1984. It runs as follows:-

51-A. Acceptance of certified copy as evidence. - In any proceeding under this Act a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under S.57 of that Act, may be accepted as evidence of the transaction recorded in such document.

But, this Section only enables a certified copy of a sale deed to be straightway accepted, without any further proof, as evidence of the transaction recorded in the said sale deed. But, the question in this proceeding is whether such an evidence alone by itself could go to prove the enhancement of compensation sought for by the claimants. To the said question, the answer, in my view, is "no", taking into consideration the above referred to observations of the Supreme Court and other decisions, which were referred to in paragraphs 3 to 8 above.

11-A. The Supreme Court in Gulzara Singh and Others Vs. State of Punjab and Others, had rejected considering several such sale deeds before it, including Ex. P9 therein, without necessary oral evidence, which was held to be "mandatory" (as also been held by it Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, . Viewed in this light, it cannot be said that in none of the above said Supreme Court and other decisions, Courts were not aware of the above said Section 51-A of the Act, though from a reading of some of the abovesaid decisions it can be said that Section 51-A was not specifically brought to the notice of the Court. The result is, that the above referred to Supreme Court decisions or other similar decisions, cannot be brushed aside on the ground that the said Courts had no occasion to specifically consider the scope of the said Section 51 -A of the Act.

11-B. In fact in Inder Singh and Others Vs. Union of India (UOI) and Others, , the Supreme Court specifically referred to the abovesaid section 51A and made the fowling significant observation, reiterating the same principle laid down in the other Supreme Court decisions referred to earlier-

The price which a hypothetical willing vendor might reasonably expect to obtain from a willing purchaser would from the basis to fix the market value. It would be possible to have reliable evidence when sale transactions are proved by either the vendor or the vendee and if either of them was not available, the attesting witnesses who had personal knowledge of the transaction is to be examined by producing either the original sale deed or certified copies thereof as evidence, u/ s 51-a of the act as amended in 1984 the certified copies have been permitted to be brought on record as evidence of sale transaction recorded therein. The examination of the witnesses is to find that the sale transactions are bonafide and genuine transactions between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throw away price at arms length or depressed sales or brought into existence to inflate market value of the lands under acquisition and the sales are accommodating one. Equally, it must be brought on record the comparative nature of the lands covered under the sale deed and the acquired lands whether adjacent or actual distance or possessed of similar advantages and whether transactions themselves are genuine and bona fide transactions. This proposition of Law, since settled law, in fairness, has not been disputed across the bar. The contention is that at the relevant time it was not being insisted upon. Therefore, none of the witnesses was called upon to prove the sale deeds or to prove the sale transactions. Therefore, when evidence of potential value is available, the same could be considered. We find merit in the contention, at one time we thought of remanding the cases but we find that it would be needless prolongation and the complexion on ground by now would have been completely changed. In view of the above-settled legal position and circumstances, the documentary evidence of sale transactions or in the mutation entries on either side are clearly not admissible and therefore, they cannot be looked into and are accordingly excluded from consideration.

(Emphasis Supplied)

Even in the above Supreme Court case, it should be noted that though at one stage the Supreme Court thought of remanding the case, finally, on the footing that it would lead to needless prolongation of the proceeding, etc., it did not do so since it also found that there was otherwise evidence of the potential value of the land in question. No doubt, it excluded consideration of the certified copies of the sale deeds filed on the ground that there was no necessary oral evidence. it did so despite section 51-A.

12. No doubt, in the present case, it was mentioned that certified copies of the abovesaid sale deeds (Ex. A1 & A2) were marked by consent. But, even assuming it was so, marking a document by consent, under the general law, does not dispense with either the proof of the contents of the document or the truth or otherwise of the contents. No doubt, in view of Section 51-A, it may be said that the marking of Exs. A.1 and A.2 in the present case may "prove the contents of the document". But it will not necessarily prove "truth or otherwise of

the contents" thereof. In this connection, I may point out the following passage in my judgment in R. Soundarapandian Vs. Santhanadevan,

No doubt, it is stated that the said medical certificate was marked by consent. The consent given by a party for marking a document does not dispense with either the proof of the contents of the document or the truth or otherwise of the contents. Vide Karuppanna Thevar (died) and Others Vs. Rajagopala Thevar and Others, and Palaniappa v. Bombay Life Assurance Co., 60 L.W.803 = AIR 1948 Mad.298 refereed to above, this Court observed as follows:-

this Court held in R.M.Y.R.M. Palaniappa Chettiar and Others Vs. The Bombay Life Assurance Co. Ltd., that permitting a document to be marked by consent only means that the party consenting is willing to waive his rights to have the document in question proved, that is the plaintiff was prepared to admit that the documents were What they purported to be, namely a certificate given by the doctor and sent to the defendant and a reply given by the doctor to the questionnaire sent by the company. But agreeing to the document being marked by consent did not mean that the plaintiff accepted the correctness of every statement made by the doctor in those two documents. The correctness of the allegations contained in the certificate given by the doctor and in his reply would have to be proved only in the recognised ways as contained in the Evidence Act.

13. I may also point out that though the Supreme Court in Gulzara Singh and Others Vs. State of Punjab and Others, rejected considering the sale deeds before it, including Ex. P9 therein, it did not think it fit to remand the matter back for fresh consideration and for letting in fresh oral evidence, since it felt that in view of the fact that the High Court found that the lands in question were possessed of potential value and the Supreme Court also found that there was evidence, that the lands were possessed of potential value for being used for building purposes, the rate of Rs. 1000/- per biswa, as awarded by the civil court to the lands abutting abadi of the lands upto a depth of 100 feet could be...upheld (vide paragraphs 6 and 7 of the said judgment). Therefore, with due respect, I am unable to agree with the view expressed by my learned brother in paragraph 14 of his judgment, particularly, his observation that "the Supreme Court itself has considered the documents and awarded compensation."

14. Further, I may also point out that in Hukam Chand and Others Vs. Haryana State, also it was held that though the above said Section 51-A permits the Court to accept as evidence the transaction recorded in the certified copy of the sale deeds in question, yet, it lies within the discretion of the Court to cast doubt on suspicious portion of them for valid reasons. The Court also expressed therein that it is not known whether sale considerations are inflated in order to scare away promoters; particularly in view of the fact that the relevant sales were gone into when the Punjab Preemptions Act, as applicable to Haryana, was operative. The Court also pointed out that the claimants did not produce the vendors and though P.W. 3 therein appeared to introduce the relevant sale deeds, claimed mem to be in favour of the father and he was not in a position to depose as to

the terms of the transaction. Thus, this decision also goes to indicate that wherever oral evidence is warranted, necessary oral evidence is a must to determine the market value. (That is so. particularly in the light of factors Nos. 6, 8, 9, 10, 11, 12 mentioned in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another,

15. No doubt, in Tata Chemicals Limited, Bombay Vs. Sadhu Singh and others, while considering the application of Section 51 -A, it was mentioned that the counsel submitted mat the cases should not be remanded for consideration of the copies of the sale deeds, as that would cause great harassment to the parties, especially to the claimants. But, in my view, simply because, there is some hardship in following any rule of procedure or evidence, it cannot be said that the said rule should necessarily be dispensed with.

16. In this connection, my learned brother has also referred to the statement of Objects and Reasons for the abovesaid Land Acquisition (Amendment) Act, 68 of 1984. But, with due respect, I may have to point out that the Supreme Court has held in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, and The The Central Bank of India Vs. Their Workmen, that the Statement of Objects and Reasons should be ruled out as aid to the construction of the Statute The decision in State of West Bengal Vs. Union of India,) also held as follows:

It is well settled that the Statement of Objects and Reasons accompanying Bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation.

(Emphasis supplied)

The language of Section 51-A of the Act is quite clear to me and there is also no necessity to refer to the above referred to Statement of Objects and Reasons to determine the true meaning and effect of it. Further, the Statement of Objects and Reasons extracted by my learned brother relates to the abovesaid entire Amendment Act 68 of 1984 and not exclusively with reference to the abovesaid Section 27 thereof, which introduced Section 51 -A. In fact, the Statement of Objects and Reasons does not actually touch upon what is actually provided in Section 51-A.

17. I may also point out that really speaking the decision in Osman Khan and another Vs. State of Maharashtra,) referred to by my learned brother in page 50 of his order, may not support the contention of the respondent that enhanced compensation claimed, could be awarded merely by looking at the contents of Ex. Al and A2, without any further proof retarding other required features which ought to have been proved by the claimants as emphasized in the above referred to Supreme Court decisions.

18. It must be further noted that once the Court reviewing its judgment, finds an

error apparent on the face of the record, it should necessarily correct the error, despite the fact that the Counsel who appeared earlier in the appeal failed to raise the said point, before the said judgment was delivered. So, the decision in Soosai Anthony D''Costa Nicholas D''Costa Vs. Francis Roche Anthony Kurush Roche (Died) and Others,) relied on by Learned Counsel for the respondent stating that review cannot be granted on the mere ground that the particular counsel who has appeared for a party, failed to raise the particular point in spite of instructions, will be of no avail to the respondent. In Soosai Anthony D''Costa Nicholas D''Costa Vs. Francis Roche Anthony Kurush Roche (Died) and Others,), it was not claimed by any party that there was any error apparent on the face of the record.

19. In the other decisions relied on by Learned Counsel for the respondent, viz., Shanmugasundara Nadar v. Tamil Nadu Housing Board, represented by its Chairman, Madras and others (1988 LACC 661 = 1988 2 L.W.57) (Mad), Srinivasan, J., after observing that Learned Counsel for the applicant for review urged 5 grounds in support of his contention that the judgment in appeal suffers from an error apparent on the face of record, only observed as follows:-

In my view, none of the grounds urged by Learned Counsel affords sufficient reason for reviewing the Judgment.

This only shows that Srinivasan, J. did not choose to hold that any of the abovesaid five grounds would constitute an error apparent on the face of the record. If that is so, there is no scope for review. But, in the present case, it is clear to me, as I have already observed, (sic) is the abovesaid error apparent on the face of the record pointed out by me.

19A. I may also point out that regarding the term "for any other sufficient reason" in Order 47 Rule 1, C.P.C, this Court held in Chockalingam Chettiar v. Chidambaram Pillai ((I960) II M.L.J. 327 = 73 L.W.533) that while the said term should be construed ejusdem generis with the other provisions of the rule laying down the limits of the exercise of the power of review, a too narrow interpretation of the words will not be in accord with equitable principles.

20. The net result is, in my view, the Review Applications are to be allowed without costs and that our common judgment dated 12.12.1994 is to be set aside. The judgment of the Reference court below also cannot stand, as it exists, in the light of my abovesaid observations based on judgments of Supreme Court. However, since my intention is not to remand the entire matter back to the Reference Court, but only to call for a finding from the Reference Court, there is no necessity to come to any final conclusion at this stage as to whether the said judgment of the Reference Court has to be set aside. Thus, a finding has to be called for from the Reference Court in the light of Exs. A1 and A2 regarding the market value payable for the acquired land, after affording an opportunity to the claimant to let in necessary oral evidence. In that case, the applicant also will be entitled to let in rebuttal evidence thereon. The court below has to be directed to

submit the abovesaid finding within short time, say within 12 weeks from the date of receipt of the copy of the order and the appeals have to be posted immediately after receipt of the finding. Any way, since myself and my learned brother are differing, the matter has first to go before a third learned judge and them, if the said third judge concurs with my view, he may give suitable direction taking also into consideration the abovesaid suggestion of mine regarding the direction to be given.

21. In view of the abovesaid two differing judgments of myself and my learned brother, the matter be placed before My Lord the Hon''ble the Chief Justice for suitable direction.

As directed by the Hon''ble Chief Justice on the office note dated 6.7.95, these Review Applications coming on for hearing on Thursday the 24th day of August, 1995, in the presence of Mr. R. Krishnamoorthy, Advocate General for Mr. P. Dhanapathy, Additional Government Pleader (CS) on behalf of the petitioner in all the petitions and of Mr. K. Alagiriswamy, Senior Counsel for Mr. A. Sivaji, Advocate for the respondent in all the petitions, and having stood over for consideration till this day, the court made the following order:-]

ORDER

Srinivasan, J.

(Third Judge (31-8-995))

1. The respondent''s lands in Kooraikundu village, Kamarajar District were acquired under the provisions of the Land Acquisition Act. The Land Acquisition Officer fixed the market value at the rate of Rs. 7,410/- per hectare. As the respondent disputed the correctness of the same and claimed more compensation, the matter was referred to the Subordinate Judge, Srivilliputhu under three L.A.O.Ps. 13, 14 and 15 of 1989. The respondent, who will be referred to as ''the claimant'' hereafter, filed two documents being sale deeds relating to some lands in the locality, which were marked as Exs. A1 and A2 by consent. On the side of the applicant, who will be referred to as The Land Acquisition Officer'', five documents were filed as Exs. B1 to B5 by consent. Neither side examined any witness. The Sub court enhanced the market value Us Rs. 1500/- per cent. Aggrieved thereby, the Land Acquisition Officer filed A.S. Nos. 187 to 189 of 1992 in this Court. The appeals were heard by a Division Bench and dismissed on 12-12-1994 (Since reported in 1995 2 L.W.99). The Land Acquisition Officer has filed the present Review Applications contending that the judgment dated 12-12-1994 is vitiated by an error apparent cm the face of the record. The same Division Bench heard these applications. Abdul Hadi, J., has expressed the opinion that the Review Applications are LO be allowed and the judgment dated 12-12-1994 has to be set aside. The learned judge proceeded to hold as follows: 21. The net result is, in my view, the Review Applications are to be allowed without costs and that our common judgment dated 12-12-1994 is to be set aside. The judgment of the Reference Court below also cannot stand, as it

exists, in the light of my abovesaid observations based on judgments of Supreme Court. However, since my intention is not to remand the entire matter back to the Reference Court, but only to call for a finding from the Reference Court, there is no necessity to come to any final conclusion at this stage as to whether the said judgment of the Reference Court has to be set aside. Thus, a finding has to be called for from the Reference Court in the light of Exs. A1 and A2, regarding the market value payable for the acquired land, after affording an opportunity to the claimant to let in necessary oral evidence. In that case, the applicant also will be entitled to let in rebuttal evidence thereon. The court below has to be directed to submit the abovesaid finding within a short time, she, within 12 weeks from the date of receipt of the copy of the order and the appeals have to be posted immediately after receipt of the finding. Anyway, since myself and my learned brother are differing, the matter has first to go before a third learned judge and then, if the said third judge concurs with my view, he may give suitable direction taking also into consideration the abovesaid suggestion of mine regarding the direction to be given.

A.R. Lakshmanan, J., who is the other member of the Bench, has opined that no ground has been made out for reviewing the judgment dated 12-12-1994 and that all the Review Applications should be dismissed. In view of the difference of opinion, the papers were place before the Hon''ble the Chief Justice and the matter has been referred to me for my opinion.

2. On behalf of the Land Acquisition Officer, the learned Advocate General has argued that the judgment dated 12-12-1994 suffers from an error apparent on the face of the record in as much as it runs counter to the law laid down by the Supreme Court in several decisions regarding the proof to be adduced by a claimant in References under the Land Acquisition Act. It is also contended by him that it is the duty of the Court to rectify its mistake when it is brought to its notice. The contention is that the claimant has not examined any person to speak about the transactions evidenced by Exs. A-1 and A-2 and there is no evidence before Court to prove mat the lands dealt with under the said documents are similar in nature and character to the acquired lands. According to him, there is also no evidence that the said documents represented genuine transactions and the consideration mentioned therein was the true market value of the lands dealt with therein. It is also submitted that the two documents dealt with lands of small extents and they cannot be taken as guidance for the acquired lands which are of larger extents. Incidentally, the learned Advocate-General submitted that the view expressed by AR. Lakshmanan, J. on the effect of Section 51-A of the Land Acquisition Act is erroneous and that the learned judge is in error in thinking that Section 51 -A was not brought to the notice of the Supreme Court in any of the decisions cited before him.

3. On the other hand, Mr. K. Alagiriswamy, learned senior counsel for the claimant has submitted that the grounds urged in support of the applications for review do not make out a case for reviewing the judgment dated 12-12-1994.

According to him, one of the grounds urged was the mistake committed by counsel appearing for the Land Acquisition Officer in the Appeals in not referring to the judgments or the Supreme Court. It is submitted that counsel''s mistake is not a ground for review. Secondly, it is pointed out that documents relating to small extents of land cannot be eschewed altogether when the ground alleged on behalf of the Land Acquisition Officer in the applications for review is wholly unsustainable. Thirdly, it is contended that the point that Exs. A-1 and A-2 were not proved by oral evidence was not taken at the time of the hearing of the appeal and it cannot be permitted to be taken at the stage of review.

4. The principles according to which the market value of the land acquired under the provisions of the Land Acquisition Act has to be determined are well settled. It has been repeatedly held that a Reference u/s 18 of the Act is not an appeal against the award of the Land Acquisition Officer and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is placed and produced before the Court. The award of the Officer is only an offer made by him and the material utilised by him for making the valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award and affirm, modify or reverse the conclusion of the Officer. The Court has to treat the Reference as an original proceeding and determine the market value afresh on the basis of the materials produced before it. The claimant is in the position of a plaintiff, who has to prove that the price offered for the land by the Officer in the award is inadequate on the basis of the materials produced before the Court. The above position has been reiterated in unmistakable terms by the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another,). In that case, the Supreme Court has also set out the various factors to be borne in mind by the Court while determining the market value of the land as on the crucial date of publication of the notification u/s 4 of the Act. It is worthwhile referring to the following methodology indicated in that judgment:- The market value has to be determined as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on the date of the notification and the vendor is willing to sell the land at a reasonable price. The Court has to correlate the market value reflected in the most comparable instance which provides the. index of market value and for that purpose only genuine instances have to be taken into account. The most comparable instances out of the genuine instances have to be identified on the consideration of proximity from time angle and proximity from situation angle. After identifying the said instances, the market value of the land may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition. The plus factors are, (1) Smallness of size, (2) Proximity to a road, (3) Frontage on a road, (4) Nearness to developed area, (5) Regular shape, (6) Level vis-a-vis land under acquisition and (7) Special value for an owner of an adjoining property to whom it may have some very special advantage. The minus factors are: (1)

Largeness of area, (2) Situation in the interior at a distance from the road, (3) Narrow strip of land with very small frontage compared to depth, (4) Lower level requiring the depressed portion-to be filled up, (5) Remoteness from developed locality and (6) Some special disadvantageous factor which would deter a purchaser. Ultimately the Court said that the guidelines given in that judgment are general guidelines to be applied with understanding informed with common sense and every case must be dealt with on its own facts bearing in mind the aforesaid factors.

5. It can be easily seen that to determine the market value on the basis of the aforesaid factors, evidence in each case is absolutely necessary as to the existence or otherwise of such factors. It will not be possible for any Court to have an idea about those factors in any case merely on the basis of sale deeds pertaining to some lands in the locality. Even if the particulars contained in such sale deeds in a given case are sufficient to prove the nature and character of the lands dealt with therein, there must be evidence before the Court to the effect that the acquired lands are similar in nature and character to the lands dealt with in such sale deeds and those documents could be taken into consideration for fixing the market value. Unless the claimant adduces evidence with regard to those factors the mere production of the documents will be of no use to him in the proceedings. If a claimant rests content with producing some sale deeds and if there is no material before Court placed either by him or by the Land Acquisition Officer to the effect that the transactions evidenced by the said sale deeds are comparable sales, they cannot be taken into account by the Court for determining the market value. It is on the basis of the above principle, the Supreme Court has held in Inder Singh and Others Vs. Union of India (UOI) and Others, and Gulzara Singh and Others Vs. State of Punjab and Others, that the persons connected with the sale transactions such as vendor, vendee or attesting witnesses should be examined in order to prove the bonafides of the transactions as well as the factors referred to earlier. The same principle has been extended when the Supreme Court held in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, that the Basic Valuation Register prepared and maintained by the Government under the provisions of the Indian Stamp Act has no evidentiary value for the purpose of determining the market value of the lands u/s 23 of the Land Acquisition Act. After holding so, the Supreme Court said:-

The burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette u/s 4(1) of the Act with reference to the sale deeds of the same lands or neighbor''s lands possessed of same or similar advantages and features executed between willing vendor and willing vendee or other relevant evidence in the Reference Court.

6. I am unable to accept the view that Section 51 -A of the Land Acquisition Act has altered the situation and dispensed with proof of the factors referred to

earlier. Section 51-A of the Land Acquisition Act reads as follows:-

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

The language of the Section shows that it enables only the acceptance of a certified copy of a document registered under the Registration Act as evidence of the transaction. To understand the scope of the Section, it is necessary to refer to the relevant provisions of the Evidence Act. u/s 64 of the Evidence Act. documents must be proved by primary evidence except in cases mentioned in Section 65. That Section refers to as many as eight instances wherein secondary evidence may be given of the existence, condition or contents of a document. Clause (f) of Section 65 is to the effect that when the original document is one of which a certified copy is permitted by the Evidence Act, or by any other law in force in India to be given in evidence, secondary evidence may be adduced. Though Section 57(5) of the Registration Act provides for certified copies being given by the Registering Officer, which shall be admissible for the purpose of providing the contents of the original documents, it has been held that such certified copy is admissible only when a case is made out for introduction of secondary evidence, i.e., by proof of the lose of the original or where the original is withheld by a party in whose possession it is or is presumed to be. (See Karuppanna Gounder and Others Vs. Kolandaswami Gounder and Others, . It is with a view to dispense with the proof of loss of original or withholding of original by another party, Section 51-A has been introduced in the Land Acquisition Act. By virtue of the said Section, the provisions of Section 65(f) of the Evidence Act become operative and registration copies of sale deeds or other documents may be accepted as evidence of the transaction recorded in the document in a proceeding under the Act. Thus, Section 51-A of the Land Acquisition Act is the other law in force in India within the meaning of Section 65(f) of the Evidence Act. It is only to the extent of dispensing with the production of the original document, Section 5 3 -A of the Land Acquisition Act helps a party in a proceeding under that Act. Such provision does not go any further and dispense with proof of the relevant factors which is absolutely necessary to enable the Court to determine the market value of the land. Neither the judgment in Hukam Chand and Others Vs. Haryana State, nor the Judgment in Tata Chemicals Limited, Bombay Vs. Sadhu Singh and others, has expressed any contrary opinion. In the former case, the Division Bench has taken care to cast doubt on suspicious portions of the documents for valid reasons. It is seen from the report that oral evidence was adduced in that case with regard to the nature of the lands and it was not as if there was no evidence before the Court to speak about the transactions proved by the sale deeds. In the second case, the position that the documents were admissible without examining any of the parties was conceded by counsel. In that case also, parties had examined witnesses to speak about the nature and situation of the acquired lands. It was not a case of no oral evidence. Hence, the observations made in those two judgments have to be understood in the context of the facts of those cases.

7. It follows, therefore, that Section 51 -A of the Land Acquisition Act does not come to the rescue of the claimant in the present case. The observation made by AR. Lakshmanan J. that the Supreme Court had no occasion to consider the scope of Section 51-A of the Land Acquisition Act is not correct. In Inder Singh and Others Vs. Union of India (UOI) and Others, the Supreme Court has expressly referred to the provisions of Section 51-A of the Land Acquisition Act and observed:

Under Section 51-A of the Act as amended in 1984 the certified copies have been permitted to be brought on record as evidence of sale transaction recorded therein. The examination of the witnesses is to find that the sale transactions are bonafide and genuine transactions between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throwaway price at arms length or depressed sales or brought into existence to inflate market value of the lands under acquisition and the sales are accommodating one. Equally, it must be brought on record, the comparative nature of the lands covered under the sale deed and the acquired lands whether adjacent or actual distance or possessed of similar advantages and whether transactions themselves are genuine and bonafide transactions. This proposition of law, since settled law, in fairness, has not been disputed across the bar.

8. The natural corollary to the above discussion is that the judgment dated 12-12-1994 in the appeals is vitiated by an error apparent on the face of the record in as much as it has failed to take note of the circumstance that there is absolutely no evidence whatever before the Court to prove that Exs. A-1 and A-2 are comparable sales for the purpose of determining the market value of the acquired lands. The said error is a glaring one, which strikes one on mere looking at the record and does not require any long drawn process of reasoning and thus satisfies the tests prescribed in Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury,

9. In view of the said error, the judgment dated 12-12-1994 requires to be set aside. It has been held by the Supreme Court in M/s. Devidayal Rolling Mills Vs. Prakash Chiman Lal Parikh and others,) that it is the duty of the Court to rectify an error committed by it and straighten the record.

10. As it is an error apparent on the face of the record, it does not matter whether the error was caused by a mistake of the counsel or his failure to argue a particular point. Even if the counsel was grossly negligent in not bringing to the notice of the Court the law laid down by the Supreme Court, it is the duty of the Court to rectify the mistake in the judgment when it is brought to its notice by way of Review Application. In this view, it is unnecessary for me to deal with the judgments cited by learned senior counsel for the claimant in Soosai Anthony D''Costa Nicholas D''Costa Vs. Francis Roche Anthony Kurush Roche (Died) and Others, followed in Hem Narain Singh and Others Vs. Ganesh Singh and Others).

It is also not necessary for me to consider the question whether the sale deeds Exs. A-1 and A-2 should not be taken into account as they deal with small extents of land. The relevancy of the sale deeds has to be decided after sufficient evidence is adduced with regard to the factors set out in detail in the judgment of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . Of course, the Court has to bear in mind the ruling in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality,

11. The fact that the non-acceptability of Exs. A-1 and A-2 for determining the compensation was not argued at the hearing of the appeals will not help the claimant to defeat these Review Applications. In fact, a ground has been raised in the Memorandum of Grounds in the Appeal in Ground No. 4 But, the counsel who appeared for the Land Acquisition Officer does not seem to have urged the point at the hearing. That will not enable the Court to keep quiet when the error apparent on the face of the record has been brought to its notice in these Review Applications. The judgment, which is erroneous in law and which is inconsistent with the law laid down by the Supreme Court cannot be allowed to continue in force. Learned Counsel for the claimant has invited my attention to a judgment of mine in Shanmugasundara Nadar v. Tamil Nadu Housing Board and others (1988 LACC 661 = 1988 2 L.W.57). I have only held on the facts of that case that the grounds for review were not made out. That judgment does not help the claimant in the present case. In the circumstances, I agree with the view expressed by Abdul Hadi, J. An order should be passed in the applications as suggested by Abdul Hadi, J. in his opinion dated 21-3-1995. I do not agree with the view expressed by AR. Lakshmanan, J. that the Review Applications should be dismissed.