
(2008) 05 AHC CK 0095
In the Allahabad High Court
Case No : First Appeal Nos. 27 to 30 of 2006

State of Uttarakhand

APPELLANT

Vs

Ravi Kumar

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131

Citation : (2008) 05 AHC CK 0095

Hon'ble Judges : Rajesh Tandon, J

Judgement

Rajesh Tandon, J.—Heard Sri L.P. Naithani, Advocate General, Sri Vinod Nautiyal, Standing Counsel and Sri Sudhir Singh, Brief Holder for the appellant and Sri D.S. Patni and Sri Sidharth Sah Counsel for the respondents.

2. Present four appeals have been preferred against the common judgment and award dated 21.2.2006 passed by the Additional District Judge, Haldwani in L.A.C. No. 187 of 1986, L.C.A. No. 15 of 1987, L.C.A. No. 16 of 1987 and L.C.A. No. 59 of 1987.

3. Briefly stated the respondent Ravi Kumar has filed a reference before the District Judge, Nainital being L.A.C. No. 59 of 1987 (arising out of First Appeal No. 28 of 2006) against the award passed by the Land Acquisition Officer with the allegations that applicant along with his brother Virendra Kumar had inherited plot No. 21/1 from their predecessor. Thereafter in the year 1976 a family partition had taken place in between Ravi Kumar and Virendra Kumar. 3 bigha 15 biswa land had come in the share of Virendra Kumar while Ravi Kumar had got 7 bigha 11 bishwa land. Out of that land Ravi Kumar sold 2 bigha 18 bishwa and 16 bishwansi to Chaudhari Vidhya Bhusan, Smt. Ishwari Devi, Sudhir Kumar, Smt. Lalita Devi, Sunil Chaudhari and Smt. Ramni Chaudhari. Thus 4 Bigha, 12 bishwa and 4 Bishwansi land still remained with applicantrespondent Ravi Kumar. Collector, Nainital has wrongly set aside the names of Ravi Kumar and Virendra Kumar from the Khatauni. The property is adjacent to High way and the Land Acquisition Officer has wrongly valued this land. The land must be

valued for at least rupees six lakhs. The applicant also interest @ 15% per annum on this amount.

4. On behalf of Opposite party State, it has been asserted that at the time of notification the owner of the land was State and the applicant has got no Bhumidhari right over the land in dispute. The sale purchase made by the parties of the land in dispute is also illegal. The valuation of the land was made properly by the Land Acquisition Officer according to the provisions of section 23 of the Land Acquisition Act.

5. On the pleadings of the parties the Reference Court has framed the following issues:

1. Whether the claimants are the Bhumidhar or owners of the property under acquisition?

2. Whether the compensation awarded is inadequate?

3. To what compensation, if any, are the claimants entitled?

4. Whether the disputed land being surplus land in accordance with the provisions of Land Ceiling Act vested in State of U.P. If so, its effect?

5. Whether the reference is barred by section 11 C.P.C.?

6. In L.A.C. No.16 of 1987 (arising out of First Appeal No. 30 of 2006), Chaudhari Vidhya Bhushan and his heirs have filed objection that they purchased 2 Bigha 18 Bishwa and 16 Bishwansi land of plot No. 21/1 from its tenure holder Sri Ravi Kumar on 24.11.1981 by registered sale deed. After obtaining permission from Nagar Palika they constructed a Godown on that land and Collector, Nainital also gave no objection certificate in that regard.

7. Appellant State has filed objection with the assertion that the land in dispute is recorded in the name of the State. The sale deed executed in favour of the applicants is null and void. State has submitted that merely by giving the permission by the Collector to construct godown on the land in dispute does not create any right over the land in favour of the objectors. The names of Ravi Kumar and Virendra Kumar were deleted from the land in dispute in the revenue records by the order dated 31.12.1981 passed by the Collector, Nainital. The provisions of U.P.Z.A.&L.R. Act are not applicable on the land in dispute.

8. On the pleadings of the parties the reference Court has framed the following issues:

1. Whether the claimant Vidhya Bhusan or his predecessors in interest had bhumidhari interest in the land under acquisition? If not its effect?

2. Whether the claimants are entitled to compensation for the acquisition under consideration? If so what?

3. Whether the disputed land vested in State of U.P. being surplus under the

provisions of U.P. Land Ceiling Act? If so its effect?

4. Whether the reference is barred by the provisions of section 11 C.P.C.?

9. In L.C.A. No. 16 of 1987 (arising out the First Appeal No. 28 of 2006), Ravi Kumar has filed objection and has stated that he along with his brother inherited the land of plot No. 21/1 from his predecessors. A family partition took place in between his brother Virendra Kumar and him in the year 1976. Virendra Kumar got 3 Bigha 15 Bishwa land while Ravi Kumar got 7 bigha 11 bishwa land. Out of that land the applicant Ravi Kumar sold 2 bigha 18 Bishwa 16 Bishwansi land to Chaudhari Vidhya Bhusan, Smt. Ishwari Devi, Sudhir Kumar, Smt. Lalita Devi, Sunil Chaudhari, Smt. Ramni Chaudhari and remaining 4 Bigha, 12 Bishwa and 4 Bishwansi land was in his occupation. Collector Nainital illegally removed his name from the revenue records. The Land Acquisition Officer did not evaluate the land properly.

10. State of U.P. has filed objection and submitted that Ravi Kumar is not the owner of the land. He has no bhumidhari right over the land acquired by the Government and he is not entitled to get any compensation.

11. On the pleadings of the parties following issues were framed:

1. Whether the applicant Ravi Kumar is the Bhumidhar of the land under acquisition? If not its effect?

2. Whether Ravi Kumar is entitled to any compensation? If so what?

3. Whether the disputed land vested in State of U.P. being surplus under the provisions of U.P. Land Ceiling Act? If so its effect?

4. Whether the reference is barred by the provisions of section 11 C.P.C.?

12. In L.C.A. No. 187 of 1986 (arising out First Appeal No. 27 of 2006) the reference Court has decided the claims of 28 persons and there remained the claim of Ravi Kumar only for which the reference Court framed the following issues:

1. Which of the objectors has title in the land in dispute or any specified portion thereof? If so, its effect?

2. What compensation is payable to each of the objectors?

3. Whether the disputed land vested in State of U.P. being surplus under the provisions of U.P. Land Ceiling Act? If so its effect?

4. Whether the reference is barred by the provisions of section 11 C.P.C.?

13. As all the cases relate to the land of plot No. 21/1 and similar evidence was adduced in all the cases therefore, the reference Court has decided all the cases by a common order.

14. The reference Court has held that Ravi Kumar and Virendra Kumar have

deposited 20 times of revenue on 24.11.1973 and they became Bhumidhar of the land in dispute. After the family partition Ravi Kumar got 7 bigha, 11 bishwa land while Virendra Kumar got 3 bigha 15 bishwa land of plot No. 21/1. Virendra Kumar sold one Bigha, 17 bishwa 10 bishwansi land to Smt. Shanti Devi and remaining 1 bigha, 17 bishwa 10 bishwansi land to Sri Deepak Kumar and Sameer Kumar on 5.1.1982 and as such Virendra Kumar has sold his entire share in plot No. 21/1.

15. Ravi Kumar sold 2 bigha 18 bishwa and 16 bishwansi land to Sri Vidhya Bhusan Chaudhari, Ishwari Devi, Sudhir Chaudhari, Sunil Chaudhari and Ramani Chaudhari on 24.11.1981 by registered sale deed for Rs. 1,60,000/-. Remaining 4 bigha, 12 bishwa and 4 bishwansi land of plot No. 21/1 remained with Sri Ravi Kumar. Notification for acquisition of the land was issued on 13.9.1982 thus prior to the notification Ravi Kumar had validly sold the land. Therefore, Vidhya Bhusan Chaudhari and others and Ravi Kumar are entitled to get compensation.

16. The reference Court has held that the reference is not barred by res judicata. The reference Court has awarded compensation of Rs. 52,608.90 in favour of Smt. Shanti Devi, Rs. 52,608.90 in favour of Sri Deepak Kumar and Sameer Kumar. Rs. 2,81,516.56 were awarded to the heirs of Sri Vidhya Bhusan Chaudhari namely Smt. Ishwari Devi, Sudhir Kumar Chaudhari, Sunil Chaudhari, Smt. Rashmi Bhatia, Smt. Lalita Devi and Smt. Ramani Chaudhari. Rs. 2,54,985.05 were awarded to Sri Ravi Kumar. The reference Court has also awarded 12% interest on the amount of compensation.

17. Feeling aggrieved the State has filed the present four appeals.

18. First of all I will discuss the issue of title. The claimants have also filed counter claims for enhancement of compensation amount on the basis of compensation awarded to other claimants.

19. The submission of the appellant is that lease of 28.65 acres of land in village Haripur Colonel Ward, teshil Haldwani was granted in favour of John Vaughan. The lease was granted for residential purposes with poultry farming and orchards, vegetable cultivation etc. The leases was for a period of thirty years and was not transferable. Mr. John Vaughan transferred the lease to Sri Manohar Lal, predecessor of Ravi Kumar. As such transfer was against the terms and conditions of lease deed, therefore, the transfer of the lease was void and illegal. The name of Manohar Lal was recorded in the revenue records as Dakhilkar tenant without any order of competent authority. The period of lease was expired and neither John Vaughan nor the transferee applied for renewal of the lease and as such no valid right over the land in dispute was inherited by Sri Ravi Kumar and Sri Virendra Kumar from their predecessor. The provisions of U.P.Z.A. & L.R. Act are not applicable to the land in dispute. The objectors have no Bhumidhari right over the land in question and as such they are not entitled to get any compensation from the State.

20. The facts arising out of the cases are that Mr. John Vaughan son of Mr.

Charles Vaughan obtained lease of 28.654 acres of land situated in village Haripur, Col. Ward, Tehsil Haldwani, District Nainital vide lease deed dated 20.6.1924 executed by the Secretary of State for India in Council. Thereafter Sri Manohar Lal purchased the land in dispute from John Vaughan through registered sale deed dated 17.11.1947 for a sum of Rs. 55,000/. Sri Manohar Lal who was the real uncle of Virendra Kumar and Ravi Kumar died issueless. Therefore, the land in question devolved upon the father of the respondent Ravi Kumar namely Sri Vidhya Ratna and after his death it devolved upon Sri Ravi Kumar and Virendra Kumar. The entries in the revenue records continued and existed in the name of the predecessors of the petitioners since 1948 and thereafter it has been duly verified and attested during the Record Operation Settlement held in the year 195960 i.e. 1376 Fasli. Opposite party Ravi Kumar has submitted that the sale deed was executed in favour of Sri Manohar Lal by Mr. John Vaughan after obtaining prior permission and approval of the Superintendent, Tarai and Bhabhar, Government State and in pursuance of the sale deed dated 17.11.1947 the name of late Sri Manohar Lal was ordered to be entered in the land revenue before Superintendent Tarai Bhabar, Government State. The entries were made accordingly. In the year 1967 State of U.P. had filed Suit No. 10 of 1967 for the possession of the property in dispute along with damages in the Court of District Judge. During the pendency of the suit U.P. Public Premises (Eviction of Unauthorised Occupants) Act, U.P. Act No. XXII of 1972 was promulgated and the Civil Judge, Nainital transferred the said case to the Prescribed Authority, Nainital for proceedings under U.P. Act No. 22 of 1972. The Prescribed Authority vide order dated 25.3.1975 dismissed the case No. 2117 of 197273 initiated against the opposite party and his father Vidya Ratna. Being aggrieved by the said order the State of U.P. filed appeal No. 7 of 1975 before the District Judge, Nainital, which was also dismissed vide order dated 30.7.1976. Against this order no writ petition was filed by the State and that order has become final and binding to the parties.

21. Thereafter, Sri Virendra Kumar and Ravi Kumar filed the application for mutation of their names on the basis of the family settlement and their names were directed to be mutated by orders of S.D.M. Haldwani dated 30.8.1978. Against that order the State of U.P. filed revision No. 23 of 197879 before the Commissioner, Kumaon Division, Nainital. The revision was also dismissed vide order dated 7th August, 1980. In compliance of the order of the S.D.M. Tehsildar, Haldwani mutated the names of Ravi Kumar and Virendra Kumar and against the mutation, the State also filed an appeal before the Additional Commissioner, Kumaon Division, which was also dismissed on 15.1.1980. Against that order State filed a revision before the Commissioner, Kumaon Division being Revision No. 135 of 197980, which was also dismissed by the Commissioner vide order dated 31.12.1980.

22. Against the order dated 7.8.1980 and 31.12.1980 passed by the Commissioner, Kumaon Division, State of U.P. filed revisions before the Board of Revenue, U.P. which were also rejected on 28.1.1982. During the pendency of

the revisions before the Board of Revenue the Collector, Nainital passed an order dated 31.12.1981 directing the Tehsildar, Haldwani, District Nainital to expunge the names of the petitioners Virendra Kumar and Ravi Kumar from the revenue records. Against the order dated 31.12.1981, Ravi Kumar and Virendra Kumar filed a revision before the Commissioner, Kumaon Division who directed that entries in the revenue records should not be changed by virtue of administrative orders.

23. Despite of the order passed by the Commissioner, the Tehsildar expunged the names of Virendra Kumar and Ravi Kumar from the revenue record. The petitioners, therefore, filed a contempt petition No. 264 of 1982 before the Allahabad High Court. Sri Babu Ram, Collector, Nainital and Sri Kundan Singh Rawat, Tehsildar tendered their unqualified apologies before the High Court and therefore, the contempt notices were discharged vide order dated 16.8.1988.

24. However, the Commissioner, Kumaon Division vide order dated 16.3.1983 dismissed the revision as not maintainable. Ravi Kumar and his brother Virendra Kumar filed a revision before the Board of Revenue against the order dated 16.8.1988 which was allowed vide order dated 22.1.1993 and both the orders passed by the Commissioner dated 16.3.1983 and order dated 31.12.1981 passed by the Collector, Nainital were set aside.

25. The main contention of the State Counsel is that the lease granted to the original lease holder Mr. John Vaughan was not transferable without permission of the Collector and as Mr. John Vaughan has not obtained permission for sale of the leased property, the sale deed was null and void. A mention of the lease deed executed by Secretary, State for India in Council dated 20.6.1924 has been made by the State. In clause (e) of the lease deed it has been mentioned as under:

"(e)The lessee agrees that he shall not transfer or sublet the said plot of land without the written approval of the Deputy Commissioner of Nainital."

26. The original lease holder Mr. John Vaughan executed a sale deed on 17.11.1947 in the name of Sri Manohar Lal predecessor of Sri Ravi Kumar and Virendra Kumar, after obtaining permission for the transfer of lease from the Commissioner vide file No. 14/23. The land in dispute was mutated in the name of Sri Manohar Lal by virtue of sale deed. In the Khatauni of 1356F, the name of Manohar Lal son of Tulasi Ram is recorded however, in the remarks column it has been noted that the land is in lease. In Khatauni 138990 the names of Ravi Kumar and Virendra Kumar have been recorded as Bhumidhar with transferable rights. In the year 1379F vide order dated 21.1.1981 the names of Ravi Kumar and Virendra Kumar were expunged and in their place State of U.P. was recorded. In the same Khatauni on the basis of the order dated 20.11.1984 passed by the Munsif, Haldwani the names of Ravi Kumar and Virendra Kumar have been restored. In the Khatauni 14011406F the names of Ravi Kumar and Virendra Kumar have been recorded as Bhumidhar (vergka) with transferable

rights.

27. The S.D.O. Bhabar vide judgment and order dated 25.3.1975 under U.P. Act No. XXII of 1972 dismissed the eviction suit and the petitioners Ravi Kumar and Virendra Kumar were held in possession of the land as recorded tenure holders. The appeal against the said order was also dismissed by the District Judge vide judgment and order dated 31.7.1976. The District Judge recorded the possession of opposite parties Ravi Kumar and Virendra Kumar over the land in dispute and has observed as under:

"There are documents on record to show that in 1966F the respondents were recorded as occupancy tenants. Similar entries exist in the Khatauni for the year 1375 F and in the Khatauni for 1376 F the respondents are recorded Sirdars."

28. In his judgment and order dated 7.8.1980 passed in Revision No. 23 of 197879, the Commissioner, Kumaon Division observed as under:

MOOL LEEJDHARI SRI JOHN VAUGHN KO UPAYUKT KI ANUMATI SE LEASE HASTANTARAN KE ADHIKAR PRAPT THE JO ANUMATI MISAL 14/23 DINANK 6.12.1948 DWARA UN. HAUNE PRAPT KER LEE THEE AUR JISAKE ADHAR PER MALKAGJATO ME 1948 ME SANSODHAN BHEEHO GAYA THA.

29. The learned State Counsel has also taken the plea of 30 years lease granted in favour of John Vaughn and has argued that the lease was to expire in the year 1954 and thereafter the land vested in the State Government. The learned Commissioner in his judgment dated 7.8.1980 has held that by virtue of the transfer case No. 14/23 dated 6.12.1948 the entries were made in the name of Manohar Lal.

30. Mr. John Vaughn got permission of transfer of the land from the Commissioner vide file No. 14/23. Consequently, the revenue records were amended in the year 1948. After the settlement operation took place in the year 1960 the old entries were also continued thereafter the State Government did not initiate proceedings for their correction and the entries were become final.

31. Section 131 of U.P.Z.A. & L.R. Act was amended vide Notification No. 226(1) IA.2I(2)69 dated June 30, 1969. The extract of the Notification is quoted below:

"In exercise of the powers under clause (b) of subsection (1) of section 2 of the Uttar Pradesh Zimindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951), (hereinafter referred to as "the said Act") the Governor is pleased to direct that the said Act shall with effect from the first day of July, 1969, apply to all estates of parts thereof, owned by the State Government, situate in the villages within the Tahsils/Peshkaris of Haldwani Kaladhungi, Ram Nagar, Kichcha, Bazpur, Sitarganj and Khatima in the Nainital District (other than village or portions thereof specified in Schedule 1, appended thereto) and also situate in the Kham village of Garhwal Bhabar Government Estate in the Garhwal District in which no person has rights as an intermediary as defined in clause (12) of section 3 of the said Act, subject to the modifications and amendments, specified

in Schedule II appended hereto.

13 For section 131, the following shall be substituted: "[3] Every person belonging to any of the following classes shall be called a Sirdar and shall have all the rights and be subject to all the liabilities conferred or imposed upon sirdars by or under this Actnamely

(a) every person who, on the date immediately preceding the appointed day held land as

(i) an occupancy tenant,

(ii) a hereditary tenant,

(iii) a grantee at favourable rate of rent,

(iv) a lessee holding a lease under the provisions of Government Grants Act, 1985 and having rights of a hereditary tenant under the terms of the lease, but not possessing the right to transfer the holding by sale.

(b) Every person who is admitted as sirdar of vacant land under the provisions of this Act.

(c) A tenant in any of the 42 Buxari villages specified in the annexure, appended hereto who was recorded in Class X (1) in the Khatwal of the previous agricultural year, and

(d) Every person who in any other manner acquires the rights of a sirdar under or in accordance with the provisions of this Act."

32. Thus by virtue of the aforesaid amendment the lease holders under the provisions of Government Grant Act, had become Sirdar on 1.7.1969 and as on the appointed day the respondent's predecessor Sri Manohar was in possession of the land in dispute had acquired rights as sirdar and by application of the provisions of U.P.ZA. & L.R. Act, he became Bhumidhar of the land.

33. Apart from that section 18 and 19 of the U.P.Z.A. & L.R. Act, also confer the rights on the occupants as Bhumidhars to take or retain possession of the land.

34. The Apex Court in the case Ram Avtar and others v. Ram Dhani and others, 1998 (Suppl.) RD 581 (SC) = (1997) 2 SCC 263 held as under:

"On a plain reading of section 18(1) it appears that all lands in possession of an intermediary as sir or khudkasht on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary. The High Court was of the opinion that as Smt. Phoola was in possession of the lands in question on the date immediately preceding the date of vesting, it shall be deemed to have been settled by the State Government with her in view of section 18(1) and she had right to retain the same as Bhumidhar thereof."

35. The Civil Judge, Nainital vide judgment and decree dated 16.6.1996 in Civil Appeal No. 113 of 1984 has also recorded a finding that the plaintiffs ancestor acquired rights under U.P.Z.A. & L.R. Act and after promulgation of the notification in District Nainital they had become Bhumidhar of the land in dispute.

36. The land in dispute was transferred to Sri Manohar Lal from John Vaughan with the permission of Commissioner, Kumaon and he was in possession over the land on 1st July 1969 and as such he became Bhumidhar of the land in dispute. Therefore, the plaintiffs and prior to them their predecessor Manohar Lal was recorded as tenure holder in the revenue records. The entries existed in the revenue records for over 35 years, which were duly verified and attested during the settlement 195960 (1376F).

37. Even after the expiry of the period of lease in the year 1954, the predecessor of the respondent Ravi Kumar and Virendra Kumar were in possession of the land.

38. In 1963, some area out of the land in question was requisitioned for the use of Military and the District Land Acquisition Officer, Nainital in Case No. 3 of 1963 and Military authorities were directed to pay Rs. 675/ quarterly from 1.10.1965, which shows the possession and legal rights of the petitioners Ravi Kumar and Virendra Kumar over the land in question.

39. The Apex Court in the case State of U.P. and others v. Maharaja Dharmander Prasad Singh etc. 1989 SC & FBRC 155 = 1990 (16) ALR 7 (SC) (Sum.) has observed as under:

"A lessor, with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression "reentry" in the leased deed does not authorise extra judicial methods to resume possession. Under law the possession of leasee, even after the expiry of its earlier termination is judicial possession and forcible dispossession is prohibited; a leasee cannot be dispossessed otherwise than in due course of law."

40. From the evidence on record it is amply clear that predecessor of Ravi Kumar and Virendra Kumar came in possession over the land in dispute by virtue of execution of a sale deed dated 17th November 1947 and even after the expiry of the lease in the year 1954, the respondent's predecessor and thereafter the respondent and his brother continued in possession over the land in dispute and they got themselves recorded over the land. The entry in the name of the respondents in revenue records neither can be cancelled by the administrative order of the District Magistrate nor they can be forcibly dispossessed from the land in question under acquisition proceedings without any compensation.

41. The proceedings initiated by the State authorities for the eviction of the respondent from the land in dispute under U.P. Public Premises (Eviction of Unauthorised Occupants) Act, were dismissed by the Prescribed Authority as well as by the Appellate Court. The suit of the petitioners Ravi Kumar and Virendra

Kumar for perpetual injunction and for restoration of the entries in the revenue records has been decreed by the Trial Court as well as by the first Appellate Court. The Second Appellate Court also dismissed the appeal of the State vide order dated 5.11.2004 as no substantial question of law was found.

42. Thus in view of the unqualified apologies tendered by the District Magistrate, Nainital and Teshildar, Haldwani before the High Court, setting aside of orders of Collector Nainital dated 31.12.1981 by the Board of Revenue on 22.1.1993, and by of decreeing the suit of Sri Ravi Kumar and Virendra Kumar for perpetual injunction and restoration of the entries in the revenue record by Munsif Haldwani and affirming his judgment and decree by the first and second Appellate Court, the respondents have acquired Bhumidhari rights and further they are recorded as Bhumidhar of the land in question which is evident from the Khatauni of 1401F 1406F. The land was leased out to Mr. John Vaughan on 20.6.1924 who sold the land to Sri Manohar Lal vide sale deed dated 17.11.1947 and thereafter the land was recorded in the name of Sri Manohar Lal and on his death his successor Sri Ravi Kumar and Virendra Kumar. They are continuously recorded as Bhumidhar of the land in question. The Chief Revenue Commissioner also held in his judgment that from the order dated 20.9.1999 of Additional District Magistrate (Land Acquisition) Lucknow and from the G.O. No. 376 dated 16.5.2002 issued by the Secretary, Uttaranchal Government all land acquisition proceedings in respect of the land in question have come to an end and the Government has ordered that the land be kept in the ownership and possession of the Bhumidhars i.e. Sri Ravi Kumar and Virendra Kumar.

43. The District Magistrate, Nainital has no jurisdiction restraining a person from occupying, selling or mutating the land of which he is a recorded Bhumidhar (Vergka) in the revenue records. Thus the reference Court has rightly held that Ravi Kumar was the Bhumidhar of the land of plot No. 21/1 and he validly transferred the land to Vidhya Bhusan Chaudhari and others. All the claimants are entitled to get compensation according to law for the land acquired by the State Government. The State Counsel has filed two applications praying therein to stay the proceedings of First Appeals till disposal of the SLP by the Hon''ble Supreme Court.

44. Respondent Ravi Kurnar had preferred a SLP against an interim order passed by the High Court. The Hon''ble Supreme Court vide order dated 15.5.2006 dismissed the SLP with the observation that it is clear to us that the direction contained in paragraph 12 of the judgment does not adversely affect the petitioner because the direction made in the judgment is only in relation to the land acquired by notification issued under Land Acquisition Act. Therefore, the present appeals have no relation with the SLP pending before the Apex Court. Further more the appellant earlier moved urgency applications No. 2484 of 2007 in First Appeal No. 27 of 2006 and urgency application No. 2483 of 2007 in First Appeal No. 28 of 2006 and on the prayer of the appellant (State of Uttarakhand) the High Court has posted the appeals for final hearing in the month of February

2008 vide order dated 26.11.2007 observing that the SLP preferred by the respondent has been dismissed. Thus the applications filed by the appellant for stay of the proceedings of the appeals are misconceived.

45. The Hon'ble Supreme Court has passed the following order in S.L.P. Civil No. 8622 of 2006 on 15.2006:

"We have heard Counsel for the Petitioners. We do not find any reason to entertain this Special Leave Petition because it is quite clear to us that the direction contained in para 12 of the Judgment does not adversely affect the petitioner, because the direction made in the Judgment is only in relation to the lands acquired by Notifications issued under the Land Acquisition Act.

The Special Leave Petition is dismissed."

46. So far as the compensation is concerned, the reference Court has held that the Land Acquisition Officer has rightly assessed the compensation on the basis of evidence on record. The reference Court has not made any alteration in the compensation assessed by the Land Acquisition Officer. The State Government acquired 4 Bigha 12 Biswa and 4 bishwansi land of plot No. 21/1 originally belongs to Ravi Kumar and his brother. The Land Acquisition Officer computed the compensation of 2 Bigha 12 bishwa land belonging to deceased Vidhya Bhushan @ Rs. 8/ per sq. ft. on the basis of exemplar sale deed dated 24.11.1981 by which Sri Ravi Kumar sold 2 Bigha 18 Biswa 16 Biswansi land of plot No. 21/1 of village Haripur Carnel Ward to Sri Vidhya Bhusashan Chaudhari. Said award was confirmed by the reference Court, while the rate given to Ravi Kumar respondent was Rs. 2.94 per sq. ft. on the pretext that the land of Ravi Kumar was not in front of road.

47. Market value of the acquired land has to be determined by comparable sale method as held by the Apex Court in Printers House Pvt. Ltd. v. Mst. Saiyadan (1994) 2 SCC 133 = 1993 (22) ALR 45 (SC) (Sum) The Apex Court has observed as under:

"Where there is evidence of sales or awards of land(s), which could be compared with the acquired land(s), the Court, as a matter of course, adopts the "Comparable Sales Method of valuation of land", in preference to other recognised methods of valuation of lands, such as "Capitalisation of Net Income Method" or "Expert Opinion Method" for determining the market value of the acquired land(s). "Comparable Sales Method" is the most favoured method, since the prices paid within a reasonable time in bonafide transactions of purchase or sale of the very acquired land or a portion thereof, or of the lands adjacent to those acquired and possessing similar advantages, could furnish to the Court the "price basis" for determination of the market value of the acquired land, in that, there can be no better evidence of what the willing purchaser would pay for the acquired land if it had been sold in "the open market at the time of publication of preliminary notification". Evidence of prices fetched by sales of lands similar to the acquired land will be taken by the Court to be the price which

a willing purchaser would have paid for the acquired land, if the same had been sold to him in the open market. However, if the price under comparable sale is to be taken by the Court, as furnishing the "price basis" for determination of the market value of the acquired land, the comparable sale must, firstly be genuine, secondly it must have taken place at a time proximate to the date of publication of the preliminary notification under section 4(1) of the Act, thirdly the land sold under the sale must be similar to the acquired land, and fourthly the land sold under the sale must be in the vicinity of the acquired land. It has, therefore, to be noted that the location, size, shape, tenure, user or potentiality of land under comparable sale, if do not compare favourably with the acquired land, price fetched in comparable sale cannot furnish the "price basis" for determining the market value of the acquired land."

48. In the present case reference Court as well as the Land Acquisition Officer has awarded compensation of the land of plot No. 21/1 at two different rates. Vidhyabhushan was given compensation at the rate of Rs. 8/ per square feet for the same plot whereas respondents Shanti Devi and others and Ravi Kumar was given compensation @ Rs. 2.94 per square feet. Exemplar Sale Deed dated 24.11.1981 by which Ravi Kumar sold 2 Bigha 18 Biswa and 16 Biswansi land of same plot No. 21/1 to Sri Vidhyabhusan Chaudhari for Rs. 1,60,000/ was made basis for payment of compensation to Sri Vidhyabhusan Chaudhari and others while compensation for the land of the same plot No. 21/1 was assessed at a lower rate of Rs. 2.94 per square feet to Sri Ravi Kumar and Smt. Shanti Devi and others. As such the Land Acquisition Officer as well as the reference Court has not adopted similar scale for weighing the land whereas the land was in the same locality and was of the same plot No. 21/1. Classification of land in two categories on the basis of their respective distance from the road is not justified.

49. The State has filed affidavit in the form of written arguments before this Court but no disparity has been pointed out in the land of Vidhyabhushan to whom compensation @ Rs. 8/ per square feet was given and the land of Ravi Kumar and others, to whom the rate of Rs. 2.94 per square feet was given.

50. A Division Bench of Punjab & Haryana High Court in Smt. Mahabiri Devi and others v. State of Haryana, 2006 (42) AIC 359 (P & H) has held as under:

"It is also well settled principle of law and assessment of compensation that when large facts of land are required for urban and commercial development and there is a development all around, then short distances between the two chunks of land loose importance. In such a situation, all the landowners are entitled to a similar treatment and a uniform compensation for their acquired land."

51. The Apex Court in *Shrilekha Vidyarthi v. State of U.P.*, (1991)1 SCC 212 has held that there should be fairness in the action by the State. The Apex Court has observed as under:

"The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of

the State, has long been settled.

It has now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law."

52. Thus I am of the view that all the respondents are entitled to get compensation on the basis of exemplar sale deed dated 24.11.1981 at the rate of Rs. 8/xper sq. ft. The respondents are also entitled to get 30% solatium and 12% interest per annum on the amount of compensation from the date on which the State took possession of the land.

53. Consequently, the aforesaid appeals are dismissed with costs. However, the cross objections filed in F.A. No. 27 of 2006, F.A. No. 28 of 2006, F.A. No. 29 of 2006 are allowed and the rate of compensation is enhanced @ Rs. 8/ per squire feet alongwith 30% solatium and 12% interest, on payment of Court fee to the execution side. The amount of award shall be paid forthwith to the claimants.

Appeals Dismissed.