
(2000) 10 BOM CK 0008
In the Bombay High Court
Case No : First Appeal No. 760 of 1980

State of Maharashtra and another

APPELLANT

Vs

Arvind Ramrao Bhalerao

RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 141
Contract Act, 1872 — Section 139, 141, 144, 54
Land Acquisition Act, 1894 — Section 18, 23, 24, 4, 4(1)

Citation : (2000) 10 BOM CK 0008

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Geeta L. Deshpande, Assistant Government Pleader, for the Appellant; A.B. Naik, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—This appeal arises from the award dated 9th April 1980 passed in Land Acquisition Case No. 7 of 1977. By a notification u/s 4 of the Land Acquisition Act 1894, hereinafter called as "the said Act" on 18-8-1971 an area of 17 acres and 7 gunthas of Sy. No. 487/2 situated at Parbhani belonging to the Respondent herein was sought to be acquired for the purpose of the Marathwada Agricultural University Extension Project. The Land Acquisition Officer classified the land into two classes, one as dry land and other as irrigated land, offering compensation at the rate of Rs. 1360/- per acre in relation to dry land and Rs. 2400/- per acre in relation to irrigated lands; besides a sum of Rs. 500/- towards well, and Rs. 500/- towards standing trees. Being aggrieved by the said amount of compensation awarded by the Land Acquisition Officer, the Respondent herein preferred a Reference Application u/s 18 of the said Act for enhanced compensation and the Reference Court by the impugned award after hearing the parties enhanced the compensation to the tune of Rs. 15,000/- per acre irrespective of the fact whether it is dry or irrigated land.

2. The Appellants have challenged the impugned award on the ground that the enhancement has been granted on the basis of sale instances related to the period much after the issuance of the notification and therefore it was not proper for the Reference Court nor was justified in granting enhancement of compensation on the basis of such sale instances. Secondly that the sale instances relied upon are in relation to small plots whereas the area acquired is large chunk of the land and, therefore, considering law laid down by the Apex Court it was not permissible for the Reference Court to apply the market value in relation to small plots to the bigger area. Thirdly the Reference Court could not have relied upon the oral testimony of the Respondent in absence of documentary evidence for granting the compensation in relation to income from the land acquired.

3. Upon hearing the learned advocates for the parties and on perusal of records, the point which arises for the consideration in the matter is that whether the Reference Court was justified in enhancing the compensation at the rate it has enhanced considering the materials on record.

4. The learned Advocates appearing for the parties while assailing and justifying the impugned award have relied upon various decisions of the Apex Court and the other High Court and therefore it would be appropriate to refer to the same before deciding the matter.

5. In *Union of India and Another Vs. Shanti Devi and Others*, , it was held that the capitalised value of the property is the amount of money whose annual interest at the highest prevailing interest at any given time will be its net annual income. The net annual income from a land is arrived at by deducting from the gross annual income all outgoings such as expenditure on cultivation, land revenue etc. The method of valuation involves capitalising the net income that the property can fairly be expected to produce and the rate of capitalization is the percentage of return on his investment that a willing buyer would expect from the property during the relevant period. The net return from "landed property, generally speaking, reflects the prevalent rate of interest on safe money investments.

6. in *Dilawarsab Babusab Mullasab and Others Vs. Special Land Acquisition Officer*, , it was held that considering the data furnished by the Agricultural Research Station the net annual income was Rs. 87.59 paise per acre and on that basis the compensation which the parties would have been entitled to in respect of kushki lands was only about Rs. 1750/- as against the sum of Rs. 2500/- granted by the High Court. Considering the said fact it was further observed that the Civil Judge had placed too much reliance on the oral evidence on behalf of the claimants about the income from the lands and that was merely oral evidence and was not supported by any documentary evidence. It was also observed that the best evidence would have been the evidence of sales of similar lands at about the time of the notification u/s 4(1) of the Land Acquisition Act but no such evidence was produced by the parties.

7. In *Chindha Vithal Sonawane v. Special Land Acquisition Officer*, 1975 MKL.J. 468, it was held that there was no general rule that when considering sale instances post notification transactions are to be ignored altogether and Sections 23 and 24 of the Land Acquisition Act do not prohibit post notification sales from being taken into consideration while determining market value, and that the distance of time by which a particular transaction is divorced from the date of relevant notification will have a bearing on the probative value and impact of the transaction. It was further held that the question whether a particular transaction though post notification one is relevant and can afford a guide for determining the fair market value as on the date of notification will depend on the facts and circumstances of each case.

8. In *Mahadev Sahu and Ors. v. Land Acquisition Collector, Dhenkanal*, 1995 AIHC 1187, a learned Single Judge of the Orissa High Court has held that value of the trees depends on nature of their use and in respect of fruit bearing trees, use of fruits, wood when it is cut are relevant factors. In respect of other trees, value of timber for fuel to be received deducting expenses for the same would be material. For this purpose, age, girth, nature of use and the place where it exists are relevant. Considering the fact that no evidence in that regard was adduced, besides, where independent evidence was available, self serving statement of the claimants could, not have been the basis for determination of compensation unless it was explained as to why such evidence was not forthcoming. Since no such explanation was on record, the trial Court was held to be justified in rejecting the claim of the claimants therein.

9. In *O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others*, , the Apex Court has held that when the market value is determined on the basis of nature of crops grown in lands taking into consideration water facility, that the owner had from irrigation wells, question of awarding separate compensation for irrigation wells on the basis of their construction costs does not arise. In *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, it has been held that the market value of large extent of acquired lands shall not be determined on the basis of the value fetched by sale of infinitesimally small extent of land. But, in exceptional cases when small extent of land sold for a price as compared with the acquired large extent of land, the market value of which is required to be determined is not so insignificant, the Court depending upon the possibility of the large extent of land of the claimant being sold as small extent of land as that already sold for a price the market value of the large extent could be fixed on the basis of the price fetched by sale of small extent.

10. In *The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc.*, , it was held that where the Court has to determine the market value of large extents of acquired agricultural lands, it may not be desirable to be guided by the price fetched by sale of small extents of

agricultural lands as the possibility of genuine agriculturists buying such small extents for their cultivation purposes is rather remote and it may also not be desirable to determine the market value of the acquired agricultural lands on the basis of the value fetched by sales of small extents of agricultural lands even if they had been purchased for building purposes, for that would involve the consideration of too many imponderables. However, if sale deed or agreement to sell relating to the small extent of land on the basis of which the market value of the large extent of the agricultural land has to be determined is a portion of the acquired agricultural land itself or other land in its close proximity, it may be made the basis for determining the market value of the acquired large extent of agricultural land but it has to be done when there is satisfactory evidence of the absence of sales or agreements to sell or bigger extents of land pertaining to the acquired land or other lands in the vicinity of the acquired land.

11. In *Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc.*, , it is held that it is well settled legal position that the claimants stand in the position of Plaintiffs and burden of proof is always on the claimants to prove by adduction of cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determined by the Land Acquisition Officer, which is only an offer, and that it is the bounden duty of the Court to evaluate the evidence on the basis of the human conduct even if no rebuttal evidence is produced by the Land Acquisition Officer to assess the market value applying the relevant tests laid down by the Apex Court in number of decisions.

12. In *State of Gujarat and others Vs. Rama Rana and others*, , it was held that it is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop and for that purpose normally the statistics from the Agriculture Department as to the nature of crops and the prices prevailing at the relevant time should be produced, but in the absence of such evidence, the oral evidence of the witnesses in respect thereof cannot be rejected without any justification. It is further held that the Court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man i.e. whether he would be willing to purchase the land at the rates proposed by the Court and on the touchstone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation.

13. In *Karan Singh and others etc. Vs. Union of India*, , it was held that in the absence of any evidence of sale of land on the date of issue of notification u/s 4 of the Land Acquisition Act, under certain conditions the post notification transactions of sales of land can be relied upon in determining the market value of the acquired land, and one of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification u/s 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing

the market value of the acquired land.

14. In State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, , it was held that when big chunk of land is acquired, sale instances relating to small parcels of land cannot be said to be comparable sale instances and market price of acquired land cannot be based on such sale instances.

15. Bearing in mind the law laid down by various decisions referred to above on various points in relation to the fixation of market value of an acquired land and considering the materials on record in the case in hand. It is apparent that the sale deeds which were produced on record by the claimant-Respondent in support of his claim for enhancement of compensation, were referring to the period about 3 years after the issuance of the notification as well as relating to the small pieces of lands as compared to the vast area of 17 acres and 7 gunthas of acquired land in the case in hand. The three sale deeds which are exhibited in the evidence are dated 5th February 1973, 5th April, 1974 and 5th August 1974 respectively. They are in relation to the area of R.F. 11 120 x 110 ft., 2 gunthas and 1 guntha respectively. The consideration paid for the said sale transactions was Rs. 22,000/-. Rs. 1400/- and Rs. 700/-respectively. Undisputedly the notification u/s 4 was issued on 18th August, 1971. The evidence on record does not disclose that the prices of land in the locality were stable during the period from 1971 till 1974. There is no evidence regarding the statistics of the sale transactions during the period from 1971 to 1974 in the locality. The evidence on record also does not disclose as to whether the sale transaction in the instances relied upon by the Respondent were for the purpose of development of the properties for non-agricultural purposes or for agricultural purpose. The record also does not disclose any material regarding the distance between the acquired land and the plots which were the subject matter of the said sale deeds. In fact, there is no record to establish any parity between the land acquired and the lands which were the subject matter of the said sale deeds. It is true that the Reference Court while relying upon the said sale deeds has referred to the fact that the lands under the said sale instances were also situated in the Municipal limits as in case of the acquired land. However merely because both the lands are situated within the Municipal limits that by itself cannot be a criteria to adopt and apply the rate which was disclosed in the sale deeds for the purpose of fixation of market value of the acquired land. Considering the law laid down by the Apex Court as well as by this Court in various decisions, it is primarily for the claimant to establish the parity between the land acquired and the lands which are the subject matter of the sale deeds relied upon by the claimant in support of the claim for enhancement of compensation. In the absence of evidence in that regard, mere production of sale deeds even though they related to the lands in the same village or town, can be of no assistance to jump to the conclusion that the valuation of the land has necessarily to be at the rate for which the plots of lands were transacted in the same village or town. Being so, it is apparent that the Reference Court has clearly erred in enhancing the compensation merely on the basis of the sale deeds which were in relation to the areas of 19 gunthas and

1 guntha whereas the acquired land comprised of vast area of 17 acres and 7 gunthas. The enhancement of compensation therefore solely on the basis of the sale deeds produced by the claimant cannot be sustained.

16. It is, however, contended by the learned Counsel for the Respondent that the enhancement has been granted not only on the basis of the sale deeds but the Reference Court has also taken into consideration the other evidence on record which is in relation to the income of the claimant earned from the acquired land. In para 15 of the impugned award a reference is made to the testimony of the claimant in relation to the average income earned from the acquired land. However, it is to be noted that the Reference Court has considered the testimony only in relation to the sole statement of the claimant that the average income from the acquired land was Rs. 30,000/- and therefore it has been concluded that the compensation which is to be awarded to the claimant has to be valued at Rs. 15,000/- per acre. There is no discussion of whatever nature in the impugned award regarding the testimony of the witnesses on the point of income derived by the claimant from the acquired land or as to whether the claim of the claimant has been in any way corroborated by any other evidence.

17. However, it is true that the testimony of the claimant disclosed that the entire acquired land is situated within the municipal limits. The deponent has given the distance between the acquired land and the Court building in the city, the railway station as well as the Agriculture University and some other places of importance in the town. He has also deposed with reference to the survey plan that the land was shown in the residential zone in the town planning plan. Further he has deposed about various types of trees with their ages which were grown in the acquired land; he has also deposed about the annual yield of each type of tree and the income derived there from per year. He has further stated in his testimony that after 1964 the land was brought under irrigation and for that purpose he had constructed water channel and had installed electric motor pump to the well situated in the property. He has given details about the expenditure incurred for development including the amount of loan obtained from the Land Development Bank, Sangli Bank as well as the Multipurpose Co-operative Society. He has deposed that he had obtained loan of Rs. 300/- from the Tahsil office for the purpose of purchasing a pair of bullocks. He has identified the area of 8 acres of land having been brought under irrigation as well as has given the details about different crops which he used to get from the cultivation of the said land. The testimony further discloses the quantity of the yield in respect of each type of the commodity like Mug, Cotton, Tur, Hybrid, Paddy and vegetables and the respective income derived from such yield. He has specifically stated, after narrating the details about the quantity of yield of each of the commodity and the income derived on sale of each of those commodities that the expenditure incurred by him for cultivation was Rs. 4000/- and that he used to get the gross income of Rs. 23,000/- per year, out of which the net income was Rs. 18,000/- per year. He has also produced receipts of payment of debt from the Land Development Bank and the Multipurpose Co-operative Society. He has also stated

that the property is situated about one and one half furlong from the Maharashtra Industrial Development Corporation area and the house building activities in the town were on increase. There were 13 high schools, one college, one Agricultural University and other institutions like D. Ed. College, I.T.I, etc. At the same time he has admitted in the cross-examination that most of the residential development in Parbhani town had been on the northern side of the railway line whereas the plots acquired lies on the southern side of the railway line.

18. Considering the testimony of the claimant, it cannot be said that there is absolute no material on record to decide the issue regarding the claim for enhancement of compensation by the Respondent. No doubt, the findings of the reference Court that considering the claim of the Respondent of Rs. 30,000/- average income from the land per year, he would be entitled for the market rate of Rs. 15000/- per acre cannot be sustained, at the same time considering the details given as regards the yield and the price and the income earned there from by the claimant, the statement of the claimant that he was getting net profit from the yield at the rate of Rs. 15,000/- per year cannot be totally discarded. The testimony of the Respondent claimant discloses that apart from the oral testimony he has produced certain documentary evidence regarding the loan obtained from institutions like the Land Development Bank and the Multipurpose Co-operative Society for the purpose of development of the land in question. Considering the said documentary evidence with the testimony of the Respondent it clearly establishes that the Respondent did carry out certain agricultural developments in the property in question since 1964. Added to this, it cannot be disputed that the acquired land is within the municipal limits and the same is situated at the distance of one to one and half furlongs from various important places in the town which include Agriculture University, railway station, S. T. bus stand, industrial development corporation area etc. There can be no doubt that the burden of proof, as rightly contended by the learned Government advocate, always rests upon the claimant to prove that the claim for enhanced compensation is justifiable. However, at the same time it cannot be forgotten that the Court has to evaluate the evidence on the basis of all material placed on record by closely scrutinising the evidence objectively and in correct perspective in order to arrive at the conclusion regarding adequate and reasonable market value of the land acquired. The Apex Court in *Special Deputy Collector v. Kurra Sambasiva Rao* (supra) has clearly observed that in this regard the attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands and it is equally relevant to consider the neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant consideration. It is further observed that in that process, though some guess work is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided and even in the absence of oral evidence adduced by the Land

Acquisition Officer or the beneficiaries, the judges are to draw from their experience, the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. At the same time misplaced sympathies or undue emphasis solely on the claimant's right to compensation would place very heavy burden on the public exchequer to which other everyone contributes by direct or indirect taxes. And therefore the fair and reasonable and adequate market value is always a question of fact which depend upon the evidence adduced, circumstantial evidence and probabilities arising in each case.

19. Considering the said decision of the Apex Court along with another decision of the Apex Court in the matter of *State of Gujarat v. Rama Rana* (supra) wherein it has been held that normally the statistics produced from the Agriculture Department as regards the nature of crops and price prevailing at the material time would be very material in deciding the market value of the acquired land but in the absence of such evidence being available on record, the oral testimony of the witnesses cannot be rejected on that ground alone and the Court has to apply the test of normal prudent man i.e. whether he would be willing to purchase the land at the rates proposed and on the touchstone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on the point of compensation. In the said case of *State of Gujarat* (supra) the reference Court had accepted the evidence of the Sarpanch to be that of a reliable person. Considering the said finding, the Apex Court had applied multiplier of 10 years to the annual income disclosed from the testimony of the witnesses and had fixed the compensation payable to the claimant after deducting 50 per cent there from. The deduction of 50 per cent was on account of cultivation expenses as well as land revenue and others.

20. A grievance is sought to be made by the learned Government advocate that no fair opportunity was given to the Appellant to cross-examine the claimant and, therefore, no much value can be attached to the testimony of the claimant as regards the annual income claimed by him. In that regard, reliance is also placed on the judgment of the Apex Court in the matter of *Dilawarsab Babusab Mullasab v. Special Land Acquisition Officer* (supra). As already observed above, the Court should not place too much reliance on the oral evidence on behalf of the claimant about the income from the lands and the best evidence would be the evidence of sales of similar lands at about the time of the notification u/s 4 of the Act. However, it cannot be ignored that the Apex Court therein was dealing with the matter wherein the data furnished by the Agricultural Research Station disclosed the net annual income of Rs. 87.59 paise per acre and on that basis the compensation payable to the parties would have been Rs. 1750/- instead of Rs. 2500/- as was granted by the High Court. It is always to be remembered that in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point for determination therein and no judgment can be read as if it is a statute. In fact, those are the observations of the Apex Court in the

matter of Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . The Apex Court therein has held that a word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. The Apex Court has further observed that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. Considering the law laid down by the Apex Court in Dhanwanti Devi's case (supra) the decision in Dilawarsab Babusab's case has to be read along with facts of the particular case. The decision of the Apex Court therein to the effect that the Court should not place too much reliance on the oral evidence on behalf of the claimants about the income from the lands and the best evidence would be the evidence of sales of similar lands at about the time of the notification u/s 4 of the Act had been on account of failure on the part of the claimant therein to produce the necessary evidence to counter the evidence produced by the acquiring authority in the form of the statistical data by the Agricultural Research Station in respect of the annual income of the properties in the village. Being so, applying the above ruling it is not possible to discard the entire testimony of the claimant in the case at hand. On the contrary, considering the decision of the Apex Court in the matter of State of Gujarat v. Rama Rana (supra) and in the matter of Special Deputy Collector v. Kurra Sambasiva Rao (supra) it is necessary to analysis the said evidence on record from the view point of a prudent person.

21. As already stated above, the testimony of the claimant-Respondent discloses the details about various trees situated in the property as well as the yield and the income received by the claimant from the said trees. On analysis of these details it is apparently disclosed that there is no scope to raise an eyebrow in respect of the claim of the Respondent that the annual net income received by him was Rs. 15,000/-. Applying the law laid down by the Apex Court regarding multiplier of 10 years to the said amount of Rs. 15,000/- the compensation and deducting 50 per cent therefore to the compensation to which the claimant Respondent would be entitled for acquisition of the land in question would, therefore, be Rs. 1,15,000/- instead of the amount of Rs. 2,32,240/- awarded by the reference Court. As regards the compensation of Rs, 1000/- awarded by the reference Court in relation to the well, the learned Government advocate is justified in contending that once the market value is determined on the basis of

nature of the crops grown in the land taking into consideration the water facility available from irrigation wells, further determination of compensation for the well on the basis construction costs etc. cannot arise. Therefore it was not proper for the reference Court to grant any compensation towards well. However, the fact remains that the compensation of Rs. 500/- for the well was awarded by the Land Acquisition Officer himself and the reference Court has enhanced the same to Rs. 1000/-. Being so, the claimant would be entitled to receive Rs. 500/- and there cannot be any interference as regards the value of Rs. 500/- awarded by the Land Acquisition Officer towards the well. Likewise no interference is called for in relation to the enhanced amount of Rs. 1000/- granted instead of Rs. 500/- towards the standing trees. Similarly, the claimant cannot be denied the solatium of 15 per cent and interest of 6% awarded by the reference Court. The impugned award is to be modified accordingly.

22. It is not in dispute that at the time of admission of the appeal while granting stay to the execution of impugned award, the Appellants were directed to deposit the amount awarded on account of enhancement of compensation granted by the reference Court and on such amount being deposited the same was allowed to be withdrawn by the Respondent. In view of the modification of the impugned award, the Appellants would be necessarily entitled for refund of considerable amount out of the amount withdrawn by the Respondent. The refund shall be to the extent of difference between the amount withdrawn and the amount which the Respondent would be entitled to in terms of the modification of the impugned award. The Respondent, therefore, shall refund the said amount along with interest thereon at the rate of 6 per cent per annum from the date of withdrawal till the date of payment of the entire amount repayable. The same shall be paid by the Respondent within a period of six months.

23. At this stage the learned advocate for the Respondent placing reliance on the decision of the Apex Court in the case of State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another, , submitted that the question of grant of restitution does not arise in the present appeal as the necessary application in that regard is to be filed by the Appellants in the Court of the first instance as is held by the Apex Court in the said decision.

24. The Apex Court in the said case of the State of Bank of Saurashtra (supra), while considering whether the Apex Court could grant restitution, has held that prior to the Amendment Act, 1976, an application for restitution u/s 144 in all cases had to be made to the Court of first instance. Even since the amendment the substituted expression "the Court which passed the decree or order" would as per Clause (a) of the Explanation, mean the Court of the first instance, because the expression "the Court which passed the decree or order" has been deemed to include where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance. That was a case where the trial Court had found that there was no negligence on the part of the bank with regard to the safe custody of the pledged oil tins but as the

contract of guarantee entered into by the surety with the Bank was independent of the pledge of goods given by the principal debtor, the surety was not discharged from the liability under the guarantee and, therefore, the trial Court had decreed the suit. On appeal by the surety, the High Court held that the bank was utterly negligent and had not exercised such care as a prudent man would have taken in the circumstances of the case which resulted in the loss of security, namely, pledged oil tins and, therefore, in view of combined operation of Sections 139 and 141 of the Indian Contract Act, the surety was discharged. Accordingly the appeal of the surety was allowed and the suit against him was dismissed. The Bank therefore appealed to the Apex Court and the Apex Court after considering rival contentions confirmed the order of the High Court. However, at that stage the Respondent surety filed an application that in compliance with the decree made by the trial Court he had paid the entire amount and he should not be exposed to second round of litigation for restitution of the amount and that the Apex Court itself should give a direction to the Bank as part of the judgment that the amount be returned with interest at the prevailing rate to the Respondent surety. In dealing with the said application, the Apex Court found that that was a simplest case where the suit in favour of the Appellant and against the surety was decreed by the trial Court i.e. the Court of first instance, and this decree has been reversed by the High Court in exercise of its appellate jurisdiction. In that situation Clause (a) of the Explanation was attracted and an application for restitution had to be filed in the Court of the first instance i.e. the Court of Civil Judge.

25. Before deciding the point sought to be raised by the Respondent as regards the scope of restitution u/s 144, it would be necessary to refer to two more decisions of the Apex Court, namely, in the case of Kartar Singh alias Naranjan Singh and others Vs. State of Punjab, and Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd., .

26. In Kartar Singh's case, the Apex Court held that u/s 144, CPC the doctrine of restitution contemplates that where a property was received by a decree holder in execution of a decree, which, on appeal, either in whole or in part thereof, is subsequently reversed or varied, the Court is empowered to restore to the judgment debtor what has been lost to him in execution of the decree. The restitution is consequential to the variation or reversal of the decree or on its being modified or set aside. The condition precedent for restitution, therefore, is that the decree of the trial Court must be reversed or varied in appeal or otherwise. The word "consequentially" lays emphasis on the obligation on the party to the suit or proceedings who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. The Court, therefore, is bound to restore the parties, as far as they can be, to the same position they were at the time when the Court by its erroneous action has displaced them from it. Equally, where a sum of money was recovered in execution of a decree which was subsequently reversed or varied, the judgment debtor is entitled to get back not only the sum recovered but also the interest thereon or damages or

compensation for the period for which the amount he had retained with him. The reason being that the person who has taken the money improperly from the judgment debtor has to retribute to him the amount as a corollary with interest during the time that the money has been withheld from him. The owner or the person interested in the land when receiving the compensation under the award and decree which is subsequently reversed, varied or modified on appeal, the Court is empowered u/s 144, CPC to retribute the amount to the State with interest or quantified damages or by way of compensation. In the said case, the High Court had reduced the compensation from Rs. 300/- to Rs. 255/- per marla and in the meanwhile the Appellants had recovered the award amount at Rs. 300/- per marla with interest in execution. The Apex Court in those circumstances held that the Appellants were liable to retribute the excess amount realised in execution of the decree of the reference Court or appeal u/s 54 with interest. Therefore the State was entitled to retribute the benefit accrued to the owner in the original decree and direction to retribute the amount with interest given by the High Court was within the powers conferred on the Court u/s 144 of the Code.

27. In Kavita Trehan's case (supra) it was held that Section 144, CPC incorporates only a part of the general law of restitution. It is not exhaustive. The jurisdiction to make restitution is inherent in every Court and will be exercised whenever the justice of the case demands. It is to be exercised under inherent powers where the case does not strictly fall within the ambit of Section 144.

28. Bearing in mind the law laid by the Apex Court in the above two decisions and considering the facts of the case in hand it is apparent that the Respondent was benefited of the enhancement of compensation granted by the reference Court under the impugned award. Pursuant to the order passed by this Court while admitting the appeal and granting stay to the execution of the impugned award. It is an undisputed fact that while granting stay to the impugned award this Court had directed the Appellants to deposit the decretal amount and the Respondent was allowed to withdraw the same. Accordingly the Appellants had deposited the said amount and the same was withdrawn by the Respondent. In the absence of such an order by this Court directing the Appellants to deposit the said amount there would have been no occasion for the Respondent to withdraw the said amount and the Respondent would have been compelled to proceed for normal execution remedy available under the law. By the present order, this Court has already modified the impugned award whereby the enhanced compensation has been reduced to a considerable extent. Naturally the Appellants would be entitled to recover the amount which has been collected by the Respondent over and above the amount he is entitled to. The decision of the Apex Court in the matter of State Bank of Saurashtra (supra), considering the facts of the said case, in which same was delivered has no application to the case in hand. That was a case where the Respondent had paid the amount in execution of the decree and during pendency of the appeal before the Apex Court

an application u/s 144 was filed by the Respondent therein. The Apex Court held that such an application for restitution will have to be made to the Court of first instance. In the case in hand it is not an application by the Respondent for restitution of benefit. On the contrary considering the facts that the Respondent was benefited pursuant to the order of this Court, the Respondent is duty bound to restitute the amount repayable to the Appellant pursuant to the modification of the impugned award.

29. In the result, therefore, the appeal partly succeeds. The impugned award is modified to the extent that the enhanced compensation granted to the Respondent is restricted to the sum of Rs. 1,15,000/- instead of Rs. 2,32,240/-. The enhanced compensation of Rs. 500/- as regards the well is also quashed and set aside. The enhancement granted in relation to the value of the standing trees to the tune of Rs. 1000/- instead of Rs. 500/- is not interfered with. Needless to say that the claimant shall be entitled to solatium at the rate of 15% and the interest at the rate of 6% as awarded by the reference Court. The Respondent shall refund the excess amount received by him within a period of six months from today along with interest at the rate of 6% per annum thereon from the date of receipt of such amount till the date of refund. With the above modification in the award, the appeal is disposed of with no order as to costs.