

(2001) 10 DEL CK 0088

In the Delhi High Court

Case No : Regular First Appeal No. 83 of 1987 and C.Ms. 321/87, 516 of 1987 (Cross Objections) , 114 and 115/94, 1512 and 1513/99, 352, 366, 865 and 866 of 2000 and 41, 127, 237 and 248 of 2001

Union of India (UOI)

APPELLANT

Vs

Rajiv Gupta and Others

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 24, 25, 28
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3, 4
Punjab Land Revenue Act, 1887 — Section 41, 42

Citation : (2002) 5 AD 607 : (2002) 96 DLT 225

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Pinki Anand and D.N. Goburdhan, for the Appellant; Party in person, L.R. Gupta S.S. Tripathi and Gagan Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—Four appeals have been preferred u/s 54 of Land Acquisition Act, 1894 (hereinafter referred to as the Act) by Union of India seeking reduction in the amount of compensation as awarded by the impugned award passed on 28.7.1986 by the Additional District Judge, Delhi by which the said Reference Court answered the reference of the claimant-respondents under-Section 18 of the Act and determined the amount of compensation payable to them. Claimants/respondents in the cross-objections are seeking further enhancement in the amount of compensation.

2. Considerable land situate in village Masoodpur was notified u/s 4 of the Act on 24.10.1961 for being acquired at public expense for public purpose, namely, Planned Development of Delhi. Before declaration u/s 6 of the Act could be issued additional land situate within the same revenue estate was notified u/s 4 of the Act on 23.1.1965 for being acquired for the same public purpose. On 5.5.1966 declaration u/s 6 was made with respect to a portion of land which was

notified on 24.10.1961, for being acquired for which the Collector, Land Acquisition on 25.2.1967, after completing necessary formalities, made his Award No. 1944 classifying the land in three blocks A,B & Candy offering compensation @ Rs. 1,200/-, Rs. 900/- and Rs. 750/- per bigha for categories A, B and C. On 6.8.1966 another declaration was made u/s 6 of the Act for the remaining land which was notified on 24.10.1961. For this portion of land on 2.12.1967 the Collector, Land Acquisition made his Award No. 2040 and offered amount of compensation to the claimants @ Rs. 1,000/-, and Rs. 800/- respectively to categories B and C lands. On 6.9.1966 another declaration u/s 6 was made with respect to part of the land which had been notified on 23.1.1965 for being acquired. The Collector on 26.3.1969 made his award No. 2225 for the said land offering compensation to the claimants @ Rs. 1,580/-, Rs. 1,175/- and Rs. 600/- respectively for categories A, B & C lands and lastly on 26.12.1968 declaration u/s 6 was issued for the remaining land for which on 22.12.1980 Award No. 90/ 80-81 was made offering compensation @ Rs. 1,200/-, Rs. 900/- and Rs. 700/- respectively for categories A, B & C lands.

3. It is not in dispute that the specific purpose under the general purpose of Planned Development of Delhi to acquire the land being establishment of Jawaharlal Nehru University and it is also admitted that Jawaharlal Nehru University was set up on the acquire land.

4. Feeling dissatisfied with the amount of compensation offered to the claimants under separate awards, reference were sought u/s 18 of the Act for determination of the amount of compensation. The Reference Court from time to time answered those references by separate awards. Feeling aggrieved appeals were filed against some of the awards of the Reference Courts by the appellants seeking reduction in the amount of compensation which were dismissed. In some of the cases appeals were carried to Supreme Court also by the appellant. The same were also dismissed. Reference to those cases will be made subsequently, while considering the preliminary objection raised on behalf of claimant-respondents that in no far as the instant appeals by Union of India seeking reduction in the amount of compensation, are now barred by the principles of res-judicata as regards the determination of amount of compensation qua the appellant. Preliminary objections further say that in any case the appellant is estopped from questioning the impugned awards since the amount of compensation already stands paid to the other claimant-respondents, whose lands were acquired under the same notification. In so far as the claimant-respondents are concerned they have filed cross objections seeking further enhancement in the amount of compensation.

5. The facts leading to acquisition and determination of the amount of compensation in the instant appeals are being stated. Smt. Pramod Gupta and Ors., respondent in RFAs 85/87 and 86/87 were bhumidar of 1/4 undivided share in the entire holding of village Masoodpur. Similarly, Shri Rajiv Gupta and Ors., respondents in RFAs 83/87 and 84/87 were bhumidars/owners of 1/8 undivided

share in the joint holding of the entire village Masoodpur. Feeling dissatisfied with Award Nos. 2040 and 2225 respectively Smt. Pramod Gupta and Ors. filed reference petitions u/s 18 of Land Acquisition Act. Surinder Gupta, the predecessor- in-interest of respondent Rajiv Gupta and Ors. filed two reference petitions u/s 18, feeling aggrieved with Award Nos. 2040 and 2225 respectively. These were, Therefore, assigned separate number by the Land Acquisition Collector. Surinder Kumar Gupta was substituted firstly by Ratan Lal Gupta and later on by Rajiv Gupta and Ors. in the two reference petitions.

6. The Reference Court with respect to the land, which was subject matter of Award No. 2040, awarded compensation @ Rs. 22,000/- per bigha. He in fact assessed compensation payable for the minor mineral (china clay) embedded in the land @ Rs. 12,000/- per bigha and market value for the land @ Rs. 10,000/- per bigha. With respect to the land which was subject matter of Award No. 2225 the Reference Court awarded compensation @ Rs. 28,000/- per bigha for which he held Rs. 10,000/- per bigha to be compensation for minor mineral (china clay) embedded in the land and Rs. 18,000/- per bigha towards market value of the land.

7. By the time these appeals were filed we are informed that reference petitions arising out of Award No. 1944 have not yet been decided by the Reference Courts. With respect to Award No. 90/80-81 also no information was supplied to us by either of the parties.

8. Learned Counsel for the parties were heard at length and we were taken through the entire record which was placed before the Reference Court. On behalf of Union of India the challenge to the impugned awards has been on various grounds but during course of submissions the points urged were, (a) Reference Court was not justified in allowing interest for the period during which reference proceedings u/s 18 of the Act were stayed with effect from 17.1.1971 and 25.2.1971 to 28.5.1980; (b) claimant-respondents are not entitled to additional amount u/s 23(1A) of the Act since the awards in question were made by the Collector, Land Acquisition much prior to coming into force of the Land Acquisition (Amendment) Act, 1984; (c) no interest is payable to the claimant-respondents on solarium; (d) Collector, Land Acquisition had classified the land in three blocks, Therefore, the Reference Court was not justified in doing away with this classification as the land of claimant-respondents fell under Block C, they could not have been awarded compensation more than Rs. 900/- per bigha, as such the enhancement of compensation is bad in law and is not based on rational basis; (e) claimant-respondents had claimed compensation @ Rs. 25/- per sq. yard for the land which was acquired through Notification dated 24.10.1961 and @ Rs. 50/- per sq. yard for the acquisition which took place through the Notification dated 23.1.1965. The Reference Court thus exceeded in its jurisdiction in allowing compensation @ Rs. 28,000/- per bigha for the land which was the subject matter of Award No. 2225, ignoring the bar created by Section 25 of the Act; (f) claimant-respondents are not entitled to any compensation

separately for china clay mineral embedded in the acquired land for the reason that under the provisions of Mines and Minerals (Regulation and Development) Act, 1957 the same belongs to Government.

9. On behalf of the claimant-respondents a preliminary objection was raised that the appeals filed by Union of India are barred by principles of res-judicata and on merits it was urged that the interest cannot be denied which statutorily is payable to the claimant-respondents, whose property is compulsorily acquired, irrespective of the fact that the proceedings were stayed, whether by order of the Court or with consent of the parties. It was urged that interest on solarium is payable. There was no embargo in the reference Court having awarded compensation at uniform rate, keeping in view the potentiality particularly when Reference Courts found that it was the market value, which was prevalent as on the date of the notification u/s 4 of the Act. The appellants had failed to satisfy the requirements, which would justify invoking the bar of Sub-section (2) of Section 25 of the Act. It was urged that in an earlier litigation between the parties the owners were held entitled to the china clay, Therefore, the appellant was estopped from questioning title of the claimants to compensation for the minor mineral (china clay) embedded in the acquired land and moreover, it is not specifically and expressly mentioned or recorded in Wajib-ul-arz the china clay embedded in the land belongs to the Government, in the absence of which it must be presumed that the china clay belongs to the claimant-respondents. In addition on behalf of claimant-respondents it was urged that the cross objections were liable to be allowed by enhancing the amount of compensation, as per the fair market value as existed on the date of the notification u/s 4 of the Act.

10. We have given due consideration to the submissions made at the bar. Our findings are as under:

Whether the appeals of Union of India seeking reduction in compensation are barred by the principles of res-judicata:

Applications were filed by the claimant-respondents in each appeal seeking dismissal of the appellant's appeals being barred by principle of res-judicata. It is stated that appeals were filed by Union of India against the award of Reference Court dated 28.7.1986 by which compensation for land as well as china clay i.e. sub-soil minerals embedded therein, acquired by the two awards (Nos. 2040 and 2225) was assessed at Rs. 22,000/- and Rs. 28,000/- per bigha respectively. The claimant-respondents were bhumidars Along with the others, who for their undivided share in the joint holding, which had also been acquired under the same notifications had also sought references against the two awards. The references were answered separately by various Reference Courts, determining similar amount of compensation payable to the claimants. Appeals were filed to this Court against various awards of the Reference Court, which were dismissed. Against the judgments of this Court Special Leave Petitions were filed by the appellants to the Supreme Court which were also dismissed. Accordingly it was urged that the decisions rendered by the Reference Court had become final and

conclusive and the same operates as res-judicata against the Union of India more particularly when the appellant has already paid compensation to the co-bhumidars at the same rates at which compensation has been awarded to the claimant-respondents by the Reference Court including compensation for china clay. In the applications full particulars of the cases have been supplied by the claimant-respondents. Despite opportunities no reply was filed by the appellants to the applications. It was urged that the appellant had no reply to the respondents' claim and there is no answer with the appellant, Therefore, the appeals of the appellants have to be dismissed and only cross objections would require consideration.

11. At this stage, we may quote what the claimant-respondents urged with respect to the factual matrix on which the plea of res-judicata is being raised:

"An area of 4307 bighas 18 bids was of lands situate in village Masoodpur was acquired by Government under three awards bearing Nos. 1944, 2040 and 225. The present appeals are concerned only with the lands acquired by Award Nos. 2040 and 2225. The respondents are co-bhumidars of the aforesaid acquired lands along with Shri Inder Pal Malhotra, Ram Pal Malhotra, Shri Kewal Wadhera, Shri Vikram Kumar Jain, Shri Chikram Kumar Jain, Shri Sukhdev Singh and Shri K.M. Sharma and others who have also undivided shares in the joint holding which has been acquired. It is also an admitted fact that these respondents namely Smt. Pramod Gupta and others have 1/4 undivided share in 4200 bighas of acquired land while Shri Rajiv and others have 1/8 share in the aforesaid undivided holding of 4200 bighas."

12. After the decree/award passed by Shri S.R. Goel, ADJ in the cases of Smt. Pramod Gupta and Ors. v. Union of India and Shri Rajiv Gupta and Ors. v. Union of India, the reference petitions filed u/s 18 of the Act by the above-named co-bhumidars/owners were decided by Shri Padam Singh, Additional District Judge and also Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) respectively. Reference petitions filed by Shri Inder Pal Malhotra, Ram Pal Malhotra and Shri Kewal Wadhera were decided by Shri Padam Singh, Additional District Judge on 12th April, 1990 in LAC No. 15/81 and 119/81 respectively and were awarded compensation @ Rs. 22,000/- per bigha for the lands acquired under Award No. 2040 and @ Rs. 24,340/- per bigha for the lands acquired under Award No. 2225. Shri Padam Singh differed from the judgment of Shri S.R. Goel only to the extent of increase in the market value of the lands between years 1961 to 1965, the different in time between the notifications of the said two Award Nos. 2040 and 2225. It may be stated that the notification u/s 4 of the Act in the case of Award No. 2040 is dated 24.10.1961 while the date of notification issued u/s 4 of the Act in the case of Award No. 2225 is 23.1.1965.

13. Union of India filed appeals against the judgments and decree passed by Shri Padam Singh in the aforesaid cases which were registered in this Hon'ble Court as RFA No. 567/90 and RFA 604/90 against the aforesaid LAC Nos. 15/81 and 16/81 respectively. Appeals were also filed by Union of India in the case of Shri

Kewal Wadhwa which was registered as RFA No. 567/90, RFA No. 567/90 came up for hearing before the Division Bench comprising of Hon''ble Mr. Justice S.B. Wad and Hon''ble Ms. Justice Usha Mehra and the same was dismissed by Their Lordships vide order dated 25.10.1990. Other sets of appeals bearing RFA No. 604/90 filed by Union of India against Shri Inder, Pal Malhotra and Ram Pal Malhotra in other LAC, came up for hearing before the Division Bench of this Hon''ble Court comprising of Hon''ble Mr. Justice N.N. Goswami and Hon''ble Mr. Justice S.C. Jain and the same was dismissed vide order dated 6.12.1990. RFA No. 546/90 filed by Union of India against Kewal Wadhwa represented by his L.Rs. was heard by Hon''ble Mr. Justice N.N. Goswami and Hon''ble Mr. Justice S.C. Jain and the same was also dismissed by Their Lordships on 6.12.1990.

14. Reference petitions u/s 18 of the Act filed by the Vikram Kumar Jain, Chikram Kumar Jain and Shri K.M. Sharma the other co-bhumidars of the aforesaid undivided joint holdings of 4200 bighas came up for hearing against the said two Award bearing Nos. 2040 and 2225 and were decided by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was). The other reference petition filed by Shri Sukhdev Singh was also decided by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was), vide judgment and decree dated 30.7.1990 while the reference petitions of Shri Vikram Kumar Jain and Chikram Kumar Jain were decided by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) vide his judgment and decree dated 31.7.1990.

15. The reference petition filed by Shri K.M. Sharma was also decided by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) on 30.7.1990. Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) vide his aforesaid judgment and decree awarded compensation to the said reference petitioners at the rate of Rs. 22,000/- per bigha acquired under Award No. 2040 and Rs. 28,000/- per bigha for the lands acquired vide Award No. 2225 after arriving at his own independent findings as were recorded by Shri S.R. Goel, ADJ in the reference petitions of these respondents.

16. The Union of India filed Regular First Appeal (RFA) No. 527/93 against the aforesaid judgment passed by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) in the case of Shri Sukhdev Singh which was dismissed by this Hon''ble Court on 19.8.1993. RFA No. 456/93 filed by Union of India against Shri Sukhdev Singh in the case of another Award was also dismissed on 21.3.1994.

17. Appeal filed by Union of India in the case of Shri K.M. Sharma in RFA No. 479/93 was dismissed by this Court on 28.7.1993. RFA No. 472/93 filed by Union of India against Shri K.M. Sharma was also dismissed by another Division Bench of this Hon''ble Court on 22.9.1993.

18. RFA No. 454/93 filed by Union of India against Shri Vikram Kumar Jain and Chikram Kumar Jain was dismissed by the Division bench of this Hon''ble Court comprising Hon''ble Mrs. Justice Sunanda Bhandare and Hon''ble Mr. Justice Arun

Kumar on 29.7.1993. RFA No. 437/93 filed by Union of India against Vikram Kumar Jain and others, was dismissed by another Division Bench comprising of Hon''ble Mr. Justice P.N. Nag and Hon''ble Ms. Justice Usha Mehra on 15.4.1994.

19. The Union of India, it is learnt, filed special leave petitions against all the aforesaid orders passed by the different Division Benches of this Hon''ble Court against the decree/award passed by Shri Padam Singh, ADJ and Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) and the same were dismissed. In case no special leave petitions were filed by Union of India against the aforesaid orders passed by this Hon''ble Court even then the awards/decrees passed by Shri Padam Singh, ADJ and Shri S.N. Kapoor, Additional District Judge (as his Lordship then was), became final and conclusive and the same operate as res-judicata against Union of India on the following issues:

(1) The market value of the acquired lands vide Award No. 2040 including the china clay, minor mineral held by both Shri Padam Singh, ADJ and Shri S.N. Kapoor, Additional District Judge (as his Lordship then was), has become final. The Government after the dismissal of its appeals by this Hon''ble Court paid the compensation amount to the aforesaid co-bhumidars namely, Inder Pal Malhotra, Ram Pal Malhotra, Shri Kewal Wadhera, Shri Vikram Kumar Jain, Shri Chikram Kumar Jain, Shri Sukhdev Singh and Shri K.M. Sharma.

(2) With regard to Award No. 2225, the decree passed by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was), awarding a market value of the lands acquired under Award Nos. 2040 and 2225 @ Rs. 22,000/- per bigha and Rs. 28,000/- per bigha including china clay respectively, has become final and the Government has paid the amount of compensation at the aforesaid rates of Rs. 22,000/- and Rs. 28,000/- per bigha respectively to the above-named co-bhumidars and as such the awards/decrees passed by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) has become final and operates as res-judicata. It is submitted that the Union of India accepted the aforesaid judgments and decrees passed by Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) and confirmed vide the aforesaid orders made by this Hon''ble Court by the aforesaid Division Benches of this Court as correct and the unchallengeable and has paid the compensation accordingly to the aforesaid claimants/co-bhumidars.

In view of the finality of the judgments and decrees passed by the Court of Shri S.N. Kapoor, Additional District Judge (as his Lordship then was) and the same having been acted upon by the Government in making the payment of compensation to the said co-bhumidars/claimants, the present appeals against the respondents in respect of the same lands acquired which is a joint and undivided holding are barred by res-judicata. These respondents cannot be paid compensation at a lesser rate/amount than what has already been paid to other co-bhumidars/co-owners both on the principles of res-judicata and equality before law and are entitled to be treated with the same treatment and parity. It is submitted that the appeals are barred by res-judicata or principles of res-

judicata."

20. It has not been denied that in so far as the co-bhumidars are concerned in their case also, by separate awards, the Reference Courts awarded compensation at the same rates as has been awarded to claimant-respondents by the impugned awards. Appeals were filed against the said awards by the appellant-Union of India, which were dismissed. Special leave petitions of Union of India were also filed, which also stand dismissed. Copies of special leave petitions and orders passed thereon have not been appended to the applications. It has not been brought to our notice by the appellants that any SLP is still pending consideration, Therefore, it has to be presumed that at least the decisions of this Court, which were not appealed against, have become final. By the decisions rendered by the Reference Courts in the cases of other co-bhumidars the market value of the land inclusive of compensation payable for china clay embedded in the soil has been determined at Rs. 22,000/- and Rs. 28,000/- per bigha for the land acquired through Notifications dated 24.10.1961 and 23.1.1965 respectively. Not only that the awards have become final even compensation has also been paid by the appellant to the co-bhumidars.

21. In Sheodan Singh Vs. Smt. Daryao Kunwar, it was held that where the Trial Court decides two suits having common issues on merits and there are two appeals there from and one of them is dismissed on some preliminary ground like limitation or default the result is that the Trial Court's decision stands confirmed, the decision of the Appeal Court will be res-judicata and the Appeal Court must be deemed to have heard and finally decided the matter. In such a case the result of the decision of the Appeal Court is to conform the decision of the Trial Court given on merits, and if that is so the decision of the Appeal Court will be res-judicata whatever may be the reason for the dismissal. It would be a different matter, however, where the decision of the Appeal Court does not result in the confirmation of the decision of the Trial Court given on the merits, as for example where the Appeal Court holds that the Trial Court had no jurisdiction and dismisses the appeal, even though the Trial Court might have dismissed the suit on the merits.

22. Principles laid down in Sheodan Singh's case (supra), were followed in Premier Tyres Limited Vs. Kerala State Road Transport Corporation, , wherein it was held that finality of findings recorded in the connected suit, due to non filing of appeal, precludes the Court from proceeding with the appeal in the other suit.

23. On the ratio of the two decisions aforementioned, in so far as the instant appeals are concerned, at least it has to be held that when between the co-bhumidars and the appellant-Union of India the question of determination of the market value of land and the compensation payable for the china clay, embedded in the land has become final and the appellant has also paid the amount of compensation to the said co-bhumidars, the appellant is precluded in these appeals from challenging the market value and the compensation which has been payable to the claimant-respondents for china clay or in other words is precluded

from seeking reduction in the amount of compensation.

24. Dismissal of one appeal, when the common issues arise for consideration in connection appeals, will have the result of making the other appeals also not maintainable. In *Badni v. Sri Chand and Ors.* 2 (1999) CLT 46 (SC) 1999 (2) Scc 104, it was held that dismissal of one appeal as having abated would result in conflicting decrees, Therefore, the other appeals were also dismissed as not maintainable.

25. Division Bench of Allahabad High Court in *State of U.P. Vs. Babu Ram (Deceased by LRs.) and others etc.,* , held that when market value is determined in one reference, which has become final, same rate would also govern the land of the other owners, having similar advantages. Para 5 of the report says:

"Market value is determined on the date of notification u/s 4(1) of the Act. u/s 23 for determination of the market value exemplars of contemporaneous transactions in respect of land having similar advantages have the evidentiary value. Previous awards have also evidentiary value to consider the question of market value. When in respect of one of the land owners, compensation has been awarded at a rate which is same as in respect of other owners of the land acquired under the same notification in the village, it can be presumed that acquired lands of the various owners have similar advantages. Accordingly, when market value as determined in one reference which has become final in absence of any appeal, the same rate would also govern the land of other owners. Thus, there is force in contention of Mr. Verma in the preliminary objection."

26. Question of bar of res-judicata does not depend on the existence of a right of appeal of the same nature against each of the two decisions. One of the questions in deciding whether the doctrine of res-judicata applies to a particular case or not, as held in *Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead)* by L. Rs., is to determine whether two inconsistent decrees will come into existence.

27. In view of the aforementioned factual background and the decision of Supreme Court, we are of the view that when proceedings, as regards determination of market value of the land with china clay embedded in the soil, have attained finality qua the other co-bhumidars vis-a-vis the appellant, the appellant is estopped from questioning the same in these appeals. The appellant cannot litigate again and again on the same issue. For this principle reference be made to the decision of Supreme Court in *Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another,* . The Court held:

"It is settled law that the principles of estoppel and res-judicata are based on public policy and justice. Doctrine of res-judicata often treated as a branch of the law of estoppel through these two doctrine differ in some essential particulars. Rule of res-judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are

bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res-judicata but these are not exhaustive of the general doctrine of res-judicata. Legal principles of estoppel and res-judicata are equally applicable in proceedings before Administrative Authorities as they are based on public policy and justice."

28. In view of the decision aforementioned the appeals of Union of India would be liable to be dismissed.

29. There are few applications pending consideration. In view of the order passed on 25.8.1999 allowing amendment to the memorandum of appeal and of the fact that deficiency in Court-fee was made good there is no need to pass separate orders. In any case the applications seeking amendment to memorandum of appeal, in terms of order dated 25.8.1999 and of the decisions of Supreme Court in *Harcharan Vs. State of Haryana*, ; *Bhag Singh and Others Vs. Union Territory of Chandigarh* through the land acquisition collector, Chandigarh, *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, ; *Chand Kaur and others v. Union of India*, (1994) 4 SCC 663 ; and *Buta Singh (Dead) by L. Rs. Vs. Union of India*, are allowed.

30. The appellants have in separate applications prayed for permission to place photo copies of the sale deed on record, by which the predecessors of claimant-respondents are stated to have purchased the land, much prior to the date of Notification u/s 4 of the Act, which application is vehemently opposed by the respondents. The ground urged in seeking permission is that this is a relevant piece of evidence in determining the amount of compensation. Needless to add that the sale deeds by which the claimant-respondents or their predecessors purchased the property was within the knowledge of the appellants and the Collector, Land Acquisition. No effort was made to rely upon this sale deed and obviously so because it is not in close proximity to the date of acquisition but much prior thereto and moreover, as per the recitals in the sale deed the land was subject matter of numerous litigations. What reasons prevailed in fixing the market value thereof are not on record and at this late stage it will neither be fair nor proper for us to permit reopening of the entire case by permitting the parties to lead evidence. Moreover, the price at which the owners purchased the property much prior to the date of acquisition cannot be relevant, when admittedly the market value has to be determined with reference to the date of

notification u/s 4 of the Act. The appellants have also not produced certified copy of the judgment. Rather they have sought permission to place reliance on a photo copy. Respondents in their reply have assigned valid and cogent reasons that why the appellants be not permitted to place reliance upon photo copy of the judgment, more particularly for the reason about the knowledge which the appellants are alleged to be having about the sale deed and the reasons which might have prevailed with the appellants for not producing the same at the relevant time, which we will also extract hereinafter but before that we may notice that the appellants have not assigned any reason that how they are prevented from placing reliance on this document during the pendency of the reference before the Reference Court.

31. The respondents have stated in para 8 of their reply that even on the appellant own showing they were fully aware of the sale deed executed by Smt. Gulab Sundri in favor of her transferees including the respondents, which had already been produced by the transferees of Smt. Gulab Sundri before the Land Acquisition Collector. The transferees claimed compensation on the strength of the sale deed, for the land which was notified for acquisition on 24th October, 1961. The appellants besides having full knowledge of the said sale deed and in particular the Land Acquisition Collector did not consider the sale deed relevant as reflecting the true market value of the land as on 24th October, 1961. The appellants knew very well that the said sale deed was executed by Smt. Gulab Sundri Pursuance to an agreement to sell, which she had entered into with one Shri Devi Chand Malhotra at the time after the bhumidari/declaration certificate issued to her under the provisions of Delhi Land Reforms Act, 1954 on 5th July, 1958 had been cancelled by the Revenue Assistant, Delhi vide order dated 14th July, 1958. The said agreement to sell her bhumidari rights was on the basis of the bhumidari rights on "as is where is" basis. The appellants had been litigating against Smt. Gulab Sundri and her transferees including the respondents since the year 1959-60, which fact has been duly noted in the decision dated 20.5.1980 delivered by the Additional District Judge, Delhi, in the reference filed under Sections 30 and 31 of the Land Acquisition Act. The appellants were fully aware of the circumstances under which the alleged sale deed was executed and for that reason besides others the appellant rightly considered the same as irrelevant and of no consequence in assessing market value on the land. According to terms of agreement to sell it was for Shri Devi Chand Malhotra to take legal proceedings for getting the order of cancellation set aside at his own cost, expense and risk. The alleged sale deed was executed pursuant to the agreement to sell in favor of Shri Devi Chand Malhotra and his assignees. The Bhumidari rights were in jeopardy and were under litigation since 1959. There was litigation between the appellants on one hand and Smt. Gulab Sundri and her transferees on the other before the Civil Courts and Revenue Courts. Also there was litigation between the recorded proprietors of the acquired land on one hand and Smt. Gulab Sundri and her transferees including the respondents on the other, in different Forums/Courts. These facts have been referred to in the

award of the Reference Court, who incidently also decided the reference u/s 30/31 of the Act. Against the said award, by which the title to the land was declared in favor of Smt. Gulab Sundri and her transferees and the claims of the appellants and also of the other recorded proprietors were negatived and the compensation amount lying deposited in the Court was directed to be paid to Smt. Gulab Sundri and her transferees including the respondents the recorded owners filed appeals bearing RFA No. 309 and RFA No. 310, RFA No. 356 and RFA No. 357 of 1980 while the Union of India and Gaon Sabha filed RFA No. 340 and RFA No. 341 of 1980. The said Regular First Appeals were dismissed by a Division Bench of this Court on 26th February, 1991. The Union of India and Gaon Sabha did not file any further appeal before the Supreme Court. The consequence being that the judgment of this Court in favor of Smt. Gulab Sundri and her transferees including the respondents became final and conclusive as regard title.

32. In the background aforementioned the respondents case is one sound footings that the sale deed was within the knowledge of the appellant throughout and had even been produced by the transferees, including the respondents, before the Land Acquisition Collector way back in 1961-62 under which they claimed compensation to the acquired land. The appellants knowing fully well that the said sale deed was not relevant for determining compensation and did not represent the fair market value of the land at all, in any manner whatsoever, rightly did not rely upon the same before the Land Acquisition Collector and never produced the same before the Reference Court, Therefore, there is no force in the applications filed by the appellant under Order 41 Rule 27, CPC, which are hereby dismissed.

33. In another set of applications prayer has been made by Shri Rajiv Gupta, respondent for deletion of three names of Sanjay, Sumangli and L.R. Gupta and for continuing with two names only on the ground that bhumidari rights were acquired by him and late Smt. Pramod Gupta only and not by the others. These applications were vehemently opposed by the other respondents. In the reply filed by respondent is stated that the respondents being members of L.R. Gupta, HUF were substituted in that capacity in proceedings u/s 30 of the Act. Needless to add that names of all the respondents were duly substituted in proceedings under Sections 30 and 31 of the Act. After the said reference was decided no further appeal was carried by the applicant or by any other person. In this reference filed u/s 18 of the Act, there is neither any question, nor any scope of again going into the alleged dispute of apportionment. The prayer thus cannot be allowed, which is apparently misconceived. Inter se disputes amongst the respondents could have been subject matter of a separate reference for apportionment u/s 30 and 31 of the Act. In such proceedings names of all respondents stood duly substituted. These appeals have arisen out of reference u/s 18 of the Act only for determination of the amount of compensation. There is no merit in these applications, which are dismissed. The amount of compensation has thus to be realised, received and withdrawn only by the Karta of L.R. Gupta

HUF, through Shri L.R. Gupta. The amount compensation, Therefore, deserves to be paid to L.R. Gupta, HUF through its Karta Shri L.R. Gupta, ordered accordingly.

Interest during period of stay:

34. On the question as regards entitlement of the claimant-respondents to interest for the period during which proceedings before the Reference Court remained stayed, reliance was placed on behalf of the appellant to the orders passed in the four reference petitions. In Land Acquisition Case No. 186/81 the following order was passed on 17.1.1972:

Present: Sh. L.R. Gupta, Counsel for the claimant

Sh. J.S. Chowdhary for UOI

Shri Gupta learned Counsel for the petitioners states that the petition may be stayed sine die and that the petitioner would not be claiming any interest on the enhanced amount of compensation money, if any, for the period of stay. Counsel for UOI has no objection to the proposed stay on the terms stated. I would accordingly stay the proceedings in this case sine die on the condition that no interest will be awarded to the petitioners on the enhanced compensation which may be eventually granted to him, for the period of stay.

A.D.J.

17.1.1972

35. On 25.2.1981 following order was passed in Land Acquisition Case No. 189/81:

President: Sh. L.R. Gupta, Advocate for petitioner

Mr. Madan, Counsel for UOI

It is stated by petitioner Counsel Mr. Gupta that another reference under Sections 30/31 is pending in the Court of Sh. F.S. Gull, A.D.J., Delhi regarding title below the petitioner, respondent No. 2 Gaon Sabha, Masoodpur and other. He, Therefore, prays that this case u/s 18 of the Act be stayed till the disposal of that reference. Mr. Madan, Counsel for UOI has no objection to this prayer of petitioners Counsel if the petitioner forgo their claim regarding interest on the amount of enhanced compensation, if any, during the continuance of stay. I, Therefore, order the stay of this case during the pendency of that other reference petition under Sections 30/31 of the L.A. Act. It is further ordered that the petitioner would not be entitled to interest on the amount of enhanced compensation, if any, during the pendency of this reference.

File be consigned to record room. Either party is entitled to have this case revived after disposal of that other reference.

A.D.J.

25.2.1981

36. On 5.3.1973 following order was passed in Land Acquisition Case No. 188/81:

Present: Counsel for the petitioner

Counsel for respondent No. 1

The petitioners Counsel states that further proceedings in the case may be stayed sine die till the decision of the reference petition under Sections 30/31 of the L.A. Act pending in this Court pertaining to the compensation in question awarded in this case. He further states that the petitioner would not claim interest for the period during which the proceedings in the case remain stayed. The Counsel for respondent No. 1 agrees to that. Under the circumstances whether proceedings in the case are stayed sine die till the decision of the said reference petition under Sections 30/31 of the L.A. Act. The proceedings shall be revisable on the decision of the said reference.

A.D.J.

5.3.1973

37. Pursuant to the aforementioned orders reference proceedings remained stayed and stood revived only after the reference petitions under Sections 30/31 of the Act were disposed of. No statement was made in the fourth reference case on behalf of the claimants, namely, the reference arising out of Award No. 2225, Smt. Pramod Gupta and Ors. v. Union of India and Ors., proceedings were stayed suo moto by the Court.

38. It was submitted on behalf of the appellants that voluntarily statements were made on behalf of the claimant-respondents, Therefore, they are precluded from claiming interest for the period of stay. Learned Counsel for the respondents contended that the statements of disclaimer of interest being contrary to the mandatory provisions of law, the Reference Court was justified in allowing interest, even for the period of stay.

39. The mandate contained in Section 28 and 34 of the Act requires payments of interest, which cannot be denied in any circumstance. Section 28 lays down payment of interest on the amount of compensation in excess of the sum, which the Collector awarded as compensation and it reads:

"Collector may be directed to pay interest on excess compensation--If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court."

40. Section 34 of the Act provides for payment of interest when compensation is

not paid or deposited on or before the Collector taking possession of land, which is payable on the amount assessed and awarded by the Collector. Section 34 reads as under:

"Payment of interest.--When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

41. Interest u/s 34 is an integral part of compensation and it is the liability of the Collector to pay interest. In the instant appeals the question involved is of interest which is payable u/s 28 and not the interest payable u/s 34 of the Act. The contention on behalf of the appellant is that on the enhanced amount of compensation interest cannot be allowed for the period during which the reference proceedings u/s 18 of the Act remained stayed because of pendency of reference under Sections 30/31 of the Act. Reliance was placed by learned Counsel for the claimant-respondents on a number of decisions of this Court where despite similar orders of stay the claimants were held entitled to interest on the enhanced amount of compensation even for the period during which reference proceedings remained stayed on account of pendency of petitions under Sections 30/31 of the Act. The decisions are, *Moti Sagar and Ors. v. Union of India*, RFA 240/79 decided on April 17, 1984; *Union of India v. Birla Cotton Spinning Mills*, RFA No. 249/79 decided in September, 1979; *Rati Ram etc. v. Union of India*, C.R. Nos. 393-396/80 decided on 29.8.1980; *Union of India v. Hakumat Devi Charan Topkhanewale Dharmarth Trust*, RFA No. 242/76 decided on 25.8.1983; *Shri Radhey Shyam v. Union of India*, RFA 137/83 decided on 27.7.1984; *Swaroop Singh v. Union of India*, RFA 360/84, decided on 6.11.1984; *Union of India Vs. Kishan Chand etc., ; Net Ram and Others Vs. Union of India*, and *Ashok Kumar v. Union of India and Ors.*, RFA 275/81 decided on 14.11.1995.

42. Full Bench of J & K High Court in *Collector v. Habibullah Din and Ors.*, AIR 1967 J&K 44, construed the word "may" in Section 28 of the Act as "shall" holding that the word "may" in Section 28 does not invest mere discretion in the Court but imposes a duty on it to pay interest at the rate mentioned in the section and Therefore, it is mandatory.

43. Supreme Court in *Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat*, , held that once the conditions u/s 28 or Section 34 of the Act are satisfied award of interest is consequential and automatic. It was further held that there is inherent evidence in the wording of Sections 28 and 34 of the Act show that the framers of the Act intended to assure payment of interest to the persons whose land was acquired and it was not the intention to subject said payment to procedural hazards. So far as the interest is concerned it was held that it is never an issue between the parties. The Court in paras 13, 14 and 16 of the judgment held:

"13. There is no dispute that under the Act the claimant is entitled to compensation at the rate of the market value of the land on the date of notification u/s 4 of the Act. Section 23(1) of the Act enumerates the matters which are to be taken into consideration in determining the compensation. On reference u/s 18 of the Act the parties go to trial before the Court primarily on issue of determination of market value of the land. So far as award of interest is concerned it is never an issue between the parties. Once the conditions u/s 28 or Section 34 of the Act are satisfied the award of interest is consequential and automatic.

14. The High Court while appreciating the point in issue did not consider the mandatory provisions of Section 34 of the Act. The said section specifically provides that when the amount of compensation is not paid on or before taking possession of the land the Collector shall pay interest at 12% per annum from the date of taking over possession. The payment of interest is not dependent on any claim by the person whose land has been acquired. There can be no controversy or any lis between the parties regarding payment of interest. When once the provisions of Section 34 are attracted it is obligatory for the Collector to pay the interest. If he fails to do so the same can be claimed from the Court in proceedings u/s 18 of the Act or even from the Appellate Court/Courts thereafter.

16. There is inherent evidence in the wording of Section 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest 6% per annum.....". The legislative mandate is clear. It is a directive to the Collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest-amount is to be included in the award-decree as prepared u/s 23(1) read with Section 26 of the Act. Similarly Section 28 provides "the award of the Court may direct that the Collector shall pay interest". Here also the award u/s 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid u/s 34 and also u/s 28 is of different character than the compensation amount u/s 23(1) of the Act. Whereas the interest, if payable under the Act can be claimed at any stage of the proceedings under the Act, the amount of compensation u/s 26, is subject to the rules of Procedure and Limitation. The rules of procedure are hand maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act."

44. In Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi, it was held that word "may" in proviso to Section 28 has to be construed as "shall". Therefore, the Court have no discretion in the matter whether to award or not to award interest since the Statute has given measure of interest and the period for which it is payable.

45. From the aforesaid decisions, we are of the view that payment of interest is not a matter of lis or controversy between the claimants and the State. Section

28 of the Act is mandatory in character, which mandates payment of interest at the rate specified therein, as also the period for which it is to be paid. It is a legislative policy to pay interest to the claimants under Sections 28 and 34 of the Act. There is absolutely no discretion left with the Collector or the Court not to grant interest. On the aforementioned principle the Reference Court proceeded to hold the claimants entitled to interest even for the period of stay. We are of the view that the impugned award to that extent is unassailable for the reason that since it is a legislative mandate that claimant must be paid interest at the specified rate for the period mentioned u/s 28 of the Act.

46. As regards the statements made by the Counsel that whether it would amount to waiver we are of the view that it will not since there cannot be any question of waiver against mandatory and statutory provisions.

47. In *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, it was held that plea of waiver is not sustainable if it enforces an illegal agreement, which contravenes the statutory provisions based on public policy and produces the very result which the Statute prohibits and makes illegal. It was further held that by enforcing the contract the consequence will be the enforcement of illegality and infraction of a statutory provision, which cannot be condoned by any contract or agreement of parties. An agreement to waive illegality is void on the ground of public policy and would be unenforceable. It is an established principle of law that a waiver in derogation of a statutory right is not favored and a waiver will be void if it infringes on the rights of others or would be against public policy or morals.

48. Supreme Court in *Supdt. of Taxes, Dhubri and Others Vs. Onkarmal Nathmal Trust and Others*, held that there could be no waiver against the mandatory provisions. In para 68 of the said decision it was observed:

"Furthermore, the waiver even where both sides have agreed to waive the portion of a statutory provision, cannot extend to a case in which the effect may be either to oust the jurisdiction conferred by Statute or to confer a jurisdiction, which according to the Statute, is not there. In other words, if a notice u/s 7(2) of the Act is a condition precedent to the exercise of jurisdiction to make the best judgment assessment, I do not think that the doctrine of waiver will confer jurisdiction so as to enable the parties to avoid the effect of violating a mandatory provision on a jurisdictional matter even by agreement. Other judgments reported in AIR 1962 Ass ; 1979 All L.J. 1072, by which it was laid down that there could be no Estoppel or Waiver against the mandatory provisions of the Statute."

49. On the principles aforementioned and in view of the mandatory character of Section 28 of the Act, we do not find any illegality in the impugned awards by which the Reference Court held the claimant-respondents entitled to interest for the entire period including the period during which the proceedings u/s 18 of the Act remained stayed, irrespective of the statement of Counsel for claimants.

Interest on solarium:

50. On the question of payment of interest on solarium, learned Counsel for the respondent frankly and rightly so conceded that since in *Kapur Chand Jain v. State Government of H.P.*, (1999) 2 SC 89, reference has been made to a larger Bench because of conflict on this question whether interest is payable on solarium or not, he would not insist on a separate decision by this Court but would seek a direction that in the event of it being held in *Kapur Chand Jain's* case (*supra*), or in any other reference that interest is payable on solarium, direction be issued for payment of interest on solarium also.

51. After the arguments were heard in this case the larger Bench of Supreme Court has since answered the reference by its judgment dated 19.9.2001 in 6 (2001) SLT 641 4 (2001) CLT 18 (SC) = Civil Appeal No. 6271/98 *Sunder v. Union of India*, holding that the person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solarium. In view of the said decision claimants will be entitled to interest on solarium. Bar of Section 25 of the Act.

52. Learned Counsel for the appellant vehemently contended that the learned Reference Court exceeded in its jurisdiction in awarding compensation in excess of what had been claimed by the claimant-respondents before the Land Acquisition Collector, because of the Bar contained u/s 25 of the Act.

53. Section 25 of the Act, as it stood prior to coming into force the Land Acquisition (Amendment), Act, 1984 reads:

"(1) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted, without sufficient reason (to be allowed by the Judge) to make such claim the amount awarded by the Court shall, in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed the amount awarded by the Collector."

54. The aforementioned provision, as it stood prior to the amendment had laid down the maximum and minimum amounts, which the Court could award. Limitation imposed in Section 25(1) was to the effect that the total amount of award offered by the Collector could not be reduced and also provided that the total amount that may be awarded by the Court on a reference u/s 18 shall not exceed the total amount as claimed in response to notice u/s 9 of the Act. However, the rigour of not allowing the maximum amount over and above the amount claimed could apply only in case notice u/s 9(3) of the Act had been duly served on the claimant. In the absence of service of notice u/s 90 of the Act the

bar of the upper limit on award of compensation would not apply.

55. Full Bench of Orissa High Court in Collector of Cuttack Vs. Mayadhar Sahu, held that if no notice, either public or special, had at all been issued u/s 9, bar u/s 25 does not operate because in that case no stage is ever reached where an applicant can be said to have made a claim, or to have refused to make a claim, or to have omitted to make a claim. It was held that the Courts are not prohibited from awarding higher compensation than the amount awarded by the Collector u/s 11 of the Act.

56. In addition to placing reliance on the Full Bench decision of Orissa High Court reliance was also placed by learned counsel for the claimant-respondent on other decision i.e State of Madhya Pradesh Vs. Nagar Palika, Mandsaur, ; State of Bihar Vs. S.K. Thacker and Others etc., ; State of West Bengal Vs. Musst. Nurjahan Sakil and Others, and State of Himachal Pradesh Vs. Badri Nath Kapoor, , which are also to the same effect.

57. Admittedly no notice under Sections 9 and 10 of the Act were served by the Collector on the claimant-respondents. It was contended that when the claimant-respondents learnt that their lands are being acquired they approached the Land Acquisition Collector for awarding compensations. As notices u/s 9 of the Act were not given by the Collector, Land Acquisition nor served on the claimant-respondents there is no question or applicability of the Bar as contained in the unamended provision of Section 25 of the Act.

58. However, the question still needs consideration that whether the unamended provisions of Section 25 of the Act would apply or Section 25 as it stood amended by the Land Acquisition (Amendment) Act, 1984 would apply. The amended provision is as follows:

Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.--The amount of compensation awarded by the Court shall not be less than amount rewarded by the Collector u/s 11.

59. A bare reading of the provision would show that the statutory rigour has been done away and there is no prohibition in the Court even enhancing the market value in excess of the amount awarded by the Collector or even in excess of the amount of the claim made by the claimants before the Land Acquisition Collector, without even explaining that why the claim was made less before the Land Acquisition Collector.

60. In the The Special Land Acquisition Officer (NHW) Dharwad Vs. Kallangouda and others etc., , Full Bench of Karnataka High Court had an occasion to consider the question whether a claimant, who had made a particular claim for compensation before the Land Acquisition Officer is bound by the same, when he seeks enhanced compensation u/s 18 of the Act and if not under what circumstances he is permitted to depart from the earlier claim? On an analysis of number of decisions the answer to the question was given by the Full Bench

holding that the claimant being free to ask and obtain compensation, after making an appropriate demand before Court, subject to making good the claim by substantiating it by adequate evidence, it would not be necessary for the claimant to explain the circumstances under which he made no claim or made a smaller claim before the LAO. In view of the amended provision of Section 25 of the Act he is no longer under any obligation to support his conduct before the LAO in not making a claim or in making a lesser claim. Reliance was placed by the Full Bench on the decision of Supreme Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, that the claimant can seek compensation without any pre-conditions or restraints.

61. Admittedly in the instant case the references had not been answered, when the Land Acquisition (Amendment) Act, 1984 came into force. The reference petitions would thus be governed by the amended provisions of Section 25, which imposes no restrictions.

62. In any case the legislative mandate is to award fair amount of compensation, when land is acquired under the provisions of Land Acquisition Act. This legislative mandate has been recognised by the Supreme Court in *Bhag Singh and Others Vs. Union Territory of Chandigarh* through the land acquisition collector, Chandigarh, , holding that under the law the State is bound to pay the claimants compensation on the basis of the market value of the land acquired and if according to judgments of the Courts, the market value of the land acquired is higher than the one awarded by the Land Acquisition Collector or the Reference Courts, there is no reason why the claimants should be denied the benefit of payment of the market value so determined. It was reiterated that denying this benefit to the claimants would tantamount to permitting the State Government to acquire the land of the claimants on payment of less than the true market value, which is impermissible in law. It was further held that where land is acquired under the Act it would not be fair and just to deprive the holder of his land without payment of true market value, when the law in so many words declare that "he shall be paid such market value". The State Government must do what is fair and just to a citizen and should not, as far as possible, deprive him of the fair amount of compensation. State or the Government cannot be permitted to take up technical pleas to defeat legitimate and just claim of citizen.

63. In *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, , it was held that the amended provisions would apply to those cases where awards had not been made by the Reference Court till 30.4.1982. In the instant cases the impugned awards were made after the amended act had come into force, Therefore, the amended provisions of Section 25 would apply and for that reason that is no force in the submission made by learned Counsel for the appellant.

Claim regarding Minor Mineral:

64. As regards claim for minor mineral (china clay) embedded in the acquired land the questions which need to be answered are, (a) who was the owner of the minor mineral (china clay) embedded in the acquired land; (b) what was the quantity/quantum of the minor mineral in the acquired land; and (c) what was the market value of the china clay per bigha when Notifications u/s 4 of the Act were issued on 24.10.1961 and 23.1.1965 respectively.

65. on the first question learned Additional District Judge in the impugned awards, after considering the entire material and evidence on record recorded a finding in favor of the claimants that the claimants are the owners of the minor minerals (china clay) embedded in the acquired land or which they are the . Before the Reference Court the claimants placed reliance upon a judgment and decree Ex. A-2 dated 12.12.1966 in support of issue No. 2. Smt. Gulab Sundari was held to be the bhumidar of the land and in the declaratory suit against Union of India the predecessor-in-interest of the claimants and the owner of the minor minerals embedded in the land. Smt. Gulab Sundari-the predecessor-in-interest of the claimants had filed the suit against the Gaon Sabha and Union of India for declaration that she continues to be the bhumidar of the lands of which she earlier was the non-occupancy tenant and had validly been declared as bhumidar thereof and a bhumidari declaration/certificate had been granted to her in respect thereof on 5th July, 1958 in accordance with the provisions of Delhi Land Reforms Act, 1954 and the rules framed there under. The said judgment and decree was affirmed in appeal filed by the Union of India and Gaon Sabha on 23.4.1968. No second appeal was filed by the Union of India or the Gaon Sabha. The claimants in view of the said judgment and decree claimed that the said issue relating to the ownership of the china clay and the minor mineral had become final and operates as res-judicata.

66. The claimant-respondents also relied upon pleadings in the reference proceedings where specific averments made by the claimant-respondents in their claim petitions relating to the existence of minor mineral (china clay) in the acquired land and its ownership having vested in them and in their predecessor and its extraction earlier by Smt. Gulab Sundari through her employees/contractors employed by her which were not specifically denied by the Union of India in its reply. The appellant did not deny or controvert the claim of ownership of the respondents to extract china clay. The claimants also relied upon the provisions of Sections 41 and 42 of the Punjab Land Revenue Act providing that in case the revenue records completed after 18th day of November, 1871, do not specifically and expressly mention a particular minor mineral vesting in the Government in that case the minor mineral shall be presumed to belong to the owner of the land. This presumption in favor of the owner is un rebuttable. In the instant case, the revenue records was prepared and completed after 18.11.1871, which do not expressly record that the china clay vests in the Government. As such the claimants, the owners of land are presumed to be the owners of deposits of the reserve of china clay embedded in the acquired lands. Claimants that the Government never laid any claim and never exercised right of ownership

over the minor mineral (china clay) in the acquired land. On the other hand, Smt. Gulab Sundari, ever since she became the non-occupancy tenant of the land under acquisition and prior to her lease, the owners/proprietors, exercised rights of ownership over the said minor mineral and after getting it extracted sold it in the market without any hindrance from the Government and without obtaining any prospecting license. The Government never demanded or claimed any royalty either from the land owners or from Smt. Gulab Sundari or from the claimants/respondents.

67. Learned Counsel for the appellant urged that the government is the owner of the minor minerals (china clay). Reference was made to Section 4 of the Mines and Minerals (Regulation and Development) Act, 1957 contending that no person is entitled to undertake any mining operations in any area except under and in accordance with the terms and conditions of a prospecting license, which may be granted under the said Act. It was further urged that the respondents had no license to mine the chine clay and so they cannot claim any compensation for the same. It was further contended that the expression "Minor Minerals" as defined in Section 3(e) of the 1957 Act, means "building stones", gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may by notification declare to be a minor mineral. Therefore, it is the Central Government which has power to regulate prospecting license and mining lease and that all the minerals vest in the State and so the respondents have no right to claim compensation for the said minor minerals.

68. This submission made on behalf of the appellant was duly dealt with by the Reference Court and was negatived holding that the claimants are the owners of the minor mineral (china clay) and Government has no concern or right in the same. Reference Court held that in the suit filed by Smt. Gulab Sundari against Gaon Sabha and Union of India for declaration that she continues to be bhumidar of the entire area situated in village Masoodpur. Union of India had raised an issue of the Mines and Minerals (Regulation and Development) Act and that Smt. Gulab Sundari was neither the bhumidar of the said land nor she was the owner of the minor mineral (china clay) embedded and found in the said land. The issues were decided against the Union of India wherein it was held that Smt. Gulab Sundari was the bhumidar and she continues to be the bhumidar of the aforesaid lands and was also the owner of the minor mineral embedded in the land including the china clay. An appeal was filed against the judgment and decree (Ex. A-2) passed by the Trial Court. The same was dismissed. No further appeal was filed by Union of India or by the Gaon Sabha against the judgment and decree of the Trial Court or of the Appellate Court. The consequence of this being that the said judgment and decree of the Trial Court became final and conclusive by which it was held that the minor minerals (china clay) and beryl belong to Smt. Gulab Sundari, the bhumidar and not to be Government.

69. No exception can be taken to the findings recorded by the Reference Court

that when a civil litigation same issue had cropped up between Union of India and the predecessor-in-interest of the claimant-respondents and the same stood finally decided holding that the minor mineral, namely, china clay and beryl belong to the predecessor of the claimant-respondents and not to Government, in proceedings u/s 18 of the Act or in further appeal against the award of the Reference Court, the same question cannot be permitted to be reagitated since the same would be barred by the principle of res-judicata. The Reference Court in our view was perfectly justified in holding that the issue as regards claim to china clay operates as res-judicata in favor of claimants and against the Union of India.

70. In addition to the above reasoning the Reference Court further recorded a findings of fact that the minor minerals embedded in the lands in question was always extracted by the owners of the land till 1939. After 1939 when the owners had leased out the lands to Smt. Gulab Sundari for agricultural purposes with a right to extract china clay and other minor minerals embedded in the said land and to appropriate the sale proceeds received from the sale of such minor minerals. Smt. Gulab Sundari had continued to extract china clay and other minor minerals from the lands under the lease till the time the lands in question were acquired and taken possession of by the Government under the provisions of Act. The Government neither laid any claim to the said minor minerals nor claimed any royalty from Smt. Gulab Sundari and/or from the land owners/proprietors prior to the lease granted by them to Smt. Gulab Sundari. The Government never asked Smt. Gulab Sundari to obtain any prospecting license for the purpose of extracting the said minor minerals embedded in the land.

71. Learned Counsel for the claimant-respondents placed reliance on Section 42 of the Punjab Land Revenue Act, Sub-section (1) whereof lays down that when in any record of rights completed before the 18th day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belongs to the land owners, it shall be presumed to belong to the Government; while Sub-section (2) provides that "when in any record of rights completed after that date (18th day of November, 1871), it is not expressly provided that any forest or quarry or any such land or interest belonging to the Government, it shall be presumed to belong to the land owners". The claimant-respondents also relied upon and submitted that the presumption provided in Sub-section (2) of Section 42 is irrebuttable while the presumption created by Sub-section (1) is rebuttable.

72. In the State of Punjab Vs. Vishkarma and Co. and Others, similar question had cropped up as regards the minor mineral (brick earth). Referring to the entries in Wajib-ul-arz prepared after 18th November, 1871 and to the provisions of the Punjab Land Revenue Act when there was nothing expressly stated in the entries in revenue records that the forest or quarry or land or interest in the estates belong to the Government, it was held that it must be presumed that the minor mineral i.e. the brick earth belongs to the concerned landowners. Para 7

of the report says:

"Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is not any of the mines of minerals covered by Section 41 of the Revenue Act as would make it become the property of the State. If the owner of such brick-earth and to obtain permit or license for such removal, necessarily arises because of the operation of the Act and the rules. But the Courts below have concurrently found that the brick- earth concerned in the suits out of which the present appeals have arisen was in lands which formed the estates of the private owners and as such the same belonged to such land-owners. It is so found on their reading of the entries in Wajib-ul-arz pertaining to the concerned estates. Wajib-ul-arz is a document included in the record of rights cannot be disputed since it contains the statements on matters envisaged under Clauses (a) and () of Sub-section (2) of Section of the Act. According to the Courts below Wajib-ul-arz document being record of rights of estates completed after 18th day of November, 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick-earth in them shall be presumed to belong to the concerned land-owners as is declared in Sub-section (2) of Section 42 of the Revenue Act."

73. On the question of presumption which arises in Sub-section (2) of Section 42 of the Punjab Land and Revenue Act, it was held:

"Again, it is pointed out by the Courts that there being no provision similar to the provision in Sub-section (3) which permits adducing of rebuttal evidence against the presumption that the lands belong to the State Under Sub-section (1) of Section 42 of the Revenue Act, the presumption which arises under Sub-section (2) of Section 42 of the Revenue Act that the forest or quarry or land or interest belong to land-owner, cannot at all be rebutted by the State by adducing any contrary evidence. Even otherwise, according to them, when the State has not chosen to adduce any evidence to rebut the presumption arising from the entries in Wajib-ul-arz document record-of-rights relating to the estates of lands whose brick-earth is allowed by the land-owners to be removed by the brick-manufacturers who are the plaintiffs in the suits out of which the present civil appeals have arisen, there can be no valid reason for them to hold that the brick-earth in the lands of the estates concerned has become the property of the State, so as to require the brick-manufacturers to pay royalty for removal of such brick-earth and obtain permits or licenses under the rules."

74. It is worthwhile to mention that the claimants in their reference petition had specifically alleged themselves to be the owners of minor mineral china clay. Despite this specific averment the appellant in its reply did not specifically deny this fact nor raised any dispute about the existence of the minor minerals or that the claimants-respondents had no right therein. Provisions of the CPC apply to the reference proceedings. In view of non denial to the specific averments the principle contained in Rule 5 of Order 8 of the CPC would fully apply and it must

be held that the appellant did admit the existence of the minor mineral in the land and also the fact that the claimant-respondents are the owners thereof.

75. In view of the above there is no illegality in the findings recorded by the Reference Court holding the claimant-respondents to be the owner of the china clay.

76. The second question is as regards the quantum of china clay. On the quantum and quantity on the acquired land reference deserves to be made to the oral evidence. The Reference Court relied upon the depositions of the witnesses examined on behalf of claimant-respondents for which the claimants also made reference during appeal.

77. PW1 Shri S.S. Das, Dy. Collector (Mines), Indian Bureau of Mine, in charge of Dehradun Office deposed that china clay, mica, quartz, beryl are embedded in the acquired land in village Masoodpur. He stated that the china clay is principally used for potteries and is also used in textile, papers and rubber industries. According to him associated minerals are mostly used for gem stones and also for other minor use. As per his estimate the reserve of china clay in the area of village Masoodpur covered under the lease of Shri C.P. Dutta was to the extent of 17,049.120 MTS in an area of 1155 bighas in the year 1971. The reserve of China clay in the year 1961 in that area of village masoodpur was to the extent of 17,96,000 MTS. In the year 1965 it must have been 17,78,000 MTS. He further deposed that on the basis of the reports the average price per Metric T on was about Rs. 15.48 per MT for crude china clay and the value of the china day at the mouth of the pit in 1950 was about Rs. 8/- per MT.

78. PW 4 Shri S.K. Chaudhary, Regional Controller (Mines), in charge of Mines, Control and Conservation Division, North Division, Indian Bureau of Mines, Nagpur, deposed that there are no geological reports prepared in the office but the monograph on china clay published in April, 1968 was to the effect that one acre of land contains, 3,12,800 MTS of china clay. It was so stated in the annual returns also submitted by Shri C.P. Dutta to the Mines Department. He further deposed that "in the annual return of 1977 submitted to the Indian Bureau of Mines the reserve figure had been quoted by Mr. C.P. Dutta to the extent of one lac MT up to 12 meters depth. The estimated reserve to the extent of 2.5 lacs MTS up to to 20 metres depth in one acre. He further deposed that lease area with Mr. C.P.Dutta was to the extent of 452 acres in three villages namely Masoodpur, Mahipalpur and Rangpuri and the officer concerned had estimated the reserve the china clay in this area to the extent of 2 lacs MTS per acre. In the revision application submitted under Rule 5A of Minor Mineral Concession Rules u/s 30 of the Mines and Mineral Regulation Act, 1957 by Shri C.P. Dutta to the Under Secretary, Government of India, Ministry of Steel and Mines he had quoted the Khasra numbers on lease with him to the extent of 1155 bighas in village Masoodpur.

79. PW 5 Bhim Singh who is Sarpanch of village Masoodpur and other

neighbouring villages deposed that he had himself worked to extract china clay from the acquired land for Smt. Gulab Sundari after she had taken the land on lease and prior to her lease he being a proprietor/owner of the land was extracting the said minerals. He further deposed that as per his estimate the reserve of china clay was approximately to the extent of 3 lacs mounds per bigha. No cross-examination was made by Union of India on this witness regarding the ownership and quantum of reserve of china clay per bigha in the land.

80. PW 6 Shri Bhagwan Singh was a contractor for extracting china clay from the acquired land under Smt. Gulab Sundari. He deposed that the entire area of acquired land was full of china clay. Besides china clay, it contains beryl, quartz, mica and some other minerals as well. According to him, the reserve of china clay was to the extent of 2 to 2 1/2 lacs mounds in one bigha. No cross-examination was made by Union of India on this witness on the said part of his examination-in-chief.

81. PW 7, Shri Mohan Lal Lambardar of village Masoodpur gave his estimate that the reserve of china clay to be is about 2 1/2 to 3 lacs mounds in one bigha. No cross-examination was made on behalf of Union of India upon this witness.

82. Though the depositions of PW 5 to PW 7 were referred to but the Reference Court did not rely upon such depositions and did not assign any reason in not relying thereon. PW 5 to PW 7 are the recorded proprietors of the acquired land prior to lease granted to Gulab Sundari, the predecessor-in-interest of the claimants, who were extracting china clay from the lands prior and even after the lease of the entire land to Smt. Gulab Sundari under whom they worked for extracting china clay and other minerals. The said witnesses specifically deposed that they sued to extract china clay from the lands while working for Smt. Gulab Sundari, who was the owner/bhumidar of the lands as well as of minerals embedded in the earth and that no license was ever obtained nor the State Government ever asked the proprietors or the bhumidar Smt. Gulab Sundari to obtain prospecting license nor the Government ever claimed any ownership over the minor minerals and nor ever demanded royalty.

83. In view of the statements of PW 4, PW 5, PW 6 and PW 7 and in the absence of any challenge on behalf of Union of India to the estimates in respect of quantum or reserve of china clay in the acquired land per bigha or per acre, the Union of India will be deemed to have accepted the existence of the quantity of china clay embedded in the acquired land to the extent of 2 to 2 1/2 lacs mounds per bigha. The same quantum /reserve of china clay is stated to be embedded in one bigha of the acquired land by the witness. Statement of PW1 could not have been treated as correct and the reserve of china clay has to be taken approximately to the extent of 2 to 2 1/2 lacs mounds per bigha.

84. On the question regarding the manner of assessment of market value of minor mineral, learned Counsel for the claimant-respondent placed reliance upon

a number of decisions. We need not refer to all the decisions but we may take notice of the principles which have been followed in arriving at the market value of minor mineral embedded in the soil in the decisions relied in *Daya Khushal Vs. The Assistant Collector*, ; *Mujaffar Ali Khan v. Secy. of State*, AIR 1918 Cal. 341; *Raghunath Row v. Secy. of State*, AIR 1921 Mad. 324; *Additional Special Land Acquisition Officer v. P. Ananthabhat*, AIR 1972 Mys 313; *The Special Tahsildar, Land Acquisition, Yerraguntla Vs. Kamalagangi Reddy and others*, *State of Kerala v. Malayalam Plantation Ltd.*, AIR 1981 (Ker) 163, and *London and North Eastern Railway Company v. B.A. Collieries Limited*, AIR 1945 s C 143.

85. The measure of compensation is the amount of workable quantity of the minor mineral embedded in the land, which likely to be gotten therefore .In other words it is price of the quantity of minor mineral, which has remained unworked on the date when the land was acquired, which would be the value to the owner. The price of the cart loads, to be extracted from time to time, for certain number of years and not the total value of the whole amount available at once. It is the present value of what might be expected to be realised in future. The basis for compensation to be paid for acquiring the minor mineral is the amount of workable mineral likely to be gotten therefore ,taken at a rate to be determined from the evidence.

86. We have to evaluate the evidence as also the reasoning adopted by the Reference Court in assessing the compensation payable for the minor mineral. According to the statement of PW 3, Shri P.R. Sarkar, the Asstt. Mineral Economist, Indian Bureau of Mines, Nagpur, the market value of china clay in India for the year 1960 to 1974, as assessed by the Bureau of Mines is reflected in the documents Exhibit PW 3/1, which is the price index and as per this document the price should have been assessed at Rs. 70/- per ton but the learned Additional Distt. Judge relied upon the statement of PW 4 who deposed that the price of china clay during 1961-65 was RS. 11/- per tone at pits mouth. He stated this price at pits mouth, one the basis of returns filed by Shri C.P. Dutta, the lessee. The grievance of the respondents is that this price is only fractional and imaginary and not the correct market price. The price index is given in Exhibit PW 3/1 is more reliable than the returns of Shri C.P. Dutta. The learned ADJ, however, committed grave error in not relying upon the statement of PW 5, PW 6 and PW 7. According to these witnesses, the cost of extracting china clay up to the pits mouth was about Rs. 25/- per truck load. A truck contains approximately 150 mounds to china clay. A truck load of china clay was being sold at pits mouth for Rs. 65/- to Rs. 75/- in the year 1961-62. These witnesses also deposed that the net profit per truck load of 150 mounds in the year 1961-62 was Rs. 42/- Rs. 45/-. According to them the price of china clay to be extracted from one bigha of land comes to Rs. 54,000/, it computed @ Rs. 40/- per 150 mounds in one truck load. As per evidence, out of the entire acquired land, an area of about 800 bighas had already been exploited. The remaining area of about 3507 bighas still remained unexploited, at the time the land in question was acquired.

87. It was submitted on behalf of the claimants that 19% of the entire area, which had already been worked out, if deducted the price of china clay per bigha, according to the estimate of the witnesses, after reducing the price by 19% would in any case be Rs. 42,000/- per bigha. There is no denying the fact that neither the witnesses PW 1, PW 4, PW 5, PW 6 and PW 7 were cross-examined at all on behalf of the appellant on the question, either of the extent of reserve of china clay or on the price of china clay in the years 1961 to 1965. Their statements and evidences have to be taken as accepted and as correct. It is also equally true that the appellant/Union of India failed to produce any evidence either on the question of the extent of reserve of china clay in the entire land or in one bigha or one the price of china clay. The Reference Court allowed Rs. 10,000/- per bigha as the market value for the china clay, while according to the claimants at least Rs. 42,000/- per bigha ought to have been allowed to the claimants towards market value of the china clay, in addition to the market value of the land.

89. Question Therefore is that whether claim separately for compensation for china clay, will be justified. Assessment of compensation, as the when land is acquired for public purpose under the provisions of the Act, has to be made by taking into consideration the provisions of Section 23 and 24 of the Act. Value of land has to be taken with all its potentialities. In case of acquisition of land with china clay embedded in it, what has to be evaluated is the land with all its potentialities for being used as a quarry quite apart from the provisions relating to damages i.e. the damages sustained by the land owner on account of standing crops or trees or any other injurious affection to the property belonging to the claimant. Compensation must be determined, Therefore, by reference to the price which a willing vendor might reasonable expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated as its value to the purchaser. But this does not mean that the fact that some particular purchasers might desire the land more than others is to be disregarded.

90. In the case of land its value in general can be measured by a consideration of the prices that have been obtained in the past for the land of similar quality and in similar position and this is what must be meant in general by market value used in Section 23 of the Act i.e. what a willing vendor might reasonably expect to obtain from a willing purchaser for the land in that particular position and with those particular potentialities. When the land includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth, in the case determining the total compensation payable for the lands acquired, what has to be determined is the value of land including the value of trees and other fixtures, which are merely the component parts of the land acquired. Therefore, even if value of the quarry were to be assessed independently, such assessment of value becomes a part of the compensation

payable to land. Therefore, special adaptability for that purpose is an element for consideration in fixing the amount of compensation. It may be that the only demand for the quarry came from the Government. IF the land acquired had an adventitious value, i.e. something beyond its mere agricultural or nominal value and that is marketable in the sense, that person wishing for a purpose for which the land is peculiarly applicable, want to purchase that land, in that case the Court has to take that factor also into consideration. In other words special adaptability of the land is an element which cannot be disregarded in determining the market value of the land. It is a matter no doubt contingent, but still being a factor, which is not to be ignored or put out of consideration by the valuer. This principle was adopted by a Division Bench of Kerala High Court in Malayalam Plantation Ltd.'s case (supra), in which reliance was placed on a Division Bench decision of Madras High Court in Raghunath Row's case (supra).

91. On the material on record cost of extracting china clay up to the pits mouth was about Rs. 25/- per truck load of 150 mounds. A truck load of china clay was sold at its mouth for Rs. 65/- to Rs. 75/- in the year 1961-62. Net profit, even taking the prices to be the lowest not at the rate of Rs. 42/- per 150 mounds but at Rs 30/- per 150 mounds and the fact that an area of 800 bighas had already been exploited and considerable area was yet to be unexploited, by reducing the price by 19% the value would come to about Rs. 26,000/- per bigha which would be the amount of compensation payable to claimants for the minor mineral china clay which were acquired, as on the date of its acquisition.

Market value of land :

92. Next question is about the marketability of the land. The Reference Court while assessing compensation in the case of Award No. 1944 and 2040 relied upon Award No. 1889 in respect of the land of village Ber Sarai and awarded the same compensation for the lands in question as was made fixed for the lands situate in village Ber Sarai. The market value of the land situate in Ber Sarai was determined on the basis of the market value assessed in respect of the lands in village Munirka holding that the boundaries of villages Munirka and Ber Sarai adjoin each other, Therefore, same compensation is to be awarded. It stands proved on record that case arising under the said Award No. 1889 and award for the lands situate in village Munirka have been decided and compensation stood enhanced at uniform rate. The respondents relied upon the decision of this Court in RFA No. 572/71 entitled "Mrs. Saraswati Devi v. Union of India" and Ors. decisions copies of which and Exs. P-2, P-9, P-12, P-16 and P-42 and in "Dalpat Singh v. Union of India" RFA No. 690/70 decided on 26.7.1984. Copies of various other awards of the Reference Courts were also relied upon by the respondents wherein compensation has been awarded at uniform rates for the lands situate in villages Ber Sarai and Munirka.

93. Even in Award No. 2225 of village Masoodpur the Collector at page 17 of the award noticed to topography of the land vis-a-vis Ber Sarai as under:

"In Award No. 1944, the material date of which was 24.10.1961, the Land Acquisition Collector awarded Rs. 1,521/- per bigha for block "A" comprising Rosili land; Rs. 900/- per bigha for block "B" comprising Banjar Jadid and Rs. 650/- per bigha for block "C" comprising "Gairmumkin Pahad". These rates were fixed because the land under acquisition in the award under reference adjoins largely to village Bar Sarai where certain awards had been given."

94. Therefore, the Collector proceeded to offer compensation for the lands covered by the said awards on the basis of the award given for the lands located in adjoining village Ber Sarai. Case of Union of India before the Reference Court was that the potentiality of the land in question is that of building site and that the land in question adjoins villages Bar Sarai and Munirka. The Reference Court on the basis of the decisions of the Court pertaining to the lands of village Bar Sarai and Munirka proceeded to enhance compensation at the same rate of Rs. 12,000/- per bigha. The Reference Court in its judgment recorded a positive finding that the land in question is far superior in all respects as compared to the land situate in villages Munirka and Ber Sarai and assigned the following reasons in support of his findings:

- (1) that this land adjoins Vasant Vihar on one side and developed colony R.K. Puram on the other while the land in village Ber Sarai does not adjoin Vasant Vihar or R.K. Puram and is far away from Vasant Vihar and R.K. Puram;
- (2) that on account of the best location, evenness and suitability of this land being superior to the land of other villages like Munirka and Ber Sarai the Government determined this land fit for establishing therein Jawaharlal Nehru University (JNU) and acquired the land for the Planned Development of Delhi i.e. for establishing Jawaharlal Nehru University on this land;
- (3) that admittedly the JNU has been established/set up on the acquired land;
- (4) the admittedly the land in dispute is surrounded by roads from all sides while land in villages Ber Sarai and Munirka are not so surrounded from all sides by roads;
- (5) that the acquired land was a leveled land and was fit and suitable for building purposes;
- (6) that the building activity has taken place and was still going on at a large scale in the adjoining colonies of Vasant Vihar, R.K. Puram, Diplomatic Enclave Extension (known as West End), IIT, Hauz Khas. The land in question became the most suitable land for development of residential colonies in South Delhi;
- (7) that the land in dispute has close proximity and vicinity to highly developed residential colonies of Diplomatic Enclave Extension (West End), Anand Niketan and Safdarjung Development Area;
- (8) that the potentiality of the acquired land as a building site was admitted by the Collector himself in the impugned award.

95. Despite superiority of the acquired land in question, vis-a-vis Munirka and Ber Sarai Reference Court awarded compensation @ Rs. 12,000/- per bigha, only for the reason that this Court had also allowed compensation @ Rs. 12,000/- per bigha for the lands situate in Bar Sarai and Munirka.

96. For the land covered by Award No. 2225, the Reference Court awarded compensation @ Rs. 18,000/- per bigha by allowing an increase in price for the difference in the dates of the two Notifications dated 24.10.1961 and 23.1.1965 @ Rs. 6/- p.a. on the amount of market value allowed under the earlier acquisition.

97. As has been noticed above the appellant, because of the applicability of the principles of res-judicata or in any case due to applicability of the principles of estoppel cannot challenge the award of compensation at the market value of Rs. 12,000/- per bigha and Rs. 18,000/- per bigha under Award Nos. 2040 and 2225. As such we have now to consider and examine the claim of respondents as made in the cross-objections, which they have claimed @ Rs. 150/- per sq. yard besides the market value of the minor minerals.

98. Respondents' plea is that the lands in question adjoined Vasant Vihar, a very posh residential colony. It was also in close vicinity of Diplomatic Enclave Extension, also known as West End, which is on the other side of the road from Vasant Vihar and the approximate distance between the two is about 150 feet. The distance between the acquired land and West End is approximately 500 yards or at the most 800 yards. The acquired land on the Eastern side was also in close vicinity to Indian Institute of Technology. PW 2 Shri Balwant Singh, village Patwari, Halqa Mehrauli gave the topography of the acquired land of village Masood pur in the north village Ber Sarai, Munirka, Kasumpur, Moradabad Pahari, Katwaria Sarai. Land of village Moradabad Pahari is comprised in Vasant Vihar. R.K. Puram is situated in the land of village Munirka. He has further deposed that "Khasra numbers in dispute are very close to R.K. Puram and Vasant Vihar. Boundaries of these Khasra numbers adjoin these colonies". No cross-examination was made on behalf of Union of India and no challenge was made to this statement. Learned Counsel for the respondents urged that as this witness is the concerned Patwari of the Revenue estate of village Masoodpur, an official witness and his statement being truthful, the Union of India appellant neither made any cross-examination, nor even challenged his testimony before the Reference Court, as such the testimony of this witness has to be accepted as true.

99. The respondent also relied upon number of other documents viz. maps Exhibits P-29 and P-34 of villages Mohammadpur and Munirka; Ex. P-36 map of Delhi, Ex. P-5 Delhi Guide Map of 1969, Ex. P-28, copy of Khasra Girdawari of the land in question showing that Jawahar Lal Nehru University is precisely located and set up on the acquired land. Ex. P-4 Award No. 1944 wherein the Collector stated that "the area under acquisition is adjoining to the boundary line of villages Munirka, Kasumpur, Ber Sarai, Katwaria Sarai and Mehrauli". Apart

from testimony of PW 2, the respondents also relied upon the statement of PW 5 Shri Bhim Singh Pardhan of village Masoodpur and of the other adjoining villages who deposed that the land in question adjoins R.K. Puram, Vasant Vihar and IIT, JNU is located on the acquired land. In cross-examination, he deposed that "there are roads running along with the land in question on all the four sides" He further deposed that "Vasant Vihar was developed in the year 1959-60 while R.K. Puram was developed in the year 1960-61, IIT was developed in 1962-63". These parts of the statement remained unchallenged. No cross-examination was made on behalf of the appellant. PW 6 Shri Bhagwan Singh deposed that "this land adjoins Vasant Vihar, R.K. Puram, IIT, JNU was established in 1970-71 on a part of the acquired land. He further deposed that "this area is surrounded by roads on all sides". No cross-examination was made on behalf of the appellant to this part of the statement of this witness. PW 7 Shri Mohan Lal - Lambardar of village Masoodpur also deposed to the same effect. Learned Counsel for the respondents urged that the unrebutted testimony of the witnesses and various plans filed on record would show that the acquired land adjoins Vasant Vihar on one side and R.K. Puram and IIT on the other. Diplomatic Enclave Extension (known as West End) is in close vicinity of the acquired land being at a distance or about 500 yards from the acquired lands.

100. The situation of the land has already been noticed by us above that the acquired land as on the date of notification u/s 4 of the Act was located in close proximity to the developed and developing localities belonging to private parties and the D.D.A. We cannot accept the version of the respondents that it was too close to the posh locality of Diplomatic Enclave Extension or the other highly posh localities, but there is no manner of doubt that being located quite near to the developed and developing colonies it had a tremendous potentiality for being utilised for building purposes in terms of the decisions of Supreme Court in *Union of India and others Vs. A. Ajit Singh*, . Pressure on the lands adjacent to the developed and developing localities had been on an increase in Delhi after 1957, when Government started acquiring lands in Delhi for Planned Development of Delhi. Very vast area was acquired by a general notification issued on 13.11.1959. Nature of tremendous pressure on adjoining lands of developed and developing localities has been judicially noticed by this Court in a number of decisions. It being the position there can be no manner of doubt that the acquired land possessed tremendous potential value for being used for building purposes in the immediate future. More particularly of the fact that there has been a lot of pressure on lands located in South Delhi adjacent to or in close proximity of the developed colonies by successive notifications being issued by the Government from time to time.

101. The method and manner in which building potentiality of the land is to be taken into consideration while assessing amount of compensation was noticed by Supreme Court in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, , saying that the market value of land acquired under the Act is the main component of the

amount of compensation awardable for such land u/s 23(1) of the L.A. Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the Act. Such market value of the acquired land cannot be its value only with reference to the actual use to which it was put on the relevant date, envisaged u/s 4(1) of the Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land being put to certain use on the date envisaged u/s 4(1) of the Act, or becoming available for better use in the immediate or near future, is regarded as its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when land with building potentiality is acquired, the price which a willing seller could reasonably expect to obtain from a willing purchaser with reference to the date envisaged u/s 4(1) of the Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the Act.

102. When the acquired land was actually being used for agricultural or horticultural purposes on the date of notification u/s 4 of the Act or was even barren or waste, under what circumstances the same could be regarded as having building potentiality was also considered by the Apex Court in P. Ram Reddy's case (supra), saying that it is the possibility of being used immediately or in near future, which needs consideration. It was observed:

"An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged u/s 4(1) of the Act of agricultural or horticultural or other like purposes was on that date even barren or waste, had the possibility of being used immediately or in the near future as land of putting up residential, commercial, industrial or other buildings. However, the fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to regard it as a land with building potentiality, in that, under Clause (4) of Section 24 of the Act that any increase to the value of land likely to accrue from the use to which it will be put when acquired, is required to be excluded. Therefore, wherever, there is a possibility of the acquired land not used for building purposes on the relevant date envisaged u/s 4(1) of the Act, of being used for putting up buildings either immediately or in the near future but not in the distant future, then such acquired land would be regarded as that which has a building potentiality. Even so, when can it be said that there is the possibility of the acquired land being used in the immediate or near future for putting up buildings, would be the real question. Such possibility of user of the acquired land for building purposes can never be wholly a matter

of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Material so placed on record or made available must necessarily relate to the matters such as:

- (i) the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial educational, religious or any other kind of importance or because of the explosive population;
- (ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;
- (iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;
- (iv) absence of statutory impediments or the lie for using the acquired land or building purposes;
- (v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity or the acquired land;
- (vi) benefits or advantages of educational institutions, health care centres or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and
- (vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

The material to be so placed on record or made available in respect of the said matters and the like, cannot have the needed evidentiary value for concluding that the acquired land being used for building purpose in the immediate or near future unless the same is supported by reliable documentary evidence, as far as the circumstances permit. When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

103. The Collector, Land Acquisition had adopted the belting system in awarding compensation which was discarded by the Reference Court. Such method of belting has to be ignored in view of the voluminous evidence on record and of the fact that the land was situated in urban locality.

When the entire area is surrounded by developing colonies belting system for valuation purposes has to be discarded. The Supreme Court in Calcutta Metropolitan Development Authority, State of W.B. through its First Land Acquisition Collector Vs. Dominion Land and Industries Ltd. and Kalidas Chakraborty, , held that it will be inappropriate to determine the market value of vast land by adopting the method of belting. For determining the market value of

land acquired under the Act, method of belting could be adopted, where such land is in an urban locality and it could, by the mere laying of roads, be readily turned into building plots and utilised as such and where prices fetched by comparable sales of similar building plots in the vicinity of the acquired land at about the time of acquisition are available. But, where the land acquired under the Act cannot be turned into building plots for utilisation unless a regular layout of building plots on such lands is made by the laying of roads, drains and after providing the amenities for user of such plots for the construction of buildings, conforming to regulations governing formation of such building layouts, it would be inappropriate to determine the market value of such land by resorting to the method of belting by which higher value could be fixed for building plots, facing the available public road/s. In any event, adoption of the method of belting or the method of hypothetical building layout or the method of comparable sales in the vicinity, would be inapposite for determining the market value of a vast area of land acquired under the Act.

104. In *Meharban and others etc. etc. Vs. State of U.P. and others*, , also Supreme Court held that belting system was not proper when acquired land was situated in well-defined and developed blocks and it possessed of immediate potential value as building sites. On the principle of determination of compensation and discarding the belting method, the Court observed:

"It is settled legal position that the Court, while determining the compensation must sit in the armchair of a willing and prudent vendor and put a question whether the market value sought to be determined would be capable of fetching that hypothetical price and should determine a just and adequate compensation for the land acquired. Since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence though certified copies marked u/s 51-A are available. So, all the sale deeds stands excluded. It is the duty of the Court to take all the relevant factors into account before determination of the compensation. Applying the above acid test, in view of the paucity of evidence, instead of remitting the matter to the Reference Court and prolonging the agony of the claimants, we think that the appropriate course would be to base the award of the Reference Court in respect of the Notification dated 5.4.1980 in which the compensation was determined at the rate of Rs. 70/- per sq. yard and which has become final. That would form the foundation and base to determine the compensation treating that area as a block. That was determined after giving necessary deductions towards developmental charges, as enquired under law. The belting in this case is not reasonable for the entire lands are situated in well-defined and developed blocks. The lands are possessed of immediate potential value as building sites. Having regard to that base, the question is whether the claimants are entitled to higher compensation that was determined. In view of the fact that Meerut City is a fast-growing industrial and commercial city and in many a part it is already developed, there is pressure on the land for the developmental activities, viz., for building and commercial purposes. In fact, under these circumstances, we think that we should take into account reasonable

rise in prices, particularly in view of the gap of several years, we think that the approximate net market value would be Rs. 175/- per sq. yard after giving deduction for developmental charges for the lands situated in Quasimpur Nagla Tashi."

105. In *The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others*, it was held that when a land is acquired, which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid, while in respect of the lands on the interior side it should be at lower rate, may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and Therefore classification of the same into different categories does not stand to reason.

106. Court while determining market value of land will be entitled to even take judicial notice of development activities going on in and around the acquired land at the time of issuance of notification u/s 4 of the Act. *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*, judicial notice was taken by the Court that Aurangabad city had developed rapidly following police action which brought about accession of the Nizam's State with India. Aurangabad had become the regional headquarters of a zone of the State. The city had been industrially developing. Therefore, it was held that the lands in question had potential value which had to be kept in view in the matter of fixing the compensation under the Land Acquisition Act and for that reason classification of land in various categories was discarded.

107. In *Hasanali Walimchand (dead) by LRs. v. State of Maharashtra*, 1 (1998) CLT 58 (SC) ; (1998) 2 SC 388, it was observed that despite the fact that the area of the city of Ahmednagar was fast developing and the land in question was located about a short distance of about one and a half miles from Ahmednagar town the High Court fell into error in ignoring the future potential of the land in question. Further potential on account of its location ought to have been taken into consideration while assessing the amount of compensation.

108. On the question of determination of the market value of the acquired land with building potentiality in *P. Ram Reddy's case (supra)*, it was held that undoubtedly such market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged u/s 4(1) of the Act plus the increase in the market value because of the possibility of the acquired land being used for putting up buildings in the immediate or near future. If there is any other land with building potentiality similar to the acquired land, which had been sold for a

price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality in the neighborhood or vicinity of the acquired lands with building potentiality, as on the relevant date envisaged u/s 4(1) of the Act, are unassailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a willing buyer on or nearabout the relevant date u/s 4(1) when the acquired land had been proposed for acquisition and then to find out what would be the price which the acquired land would have fetched if it had been sold by making it into building plots similar to those sold. In other words, a hypothetical layout of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared and the price fetched by sale of building plots in the layout actually made should form the basis for fixing the total price of the acquired land with building potentiality to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process.

109. The Apex Court then proceeded to consider the method and manner which deserves to be adopted in arriving at the market value and say that the prices fetched by sales of building plots which may become available could be of building plots in either a fully developed layout of building plots or in an undeveloped layout of building plots, situated in the vicinity of the acquired land with building potentiality. If the market value of the acquired land with building potentiality has to be fixed on the basis of the evidence of the said prices, the first thing required to be done is to prepare a hypothetical layout of building plots of the acquired land itself. Then, how much of land out of the acquired land becomes available to be made into plots, similar to those in the developed layout of building plots or in the undeveloped layout of building plots has to be found out. If the building plots, which so become available were to be sold at the prices at which the building plots in the developed layout of building plots or undeveloped layout of building plots could have been sold on the date envisaged in Section 4(1) of the Act, what would be the total amount of such prices which could have been obtained has to be seen. Then, what could have been the losses, suffered or expenses incurred for getting such total amount has to be found out. The market value of the acquired land with building potentiality can then be regarded as the total amount of the prices of sales of all the building plots envisaged in the hypothetical layout of building plots in the acquired land minus the losses which could have been suffered or expenses which could have been incurred in taking the hypothetical layout of building plots in the acquired land on a par with the developed layout of building plots or the undeveloped layout of building plots, as the case may be. If losses to be suffered or expenses to be incurred for making a layout of building plots in the acquired land, with building potentiality for purposes of selling such building plots at the prices to be

fetched by similar building plots in the developed layout of building plots in the developed layout of building plots or in the undeveloped layout of building plots are to be found out, the losses which might have been suffered or expenses which might have been incurred by the owners of the lands of either of a developed layout of building plots or of an undeveloped layout of building plots, in making such layouts, could prove to be the best evidence. The evidence of losses suffered or expenses incurred in having made a layout of building plots may relate to lands lost for laying roads, drains, sewerages, parks, etc., costs incurred in the making of roads, drain, sewerages, providing water supply, electric supply, losses on investments and paying of conversion charges, development charges etc. in a developed layout or an undeveloped layout in which building plots had been laid and sold and which sales form the basis for determining the market value of the acquired land. No difficulty arises when all the materials needed to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be formed in respect of it is made available to the Court, so as to enable it to find out the possible market value of the acquired land with reference to the price to be fetched by sale of building plots to be made in such land. But, owners of the acquired land with building potentiality, rarely produce all the material or evidence needed for the Court to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be thought of by the Court in respect of such land, although they rely on the price fetched by sale of plots in a developed layout or an undeveloped layout for determining the market value of their lands with building potentiality in the vicinity of such layout.

110. In those cases where appropriate evidence is not led except placing reliance of the sale instances of developed plots, the Supreme Court in *P. Ram Reddy's* case (*supra*), observed that in such a situation the Court may have to inevitably fix the market value of the acquired land with building potentiality on the basis of the prices got in the sale transactions relating to the building plots in a developed layout, relied upon by the owners of the land, if such transactions are found to be genuine. A simple method, Therefore, is evolved by Courts in determining the market value of the acquired land with building potentiality with reference to the retail price to be fetched by sale of plots in a fully developed layout as on the date of publication of notification u/s 4(1) of the Act.

111. The Supreme Court in *P. Ram Raddy's* case proceeded to approve the method of determination of market value of land on wholesale price, by deducting one-third to one-half of the retail prices as had been referred to in *Bombay Improvement Trust Vs. Mervanji Manekji Mistry*, that the wholesale price of the acquired land with building potentiality could be fixed at one-third to one-half of the retail price fetched by sale of building plots in a developed layout of building plots, depending upon the nature of development taken place in such layout.

112. Deduction of 20% to 50% from the retail price was held to be reasonable, depending on the facts and circumstances of the each case in order to fix whole sale price of undeveloped larger area in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, . It was held that determination of compensation has to be made as on the date of notification u/s 4 of the Act as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day and it has also; to be assumed that the vendor is willing to sell the land at a reasonable price. In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value. Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors. Plus and minus factors were noticed separately in the judgment but while saying so it was held that evaluation of these factors depends upon facts of each case. There cannot be hard and fast or rigid rule. Common sense is the best and most reliable guide. Factors can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. Between 20% to 50% to account for land required to be set apart from carving out lands and plotting out small plots.

113. We need not multiply decisions on this point. This Court in a number of decisions, placing reliance upon the market rates of lands in various localities of Delhi notified by the Land and Development Officer of the Ministry of Works, Housing and Supply had determined fair market value of acquired lands. In 1965 the Ministry of Works, Housing and Supply, (Department of Works and Housing), Land and Development Office published information for the guidance of lease holders, notifying schedule of market value in different areas of Delhi and New Delhi. For the Diplomatic Enclave the market value of land for residential purposes and commercial purposes was fixed at Rs. 175/- and Rs. 350/- per sq. yard respectively. For the area known as Extension of Diplomatic Enclave the land rates were notified at Rs. 150/- and Rs. 300/- for residential and commercial purpose respectively. For the far flung localities the minimum and rates for residential plots, as notified varied from Rs. 150/- to Rs. 200/- per sq. yard. The maximum land rates notified are ranging from Rs. 600/- to Rs. 2,000/- per sq. yard for commercial plots. Such land rates became effective from 1.1.1965.

114. In *Virendra Singh etc. v. Union of India*, RFA 299/84, decided on 23.4.1991 the schedule of market rates were taken into consideration and relied upon in determining the amount of compensation of neighbouring areas to Kalkaji. Market value of acquired land was fixed with reference to the locality of Kalkaji @ Rs. 60/- per sq. yard. It was so done on the basis of the market value of the land as notified by the Government of India in 1965 for various localities including Kalkaji by Circular No. 23/1/65 dated 28.3.1966 issued by Ministry of Works, Housing and Urban Development holding that the market rate of Kalkaji would

form a reasonable and fair basis to determine the market value of the adjoining land. Union of India filed SLP against decision of this Court in Supreme Court but the same was dismissed.

115. Another Division Bench of this Court in Chandan and Others Vs. Union of India, , decided on 20.7.1992, relied upon the same circular dated 28.3.1966 and followed the decision in Virender Singh's case (supra), in determining market value of the acquired land. It was, however, directed that 1/3rd of the market value is to be deducted for development of the acquired land and thus, the market value @ Rs. 49,000/- per bigha was fixed as whole price.

116. Yet another decision Division Bench of this Court in RFA No. 131/88, Shri Ram Lal Bansi Wal v. Union of India and Ors., decided on 28.11.1995 relied upon schedule of rates as notified by circular of the Government while filing the market rates as in January, 1965 of property located in New Rohtak Road and enhanced compensation to the tune of Rs. 2,400/- per sq. yard. Appeal was carried to Supreme Court. The Supreme Court modified the judgment of this Court and further enhanced the compensation to Rs. 3,000/- per sq. yard in C.A. No. 1328/97 (arising out of SLP No. 10661/96) decided on 17.2.1997 thereby relying upon the same schedule of rates.

117. In Anil Kumar Sharma Vs. Union of India, , also the schedule of rates as notified by the Government of India were applied in determining the compensation payable to the claimants. With respect to the schedule of rates notified by Government of India in Anil Kumar Sharma's case (supra), cogent reasons were assigned to rely upon such schedule of rates and it was held:

"The appellants have also placed reliance upon schedule of rates notified by the Government of India. The Reference Court did not place any reliance not discarded the same. On 21.10.1981 notification was issued by the Government of India, Ministry of Works, Housing and Urban Development on the schedule of market rates in different areas of Delhi/New Delhi. It is stated in the notification that the matter of revision of the schedule market rates in Delhi with effect from 1.4.1981 was under consideration. Therefore, lands rates have now been revised, which are to be adopted for all purpose except for hotel, cinema and purposes of recovery of unearned increase. As per the notification, Delhi has been divided in 8 separate groups. Group-1 being heart of Delhi, namely, Connaught Place whereas Group-II is another important area outside Group-I being highly prices area. Lesser important areas fall in other later groups. For Group-I and Group-Ii, schedule market rates per sq. metre are residential for the period from 1.4.1981 to 31.3.1983 were fixed at Rs. 2,000/- per sq. metre and for commercial purposes at Rs. 13,000/- per sq. metre and Rs. 10,500/- per sq. metre respectively. For group-III rates fixed for residential and commercial plots were Rs. 2,000/- and Rs. 6,000/-; for Group-IV Rs. 1,000/- and Rs. 2,000/-; Group-VII Rs. 800/- and Rs. 1,600/-; and for Group-VIII lands are those situated in Narela and other out-lying colonies for which market rates were fixed at Rs. 400/- per sq. metre for residential plots and at Rs. 800/- for commercial plots

respectively.

17. xxx xxx xxx

18. xxx xxx xxx

19. In the schedule of rates issued by Government of India on 1.4.1991 the minimum market rate of residential plot effective from 1.4.1981 to 31.3.1983 for all outlying colonies in Delhi is shown as Rs. 400/- per sq. metre. Whereas for Jhilmil Tahirpur the market rate for residential plot during said period is shown as Rs. 800/- per sq. metre. The schedule of rates issued by Government of India are not altogether irrelevant but can also be taken note of as relevant guide for determining the amount of compensation for which reference be made to a decision of this Court in RFA No. 299/84 titled as Virender Singh etc. v. Union of India decided on 23.4.1991.] It was held by a Division Bench that market value of land fixed by government of India in 1966 for neighbouring locality of Kalkaji would be a reasonable and fair basis for determining the market value of the land.

20. In Chandan and Others Vs. Union of India, a Division Bench of this Court also relied upon similar circular issued by the Central Government on market rates in Delhi holding:

"it is not disputed before us that colony of Kalkaji was carved out of the land of the village Tughlakabad. The colony is developed with roads, parks, schools and having other civil amenities. The circular of the Central Government containing information for guidance of lease holders fixes the market value of the residential plots in Kalkaji at the rate of Rs. 60/- per square yard. It is mentioned in the circular that the land value indicated in it was determined some time in 1965 and though issued in 1966 would not purport to indicate current market value of any particular plot for the purpose of Direct Taxes Act which would depend not only on the exact location of the plot within the specified area but also on the date as on which the valuation had to be made under the respective Acts. The circular also states that the instructions contained therein were for the limited purpose of providing assistant to the lessees in the matter of assessment of charges by the Lesser and were, in no way, to be construed as statutory rules and regulations on the subject. Nevertheless as held in RFA 299/84 the circular does not give reasonable basis of the market value of the land in he colony of Kalkaji in the year 1965. It is, Therefore, not necessary to refer to any judgment fixing the market value of the adjacent land to the lands, subject matter of these appeals when sufficient guidelines could be obtained from the Central Government circular of 1966 itself. The market value of the land in all these appeals has, Therefore, to be fixed at Rs. 60/- per square yard less 1/3rd of the same deducted for the purpose of development of lands. The latest decision of Supreme Court on the question of deduction of 1/3rd of the market value is reported in Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala

Gowri, "

21. In *Ram Lal v. Union of India and Ors.* RFA 131/88, decided on 28.11.1995, another Division Bench of this Court also placed reliance upon the land rates fixed under similar notification by the Central Government observing:

"This market value, if allowed, would be in consonance with the average rates, as recognised in schedule of rates issued by the L&DO in Ex. A5 for the commercial plots located in the same vicinity on the main New Rohtak Road, namely, Rs. 2,400/- per sq. yard as on 1.4.1982".

22. These factors if taken into consideration lend full support to the evidence adduced on behalf of the appellant that the prevalent rates in NOIDA were far less than the rates of similar categories of land located in any other part of Delhi. The sale instances proved before the Reference Court, the schedule of rates notified by the Government of India and the judgment Ex. A10 form relevant and valid basis for determining the amount of compensation but after allowing some reasonable deduction therefrom since large tract of land is involved. Assuming that rates as specified in the schedule were fixed by taking into consideration all relevant factors, there is no reason why it be not held that the fair market value of the land in the vicinity as on the date of notification for similar plots would be Rs. 800/- per sq. metre. Even ignoring the submissions made on behalf of the appellant that deductions cannot be made since the area was already developed and was possessed of amenities and making the maximum permissible deduction which can be made on all counts, i.e. 50% there is no reason why it be not held that the market value of residential plots in village Kondli, as on the date of notification were not less than Rs. 345/- per sq. yard. there is no scope for further deductions. Accordingly, we hold that market value of the acquired land as on the date of notification u/s 4 of the Act to be at Rs. 345/- per sq. yard.

118. Having considered the submissions made at the bar, the principles laid down in the decisions of the Apex Court and the method of evaluation aforementioned, we are of the view that taking the market value of the developed plots of lowest category of residential developed plots to be the base as in the year 1965 @ Rs. 150/- per sq. yard and for making due allowance for the minus factor including the factor that time would have been taken to excavate minor mineral and thereafter the land would have been taken to excavate minor mineral and thereafter the land would have become available for development a deduction to the extent of 40% would be reasonable to arrive at the fair wholesale market price of the lands in the locality, which had a tremendous building potential. From the amount so arrived at on making further deduction of 20% from the wholesale rates, in our opinion in the year 1965 Rs. 72/- per sq. yard would be the fair retail market price of the acquired land. In the absence of any other evidence on record of any appreciable increase in the market values from 1961 to 1965, relying on the ratio of the decision of a Division Bench of this Court in *Rameshwar Solanki Vs. Union of India*, , making deduction @ 12% p.a. from the market rates as in 1985 it will also be possible

for us to arrive at the fair market value as in the year 1961, which would work out to Rs. 30/- per sq. yard. With the special features of the land with china clay, we hold that as on 24.10.1961 the respective market value of the acquired land with china clay and without china clay would be Rs. 56/- per sq. yard and Rs. 30/- per sq. yard. As on 23.1.1965 such market value for the acquired land with china clay and without china clay is determined to be Rs. 98/- per sq. yard and Rs. 72/- per sq. yard respectively.

119. Consequently the appeals are dismissed. Cross-objections (C.Ms. 516/87, 515/87, 517/87 and 524/87) are allowed with proportionate costs. Claimants/respondents are held entitled to compensation @ Rs. 56/- per sq. yard and Rs. 30/- per sq. yard for the acquired land with china clay and without china clay respectively for the land which was acquired through Notification dated 24.10.1961 and which are subject matter of Award No. 2040 dated 2.12.1967. Claimant-respondents are also held entitled to compensation @ Rs. 98/- per sq. yard and Rs. 72/- per sq. yard respectively for such of the lands which were acquired through notification issued u/s 4 of the Act on 23.1.1965 and which are subject matter of Award No. 2225 dated 26.3.1969 passed by the Collector. In addition on the enhanced market value claimants will be paid solatium @ 30% and interest @ 9% p.a. for a period of one year from the date of Collector taking possession and thereafter @ 15% p.a. till date of payment of compensation. The claimant will also be paid 6% interest u/s 4(3) of the Land Acquisition (Amendment and Validation Act), 1967 on the market value of the land, as determined by this Court from the date of expiry of period of three years of the date of notification u/s 4(1) of the Act to the date of tender of compensation, which was awarded by the Collector. Interest will also be paid to the claimants on solatium in view of decision of Supreme Court in Civil Appeal No. 6271/98, *Sunder v. Union of India and Ors.*, connected appeals decided on 19.9.2001.

In view of the reasons aforementioned all pending applications also stand disposed of.

The security bond furnished by the claimant-respondents stands duly discharged.