

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.32 of 2023

North East Transmission Company Ltd., A Company registered under the Companies Act, having its Corporate Office at D-21, 3rd Floor, Corporate Park, DMRC Building, Sector 21, Dwarka, New Delhi-110075 and registered office at East Champamura, Khayerpur Bypass Road, P.O. Old Agartala, P.S. Budhjungnagar, District – West Tripura, Pin-799008, represented by its authorized person Shri Bikash Kumar Nayak, Asstt. Manager (Project).

.....Petitioner (s);

Versus

1. Khalek Mia, S/o Late Nawab Ali, resident of Village – Karaiyamura, P.O. – Bagma, P.S. – R.K. Pur, Sub Division – Udaipur, District – Gomati Tripura.
2. The State of Tripura, represented by the Secretary to the Government of Tripura, Department of Power, New Secretariat Complex, P.O. & P.S. – NCC, District – West Tripura.

.....Respondent (s);

For Petitioner (s) : Mr. Abhishek Puri, Advocate,
Mr. K. Dhirendra Singha, Advocate,
Ms. Ayesha Saha Hirawat, Advocate.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Haradhan Sarkar, Advocate,
Mr. Pannalal Debbarma, Advocate,
Ms. Adwitiya Chakraborty, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

Date of hearing : **20.08.2025**

Date of Judgment & Order : **09.09.2025**

Whether Fit for Reporting : **YES**

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

1) This Revision Petition is filed under Art.227 of the Constitution of India challenging the judgement dt.21.12.2022 of the learned District Judge, Gomati Judicial District, Udaipur in Civil Misc. 18 of 2014.

The Background facts

- 2) The petitioner is a Company registered under Companies Act and is engaged in a transmission of electricity. It has a registered office in East Champamura, Khayerpur Bypass Road, West Tripura District.
- 3) The respondent No.1 is the owner of the certain land under Mouja Bagma, Tehsil – Bagma, Revenue Circle – Killa, under Udaipur Sub-Division. On the said land, he was growing rubber trees of various ages.
- 4) Four notices dt.12.03.2011, 11.07.2011, 11.07.2011 and 15.11.2011 were served on the respondent no.1 by the petitioner informing him that a 400KV double circuit Palatana-Surjamaninagar transmission line will pass through his land and 425 Nos. of rubber trees aged 7(seven) years old will be cut, and assuring him compensation for the loss sustained by him.
- 5) Under Exhibit-C, dt.07.09.2011, a receipt was obtained from the son of the respondent no.1 of having received Rs.72,675/- through a cheque No.066172, dt.23.06.2011, as surface damage compensation for the trees cut as per the notice dt.12.03.2011.
- 6) Though three other notices had been issued, as referred to supra, to the respondent no.1 proposing to cut other trees, no trees were cut pursuant to those notices, and so no compensation was paid.

W.P.(C) No.53 of 2014 and the judgment dt.25.4.2014 therein

- 7) Alleging that the compensation awarded to him on 07.09.2011 as meagre and claiming that he is entitled to much more, the respondent no.1 filed WP(C) No.53 of 2014 before this Court. He also contended that inappropriate procedure was followed for determining the compensation paid to him.

8) In the said Writ Petition, the respondent no.1 placed reliance in the said case on a judgment rendered on 23.07.2013 by this Court in the case of ***Sri Ajit Nag vs. The State of Tripura and others***¹ and analogues cases.

9) The counsel for the State Government admitted in the said writ petition that inappropriate procedure was followed but alleged that the respondent no.1 had received the awarded compensation without raising any objection.

10) In the judgment rendered on 25.04.2014, this Court brushed aside the said objection, and held that compensation has to be determined by the District Judge in accordance with law by following the procedure as explained in the judgment dt.23.07.2013 in the case of ***Sri Ajit Nag*** (1 supra). The Court further directed that the amount already received by the respondent no.1 would be adjusted on determining of the compensation afresh by the District Judge. The operative part of the judgment dt. 25.04.2014 is extracted hereunder:

“Mr. Datta Majumder, learned GA has fairly submitted that in the case of the petitioner an inappropriate procedure has been followed. However, the petitioner has received the awarded compensation without raising any objection.

Be that as it may, it is directed that the respondent No.2 shall transmit all records along with a copy of this order to the District Judge, South Tripura within a month from today for the purpose of determining the compensation in terms of the judgment and order dated 23.07.2013 as reproduced. For that purpose, the petitioner is directed to furnish a copy of this order to the respondent No.2 within a

¹ WP(C) No.30/2012

period of 7 days from the date of receipt of the certified copy from the Registry.

It is made clear that the amount that has been received by the petitioner shall be adjusted on determining the compensation by the District Judge.

It goes without saying that against the claim where no compensation has been paid the compensation would be determined by the District Judge in accordance with law. The procedure as explained in the judgment dated 23.07.2013 shall be followed for determining the compensation. The parties may advance their claims in terms thereof.

Accordingly, this petition stands allowed to the extent as indicated above. There shall be no order as to costs.” (emphasis supplied)

- 11) The procedure in the case of Sri Ajit Nag (1 supra) which was directed to be followed is:

“the matters shall be referred to the District Judge, South Tripura, Udaipur, as the land concerned in all the writ petitions are situated within the territorial jurisdiction of the District Judge, South Tripura, Udaipur. The District Judge shall assess the due compensation following the principles and procedures of the Land Acquisition Act deeming this reference as if made under Section 18 of the Land Acquisition Act, 1894. Needless to say, the parties before this Court would be at liberty to submit their respective claims without prejudice to what they have stated in their affidavits filed before this Court. The parties would be allowed to adduce evidence in support of their respective claims and thereafter, the District Judge, South Tripura, Udaipur, would determine the matter and pass the award as would deem proper in the fact and circumstances”. (emphasis supplied)

- 12) The order dt. 25.04.2014 in the said writ petition was subsequently modified on 31.05.2014 and it was recorded therein as follows:

"Where the lines, "However, the petitioner has received the awarded compensation without raising any objection" appear, be substituted by "However, the petitioner has received the compensation as awarded against Notice No.250, dated 12.03.2011 to the extent of ₹72,675 without raising any objection".

Further, after the paragraph starting with "Be that as it may" and ended with "from the date of receipt of the certified copy from the Registry", the following paragraph be inserted in the judgment and order dated 25.04.2014 passed in W.P.(C) No.53/2014:

"So far the compensation in respect of Notice No.156 dated 11.07.2011, Notice No.157 dated 11:07.2011 and Notice No. 704 dated-15.11.2011 are concerned, if the assessment is made, shall be deposited in the court of the District Judge, South Tripura, Udaipur, forthwith and the District Judge, South Tripura, Udaipur, after receipt of such deposit, shall disburse the same after proper identification of the petitioner or other claimant". (emphasis supplied)

13) This judgment in WP(C) No.53 of 2014 was not challenged by the petitioner by filing a Writ Appeal in this Court to the Division Bench or by filing of SLP in the Supreme Court invoking Art.136 of the Constitution of India. It thus attained finality.

Civil Misc. 18/2014

14) Thereafter, the District Judge, Gomati District, Udaipur, registered case No. Civil Misc. 18/2014 pursuant to the order dt. 25.04.2014 in WP(C) No.53 of 2014 as modified subsequently on 31.05.2014.

15) Claim statement was filed by the respondent no.1 in the said case claiming Rs.1,01,55,000/- as cost of rubber trees and Rs.38,25,000/- as cost of land of 45 satak (1 kani 2 ½ gandas).

16) In the claim petition, it was contended that under Article 300A of the Constitution of India, a person cannot be deprived of his property without

conforming to the due process of law; that the petitioner had resorted to arbitrary and illegal exercise of power without assessment of the compensation and cutting the trees; and that the petitioner, with the help of the local administration, forcibly entered into and caused damage to the rubber trees of the respondent no.1, ignoring his objection thereto.

It was contended that the petitioner had omitted to pay any compensation to the respondent no.1.

It was also contended that no prior permission of the District Magistrate was taken before placing the electrical line over his property.

The respondent no.1 contended that the amount of Rs.72,675/-, which was assessed for the damage caused to the rubber plantation standing on his land against notice No.250, dt.12.03.2011, was inadequate and there should be an assessment of due and proper compensation following the principles and procedures under the Land Acquisition Act, 1894, treating it as a reference under Section 18 of the said Act.

17) The petitioner filed an objection to the claim petition stating that the Tehasildar had identified only 425 Nos. of rubber trees of 7(seven) years old on the location mentioned in the notice dt.12.03.2011, that the son of the respondent no.1 was also present there who put his signature in the said notice on behalf of the respondent no.1 after the recording of numbers of trees standing thereon.

It was contended that the respondent no.1 never raised any objection for carrying out the construction of 400KV line. It is stated that compensation of Rs.85,000/- was calculated as per supervision of district

administration and after all deductions, an amount of Rs.72,675/- was paid to the respondent no.1.

It was also stated that the son of the respondent no.1 received the said amount for the notice dt.12.03.2011 and as no other trees of the respondent no.1 were damaged, no other compensation was paid to him.

It was further contended that the respondent no.1 was not entitled to get any compensation for the land.

18) The respondent no.1 was examined as PW-1. He stated that the high tension line was set up over his land of area 15 gandas. He stated that adequate compensation was not given for his rubber plantation, and he denied the suggestion that he was not entitled to get any compensation for the trees mentioned under the other notices.

19) The petitioner did not lead any evidence but the State Government examined an Engineer as its witness DW-1.

The said witness marked the original notices issued to the respondent no.1 and Exhibit- B which was an authenticated copy of one assessment note. He also marked Exhibit-C which was the money receipt issued by the son of the respondent no.1.

He stated that there was no assessment note against the notices other than the notice dt.12.03.2011, as the petitioner did not cut down the rubber plantation mentioned in those notices, and as such, no payment was made in respect of the trees mentioned in the other notices.

He admitted that no verification report of Tehasildar was submitted by the Government in the Court.

He also admitted that it was not informed to the respondent no.1 in writing that the rubber plantation under other notices need not be cut down.

He denied that the respondent no.1 was paid lower amount for the value of the rubber plantation to deprive him. He stated that the petitioner and the State Government did not get the assessment of value of those rubber plants done through Rubber Board, and that they relied on the rate furnished by the Addl. District Magistrate, West Tripura. He also admitted that as per the said rate, costs of yield of a matured rubber plant is Rs.2,778/- and costs of non-yielding rubber plant is Rs.250/- and that the said rate was prepared by SDM, Sadar. He admitted that he cannot say on what basis the said value was assessed by the SDM, Sadar.

On a question put by the Court, he admitted that as per an office order issued by the Power Grid Corporation of India Limited, deduction was made under the heading of auction value and 10% was also deducted due to pending approval of the petitioner. Further 5% was also deducted on the ground that the signature of the Revenue Authority was pending.

The judgment of the District Judge

20) On the basis of the rival contentions and the evidence adduced before him, on 21.12.2022, the District Judge, Gomati District, Udaipur, passed judgment in Civil Misc. No.18/2014, awarding Rs.41,48,000/- as compensation for the 425 Nos. of rubber trees which were cut down. He also awarded compensation of Rs.90,872/- for land of petitioner used for construction of tower base of 26 sq.m.

21) In his judgment, the learned District Judge, Gomati District, Udaipur, held that only 425 Nos. of rubber trees were cut down by the

petitioner and that this is corroborated by an Advocate Commissioner's report which mentioned the said number of trees after inspection done in the presence of the both the parties. The District Judge refused to accept the plea of the respondent no.1 that other trees were also affected or likely to be affected.

22) He also gave a finding that the base of the tower would be located in 26 sq.m. and the respondent no.1 will get 85% of the fair market value as costs.

23) He recorded a finding that the Right of Way will get compensation @15% of the market value to be assessed by the District Magistrate & Collector, but such assessment has not been done.

24) He recorded that in a previous acquisition of land for the National Highways Authority of India for expansion of NH 44, value of land at Bagma area was taken to be Rs.66.00 lakh per kani, and the respondent no.1's land was within 200 m. of NH 44, and it would come to Rs.382/- per sqft.

25) The District Judge, Gomati District, Udaipur, then noted that guidelines for computing compensation for rubber trees were issued by the **Rubber Board, Ministry of Commerce, Govt. of India**, on 28.03.2012, and for trees aged 7(seven), the expected loss was assessed @Rs.9760/- and rounded off to Rs.10,000/- per tree per year.

26) He, therefore, assessed the compensation for 425 Nos. of rubber trees aged 7(seven) years @Rs.9,760/- per tree and awarded Rs.41,48,000/- for them and for the land utilized for the tower base of 26 sq.m., he awarded compensation of Rs.90,872/-. He directed that the total amount of Rs.42,38,872/- for both trees and the land to be paid after deducting the

amount paid earlier within 60 days or else the amount would carry interest @6% per annum till payment.

The instant Revision

27) Challenging the same, this Revision petition is filed by the petitioner under Art.227 of the Constitution of India.

28) On 25.01.2024 subject to deposit of Rs.10,00,000/- by petitioner in the Registry of this Court within four weeks from that date, the operation of the judgment dt.21.12.2022 of the learned District Judge, Gomati District, Udaipur, in Civil Misc. No.18 of 2014 was stayed. The said amount was deposited on 14.02.2024. The said amount was directed to be invested in a Fixed Deposit scheme.

29) When the matter was listed on 01.08.2024 before the learned Chief Justice, a contention was raised by the counsel for the petitioner as to correctness of the judgment in the case of **Sri Ajit Nag** (1 supra) and so the learned Chief Justice opined that the correctness of the said judgment in the case of **Sri Ajit Nag** (1 supra) as well as the correctness of the judgment in WP(C) No.53/2014 [between the petitioner and the respondent no.1 which was decided on 25.04.2014 following the case of **Sri Ajit Nag** (1 supra)] requires reconsideration and referred the matter to the Larger Bench. Thus, the matter was listed before the DB-1.

Consideration by the Court

30) Heard Mr. Abhishek Puri, counsel, together with K. Dhirendra Singha, counsel, for the petitioner and Mr. Somik Deb, senior counsel, assisted by Mr. Pannalal Debbarma, counsel, for the respondent no.1.

31) The counsel for the petitioner contended that the case of **Sri Ajit Nag** (1 supra) was not correctly decided with regard to the principles of the determination of compensation under the Electricity Act, 2003 by directing the application of the provisions of the Land Acquisition Act, 1894 for the said purpose, and it is necessary to hold the ratio in the case of **Sri Ajit Nag** (1 supra) to be *per incuriam* and *sub silentio* because the instant litigation relates to laying down of transmission lines under the Electricity Act, 2003, read with the Indian Telegraph Act, 1885.

32) He placed reliance on the judgment of the Supreme Court in the case of **A.R. Antulay versus R.S. Nayak and another**² and contended that if the decision of the previous Bench is *per incuriam* on a question of jurisdiction over the subject matter, this Court even in the instant proceeding can hold that principles of determination of compensation under the Land Acquisition Act, 1894 cannot be applied in the matter of award of compensation for laying down transmission lines under Electricity Act, 2003 read with the Indian Telegraph Act, 1885.

33) Admittedly, the petitioner was a party in WP(C) No.53/2014 and had been arrayed as the second respondent therein. If it was of the opinion that the judgment in WP(C) No.53/2014 was incorrect either in law or on fact and that the learned Single Judge, who decided the said writ petition, had wrongly determined the principles for computing compensation in cases under the Electricity Act, 2003 read with the Indian Telegraph Act, 1885, it was certainly open to the petitioner to challenge the said judgment by filing a Writ Appeal before a Division bench of this Court or to challenge the said

² (1988) 2 SCC 602

judgment by way of Special Leave Petition invoking Art.136 of the Constitution of India before the Supreme Court. It has not chosen to adopt either of these courses of action.

34) It is, therefore, bound by the judgment dt.25.04.2014 in WP(C) No.53/2014 as modified on 31.05.2014 by this Court. It is not permissible for the petitioner to collaterally attack WP(C) No.53 of 2014.

35) It was held by the Supreme Court in the case of ***Omprakash Verma and others versus State of Andhra Pradesh and others***³ that a judgment rendered by the High Court or the Supreme Court cannot be collaterally challenged on the ground that certain points had not been urged or argued before the Supreme Court and to reopen the issue. The same principle applies to the judgment of this Court in WP(C) No.53/2014.

Consideration of plea regarding application of judgment in A.R.Antulay (2 supra)

36) In the case of ***A.R. Antulay*** (2 supra) cited by the counsel for the petitioner, the Supreme Court had passed an order suo motu directing withdrawal of a case from the Court of the Special Judge and transferring it to the High Court of Bombay for speedier trial in a previous judgment rendered by it. The High Court then framed charges against the accused and rejected the application of the accused for proceeding against the alleged co-conspirators.

37) This was questioned by the appellant again before the Supreme Court contending that the exercise of jurisdiction by the High Court was violative of Art.14 & 21 as well as the Criminal Law Amendment Act, 1952.

³ (2010) 13 SCC 158

38) The Supreme Court held that it had no jurisdiction to suo motu direct withdrawal of a case from the court of the Special Judge and transfer it to the High Court for speedier trial, that the order of the Supreme Court transferring the cases to the High Court was not authorized by law, and the Supreme Court, by its directions, cannot confer jurisdiction on the High Court of Bombay to try any case which it did not possess under the Criminal Law Amendment Act, 1952. It held that the power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal and only Parliament can do it. It held that the directions of the Supreme Court given previously were violative of the limits of jurisdiction and had resulted in deprivation of fundamental rights of the appellant, guaranteed by Art.14 & 21 of the Constitution.

39) In the case of **A.R. Antulay** (2 supra), the Supreme Court held:

“53. Hidayatullah, J. Observed at page 790 of the report that in Prem Chand Garg case the rule required the furnishing of security in petition under Article 32 and it was held to abridge the fundamental rights. But it was said that the rule was struck down and not the judicial decision which was only revised. That may be so. But a judicial decision based on such a rule is not any better and offends the fundamental rights just the same and not less so because it happens to be a judicial order. If there be no appropriate remedy to get such an order removed because the Court has no superior, it does not mean that the order is made good. When judged under the Constitution it is still a void order although it may bind parties unless set aside. Hidayatullah, J. reiterated that procedural safeguards are as important as other safeguards. Hidayatullah, J. reiterated that the order committed a breach of the fundamental right of freedom of speech and expression. We are, therefore, of the opinion that

the appropriate order would be to recall the directions contained in the order dated February 16, 1984.”

(emphasis supplied)

40) Thus the basis for interference in the case of **A.R. Antulay** (2 supra) was that there was no appropriate remedy to get the order of the Supreme Court removed because there was no other Court superior to the Supreme Court, and therefore the Supreme Court entertained the Writ petition under Art.32 and granted the relief therein.

41) This implies that where there is an adequate remedy available to a party to challenge the judgment which it does not accept, and it does not avail the said remedy, it cannot rely on the principle laid down in the case of **A.R. Antulay** (2 supra) and collaterally attack the said judgment to which it was a party and which is binding on it.

42) The next contention raised by the counsel for the petitioner is that there was an assessment of compensation done in the instant case by the District Magistrate & Collector, that computation of compensation of Rs.72,675/- was correctly done and that this was done on the basis of Annexure-18.

43) The said Annexure bears the date 02.09.1997, and is a proceeding addressed by the Addl. District Magistrate & Collector, West Tripura to the Sub-Divisional Officer, Sadar, fixing the cost of yield of a matured rubber plantation as Rs.2,778/- and cost of the rubber plant @Rs.250/-.

44) Admittedly, the plantation of the petitioner was cut in the year 2011. We fail to see how, a guideline issued by the Addl. District Magistrate and Collector, West Tripura on 02.09.1997, 14 years before the trees are cut,

would represent the correct value of the plantation cut in 2011. This is not explained by the counsel for the petitioner.

45) That apart, there is already an admission recorded in the judgment dt.25.04.2014 in WP(C) No.53 of 2014 by the Government counsel that in the case of the petitioner, inappropriate procedure was followed in determining the compensation. The said admission is binding on the petitioner as well and it cannot now seek to justify the compensation of Rs.72,675/- paid to the petitioner on the basis of Annexure 18.

46) In the evidence of DW-1, the witness for the State Government admitted that they did not get assessment of value of the rubber plants done through Rubber Board and that they relied on the rate furnished by the Addl. District Magistrate, West Tripura in Annexure 18. He also admitted that he cannot say on what basis the said value was assessed by the SDM, Sadar.

47) On the contrary, the respondent no.1 has placed reliance on the guidelines for computing compensation for rubber trees given by the Rubber Board, Zonal Office/NRETC, Rubber Board, Agartala, dt.28.03.2012. There is a table annexed to the said proceeding indicating that for trees aged 7(seven) years, expected loss would be Rs.9760/- and this was what was adopted by the Court below.

48) This Rubber Board functions under the Ministry of Commerce, Government of India and the guidelines have been issued by the Zonal Office based in Agartala for the North Eastern Region in respect of rubber trees for valuation as on December, 2011. Therefore, there is no reason to doubt its veracity.

49) We reject the plea of the petitioner that none concerned with the Rubber Board was examined to prove the correctness of the said document. The Rubber Board is constituted by the Central Government under the Rubber Act, 1947, and it is a statutory body.

50) If the petitioner was disputing the said document and contending that the compensation should be less than what is mentioned in the said document, petitioner should have examined some witnesses in support of such plea and it has not chosen to do so.

51) Therefore, the judgment of the District Judge cannot be found fault with for following the guidelines issued by the Rubber Board on 28.03.2012, specific to the North Eastern Region.

52) The next plea of the counsel for the petitioner was that the petitioner had received the compensation without objection and is therefore estopped from seeking further compensation. This argument is based upon a printed money receipt (Exhibit – C) handing over Rs.72,675/- to the son of the respondent no.1 accompanied by a cheque dt.23.06.2011 of the said amount for surface damage.

53) Firstly, this document cannot be used to contend that the respondent no.1 did not raise any objection for the reason that the respondent no.1's son was only *acknowledging* the receipt of the cheque.

54) Admittedly, this plea was raised in WP(C) No.53 of 2014 but this Court brushed it aside by saying “*Be that as it may, it is directed that the respondent No.2 shall transmit all records along with a copy of this order to the District Judge, South Tripura within a month from today for the purpose of determining the compensation in terms of the judgment and order dated*

23.07.2013 as reproduced.....” It made clear that the amount that has been received by the respondent no.1 shall be adjusted on determining the compensation by the District Judge.

55) Therefore, this plea made by the petitioner is deemed to have been rejected in WP(C) No.53/2014 by the learned Single Judge and the said judgment continues to bind the petitioner as it had not challenged the said judgment and accepted it. The petitioner is barred by the principle of *res judicata* from raising the said plea again in this Revision petition.

56) Another contention raised by the petitioner is that compensation for land of 26 sq.m. cannot be granted.

57) Admittedly, there is a finding of the District Judge that for placing a tower by petitioner this 26 sq.m. of land of respondent no.1 is required to be utilized.

58) Since the respondent no.1 is engaged in raising the rubber plantation, undoubtedly the respondent no.1 would be deprived of use of this 26 sq.m. because he cannot raise a rubber plantation when the tower of the petitioner is located there.

59) Under Art.300A of the Constitution of India no person can be deprived of his property save by authority of law. If the respondent no.1 is deprived of use of land of 26 sq.m. for laying the tower by the petitioner, it was incumbent on the part of the petitioner to initiate process under the Land Acquisition Act,1894 for acquisition of this portion of the land for the said purpose. It had chosen not to do so for reasons best known to it.

60) But that does not mean that the respondent no.1 should be denied compensation to the extent he is deprived of the use of the land because there is a default on the part of the petitioner to acquire the same.

61) In the case of ***Chairman, Indore Vikas Pradhikaran versus Pure Industrial Coke & Chemicals Ltd. and others***⁴, Supreme Court held that where the right of an owner of property to use and develop land stands restricted, it requires strict construction. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land. The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof and expropriatory legislation must be given a strict construction.

62) In the case of ***M. Naga Venkata Lakshmi versus Visakhapatnam Municipal Corporation and another***⁵, the appellant had purchased a plot in a non-approved layout. Subsequent to the said purchase, a layout was approved and the plot of the appellant was earmarked as open space without giving opportunity of hearing to the appellant. When the appellant applied for sanction of a building plan before the Visakhapatnam Municipal Corporation, it rejected the same on the ground that the proposed construction fell on a reserved open space in the Layout. This was challenged by the appellant in the High Court and the High Court rejected it. This was challenged in the Supreme Court by the appellant. The Supreme Court held that the Visakhapatnam Urban Development Authority was created under the Andhra Pradesh Urban Areas (Development) Act, 1975, and that a revised plan was prepared in the year 1989. But 7(seven) years prior thereto the appellant had

⁴ (2007) 8 SCC 705

⁵ (2007) 8 SCC 748

purchased the land under a registered sale deed dt.08.07.1982. The Supreme Court held that there is no provision in terms whereof the appellant could be deprived of her right of property without payment of any compensation and when the appellant was going to be affected by making of a Zonal plan or master plan, she ought to have been given notice. Therefore, the matter is remitted to the High Court.

63) In the case of ***Raju S. Jethmalani and others versus State of Maharashtra and others***⁶, a plot belonging to private person was earmarked as a garden in a development plan, but it was not acquired and it remained as private property. It was shown as a garden in the draft development plan and no objection was raised and final notification declaring this land as earmarked for garden was published. The Supreme Court held that a development plan can be prepared of a land comprising of a private person, but that plan cannot be implemented till the land belonging to the private person is acquired by the Planning authority. It held that the Government cannot deprive the persons from using their private property.

64) Thus, the Supreme Court held that a person cannot be deprived of use of property unless the same is acquired i.e. compensation is paid for the land which he deprived of use.

65) So, we find no illegality in the action of the learned Single Judge awarding compensation for the 26 sq.m. of land which the respondent no.1 would be deprived of for tower base construction on account of the action of the petitioner, who deliberately chose not to acquire that land and yet deprived the respondent no.1 of the use of the same.

⁶ (2005) 11 SCC 222

66) In any event, the scope of interference under Art.227 of the Constitution of India with orders of sub-ordinate Courts is very limited. Mere wrong decision is not a ground for exercise of jurisdiction under Art.227 and the High Court may intervene only where it is established that the lower Court was guilty of grave dereliction of duty and flagrant abuse of power which has resulted in grave injustice to any party.

67) In the case of ***Ouseph Mathai and others versus M. Abdul Khadir***⁷, the Supreme Court held that unless findings of fact of the lower Court are perverse or based on no legal evidence, High Court cannot exercise power under Article 227 as if it was an appellate Court.

68) In the case of ***Management of Madurantakam Coop. Sugar Mills Ltd. versus S. Viswanathan***⁸, the Supreme Court held that High Court cannot re-appreciate evidence while exercising jurisdiction under Art.227.

69) In the instant case we are of the view that the limited jurisdiction vested in this Court by Art.227 of the Constitution of India does not warrant interference with the judgment of the Court below. No case has been made out by petitioner justifying such interference.

70) Having regard to the above reasons, we find that there is no merit in this Revision Petition. It is accordingly dismissed with cost of Rs.25,000/- to be paid by the petitioner to the respondent no.1 within 8(eight) weeks.

71) Pending application(s), if any, shall stand disposed of.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

⁷ (2002) 1 SCC 319

⁸ (2005) 3 SCC 193