

(2002) 04 AP CK 0090

In the Andhra Pradesh High Court

Case No : C.M.P. No's. 12551 of 2000, 12061, 12213 and 21347 of 2001 in A.S. No. 2836 of 1996, Cross-Objections (SR) No. 52624 of 1998 and Writ Petition No. 21878 of 2000

State of A.P., Land Acquisition Officer, (R.D.O), Warangal and
Another

APPELLANT

Vs

Ch. Madhusudhan Reddy

RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Land Acquisition Act, 1894 — Section 10, 15A, 16, 18, 23(2)

Citation : (2002) 5 ALT 658

Hon'ble Judges : R.M. Bapat, J;C.Y. Somayajulu, J

Bench : Division Bench

Advocate : C. Poornaiah, for the Appellant; P. Prahabhakar Reddy, for the Respondent

Judgement

C.Y. Somayajulu, J.—Since the appeal and the Writ Petition are interconnected, at the request of the counsel for parties, they are being disposed of by this common Judgment. But for the sake of convenience parties would be referred to as they are arrayed in the respective proceedings i.e., petitioner and respondents in the Writ Petition and appellants and respondents in the appeal.

2. As per a Notification u/s 4(1) of the Land Acquisition Act (the Act) made on 21-11-1980, an extent of 31 acres 11 guntas in S.Nos.24, 26, 464 and 465 of Jangaon village and Taluq, Warangal District was proposed to be acquired for the benefit of A.P.Housing Board (appellant) and on the same day a Notification u/s 6 of the Act also was issued. Notices under Sections 9(1), 9(3) and 10 of the Act were issued on 21-5-1981, and after conducting an enquiry on 18-6-1981, advance possession of those lands was taken on 27-6-1981. Some of the persons whose lands were proposed to be acquired filed Writ Petitions to declare the Notification dated 21-11-1980 in respect of their lands void. Those Writ Petitions were allowed. The details thereof are like this. Writ Petition No.207 of 1982 filed

by T.Taramma and 22 others in respect of 4 acres 12 guntas of land in S.No.464 was allowed on 15-12-1985, Writ Petition No.6397 of 1982 filed by Khaja Moinuddin and 38 others, and Writ Petition No.1943 of 1982 filed by Ahmedi Begum, in respect of the entire land in S.No.24 were allowed on 27-10-1987 and 12-2-1986 respectively, Writ Petition No.7288 of 1982 filed by Srimad Bhagavadgita Ashram in respect of 4 acres 16 guntas from out of 8 acres proposed to be acquired in S.No.465, was allowed on 15-1-1986. Writ Petition No.16139 of 1986 filed by Syed Abdul Wahab in respect of 3 acres 20 guntas in S.No.464, was allowed on 13-7-1987. Subsequently a fresh Notification u/s 4(1) of the Act for acquisition of 24 acres 14 guntas i.e., 11 acres 9 guntas in S.No.24; 4 acres in S.No.26, 9 acres 5 guntas in S.No.465, was issued on 11-12-1991 and after enquiry an award was passed on 23-4-1996 proposing to pay compensation at the rate of Rs.25/- per sq. yard, besides 30% solatium on the market value excluding the structural value, interest u/s 34 of the Act at 9% per annum from 27-6-1981 to 27-6-1982 and at 15% per annum for the subsequent period till the date of award. Dissatisfied with the quantum of compensation awarded, the land owners sought a reference u/s 18 of the Act claiming compensation at the rate of Rs.250/- per sq.yard, which was numbered as O.P.No.13 of 1996 on the file of the Court of the Subordinate Judge, Jangaon. After enquiry, the reference Court fixed the market value of the acquired land at Rs.47/- per sq.yard besides 30% solatium, 12% additional amount from 27-6-1981 till date of award i.e., 23-4-1996, interest at 9% per annum from 27-6-1981 for one year and thereafter at 15% till date of deposit, on the market value, solatium and additional interest. The beneficiary (A.P.Housing Board) filed the appeal questioning the enhancement granted by the reference Court, claimants filed cross-objections claiming higher compensation at the rate of Rs.67/- per sq.yard.

3. As per the order dated 23-7-1998 in C.M.P.No.12112 of 1998 in the appeal, 5 acres in S.No.24 was deleted from the acquisition proceedings, in pursuance of the compromise entered into between the parties.

4. Contending that some errors in the award were discovered while their counsel was getting ready to argue the appeal, appellant filed Writ Petition No.21878 of 2000 to quash the award passed by the Land Acquisition Officer.

W.P.NO.21878 of 2000:

5. Since the result of the Writ Petition will have a bearing on the disposal of the appeal, we wish to decide the Writ Petition in the first instance.

6. The learned counsel for the petitioner feebly contended that since the petitioner was not made a party before the Land Acquisition Officer, it did not have the opportunity to bring the relevant facts to the notice of the Land Acquisition Officer. His main contention is that since the entire first notification dated 21-11-1980 was not quashed by the orders of this Court in the Writ Petition Nos.207, 6397, 7288, and 1943 of 1982 and 16139 of 1986, the second

notification dated 11-12-1991 issued, on the assumption that the entire first notification dated 21-11-1980 was quashed, is non-est in the of law, because advance possession was taken on 27-6-1981, by placing strong reliance on GOVT. OF A.P. AND ANOTHER vs. MOHD.MOINUDDIN HUSSAN¹. Relying on UNITED INDIA INSURANCE CO.LTD. vs. RAJENDRA SINGH AND OTHERS² and M/ S.NEYVELY LIGNITE CORPORATION LIMITED vs. SPECIAL TAHSILDAR (LAND ACQUISITION), NEYVELY AND OTHERS³, he contended this Writ Petition, though delayed, is maintainable because there is fraud. The learned counsel for the respondents relying on MUNICIPAL COUNCIL, AHMEDNAGAR vs. SHAH HYDER BEIG⁴ contended that this petition is liable to be dismissed on the ground of laches and delay. His next contention is that the Judgment of this Court in Writ Petition No.11239 of 1992, confirmed in Writ Appeal No.409 of 1993 and by the Supreme Court in S.L.P.No.18021 of 1993 operates as res judicata. He relied on STATE OF U.P. vs. NAWAB HUSSAIN⁵ and S.G.MULEY vs. STATE OF MAHARASHTRA⁶ in support of the said contention.

7. Though in the affidavit filed in support of this petition it is alleged that Writ Petition No.16139 of 1986 was filed by Syed Abdul Wahab in respect of 3 acres 20 guntas in S.No.464, no document is produced in proof thereof, obviously because no part of land in S.No.464 is acquired under the award impugned. From out of 33 acres 20 guntas sought to be acquired by the first notification dated 21-11-1980, proposal for acquisition of 12 acres 24 guntas in S.No.24, 4 acres 12 guntas in S.No.464 and 4 acres 16 guntas in S.No.465 from out of 12 acres 24 guntas only was quashed by the orders in the Writ Petitions filed by the owners of those lands. So the first notification dated 21-11-1980 in respect of 4 acres in S.No.26, and the remaining 8 acres 8 guntas in S.No.465 remained to hold good, because the first notification in respect of those extents was not challenged or quashed. Under the award impugned, 11 acres 9 guntas in S.No.24, 4 acres in S.No.26 and 9 acres 5 guntas in S.No.465 were acquired. Notification dated 11-2-1991 in respect of 11 acres 9 guntas in S.No.24 is but a fresh notification in relation to that land, because the first notification in respect of entire land in S.No.24 was quashed by the orders of this Court in W.P.Nos.6397 of 1982 and 1943 of 1982. Since the first notification dated 21-11-1980 was in respect of 12 acres 24 guntas in S.No.465, and that notification in respect of only 4 acres 16 guntas was quashed by the order in W.P.No.7288 of 1982, the first notification held good for the remaining extent of 8 acres 8 guntas in S.No.465. By the second notification dated 11-12-1991, 9 acres 5 guntas in S.No.465 was notified for acquisition. It means that 37 guntas more than the remaining extent of land in S.No.465 was notified for acquisition afresh. The first notification dated 21-11-1980 in respect of 4 acres in S.No.26 remained intact. But that extent also was notified for acquisition by the second notification dated 11-12-1991.

8. In para 14 of the affidavit filed in support of the Writ Petition it is alleged that a portion of the land acquired by the petitioner was sold to third parties by some of the claimants i.e., respondents 2 to 7, and those purchasers raised buildings

therein, and so the petitioner felt that that land need not be acquired. In para 15 of the affidavit filed in support of the Writ Petition it is stated that after the new counsel for the petitioner was going through the record for getting ready to argue the appeal, he noticed the objections raised by the audit party that there was a mistake in the award, and since the mistakes in the award would not and cannot be considered by the reference Court or the appellate Court, and has to be questioned only by way of a Writ Petition, and since the petitioner was not represented before the Land Acquisition Officer, petitioner was advised to file this Writ Petition.

9. If the petitioner failed to appear before the Land Acquisition Officer at the time of award enquiry, it should blame or thank itself, but cannot throw the blame on anybody else, because it has all through been aware of the pendency of proceedings for acquisition before the Land Acquisition Officer. Section 50(2) of the Act confers right on the beneficiary to appear and adduce evidence both before the Land Acquisition Officer and the reference Court for purpose of determining the amount of compensation. The only embargo on the beneficiary is that it has no right to seek a reference (see para 11 at page 1008 of M/s.Neyveli Lignite Corporation case - 3 supra). Petitioner who is very much alive to the fact that acquisition proceedings for its benefit are pending before the Land Acquisition Officer by virtue of the second notification dated 11-12-1991 ought to have appeared before the Land Acquisition Officer and put forth its case. But, for the reasons best known to it, it did not do so. It is pertinent to note that respondents 2 to 7 filed W.P.No.11239 of 1992 against petitioner and others, showing the petitioner as 4th respondent therein, for a Mandamus directing the Revenue Divisional Officer, and Collector of Warangal, Government of Andhra Pradesh and the Vice Chairman and Housing Commissioner, A.P.Housing Board, Hyderabad, to complete the acquisition proceedings and pass award as per the second notification dated 11-12-1991. Petitioner filed a counter contending that it decided to withdraw the acquisition proceedings under second notification dated 11-12-1991 as acquisition of those lands is proving to be expensive and as it identified an alternative land of 10 acres in S.No.326/2 for acquisition, for housing purpose. The learned Judge while deciding the said Writ Petition framed the following points for consideration:

Whether the petitioners therein (i.e., respondents 2 to 7 in this Writ Petition) are entitled to compensation for the lands sought to be acquired in S.Nos.24, 26 and 465 as per the second notification dated 11-12-1991?

Whether the stand taken by the respondents (petitioner in this W.P. and others) that taking over possession of the lands proposed to be acquired was only symbolic and that physical possession thereof is still with the land owners can be accepted?

Whether 4th respondent therein (i.e., petitioner in the W.P.,) can be permitted to withdraw the land acquisition proceedings? and answered points 1 and 2 against the petitioner herein and in favour of respondents 2 to 7 (i.e., the petitioners in

W.P.No.11239 of 1992) and on point No.3 held that when once possession is taken over, acquisition proceedings cannot be withdrawn, and gave a direction to the petitioner herein and others to complete the acquisition proceedings from the stage of publication of Section 6 declaration in pursuance of the second notification dated 11-12-1991, and pay compensation within three months from the date of receipt of the order in that Writ Petition. Appeal filed by the petitioner and others against the order of the learned single Judge before a Division Bench in Writ Appeal No.489 of 1993, and further appeal to the Supreme Court also were dismissed. Therefore it is clear that petitioner had knowledge that in a Writ Petition filed by respondents 2 to 7, against it and others, this Court gave a direction to complete the acquisition proceedings as per the second notification dated 11-12-1991. Nothing prevented the petitioner from being present before the Land Acquisition Officer, as the beneficiary under the acquisition proceedings, and taking up the necessary pleas before the Land Acquisition Officer. Petitioner, having failed to appear before the Land Acquisition Officer, cannot now lament that it was not given an opportunity to appear before the Land Acquisition Officer.

10. It is no doubt true that in MOHD.MOINUDDIN HUSSAN case (1 supra) relied on by the learned counsel for petitioner, it is held that second notification issued u/s 4(1) of the Act, under a misconception that the earlier notification u/s 4(1) of the Act was vitiated, is superfluous and non-est in the eye of law, and market value of the acquired land has to be determined as per the rate prevailing on the date of first notification. That decision, in normal circumstances, would have to some extent, come to the rescue of the petitioner but not in this case because the order in Writ Petition No.11239 of 1992 is an insurmountable obstacle in the way of the petitioner, because the learned Judge in his order in Writ Petition No.11239 of 1992 clearly held that petitioner herein and others, who are the respondents therein "cannot escape from their liability to pay compensation to the land owners in terms of notification issued on 11-12-1991 to the extent of 24 acres 14 guntas of land in S.Nos.24, 26 and 465"

The said order was confirmed by a Division Bench of this Court and also the Supreme Court. Therefore that finding operates as *res judicata* in this case. So the petitioner cannot, now, be heard to say that of the lands in respect of which the first notification was not quashed, market value should be determined as on the date of first notification dated 21-11-1980. Such plea should have been taken in the earlier Writ Petition No.11239 of 1992, but was not taken. This point would be considered in detail a little later.

11. It is contended by the learned counsel for petitioner that some of respondents 2 to 7 are still continuing in possession of the land notified for acquisition, and have alienated some land to third parties, which amounts to fraud. We are unable to agree with the said contention, because there is a specific finding in the order in W.P.No.11239 of 1992 that possession of the land proposed to be acquired was taken over by the petitioner under a panchanama. We would not have looked or taken, into consideration the evidence in the

connected appeal, for disposal of this Writ Petition. But as the appeal and this Writ Petition were heard together and are being disposed of by a common order, we glanced into the evidence adduced on behalf of the petitioner, in the reference Court.R.W.1, examined in the reference Court on behalf of the petitioner herein admitted in his chief examination that Housing Board (petitioner) took advance possession of the acquired land through Land Acquisition Officer, on 27-8-1981. It is significant that the petitioner who took a plea in W.P.No.11239 of 1992 that physical possession of the land notified for acquisition under the first notification dated 21-11-1980 was not taken over, after suffering an adverse finding in the said Writ Petition in respect of that plea, adduced evidence admitting that possession of the land notified for acquisition under the first notification dated 21-11-1980 was taken on 27-8-1981. So, it is clear that the land of 4 acres in S.No.26 and 8 acres 8 guntas in S.No.465, not covered by the Writ Petitions filed by the land owners, and not quashed by this Court, was taken possession of on 27-8-1981 by the petitioner along with the other land notified for acquisition. It should not be forgotten that respondents 2 to 7, who are all members of the same family, are the only owners of the entire land in the survey numbers covered by the acquisition proceedings. Acquisition is in respect of parts of the land, but not the entire extent of land covered by the S.Nos.24, 26 and 465. The place, or area, where the buildings are constructed in a particular survey number is a question of fact. It could be outside the area of the land acquired or within the land acquired. If the construction is outside the area of acquisition, petitioner cannot be said to be aggrieved because it has no interest in the land which is outside the area of acquisition. If respondents 2 to 7 had encroached into the land taken advance possession of by the petitioner in pursuance of Section 4(1) notification, the remedy, if any, of the petitioner is to take steps to get the encroachers evicted. If the land proposed to be acquired under the notification is sold by the land owner to third parties, the sale would not be binding on the Government or the beneficiary, because on acquisition the land vests in the Government or the beneficiary, free from all encumbrances as per Section 16 of the Act. Since there is nothing on record to show that the buildings constructed by third parties are in the portion of the land acquired for the benefit of the petitioner, and also for the reason that encroachment or alienation during the pendency of the Land Acquisition proceedings do not hamper acquisition proceedings or bind the Government or the beneficiary, the contention of the learned counsel for petitioner that there was fraud during acquisition proceedings cannot be believed or accepted. UNITED INDIA INSURANCE CO.LTD. vs. RAJENDRA SINGH (2 supra) relied on by the learned counsel for the petitioner is a case where the claimants, in a motor accident case, obtained award from the Claims Tribunal by practising fraud. The insurer, after paying the amount covered by award, discovered the fraud played by the claimants and sought recalling of the award on the ground of fraud. The Supreme Court, in the circumstances of that case, held that the Court has power to correct an error caused by fraud. The said decision has no application to the facts of this case as fraud is not alleged or established in this case.

12. In *SUSHIL KUMAR MEHTA vs. GOBIND RAM BOHRA*⁷ relied on by the learned counsel for the petitioner, the Supreme Court held that questions relating to interpretation of a statute, touching the jurisdiction of a Court, unrelated to questions of fact or law do not operate as *res judicata* even between the parties or persons claiming under them. Since Writ Petition No.11239 of 1992, was decided on question of fact and law, and since no questions relating to interpretation of any statute or jurisdiction of the Court was decided therein, the order therein does operate as *res judicata* in this Writ Petition.

13. The contentions now sought to be raised in this Writ Petition could have as well been raised in Writ Petition No.11239 of 1992. Pleas which might and ought to have been raised in the earlier proceedings, cannot be permitted to be raised in subsequent proceedings, as they are barred under the principle of Constructive *Res judicata*. Therefore petitioner cannot now contend that the award should have been passed on the basis of the market value as on the date of first notification dated 21-11-1980 but not on the basis of the market value on the date of second notification dated 11-12-1991, since such plea is barred by constructive *res judicata*.

14. There is force in the contention of the learned counsel for respondents 2 to 7 that this petition is liable to be dismissed on the ground of delay and laches. The award impugned in this Writ Petition was passed on 23-4-1996. Dissatisfied with the quantum awarded by the Land Acquisition Officer, respondents 2 to 7 sought a reference u/s 18 of the Act to civil Court. Petitioner adduced evidence before the reference Court. The reference Court, by its award dated 28-10-1996, granted higher compensation than that was awarded by the Land Acquisition Officer. Aggrieved thereby petitioner filed A.S.No.2836 of 1996 on 28-11-1996. More than three years after filing of that appeal only did the petitioner think of questioning the award of Land Acquisition Officer. The averments in para 15 of the affidavit filed in support of this writ petition show that petitioner came to know about the mistakes in the award, only while the counsel was preparing get ready for hearing of the appeal, and noticed the objections raised by the audit party. It is difficult to accept or believe that till the audit party noticed the mistakes, none else in the office or the petitioner or the counsel that represented the petitioner before the reference Court or that filed the appeal, did not notice the mistakes in the award. This petition seems to have been filed more with a view to get over or answer the audit objection. If the petitioner felt that the award of the Land Acquisition Officer is not in accordance with the provisions of the Act, and that he granted more compensation than the amount respondents 2 to 7 are legally entitled to, if not immediately after the award, at least after respondents 2 to 7 sought a reference to civil Court, or after the civil Court enhanced the rate of compensation payable to respondents 2 to 7 or at the time of filing of the appeal against the order of reference Court, petitioner could have filed a Writ Petition questioning the award of Land Acquisition Officer. It did not do so, but filed this petition more than three years after filing of the appeal against the award of the reference Court. Therefore on the ground of delay and

laches only this petition is liable to be dismissed.

A.S.No.2836 of 1996 AND CROSS-OBJECTIONS:

15. The point for consideration in the appeal and cross-objections is to what amount of compensation are the respondents are entitled to?

16. Before taking up the point for consideration in the appeal, it is necessary to dispose of the C.M.P.S., filed by the appellants under Rule 27 of Order 41 C.P.C.

C.M.P.No.12551 of 2000:

17. By this petition the appellant is seeking to introduce certified copies of the orders in Writ Petition Nos.207 of 1982, 6397 of 1982, 7288 of 1982 and 1943 of 1982 as additional evidence in this appeal. Since the factum of first notification and filing of the Writ Petitions by some of the land owners to quash the proceedings in respect of their lands is not denied and disputed, and since the Land Acquisition Officer also has taken that fact into consideration, it is not necessary to receive the certified copies of the orders in the Writ Petitions filed by some of the land owners in respect of the lands covered by the first notification as additional evidence. They are wholly irrelevant for the purpose of a decision in this appeal. Hence the petition is dismissed.

C.M.P.No.12061 of 2001 & C.M.P.NO.12213 of 2001:

18. C.M.P.No.12061 of 2001 is filed to receive certified copies of some Pahanies and letter of the Commissioner giving particulars of house assessment and tax payment of the houses situated in S.No.24/3 and the rough sketch of S.No.24 showing the encroachments in S.No.24/3., as additional evidence. C.M.P.No.12213 of 2001 is filed to receive copies of sale deeds executed by the respondents in respect of the land in S.Nos.24, 26 and 465 as additional evidence. All the above documents are sought to be introduced as additional evidence with a view to show that possession is still with the land owners, and the Housing Board is not in possession of the acquired property. The total extent of land in S.No.24 is 18 acres 13 guntas. From out of that extent only 11 acres 9 guntas was acquired. As per the compromise between the parties during the pendency of this appeal, 5 acres from out of 11 acres 9 guntas acquired was withdrawn from acquisition. Thus, 6 acres 9 guntas of land only, from out of 18 acres 13 guntas, in S.No.24, remains acquired and 11 acres 4 guntas in S.No.24 admittedly is in possession of the land owners. The houses said to be in existence as per the documents sought to be introduced as additional evidence could be in that extent of 11 acres 4 guntas not acquired or they could be acquired in the acquired land. If those houses are in the acquired land, the appellant, as owner of the land, has right to get the encroachers evicted from the acquired land. As stated earlier, the fact that the land owners, after initiation of the land acquisition proceedings, had been dealing with the acquired property, and inducted third parties into possession thereof, is not a factor to be taken into consideration for determining the market value of the acquired land. In fact

those transactions would not bind the appellants in view of Section 16 of the Act. In view of the order in W.P.No.11239 of 1992 and also the evidence of RW.1 appellant cannot contend that possession of the land acquired was not taken over. The documents sought to be introduced as additional evidence with these C.M.Ps., have no relevance for a decision in the appeal. Hence this petition is dismissed.

C.M.P.No.21347 of 2001:

19. This petition is filed to receive the letter issued by the Primary Agricultural Co-operative Society, Jangaon, giving the details of the loan facilities availed by the land owners in S.Nos.24, 465, 26/B, 27/B and 27 etc., the Memo given by the Mandal Revenue Officer giving details of the houses in S.No.24/3 and the rough sketch of S.No.24 as additional evidence with a view to show that respondents have been in possession of the acquired property, and are dealing with the property as their own. For the reasons mentioned for disposal of C.M.P.Nos.12061 and 12213 of 2001 the documents sought to be introduced as additional evidence with this petition also have no relevance for a decision in this appeal. Hence the petition is dismissed.

POINT IN THE APPEAL AND CROSS-OBJECTIONS:

20. The contention of the learned counsel for the appellant is that the compensation awarded by the reference Court is very high and is not in accordance with the principles laid down by the Supreme Court and this Court and since the compensation awarded by the Land Acquisition Officer itself is exorbitant, the order of the reference Court further enhancing the compensation is liable to be set aside. The contention of the learned counsel for the respondents is that the voluminous documentary evidence on record clearly establishes that market value of the acquired land is more than Rs.100/- per sq.yard, and the reference Court without appreciating the documentary evidence in the proper perspective instead of granting compensation at a higher rate improperly restricted it to Rs.47/- per sq.yard. Relying on RANEE OF VUYUR vs. COLLECTOR OF MADRAS⁸, STATE OF H.P. & OTHERS vs. DHARAM PAL AND OTHERS⁹ and SAHIB SINGH KALHA vs. AMRITSAR IMPROVEMENT TRUST¹⁰ he contended that respondents in fact are entitled to compensation at the rate of Rs.100/- per sq.yard but are restricting their claim to Rs.67/- per sq.yard, and so the cross-objections may be allowed and compensation at Rs.67/- per sq.yard may be awarded.

21. The price which a willing vendor might reasonably expect to obtain from a willing purchaser, is the accepted guide to determine the market value of a land acquired under the provisions of the Act. Price paid by a purchaser within a reasonable time before Section 4(1) Notification for lands at or near the land acquired, would normally be taken as the guide for fixing the market value of the land acquired. Judicial notice can be taken of the fact that on information about a proposed acquisition, people at or near the land proposed to be acquired, bring

into existence sale deeds for small extents, inflating the market value, to facilitate the owners of the lands proposed to be acquired claiming higher compensation on the basis of such sale deeds. Having noticed the said trend, Courts started ignoring the sales of small extents of land nearer to the date of acquisition. Even otherwise also for various reasons, small extents of land would be purchased for a rate higher than the market value. So sales of small extents of land cannot afford a guide for fixing the market value of a vast extent of acquired land.

22. In *RANEE OF VUYYUR* (8 supra) land was acquired for purpose of constructing houses under Town Planning Scheme. The Land Acquisition Officer divided the land acquired into five grades, keeping in view their proximity to the roads in existence, market, schools, temple etc. for fixing the market value. The reference Court, though deprecate that method, chose to adopt the said method only for fixing the compensation payable. The High Court also fixed the market value of the acquired by gradation method, but by taking the average of the prices paid under two sale deeds i.e., Exs.R19 and R27. (Ex.R19 a sale deed for 11 grounds. It was executed a few months prior to Section 4 Notification, at Rs.1,961/- per ground, was considered as a bona fide transaction between a willing seller and willing purchaser. Ex.R27, which also was before the Section 4 Notification, but was subsequent to Ex.R19, was for about 93 grounds at Rs.1,096/- per ground). On appeal the Supreme Court, holding that sale representing the highest value should be preferred, unless there are strong circumstances justifying a different course to the rest of sale deeds, remitted the case to High Court with certain observations. It is clear even from the said decision that if circumstances so warrant, sale deed of highest value need not be taken into consideration for fixing the market value, if circumstances so warrant. The facts in the above decision also establish that large extent of land would not fetch the price that would be paid to a small extent because it is seen that 11 grounds was sold at Rs.1,961/- per ground under ExR19, and for a huge extent of 93 grounds, subsequent thereto, a price at Rs.1,096/- per ground only was paid under ExR27, though the land covered by both those sale deeds happened to be in the same area. The difference in price per ground between Exs.r19 and R27 is about 47%.

23. In *DHARAMPAL* (9 supra) it is held that the Court must award interest as per statutory rates specified in the Act and that the Court has no jurisdiction to award additional interest on equitable ground. In *SAHIB SINGH KALHA* (10 supra) interest at 6% per annum was directed to be paid on the enhanced compensation from the date of taking possession. It is also held therein that if the land is in undeveloped area cut at 33% to 70% of market value would be justified.

24. In this case as long back as on 4-11-1980 an extent of 33 acres 20 guntas in S.Nos.24, 26, 464 and 465 was notified for acquisition and advance possession thereof also was taken on 18-6-1981, but by virtue of the orders in Writ Petitions

filed by some of the land owners, proposal for acquisition of 12 acres 24 guntas in S.No.24, 4 acres 16 guntas in S.No.465 from out of 12 acres 24 guntas and 4 acres 12 guntas in S.No.464 was quashed. So, technically and legally proposal for acquisition of 12 acres 24 guntas in S.No.24, 4 acres 16 guntas in S.No.465 was set aside and possession of that land, though was taken, should be deemed to have been reverted to the respective land owners because this Court quashed the acquisition proceedings in respect of those lands. But an extent of 4 acres in S.No.26, and 8 acres 8 guntas in S.No.465 should be deemed to have continued in possession of the appellant, because advance possession of those lands was taken on 18-6-1981 itself. Subsequently, by a fresh notification dated 11-12-1991 (second notification), 11 acres 9 guntas in S.No.24 and 9 acres 5 guntas in S.No.465 along with 4 acres in S.No.26 was notified for acquisition. As far as the land of 4 acres in S.No.26 and 8 acres 8 guntas in S.No.465 is concerned, since the first notification dated 4-11-1980 in respect thereof is not set aside, in view of the ratio in MOHD.MOINUDDIN HUSSAN (1 supra) the market value for those 4 acres in S.No.26 and 8 acres 8 guntas in S.No.465 should have to be determined as per their market value as on the date of first notification i.e., 27-11-1980, but not as their market value on 20-11-1991 the date of second notification. But by virtue of the order in W.P.No.11239 of 1992 only respondents are being paid compensation at the market rate prevailing on the date of second notification i.e., 11-12-1991 for that extent of land also. Since proposal for acquisition of entire land of 12 acres 24 guntas in S.No.24 in the first notification dated 4-11-1980 was set aside in Writ Petition Nos.1943 and 6397 of 1982, market value in respect of the entire land in S.No.24 and other lands which were freshly notified in the second notification dated 11-12-1991 has got to be fixed as on that date i.e., 11.12.1991 only.

25. Respondents examined five witnesses as P.Ws.1 to 5 and marked Exs.A1 to A12. 2nd respondent as P.W.1 during cross-examination stated that the acquired land is about two furlongs from P.W.D. Road and that even on the date of his giving evidence, there are no constructions in the acquired land in S.No.24, 26 and 465. P.W.2 is the vendor of the land in S.No.464 under Ex.A3, dated 29-10-1991 i.e., just about 5 weeks prior to the second notification dated 10-12-1991. PW.2 admitted during cross-examination that he filed a Writ Petition and got deleted his land from the acquisition proceedings. He clearly stated that S.Nos.24 and 26 are not adjacent to his land and that S.No.465 only is adjacent to his land. The consideration as per Ex.A3 is Rs.100/- per sq.yard for 106.672 sq.yards. He sold land under Ex.A5 dated 15-2-1989 for 200 sq.yards in S.No.464 at Rs.75/- per sq.yard. Ex.A6 dated 15-2-1989 for 200 sq.yards in S.No.464 at Rs.75/- per sq.yard and Ex.A7 dated 31-10-1995 for 100 sq.yards in S.No.464 at Rs.300/- per sq.yard. Ex.A4 is a gift deed dated 26-12-1991 in respect of 181.51 sq.yards in S.No.465, showing the value at Rs.100/- per sq.yard. Since Ex.A4 is gift deed, that too after the date of notification, it can be ignored. Since land in S.No.464 was not acquired by second notification dated 11-12-1991, Exs.A3, A5 to A7 need not be taken into consideration for

determining the market value of the acquired land more so because they are for very small extents. P.W.3 is the donee of the land gifted under Ex.A4. The evidence of P.W.4 is that he purchased a house plot in S.No.464 at Rs.75/- per sq.yard under the original of Ex.A9. The land covered by Ex.A9 is 200 sq.yards in S.No.464, which is not covered by the second notification dated 11-12-1991. During cross-examination, he stated that the distance between the acquired land and his house constructed by him in the land purchased under Ex.A9 is about 1000 yards, i.e., more than half a mile. Ex.A9 need not be taken into consideration because no part of land in S.No.464 which is more than half a mile from the acquired land, was not acquired. The evidence of P.W.5 is that he sold 252.77 sq.yards of land in S.No.464 at Rs.75/- per sq.yard under Ex.A10 on 5-7-1989. (In the deposition the extent is wrongly typed as 552.77 sq.yards. Ex.A10 is for only 252.77 sq.yards). During cross-examination he admitted that P.W.1 (2nd respondent) is his cousin, and that during family partition the acquired land was allotted to the share of the respondents. Ex.A10 is not of much help because S.No.464 is not the subject matter of acquisition. Ex.A11 is dated 5-5-1994 for 100 sq.yards in S.No.464. Ex.A12 is dated 31-10-1995 for 100 sq.yards in S.No.464. Since Exs.A11 and A12 are long subsequent to second notification dated 11-12-1991, they need not be taken into consideration. Instead of relying on Exs.A3 to A12, which all relate to the land in S.No.464, we can safely rely on the sale deed executed by some of the respondents. So, we do not wish to take Exs.A3 to A12 into consideration for arriving at the market value of the acquired land. Since they relate to small extents of land and since the price paid for small bits of land can have no relevance for arriving at the market value of a huge extent of land acquired for construction of housing colony by the Housing Board, as could be seen from RANEE OF VUYYURU (9 supra) referred to in para 22 also. Exs.A3 to A12 need not be taken into consideration for fixing the market value of the acquired land.

26. On behalf of appellants R.Ws.1 to 5 were examined and Exs.B1 to B9 were marked. RW.1 is the Deputy Executive Engineer. RW.2 is the Land Acquisition Officer. RWs.3 to 5 are the executants of Exs.B2, B5 and B7 respectively. They stated that they received higher amount of sale consideration than that is mentioned in the sale deeds. But, for reasons best known to the appellants, RWs.3 to 5 were not treated as hostile witnesses, and permission to cross-examine them was not even sought. But merely because RWs.3 to 5 thought it fit to state that they received higher consideration than that is mentioned in the sale deeds executed by those that statements, in the teeth of the recitals in the documents executed by them, cannot be accepted or believed. In fact in C.DHARMAPAL REDDY vs. R.D.O.11 it is held that oral evidence contrary to the document cannot be admitted. The Supreme Court in LAND ACQUISITION OFFICER vs. V.NARASIAH 12 held that in view of Section 51A of the Act, even if the executants of the documents are not examined, the Court can act upon certified copies of documents, produced by parties, by impliedly overruling the view in INDER SINGH vs. UNION OF INDIA 13 and P.RAM REDDY vs. LAND

ACQUISITION OFFICER14.

27. Respondents 4 and 5 knew that 12 acres 24 guntas in S.No.24 was notified for acquisition by the first notification dated 21-11-1980, but that notification in respect of those 12 acres 24 guntas was quashed by the orders of this Court in W.P.Nos.1943 and 6397 of 1982 dated 12-2-1986 and 7-10-1987 respectively. Subsequent thereto respondents 4 and 5 had on 29-11-1989 sold land in S.No.24 at Rs.30/- per sq. yard under Ex.B4. The value mentioned in Ex.B4 has great relevance because it was executed by respondents 4 and 5 themselves. Ex.B5 was executed by Chancharapu Anantha Reddy, son of Papi Reddy, i.e., the brother of the 2nd respondent and father of 3rd respondent, in respect of 120 sq.yards in S.No.24/1, on 8-2-1990 at Rs.30/- per sq.yard. Ex.B7 was executed by Chancharapu Anantha Reddy son of Papi Reddy i.e., brother of 2nd respondent and father of 3rd respondent in the Writ Petition 11239 of 1992 in respect of 120 sq.yards in S.No.24/1 at Rs.30/- per sq.yard on 16-4-1990. 2nd respondent himself had on 11-11-1991, sold 400 sq.yards in S.No.24 at Rs.60/- per sq.yard under Ex.B8. Obviously Ex.B8 must have been brought into existence in anticipation of the fresh notification for acquisition being issued. Even otherwise 400 sq.yards is a very small extent when compared to more than 24 acres. So the price mentioned in Ex.B8 cannot be a guide for fixing the market value of the acquired land.

28. Since some of the respondents sold land in S.No.24, which is the major extent of land covered by the acquisition under second notification dated 11-12-1991, at Rs.30/- per sq.yard as seen from Exs.B4 and B7, and since Ex.B3 also shows that land in S.No.24 was sold at Rs.30/- per sq.yard in 1989, it is clear that the market value of house sites of 120 to 200 sq.yards in S.No.24 was Rs.30/- per sq.yard by the date of second notification. Ex.B6 shows that land in S.No.465 was sold at Rs.65/- per sq.yard on 7-4-1990. The price mentioned in Ex.B6 cannot be taken as a guide to fix the market value of the acquired land because the price fetched for small bits of land, cannot be expected when land of a huge extent of more than 20 acres is sold. If the entire extent covered by the second notification is offered for sale by respondents as one unit, they could have sold it as agricultural land only on acreage basis but not on yard basis. If the said land was sold by them as house plots, they should make a lay out, in which case they cannot get the value for the entire land because more than 1/3rd of the area would go away towards roads, parks, lung space etc. in a lay out. Since respondents themselves sold the land in S.No.24 as house plots at Rs.30/- per sq.yard just prior to second notification, and since the price that would be fetched for a large extent would be less than the price for small bits, the Court below was in error in fixing the market rate at Rs.47/- per sq.yard, ignoring Exs.B3, B4 and B7.

29. Reasons behind acquisition of the land covered by Ex.B9 have no relevance for deciding the market value of the lands acquired in this case. The question that has to be considered is whether Ex.B9 can be taken into consideration for

fixing the market value of the lands acquired in this case or not. If the reference Court felt that the price paid under Ex.B9 acquisition has no relation to the land acquired in this case, it could have ignored Ex.B9 on that basis. The reference Court ignoring Ex.B9 on the ground that it was made with a view to withdraw the acquisition proceedings in this case, is erroneous.

30. The Court below did not give any reasons for ignoring or brushing aside Exs.B4 to B7 which are the only relevant documents in this case. They were executed by some of the respondents in respect of land in the survey number acquired, during 1989 and 1990, which is very near to the date of second notification. So, instead of preferring Exs.B4 to B7, the reference Court erroneously ignored them and had not even referred to them. If the value of the land acquired is taken at Rs.30/- per sq.yard, the price per acre would come to Rs.1,45,200/-. If we deduct 1/3rd for development charges, the amount comes to Rs.96,800/- per acre. So, if the market value of the acquired land as house sites at the rate sold by some of the respondents under Exs.B4 and B7 is taken into consideration, respondents would have got been less than Rs.1,00,000/-for the house plots made out in one acre. At the rate of Rs.25/- per sq.yard, as awarded by the Land Acquisition Officer, the price of the house plots in one acre would be Rs.1,21,000/-. So it is clear that the compensation awarded by the Land Acquisition Officer is more than what the respondents would have got, had they themselves sold the acquired land as house plots.

31. As per Section 23(2) of the Act the claimants are entitled to 30% solatium on the market value. As per Section 23(1A) of the Act in addition to the market value of the land, they are also entitled to an amount calculated at the rate of 12% per annum on such market value from the date of publication of Section 4(1) notification of the land to the date of award or the date of taking possession of the land whichever is earlier. In *M/s.I.D.L.CHEMICAL LTD. vs. K.VISWANADHAM* 15 relied on by the learned counsel for the appellant, a Full Bench of this Court held that claimants cannot be awarded interest on the additional amounts payable to them u/s 23(1A) and (2) of the Act by relying on *PREMNATH KAPUR AND ANOTHER vs. NATIONAL FERTILISERS CORPORATION OF INDIA LIMITED* 16 and *YADAV RAO PATHODE (DEAD) BY L.Rs. AND OTHERS vs. STATE OF MAHARASHTRA* 17, because *UNION OF INDIA vs. SHRI RAM MEHAR AND OTHERS* 18 was considered and not followed in *YADAVRAO PATHODE* (17 supra). But recently a Constitution Bench of the Supreme Court in *SUNDER vs. UNION OF INDIA* 19 approved *SHRI RAM MEHAR* (18 supra) and over ruled *PREMNATH KAPUR* (16 supra) and *YADAV RAO PATHODE* (17 supra).In view of *SUNDER* (19 supra), *M/S. I.D.L. CHEMICALS* (15 supra) should be deemed to have been over ruled and hence the view taken therein cannot be a guide to decide this appeal. Since as per Section 25 of the Act, compensation awarded by the reference Court cannot be lower than the award passed by the Land Acquisition Officer, and since the Writ Petition filed by the appellants is dismissed, we cannot reduce the amount awarded by the Land Acquisition Officer. Therefore we hold that the respondents are not entitled to any amount over and above

than that was awarded by the Land Acquisition Officer. The point is answered accordingly.

32. In view of our finding on the point for consideration, the appeal is allowed. The cross-objections filed and returned have no merit, because we held that the compensation awarded by the Land Acquisition Officer is adequate. So the cross-objections are liable to be dismissed.

32. In the result, the Writ Petition and cross-objections and C.M.P.Nos.12551, 12061, 12213 and 21347 of 2001 are dismissed. The Judgment of the reference Court is set aside and the award passed by the Land Acquisition Officer is confirmed. Parties shall pay and receive costs as per the result of the proceedings.