

**(2000) 02 MAD CK 0088**

**In the Madras High Court**

**Case No : Appeal No. 936 of 1986**

Special Tahsildar (Land Acquisition) Sipcot, Pudukottai

APPELLANT

Vs

R.M. Ramasamy and 3 others

RESPONDENT

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**Date of Decision : 22-02-2000**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33, Order 41 Rule 4

Land Acquisition Act, 1894 — Section 18, 23, 23(2), 28A, 4(1)

**Citation : (2000) 02 MAD CK 0088**

**Hon'ble Judges : N.V. Balasubramanian, J**

**Bench : Single Bench**

**Advocate : K.V. Venkatapathy, A.G. for Mr. V. Ravi, A.G.P. A.S, for the Appellant; Pushpa Sathyanarayanan for R1, 3 and 4, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

N.V. Balasubramanian, J.—This is an appeal under Sec. 54 of the Land Acquisition Act (hereinafter referred to as "the Act"), preferred by the Special Tahsildar (Land Acquisition) Sipcot, Pudukkottai against the order passed in L.A.O.P. No. 46 of 1983 dated 3rd May, 1984 on a reference made under Sec. 18 of the Act. An extent of 0-35-5 hectares i.e. 0.80 acres in S.F. No. 55/2 in Thiruvengaivasal Village, Pudukkottai Town was acquired for the purposes of setting up of Sipcot Industrial Complex at Thiruvengaivasal Village.

2. There is no doubt that the Government had acquired the lands after observing the formalities by issuing a Notification under Sec. 4 (1) of the Act and subsequent notices as contemplated under the Act. It is also relevant to note that the Notification under Sec. 4 (1) of the Act was published on 17.10.1981. The Government has also acquired possession from the claimant on 4.12.1981. The Land Acquisition Officer passed an Award on 31.7.1982 determining the compensation payable for the acquired land at Rs. 2,000/- per acre. Not satisfied with the award, the five claimants have sought a reference under Sec. 18 of the

Act claiming compensation at the rate of Rs. 30,000/- per acre. The reference was made to the Subordinate Judge, Pudukkottai and the learned Sub-Judge on a consideration of the oral evidence, fixed the market value of the acquired land at the rate of Rs. 4,000/- per acre.

3. Aggrieved by the enhancement of the compensation, the State have preferred the present appeal. It is also relevant to mention here that the claimants have not preferred any independent appeal or tiled any Memorandum of cross objection. It is stated in the appeal grounds that the Sub Court, Pudukkottai was not correct in enhancing the compensation without any basis and without any material and hence the enhancement is arbitrary and unsustainable in law.

4. When the appeal came up for hearing, the learned Government Advocate appearing for the appellant has fairly brought to the attention of this Court an unreported judgment of a Division Bench of this Court in a batch of appeals in Appeal Nos. 440, 453 to 456 of 1984 etc. dated 9.8.1989 wherein the Bench consisting of Mr. V. Ratnam and Mr. K.A. Thanikkachalam, JJ., (as their Lordships then were) considered the question regarding the market value of the lands which were acquired along with the claimants' land under the same Notification dated 17.10.1981, and the Bench after a detailed analysis of the evidence and after considering the nature of the land, held that the owners of the land would be entitled to be paid compensation at the rate of Rs. 6,000/- per acre without making distinction between irrigated and unirrigated lands. The learned Government Advocate has submitted that the unreported decision of this Court in Appeal Nos. 440, 453 to 456 of 1984 dated 9.8.1989 would govern the facts of this case as well, and on the basis of the judgment of this Court no interference is called for in the judgement passed by the learned Sub Judge, Pudukkottai determining the compensation at Rs. 4,000/- per acre.

5. Mrs. Pushpa Sathyanarayanan, learned counsel appearing for the respondents 1, 3 and 4 submitted that on the basis of the decision of this Court in Appeal Nos. 440, 453 to 456 of 1984 dated 9.8.1989, all the respondents would be entitled to compensation at the rate of Rs. 6,000/- per acre, though the respondents have not preferred the cross objection, and this Court can exercise the power conferred under Order 41, Rule 33, C.P.C. and hold that the respondents are also entitled to have the same amount as the compensation payable was already determined by this Court and modify the order passed by the Sub Court, Pudukkottai. Learned counsel for the respondents relied upon decisions of the Supreme Court in Mahant Dhangir and Another Vs. Madan Mohan and Others, Muthuswami Gounder v. N. Palaniappa Gounder ( 1999-1 M.L.J. 41 = 1999-1-L.W. 23) and Delhi Electric Supply Undertaking v. Basanti Devi (1999 (III) CTC 558= 2000-1-L.W. 868) and submitted that on the basis of the decisions of the Supreme Court, this Court has the power to pass any decree and make any order as the case may be to do complete justice between the parties, notwithstanding the fact, the appeal has been preferred only against a portion of the decree. Learned counsel for the respondents submitted that this is

a fit case where the discretion of the Court under Order 41 Rule 33 C.P.C. should be exercised to render complete justice between the parties and she submitted that all the conditions laid down under the provisions of Order 41 Rule 33 C.P.C. are fully satisfied in this case and therefore, this Court should modify the order of the Sub-Court, Pudukkottai and enhance the compensation to Rs. 6,000/- as held by the Court in the earlier unreported judgment.

6. Learned counsel also referred to a Division Bench Judgment of this Court in *Minor Humera Bhanu rep. by her Mother and next friend Sirajunnissa etc. v. Mis Cholan Roadways Corporation* (1994-1 M.L.J. 180= 1994-1-L.W. 260 ) and submitted that though the respondents have not filed any cross objection, they can canvass for the reduction of the amount awarded by a Motor Accidents Claims Tribunal and this is a converse case and this Court should exercise the powers under Order 41, Rule 33, C.P.C. and enhance the compensation. The learned counsel also referred to a decision of this Court in *Ismail & another v. Rajkumar Bhagwatsaran, etc.*, (1996-1-L.W. 776) where this Court pointed out the distinction between the provisions of Order 41, Rule 4, and Order 41, Rule 33, C.P.C.

7. Learned Advocate General for the State appearing for the appellant, on the other hand, submitted that the respondents have not preferred any cross objection and they are not entitled to claim the benefit of the Bench decision of this High Court. According to the learned Advocate General, Order 41, Rule 33, C.P.C. is an exception to general Rule and the power under Order 41, Rule 33, C.P.C. should be exercised with great care and circumspection and the respondents have not shown any sufficient explanation as to why they have not preferred the cross objection. The learned Advocate General submitted that the judgment of the learned Sub-Judge, Pudukkottai has become final as far as the respondents are concerned and the power under Order 41, Rule 33, may not be invoked. He also submitted that the provision of Order 41, Rule 33, would not apply to a case where there is a single plaintiff or the single defendant and the judgment of the Trial Court cannot be reversed or modified in appeal filed by the other party when no appeal or cross objection was preferred and if the order of the Trial Court is reversed or modified, then, it would amount to injustice to the party appealing against the judgment and decree. The learned Advocate General also submitted that as an ordinary rule the Appellate Court must confirm or vary the decree in favour of a party who has preferred the appeal or preferred any cross objection and when this Court is not interfering in the appeal i. e., where this Court is confirming the order of the learned Subordinate Judge, Pudukkottai, the provisions of Order 41, Rule 33, C.P.C cannot be invoked. The learned Advocate General also submitted that the power under Order 41, Rule 33, C.P.C. is a discretionary power and the power can be exercised only in cases in which failure to exercise the said power would lead to impossible, contradictory or unworkable orders.

8. The further submission of the Advocate General was, as far as the

respondents have not filed the cross objection, they are not entitled to the relief under Sec. 28-A of the Act and it is an appeal under Sec. 54 of the Act and he submitted that the plea for enhancement of compensation is not bona fide and it should be disallowed and the learned Advocate General relied upon the following decisions in supported of his plea:

- 1 State of Bihar Vs. Jehal Mahto and Others,
2. Thozhappa Iyengar (a Alagar Iyengar v. P. Ganapathy and 2 others (1992-2-L.W. 93);
3. Poomalai Ammal (died) and Others Vs. Subbammal and Others,
4. Asiatic Steam Navigation Co. Ltd. Vs. Jethalal Dharamshi and Co. and Another,
5. Sunderji Bhanji v. Ghanchi Isa Raja (AIR 1952 SAU 18)
6. Bir Singh Vs. Budhu Ram and Others,
7. Smt. Shazadi Begum Vs. Vinod Kumar and Another,
8. The British India General Insurance Co. Ltd. Vs. Seth Ramnath and Others,
9. Budda Veeraiah and Others Vs. K. Lakshminarasimha Reddy and Others,
10. G. Krishna Murthy and others Vs. State of Orissa,
11. Union of India and others etc. Vs. Mangatu Ram, etc.,
12. Buta Singh (Dead) by L. Rs. Vs. Union of India,

9. I have carefully considered the submissions of the learned Advocate General and Mrs. Pushpa Sathyanarayanan, learned counsel for the respondents. As already observed by me, the unreported decision of the Division Bench of this Court consisting of Mr. V. Ratnam and Mr. K.A. Thanikkachalam, JJ., (as their Lordships then were) in Appeal Nos. 440, 453 to 456 of 1984 etc. dated 9.8.1989 would squarely apply on all fours to the facts of the case as the land which is the subject matter for consideration in the present appeal was the subject matter of acquisition in the same Notification and Declaration, and the Division Bench of this Court, while determining the market value of the land acquired, has held that the owners of the lands would be entitled to be paid compensation at the rate of Rs. 6,000/- per acre without making any distinction between irrigated and unirrigated lands.

10. It is also not disputed that the respondents, who are claimants, have claimed compensation at the rate of Rs. 30,000/- per acre a larger amount than that determined by the Division Bench of this Court and the learned Sub-Judge, Pudukkottai, has determined the compensation for the land acquired at the rate of Rs. 4,000/- per acre. Had there been any appeal or cross objection by the respondents, there would have been no difficulty in holding that the respondents are entitled to the compensation at the rate of Rs. 6,000/- per acre, as held by

this Court in the unreported decision cited supra. Then the question that arises is what are the hurdles or the impediments that exist in not granting the amount already determined by this Court to the respondents on the ground that they have not preferred the Memorandum of cross objection as contemplated under the Civil Procedure Code. In considering the said question, it is relevant to mention that it is not a case where this Court has to examine the facts afresh, analyse the evidence and then arrive at the just compensation to be payable to the respondents for the land acquired. The rate of compensation and the amount of compensation to be paid have already been determined by the Division Bench of this Court and it is a case of on application of an earlier decision of this Court to the facts of the case and then determine the amount of compensation payable to the respondents in accordance with and in consonance with the said judgment.

11. In normal circumstance, the judgment of a Civil Court determining the compensation for the lands acquired, which are covered in the same Notification and Declaration, without anything more, would constitute the best possible evidence which the Court can rely upon in determining the compensation for the land acquired. Sec. 23 of the Land Acquisition Act provides that in determining the amount of compensation to be awarded for land acquired under the Land Acquisition Act, the Court shall take into consideration the market value of the land at the date of the publication of Notification under Sec. 4 (1) of the Act. The market value for the land acquired has already been determined, and in my view, it will be a mistake to confine the decision of the Division Bench of this Court to the lands belonging to the respondents who were parties before the Division Bench as the Bench has categorically held that the land owners will be entitled to the compensation at a particular rate and at a particular amount. The principle that there should be equality in the compensation payable to the land owners for the land acquired in the same Notification is based and founded upon salutary principles of rendering equal justice to all parties covered in the same Notification. If the order of the learned Subordinate Judge, Pudukkottai is confirmed, without anything more, the result will be that the respondents would be paid the compensation at the rate of Rs. 4,000/- per acre and the effect is that there will be inequality in the payment of compensation between the two sets of land owners whose case came before this Court. In one set of cases, where the cases went before a Division Bench of this Court, the land owners would be entitled to compensation at Rs. 6,000/- per acre and another set of land owners whose cases came before a single Judge of the Court, they would be paid Rs. 4,000/- per acre. In my opinion, the instant case is a fit and proper case for this Court to invoke the power under Order 41 Rule 33 C.P.C. to remedy the injustice and to see that all land owners are paid equal amount of compensation for the lands acquired and if lesser amount of compensation is ordered on the ground that they have not preferred any appeal or memorandum of cross objection, it will result in inequity, inequality and injustice.

12. The scope of Order 41 Rule 33 C.P.C was considered by the Supreme Court in Mahant Dhangir and Another Vs. Madan Mohan and Others, and the Supreme

Court held as under:

The appellate Court could exercise the power under R. 33 even if the appeal is only against a part of the decree of the Lower Court. The Appellate Court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The scope of the power under R. 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The Appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate Court could also pass such other decree or order as the case may require. The words "as the case may require" used in R. 33 of O. 41 have been put in wide terms to enable the Appellate Court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraints that we could see may be these: That the parties before the Lower Court should be there before the Appellate Court. The question raised must properly arise out of judgment of the Lower Court. If these two requirements are there, the Appellate Court could consider any objection against any part of the judgment or decree of the Lower Court. It may be urged by any party to the appeal. It is true that the power of the Appellate Court under R. 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties.

13. The principle laid down in *Mahant Dhangir and Another Vs. Madan Mohan and Others*, was reiterated by the Supreme Court in *Muthuswami Gounder v. Palaniappa Gounder* ( 1999- I- M.L.J. 41= 1999-1-L.W. 23), the Supreme Court has held thus:

We are not impressed with argument that the finding as to the nature of F.X.A-6 the security deed has become final as the finding operates as *res judicata*. When the entire matter was still in appeal and any part of the finding could be varied by the Appellate Court it is idle to contend that the same had become final. So also when the matter had not attained finality and still in dispute the principle of *res judicata* could not arise. In some cases finding recorded at an earlier stage will operate as *res judicata* if such finding had become final. In the present case that was not the position.

14. In *Delhi Electric Supply Undertaking v. Basanti Devi and another* (2000-1-L.W. 868= 1999 (III) CTC-558), the scope of Order 41, Rule 33, C.P.C. was again considered by the Supreme Court and the Supreme Court reiterated the law laid down in *Mahant Dhangir and Another Vs. Madan Mohan and Others*,

15. I am of the view that it will be fair, proper and just to hold that the land owners would be entitled to the compensation according to the market value for the land acquired as they have lost all their rights, title and interest in the property acquired. Sec. 23 of the Act also enjoins the State to award the market

value for the land acquired as compensation and when the market value has already been determined by a Division Bench of this Court, in my view, that would represent the fair and proper compensation to be payable to the respondents. I also hold that it is a fit case for the exercise the power under Order 41 Rule 33 C.P.C, as the Division Bench of this Court in an unreported judgment cited supra has already determined the compensation payable and fixed the amount of compensation payable at Rs. 6,000/-to all the land owners and the judgment has become final and the respondents are entitled to claim the same amount of compensation as already determined by the Division Bench of this Court.

16. That apart, if the respondents are not awarded the same amount of compensation already determined by the Division Bench of this Court or if this Court upholds that the compensation determined by the learned Subordinate Judge, Pudukkottai holding that it needs no interference, the result will be that the amount of compensation payable to the respondents will not be the market value of the land acquired and there will be two different and conflicting views of the same Court with reference to the market value of the lands which are the subject matter of acquisition in the same Notification.

17. The Supreme Court in all the three cases cited supra has emphasised that the following two conditions should be satisfied:

The first requirement is that the parties before the Lower Court should be before the Appellate Court and the second requirement is that the question raised must be properly arisen out of the judgment of the Lower Court.

18. I hold that both the requirements for the exercise of the power under Order 41, Rule 33, C.P.C. are fully satisfied in the present case and hence I hold that the respondents are entitled to same rate of compensation for the land acquired as determined by this Court. I do not find any insurmountable difficulty or hurdle in not exercising the discretionary power under Order 41, Rule 33, C.P.C. on the facts of the case and accordingly, to render complete justice between the parties, I am inclined to exercise the discretion and power conferred under Order 41, Rule 33, C.P.C. Hence I hold that the objection raised that the non-filing of Memorandum of cross objection by the respondents is only a technical Objection on the facts of the case and it does not prevent the Court from exercising its power under order 41, Rule 33, C.P.C.

19. In Minor Humera Bhanu, rep. by her Mother and next friend Humera Bhanu, represented by her mother and next friend Sirajunnissa and Others Vs. Cholan Roadways Corporation, this Court has held that it is open to the respondent to ask for reduction of compensation awarded by Motor Accident Claims Tribunal without filing cross objection. This Court noticed earlier decision of this Court in Union Co-operative Insurance Society Limited v. Lazarammal ((1974) 2 MLJ 160= 87 L.W. 322) and other decisions noted therein and held that it is open to the respondent to ask for reduction of compensation, without filing cross

objection. The present case is a converse case where the respondents seek for the enhancement of compensation without filing the Memorandum of cross objection and the principle laid down by this Court in *Minor Humera Begum rep. by her Mother and next friend etc. v. M/s Cholan Roadways Corporation* (1994 I MLJ 180) would apply to the facts of this case.

20. In *Ismail & another v. Rajkumar Bhagwat Saran etc. & 11 others* (1996-I-L.W.776), this Court made a distinction between the scope of the power under Order 41, Rule 4, and under Order 41, Rule 33, C.P.C. and while considering the provisions of Order 41, Rule 33, C.P.C, this Court held that in order that the Court may exercise its power under Order 41, Rule 33, and grant relief to a person, one of the requirements for the exercise of the power is that such person should be a party to the appeal and this Court also held that where the Court decides to grant a positive relief, it has to act under Order 41, Rule 33, C.P.C. I hold that the tests laid down by this Court for invoking the powers under Order 41, Rule 33, C.P.C. are satisfied.

21. I will now consider the various decisions relied on by the learned Advocate General. The first decision relied on is *State of Bihar Vs. Jehal Mahto and Others*, In the case before the Division Bench of the Patna High Court, the Court has awarded compensation to different claimants and in the appeals preferred by the State only some of the respondents have filed the cross objection and some of them have not. The Patna High Court held that though there was an enhancement of compensation, the respondents, who have not filed Cross Objection, were not entitled to the benefits to the enhanced compensation. It is no doubt true that the decision of the Patna High Court supports the case of the appellant. The Patna High Court held that the appeals by the State against the other respondents are quite independent and separate appeals and therefore, the power under Order 41, Rule 33, C.P.C. could not be invoked; but the decision of the Patna High Court was rendered prior to the three decisions of the Supreme Court cited supra. Considering the scope and effect of Order 41, Rule 33, C.P.C, I hold that I am bound by the decisions of the Supreme Court and the Supreme Court has exercised the power under Order 41, Rule 33, C.P.C. in cases where there is a single appellant and a single respondent.

22. The next decision relied upon by the learned Advocate General is the decision of this Court in *Thozhappa Iyengar alias Alagar Iyengar v. P. Ganapathy and two others* (1992-2-L.W.93) wherein the learned Judge of this Court considered the decision of the Supreme Court in *Choudhary Sahu (Dead) by Lrs Vs. State of Bihar*, and held that if the tests laid down by the Supreme Court in *Choudhary Sahu v. State of Bihar* are applied, the matter to be considered is whether a party can escape from the provisions of the Law of Limitation and the Law of Court-Fees and claim a relief in the Appellate Court by invoking Order 41, Rule 33, C.P.C. As far as the facts of the case are concerned, it is stated that the respondents have not preferred the Memorandum of cross objection as they were not aware of the unreported judgment of this Court in appeal Nos. 440, 453 to

456 of 1984 dated 9th August, 1989 when the notices in the appeal were served on the respondents. The appeal is of the year 1986 and the judgment of this Court determining the compensation at Rs. 6,000/- was delivered subsequently and further it is a case under the Land Acquisition Act and the Act enjoins the State to pay the market value of the land for the land acquired to the owners of the lands and hence the decision in Thozhappa Iyengar @ Alagar Iyengar v. P. Ganapathy and two others (1992-2-L.W. 93) is not applicable.

23. In so far as the payment of Court fees is concerned, the respondents have agreed to pay the Court fees on the enhanced compensation. The other decision that was relied upon is the decision of the Supreme Court in Choudhary Sahu (Dead) by Lrs Vs. State of Bihar, where the Supreme Court held that the power under Order 41, Rule 33, C.P.C. can be invoked to those cases where as a result of interference in favour of the appellant, further interference with the decree of the Lower court is rendered necessary in order to adjust the rights of the parties according to justice, equity and good conscience. In my view the ratio laid down by the Supreme Court in Choudhary Sahu v. State of Bihar is fully satisfied and the order of the Sub-Court is to be interfered as it is necessary to adjust the rights of the parties according to justice, equity and good conscience.

24. Learned Advocate General also referred to a decision of this Court in Poomalai Ammal (died) and Others Vs. Subbammal and Others, wherein this Court held that the provisions under Order 41, Rule 33, C.P.C. is not meant to be exercised in favour of a party who did not choose to file an appeal against the judgment of the trial Court and allowed it to become final. The decision of this Court in Poomalai Ammal v. Subbammal was rendered with reference to the facts of that case and has no application to the facts of instant case. Learned Advocate General also referred to a decision in Sunderji Bhanji v. Ghanchi ha Raja (AIR 1952 SAU 18) and submitted that Order 41, Rule 33, C.P.C. cannot be applied to a case of sole plaintiff and sole defendant. He also referred to the illustration to Order 41, Rule 33, C.P.C. and submitted that there must be more than one respondent for this Court to invoke the power conferred under. Order 41, Rule 33, C.P.C. I am unable to accept the submission of the Learned Advocate General. A full Bench of this Court in S.M.S. Subramanian Chettiar (dead) and Another Vs. Sinnammal and Others, has considered the scope of the power under Order 41, Rule 33, C.P.C. and held that the illustration to the rule is a type of one class of cases, which calls for the exercise of the powers conferred by Rule 33, but it does not, by any means, exhaust the class of cases in which the powers of the Appellate Court under this rule may be invoked. The Full Bench of this Court has held as under:

Its object is clearly to enable the Court to do complete justice between the parties. Its terms are very wide and in a proper case it gives the Appellate Court ample discretion to pass any decree or make any order to prevent ends of justice from being defeated. By the very terms of the order, involving as it does an exercise of judicial discretion, the question whether the Appellate Court should

exercise the powers conferred by them in a particular case would, no doubt, depend upon the special facts and circumstances of that case.

25. In view of the decision of the Full Bench of this Court, I am unable to accept the submissions of the learned Advocate General that the power under Order 41, Rule 33, C.P.C. cannot be invoked where there is a single appellant or single respondent, but what has to be seen is whether they were the same parties in the trial Court.

26. Learned Advocate General also referred to decisions in *Bir Singh Vs. Budhu Ram and Others*, *Smt. Shazadi Begum Vs. Vinod Kumar and Another*, and *The British India General Insurance Co. Ltd. Vs. Seth Ramnath and Others*, and submitted that where the Trial Court decree is not interfered in the appeal, the provisions of Order 41, Rule 33, C.P.C. cannot be invoked. I agree that the Appellate Court when it is not reversing or varying the decree in favour of the party, as an ordinary rule and prudence, it may not vary the decree in favour of the party who has not preferred the appeal or the cross objection, as the case may be. As held by this Court in *Subramania Chettiar v. Sinnammal* cited supra ordinarily the power contained in Rule 33, C.P.C. should be limited to those cases where, as the result of the Appellate Court's decree, there is an interference with the decree in favour of the appellant, and further interference is required in order to adjust the rights of the parties. But I hold that the Appellate Court's jurisdiction to interfere is not confined to those cases and no hard and fast rule can be laid down. This Court has held that there is no warrant for limiting the very wide terms of the rule only to the classes of cases where the Court has interfered the appeal in favour of the appellant, though ordinarily it may be that in those cases, but where occasions arise for the exercise of powers under the rule, in my view, having regard to the very wide power conferred on the Appellate Court under Order 41, Rule 33, C.P.C, in a proper and fit case the Appellate Court has the power and jurisdiction to exercise the power in favour of the respondent, though it may dismiss the plaintiffs case in toto. Though the respondent might not have preferred any appeal or filed Memorandum of cross objection challenging the decree or the order, in my view whether the interference is called for would depend upon the facts of the case and no straight jacket formula can be laid down and when in peculiar circumstances of the case, the Court feels it is a fit case where the power under Order 41, Rule 33, C.P.C should be exercised in favour of the respondents, I hold the Court has the necessary power to interfere even in cases where there is a sole appellant and the respondent and also in cases when it dismisses the appeal.

27. This Court in *S.M.S. Subramanian Chettiar (dead) and Another Vs. Sinnammal and Others*, has taken the same view. In the case before a Full Bench of this Court, the facts were that one A obtained a decree for redemption against "B" and "B" appealed on the ground that the amount decreed to pay was too large. The Appellate Court found that "A" was not entitled to redemption and the Appellate Court not only dismissed the appeal but also dismissed the suit,

although "B" had not appealed. This Court made the following observation:

And later on, the learned Judge adds "no hard and fast rule can be laid down." A similar opinion is expressed by Mookerjee J, in *Abjat Majhi v Intu Bepari*. It would thus appear that the statement of the learned Judges in *Ramalingam Chettair v. Subrahmanya Chettiar*, that the two Calculate decisions just now mentioned laid down that the exercise of the rule should be limited to cases where the Court had interfered in favour of the appellants and further interference was required to adjust the rights of parties, is not with all deference to the learned Judges - quite accurate. There is no warrant for limiting the very wide terms of the rule only to this class of cases, though ordinarily it may be that it is in those cases occasions arise for exercising powers under the rule.

28. This Court held that in a proper case the Appellate Court has the jurisdiction to exercise its power in favour of the respondent by dismissing the plaintiffs case in toto though the respondent did not prefer any appeal or Memorandum of cross objection challenging the decree passed by the Lower Court.

29. The Patna High Court in *Bageshwari Prasad Duivedi Vs. Deopati Kuer and Another*, has also taken a similar view and held as under:

The terms of O. 41, R. 33, Civil Procedure Code, are very wide, and in a proper case, it gives the Appellate Court ample discretion to pass any decree or make any order to prevent the ends of justice being defeated. Thus where only one of the defendants against whom a decree for specific performance has been passed, appeals against the decree impleading the other defendant as respondent the Court while setting aside the decree against the defendant appellant can also set aside the decree as against the other defendant respondent although he has not preferred an appeal.

30. The Patna High Court in another case in *Ganesh Ram v. Baikunthesh Prasad Singh and others* (AIR 38 1951 Pat 291) wherein the Division Bench of the Patna High Court consisting of Ramaswami, J. (as his Lordship then was) and Sarjoo Prasad, J. has also taken the same view and the Court held as under:

But there is ample authority for the view that the power contained in R. 33 extends to those cases where as a result of the Appellate Court's interference with the decree in favour of the appellant further interference is required in order to adjust the rights of the parties in accordance with justice, equity and good conscience (see for instance *Jawahar Bano and Another Vs. Shujaat Husain Beg and Others*, and *Ganga Dhar Muradi and Another Vs. Banabashi Padihari and Others*, In the latter case, Jenkins C.J. observes: "There is no doubt that the words of that rule are widely expressed, but they must be applied with discretion" and later on the learned Judge adds that no hard and fast rule could be laid down. A similar opinion was pressed by Sir Asutosh Mookerjee in *Abjal Majhi v. Intu Bepari*, 22 C.L.J.394; (AIR) 1916 Cal. 250). In a Full Bench case *S.M.S. Subramanian Chettiar (dead) and Another Vs. Sinnammal and Others*, it was held that R. 33 conferred wide powers upon the Appellate Court and there

was no warrant for limiting the application of the rule only to cases where further interference was required to adjust rights between the parties.

31. In *Muniappa v. Dr. C.A. Ramasetty and another* (AIR 1961 Mys 166), the Mysore High Court has also taken the similar view and held that the power under Order 41 Rule 33 C.P.C. is available to Appellate Court in all cases where the circumstances of the case warrant the exercise of power irrespective of the decision in the appeal. The law laid down by the Mysore High Court in the above decision reads as under:

It does not appear to me to be correct to understand Rule 33 or the illustration appearing under it as empowering the Appellate Court to exercise power under that rule only in cases where it allows either wholly or in part the appeal presented to it. There can be no principle on the basis of which the scope of Rule 33 could be restricted in that way. If the Appellate Court has power to vary a decree in cases where wholly or in part it disturbs the decree appealed against, notwithstanding the fact that one portion of the decree is not appealed against in the absence of an express provision to the contrary, it would not be right to think that the Appellate court does not possess the power to do so, even in cases where the appeal preferred to it does not exceed. The power of the Appellate Court under R. 33 does not, in my opinion, depend at all to any extent on the fate of the appeal which was actually preferred to it. The power conferred on the Appellate Court by that rule is available to the Appellate Court in all cases where the circumstances or the interest of justice justify the exercise of that power irrespective of the decision in the appeal itself in so far as it relates to the appellant, who preferred it.

32. In my view, the power under Order 41, Rule 33, is a discretionary power and no doubt it must be exercised with caution and hence, in my view it is one such case where the power under Order 41, Rule 33 should be invoked.

33. Learned Advocate General also referred to the provisions under Sec. 28-A of the Act and submitted that under the provisions of Sec. 28-A of the Act, the precondition for invoking the power under Order 28-A is that the party should not have sought for a reference under the Land Acquisition Act and since the respondents have sought for a reference, the respondents are not entitled to rely upon Sec. 28-A of the Land Acquisition Act. I agree that Sec. 28-A of the Act in its terms does not apply to the facts of the case, but the principle behind the Section should be kept in mind while considering the exercise of power under Order 41, Rule 33, C.P.C. The intention of the Legislature in enacting Sec. 28-A of the Act is to award just compensation to a claimant, though he has not sought for a reference under Sec. 18 of the Act, and on the basis of the award of the Court subsequently made, he is entitled to approach the Collector to re-determine the amount of compensation on the basis of the award of the Court. The intention of the Legislature is that though the claimant has not sought for a reference under Sec. 18 of the Act he should be paid the just compensation on the basis of the subsequent decision of the Court and if that is the intention, the

respondents who sought for a reference cannot be placed in a worse position than a claimant who comes within the scope and ambit of Sec. 28-A of the Act.

34. Before concluding, it will be profitable to refer to a decision of the Allahabad High Court in *State of U.P. and others v. Raj Narain Singh and another* (AIR 1986 Allahabad 321). This case has also arisen under the Land Acquisition Act and there was an appeal to the High Court by the State against the compensation awarded by the District Judge and during the pendency of the appeal before the High Court, there were certain amendments made to the provisions of the Land Acquisition Act in the year 1984 and the amount of solatium was raised and the rate of interest was also increased. The Allahabad High Court held that since the appeal was filed in the year 1974, cross objection could not have been filed on the basis of the amendment and the Court held that it was a fit case to give the benefit of the amendment to the respondent in exercise of the powers under Order 41, Rule 33, C.P.C. even in the absence of cross objection. The Allahabad High Court relied upon a decision of the Supreme Court in *Pannalal Vs. State Bombay and Others*, wherein the Supreme Court held that if a party who could have filed a cross objection under Order 41, Rule 22, C.P.C. has not done so, the Appellate Court can exercise the power and grant the relief under Order 41, Rule 33, C.P.C. The same view was taken by the Andhra Pradesh High Court in *Revenue Divisional Officer-cum-Land Acquisition Officer, Chittoor Vs. P.C. Krishna Swami Naidu and another*, wherein Ramaswamy, J. (as his Lordship then was) held that the claimants would be entitled to 30% solatium under the Amendment Act and the Court was obligated under the provisions of Sec. 23 (2) of the Act to grant the enhanced amount of solatium. The learned Judge also held that the CPC armed the Court under Order 41, Rule 33, C.P.C. to accord the relief though no cross objection was filed in this regard and the claimants would be entitled to the benefit of the Amendment Act.

35. In my view, the principle laid down by decision of the Allahabad High Court as well as Andhra Pradesh High Court would apply to the determination of the compensation as well. When the notice in appeal in the present case was served, the decision of this Court in Appeal Nos. 440, 453 to 456 of 1984 was not available and the judgment of this Court was delivered on 9.8.1989 and the respondents would be entitled to the benefit of the unreported judgment of this Court.

36. In so far as the other decisions relied upon by the Advocate General are concerned, they turned on the basis of the case and hence it is not necessary to deal with them except to state that they are not applicable to the facts of the case.

37. In my view nothing precludes this Court from exercising the power under Order 41, Rule 33, C.P.C. to do justice; nothing prevents this Court also from holding that the respondents are entitled to the same amount of compensation, which was already determined by this Court; and the unreported decision of this Court in the batch of appeals filed against L.A.O.P. Nos. 36 of 1983 etc. would

squarely apply to the facts of the case and I am bound by the decision of the Division Bench of this Court.

38. I, therefore, hold that it is a fit and proper case for exercise of the powers under Order 41, Rule 33, C.P.C. as the order determining the compensation for the land acquired, which is appealed against, is so inextricably and inseparably connected with the subject matter of appeal and the justice cannot be done unless the respondents are also given the benefit of the judgment of this Court in Appeal Nos. 440, 453 to 456 of 1984. Accordingly in exercise of the power under Order 41, Rule 33, C.P.C., I hold that all the conditions as laid down by the Supreme Court in the three cases cited supra are fully satisfied and in order to do complete justice between the parties, I am of the view that the power under Order 41, Rule 33, C.P.C. should be exercised in favour of the respondents. In so far as respondent No. 2 is concerned, she has not chosen to contest the appeal either by herself or through her counsel. In a nutshell, there was no representation by her during the hearing of the appeal. Since she has not cared to appear before this Court, I am not inclined to exercise the power under Order 41, Rule 33, C.P.C. in favour of the second respondent. But in so far as the other respondents 1, 3 and 4 are concerned, I hold that the said respondents would be entitled to be paid compensation at the rate of Rs. 6,000/- per acre and solatium at the rate of 30% instead of 15% p.a. The respondents also would be entitled to other statutory interest. Since, there is an enhancement in the compensation, respondents 1, 3 and 4 are directed to deposit the necessary Court fees with the Registry of this Court within a period of 4 weeks from this date. The result is that, the appeal shall stand dismissed, but in exercise of the power under Order 41, Rule 33, C.P.C. the order of the Sub-Court, Pudukkottai in L.A.O.P. No. 46/1983 dated 3.5.1984 is modified and I hold that the respondents 1, 3 and 4 are entitled to the compensation in respect of the acquired land at the rate of Rs. 6,000/ per acre with all statutory benefits granted under the Land Acquisition Act. Since the respondents have succeeded on the basis of the exercise of the powers by this Court under Order 41, Rule 33, C.P.C. without filing any cross objection, there will be no order as to costs.