

Serial No. 01-07
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA No. 1 of 2022 with
CRAPPL No. 1 of 2023
FA No. 1 of 2023
FA No. 2 of 2023
FA No. 3 of 2023
FA No. 4 of 2023
FA No. 5 of 2023

Date of Decision: 07.02.2025

FA No. 1 of 2022

Collector, Ri Bhoi District, Nongpoh

:::Appellant

-Vs-

1.Shri. Armstrong Syiem
S/o (L) D. Kharkongor

2.Smti. Marvellous Syiem
D/o Smti. Apraianti Giri Syiem

3.Shri. Bro Lyngdoh
S/o (L) Kiar Swer

4.(Late) Herland Lyngdoh
Substituted by Smti. Riona Shabong

5.Shri. Aibiroi Lamare
S/o (L) Shri. Wel Nengnong
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 6 of 2022)

6.Shri. Thrimson Marbaniang
S/o (L) Kidon Kharryngi
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 5 of 2022)

7.Smti. Wandahun Mawrie
D/o (L) Smti. Kshiar Mawrie
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 16 of 2022)

8.Smti. Ilinda Mawrie
D/o D. Wankhar

9.Shri. Dra Lapang
S/o (L) Phili Malai

10.Shri. Mawshantie A. Blah
S/o Shri. Dio Sing Lyngdoh

11.Smti. Twailinda Lyngdoh
D/o L. Kharthangmaw

12.Smti. Brossful Lyngdoh
D/o Justman Makri

13.Smti. Piantimontado
D/o (L) Phil Mangu

14.Smti. Annebolyne Dohtdong
Grand-daughter of (L) Smti. Soridian
Dohtdong
(Substituted vide Court's order dated
13/10/2022 passed in MC(FA) No. 14 of 2022)

15.Smti. Apphira Lyngdoh
D/o Small Junde Nengnong

16.Smti. Phliewris Nongphud
D/o (L) Sana Syiem

17.Smti. Successful Nongphud
D/o Rolsing Marngar

18.Smti. Santimon Sohsten
D/o (L) Smti. Lina Sohsten
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 11 of 2022)

19.Smti. Larita Lyngdoh
D/o Hainmanik Kharjana

20.Smti. Elma Nongrum
D/o Swip Sohasten

21.Smti. Lidia Kurbah
D/o (L) Jrim Jana

22.Smti. Darihun Lapang
D/o Adhikari Sharma

23.Shri. Kyrshanbor Donshiew
S/o Watson Nongtra

24.Smti. Niwan Roy Pale
D/o K. Lamare

25.Marvellous Carol Nengnong
D/o (L) Smti. Thenis Sinola Nengnong
(Substituted vide Court's order dated
13/10/2022 passed in MC(FA) No. 17 of 2022)

26.Smti. Meranisha Sten
D/o (L) Smti. Shantimai Sohsten
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 10 of 2022)

27.Shri. Bresson Mukhim
S/o (L) Phet Suting

28.Smti. Evaniarlyne Giri Massar
Sister of (L) Shri. Kyntiew Massar
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 8 of 2022)

29.Smti. Merilian Kharhunai
D/o (L) Jwin Malyngiang

30.Smti. Easther Syiem
D/o (L) Bliantimai Syiem

31.Smti. Trasibon Kharkongor
D/o (L) Smti. Skerina Kharkongor
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 19 of 2022)

32.Smti. Phlassibon Kharkongor
D/o (L) Jwet Pyngrope

33.Smti. Evangeline S. Sutnga
D/o (L) R. Lyngdoh Mawlong

34. Smti. Sibonty Markhap
D/o J.N. Kalita

35.Smti. Steid Dkhar
D/o (L) Kmier Sing Nengnong

36.(Late) Susan M. Wahlang
Substituted by Smti. Rhoda Angela Wahlang

37.Shri. O. Kharpran
S/o (L) R. Kharpran

38.Shri. W. Thangkhiew
S/o (L) M. Nongtathiang

39.Shri. Phlanroy Kharthangmaw
S/o (L) Arbat Kurbah
(Substituted vide Court's order
dated 17/11/2022 passed in
MC(FA) No. 25 of 2022)

40.Smti. Airihun Nongrum
D/o (L) Bren Mawthoh
(Substituted vide Court's order
dated 10/05/2023 passed in
MC(FA) No. 11 of 2023)

41.Shri. Peaceful Ramshon
S/o (L) Smti. Plin Ramshon
(Substituted vide Court's order
dated 13/10/2022 passed in

MC(FA) No. 18 of 2022)

42.Smti. Endris Shadap
D/o Let Shylla

43.Smti. Green Mukhim
D/o (L) Manasing Mawthoh

44.Smti. Dam Shadap
D/o (L) Wibarson Lapang

45.(Late) B.K. Jyrwa
Substituted by Smti. Sirbina Jyrwa

46. Smti. Julestinora Lyngdoh
D/o (L) Thrinlisi Lyngdoh
(Substituted vide Court's order
dated 03/10/2024 passed in
MC(FA) No. 3 of 2024)

47.Smti. Larleso Susngi
D/o Rosewell Lamare

48. Smti. Kashrar Karthangmaw
D/o (L) Smti. Phian Karthangmaw
(Substituted vide Court's order dated
13/10/2022 passed in MC(FA) No. 12 of 2022)

49. Smti. Hinsila Ramshong

50. Smti. Thrida Rynjah
D/o Kling Rynjah

51. Smti. Hiarmonlang Nongrum
D/o (L) Shri. Onder Myrboh
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 9 of 2022)

52. Smti. Ebrian Syiemlieh
S/o (L) Smti. Kril Syiemlieh
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 7 of 2022)

53. Smti. Mardis Lyngdoh
D/o (L) Ibon Lyngdoh
(Substituted vide Court's order
dated 13/10/2022 passed in
MC(FA) No. 13 of 2022)

54. Smti. Teidalin Khyriemmuja
D/o (L) Smti. Mabeldalis Khyriemmuja
(Substituted vide Court's order dated
13/10/2022 passed in MC(FA) No. 15 of 2022)

55. Smti. Ruthsila Synjri
D/o Mansing Kharlukhi

56. Smti. Rodialla Synjri
D/o Mansing Kharlukhi

57. Shri. Berington Nongspung
S/o Brik Thangkhiew

58. Smti. Bertilin Kharbuli

59. Smti. Ri Jaintia Shabong
D/o Kriam Kurbah

60. Smti. Ai Ridian Shadap
D/o Starding Jyrwa

61. Smti. Judy Dkhar
D/o (L) Sorbo Mohon Swer

::: Opposite Parties/Respondents

CRAPPL No. 1 of 2023

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| 1. Smti. Marvellous Syiem | :::Cross Objector/Respondent No.2/
Claimant No. 2 |
| 2. Shri. Herlan Nengnong (deceased)
Substituted by his daughter
Smti. Riona Shabong | :::Cross Objector/Respondent No.4/
Claimant No. 5 |
| 3. Shri. Wel Nengnong (deceased)
Substituted by his son
Shri. Aibiroy Lamare | :::Cross Objector/Respondent No.5/
Claimant No. 6 |
| 4. Smti. Kshiar Mawrie (deceased)
Substituted by her daughter
Smti. Wandahun Mawrie | :::Cross Objector/Respondent No.7/
Claimant No. 8 |
| 5. Shri. Dra Lapang | :::Cross Objector/Respondent No.9/
Claimant No. 10 |
| 6.Smti. Twailinda Lyngdoh | :::Cross Objector/Respondent No.11/
Claimant No. 12 |
| 7.Smti. Barasful Lyngdoh | :::Cross Objector/Respondent No.12/
Claimant No. 13 |
| 8. Smti. Piantimon Tado | :::Cross Objector/Respondent No.13/
Claimant No. 14 |
| 9. Smti. Apphira Lyngdoh | :::Cross Objector/Respondent No.15/
Claimant No. 16 |
| 10. Phliwris Nongphud | :::Cross Objector/Respondent No.16/
Claimant No. 17 |

11. Successful Nongphud	:::Cross Objector/Respondent No.17/ Claimant No. 18
12. Smti. Lina Sohsten @ Lina Sten (deceased) Substituted by her daughter Smti. Santimon Sten	:::Cross Objector/Respondent No.18/ Claimant No. 19
13. Smti. Lorita Lyngdoh	:::Cross Objector/Respondent No.19/ Claimant No. 20
14. Smti. Elma Pasi	:::Cross Objector/Respondent No.20/ Claimant No. 21
15. Smti. Lidia Kurbah	:::Cross Objector/Respondent No.21/ Claimant No. 22
16. Smti. Darihun Lapang	:::Cross Objector/Respondent No.22/ Claimant No. 23
17. Shri. Kyrshanbor Singh Donshiauw	:::Cross Objector/Respondent No.23/ Claimant No. 24
18. Smti. Thenissinola Nengnong (deceased) Substituted by her daughter Smti. Marvellous Carol Nengnong	:::Cross Objector/Respondent No.25/ Claimant No. 26
19. Smti. Shontimai Sohsten (deceased) Substituted by her daughter Smti. Meranisha Sten	:::Cross Objector/Respondent No.26/ Claimant No. 27
20. Shri. Bresson Mukhim	:::Cross Objector/Respondent No.27/ Claimant No. 28
21. Shri. Kyntiewsing Giri Massar (deceased) Substituted by his	:::Cross Objector/Respondent No.28/ Claimant No. 29

sister Smti. Evaniarlyne Giri Massar

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| 22. Smti. Merilinda Kharbujon | :::Cross Objector/Respondent No.29/
Claimant No. 30 |
| 23. Smti. Esther Syiem | :::Cross Objector/Respondent No.30/
Claimant No. 31 |
| 24. Smti. Skerina Kharkongor
(deceased) Substituted by her
daughter Smti. Trasibon
Kharkongor | :::Cross Objector/Respondent No. 31/
Claimant No. 33 |
| 25. Smti. Evangeline Sutnga | :::Cross Objector/Respondent No.33/
Claimant No. 35 |
| 26. Smti. Stied Dkhar | :::Cross Objector/Respondent No.35/
Claimant No. 38 |
| 27. Shri. Arbat Kurbah (deceased)
Substituted by his son namely
Shri. Phlanroy Kharthangmaw | :::Cross Objector/Respondent No.39/
Claimant No. 43 |
| 28. Smti. Plin Ramshon (deceased)
Substituted by her son
Shri. Peaceful Ramshon | :::Cross Objector/Respondent No.41/
Claimant No. 45 |
| 29. Smti. Endris Shadap | :::Cross Objector/Respondent No.42/
Claimant No. 46 |
| 30. Smti. Krintina Mukhim | :::Cross Objector/Respondent No.43/
Claimant No. 47 |
| 31. Smti. Diwti Shadap @
Smti. Dam Shadap | :::Cross Objector/Respondent No.44/
Claimant No. 48 |
| 32. Smti. Julestinora Lyngdoh
D/o (L) Thrinlisi Lyngdoh | :::Cross Objector/Respondent No.46/
Claimant No. 50 |

(Substituted vide Court's order dated 03/10/2024 passed in MC (CRAPPL) No. 1 of 2024)

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| 33. Smti. Iarly Susngi | :::Cross Objector/Respondent No.47/
Claimant No. 51 |
| 34. Smti. Phian Kharthangmaw
(deceased) Substituted by her
daughter Smti. Shrar Kharthangmaw | :::Cross Objector/Respondent No.48/
Claimant No. 52 |
| 35. Smti. Hinsila Rymshon | :::Cross Objector/Respondent No.49/
Claimant No. 53 |
| 36. Smti. Cinobia Mary Shanpru
D/o (L) Smti. Drimsimai Shanpru
(Substituted vide Court's order dated
22/11/2024 passed in MC (CRAPPL) No. 2 of 2024) | :::Cross Objector/Respondent not
made party/Claimant No. 54 |
| 37. Smti. Thrída Rynjah | :::Cross Objector/Respondent No.50/
Claimant No. 55 |
| 38. Shri. Onder Marboh (deceased)
Substituted by his daughter
Smti. Hiarmon Nongrum | :::Cross Objector/Respondent No.51/
Claimant No. 56 |
| 39. Smti. Kril Syiemlieh
(now deceased) Substituted by
her daughter Smti. Ebrian Syiemlieh | :::Cross Objector/Respondent No.52/
Claimant No. 57 |
| 40. Smti. Ibon Lyngdoh (deceased)
Substituted by her daughter
Smti. Mardis Lyngdoh | :::Cross Objector/Respondent No.53/
Claimant No. 58 |
| 41. Smti. Mebeldalis Khyriemmujať
(deceased) Substituted by her
daughter Smti. Teidalin Khyriemmujať | :::Cross Objector/Respondent No.54/
Claimant No. 59 |
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| 42. Smti. Ruthsila Synjri | :::Cross Objector/Respondent No.55/
Claimant No. 60 |
| 43. Smti. Rodiala Synjri | :::Cross Objector/Respondent No.56/
Claimant No. 61 |
| 44. Shri. Berington Nongspung | :::Cross Objector/Respondent No.57/
Claimant No. 62 |
| 45. Smti. Rijaintia Shabong | :::Cross Objector/Respondent No.59/
Claimant No. 66 |
| 46. Smti. Ai Ridian Shadap | :::Cross Objector/Respondent No.60/
Claimant No. 67 |
| 47. Smti. Judy Dkhar
D/o (L) Sorbo Mohon Swer | :::Cross Objector/Respondent No.61/
Claimant No. 68 |

-Vs-

Collector, Ri – Bhoi District,
Nongpoh, Meghalaya

::: Opposite Party/Appellant

FA No. 1 of 2023

Smti. Bartilin Kharbuli
D/o (L) K. Kharbynepet

:::Appellant

-Vs-

Collector, Ri – Bhoi District, Nongpoh

:::Respondent

FA No. 2 of 2023

Smti. Susan M. Wahlang since deceased
Substituted by Smti. Rhoda Angela
Wahlang vide order dated 30/09/2011
passed by Special Judicial Officer,
Shillong

:::Appellant

-Vs-

Collector, Ri – Bhoi District, Nongpoh

:::Respondent

FA No. 3 of 2023

Smti. Soridian Dohtdong, since deceased
Substituted by her grand-daughter Smti.
Annebolyne Dohtdong vide order dated
13/10/2022 passed in MC (FA) No. 14 of 2022

:::Appellant

-Vs-

Collector, Ri – Bhoi District, Nongpoh

:::Respondent

FA No. 4 of 2023

Shri. Armstrong Syiem
S/o (L) D. Kharkongor

:::Appellant

-Vs-

Collector, Ri – Bhoi District, Nongpoh

:::Respondent

FA No. 5 of 2023

Smti. Ilinda Mawrie
D/o (L) D. Wankhar

:::Appellant

-Vs-

Collector, Ri – Bhoi District, Nongpoh

:::Respondent

Coram:

Hon’ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

In FA No. 1 of 2022

For the Petitioner/Appellant(s) : Mr. S. Sen, GA with
Ms. R. Colney, GA.

For the Respondent(s) : Mr. V.K. Jindal, Sr. Adv. with
Mr. S. Rana, Adv.
Ms. B. Jyrwa, Adv.

Appearance:

In CRAPPL No. 1 of 2023

FA No. 1 of 2023

FA No. 2 of 2023

FA No. 3 of 2023

FA No. 4 of 2023

FA No. 5 of 2023

For the Petitioner/Appellant(s) : Mr. V.K. Jindal, Sr. Adv. with
Mr. S. Rana, Adv.
Ms. B. Jyrwa, Adv.

For the Respondent(s) : Mr. S. Sen, GA with
Ms. R. Colney, GA.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER

1. FA No. 1 of 2022, has been preferred by the appellant Collector, Ri Bhoi District, against the judgment and order dated 17.03.2020, passed by the Court of the Special Judicial Officer, Ri Bhoi District in (Ref.) L.A. Case No. 122 of 2015 (New) and (Ref.) L.A. Case No. 8 of 2003 (Old), whereby, 62 individual references have been disposed of vide in the common judgment and order enhancing the compensation in several references and order dated 15.04.2021, passed in Misc. Case No. 2 of 2021, in L.A. Case No. 8 of 2003, whereby, the learned Ref. Court has modified the judgment and order dated 17.03.2020, in exercise of powers under Section 151 read with Section 152 CPC, to the extent of award of solatium.

2. FA Nos. 1 and 5 of 2023, has been preferred by individual land owners namely Smti Bertilin Kharbuli, respondent No. 58/claimant No. 63, and Smti Hinda Mawrie, respondent No. 8/claimant No. 9, against the

same impugned judgment and order dated 17.03.2020, whereby the learned Ref. Court has declined to enhance the rates of land of the appellants, and thus are seeking reassessment of the compensation on the basis of the oral and documentary evidence that is stated to be on record.

3. FA No. 2 of 2023, is filed by Smti Susan M. Wahlang (deceased), respondent No. 36/claimant No. 39, is for enhancement of the rates and compensation for severance of land.

4. FA No. 3 of 2023, is filed by Smti Annebolyne Dohtdong, respondent No. 14/claimant No. 15, is for enhancement of rates and balance compensation for damage to building/shops and severance of land.

5. FA No. 4 of 2023, is filed by Shri Armstrong Syiem, respondent No. 1/claimant No. 1, who has claimed for enhancement of rates and balance compensation for hybrid tissue culture plantation, champa trees and damage to iron fencing and iron gates.

6. A separate Cross appeal/objection under Order 41 Rule 22 of the CPC numbered as CRAPPL No. 1 of 2023 in FA No. 1 of 2022, has

also been filed by the respondents/claimants against the findings in a part of the impugned judgment and order, whereby the learned Ref. Court has declined to accept the evidence of common witness No. 69, 70 and 71, and the sale deeds executed by them which were marked as Exhibits – 4, 5 and 6, the other findings which are under challenge is the compensation being allowed to only 50% of the claim amount in respect of damage to the standing structures, agricultural and horticulture products, as per valuation certificates by ignoring the evidence of the expert witnesses and assessment certificates issued by them.

7. All the above noted appeals which emanate from the same judgment and order, as they relate to the same acquisition proceedings which had been initiated for the acquisition of land measuring 2,80,556.11 sq. mtrs. in different villages on either side of Lad Umroi, Bhoirymbong Road, Ri Bhoi District, for the public purpose of construction of the National Highway, Shillong By Pass Road connecting NH-40 and NH-44, are being disposed of by this common judgment and order.

8. When FA No. 1 of 2022, had been filed by way of common or composite appeal, from the side of the respondents, objections had been raised as to its maintainability on the contention that the Collector/Appellant, should have filed individual appeals as though there was a common judgment dated 17.03.2020, individual decrees had been drawn up on separate claims. It was further also contended that the Government Advocate lacked the authority to file the appeal on behalf of the Collector, and that no authority letter had been submitted. It was also submitted that if the Collector's appeal was found to be not maintainable, the Cross Appeal would be rendered redundant, but the separate appeals filed by the individual land owners could be heard on their own merit. In this context, several authorities had been placed by the Senior counsel for the respondents, Mr. V.K. Jindal in support of this objection.

- (i) ***Shri. Gangai Vinayagar Temple & Anr. vs. Meenakshi Ammal & Ors.*** reported in ***(2015) 3 SCC.***
- (ii) ***Deputy Collector, Northern Sub-Division vs. A. Comunidade de Bamboolin,*** 1978 SCC OnLine GDD 6.
- (iii) ***Union of India & Anr. vs. Ranchod & Ors.*** reported in ***(2007) 14 SCC 326.***

9. In answer to the challenge to the maintainability of the appeal, Mr. S. Sen, learned GA has submitted that the issue requires an examination as to how the reference proceeding was initiated. First, he submits, the respondents against the award of the Collector had filed a joint application dated 22.09.2003, praying for reference, and on the basis of the joint application, a single order of reference was made by the Collector dated 31.10.2003, which was registered initially as a single reference being (Ref.) L.A Case No. 8 of 2003, by the Special Court at Shillong, and later renumbered as (Ref.) L.A Case No. 122 of 2015. Thereafter, he further submits, on the claimants filing separate claim petitions before the Court, the matter was disposed of by the common judgment dated 17.03.2020, but individual decrees were drawn up.

10. Thus, it is submitted on a joint reference application, the Collector had rightly made a single reference order under Section 19 of the L.A. Act, 1894, and the learned Special Court had registered a single case in respect of all the claimants. It is contended that Order 4 Rule 1 CPC, states that a suit shall be commenced by a plaint which is the starting point of the suit, and therefore, when a proceeding has been initiated under the

LA Act of 1894, before the Special Court on the basis of a written application containing the objections under Section 18 thereof, it is this objection that is to be referred to the Court for adjudication and that the legislation does not provide for filing of any other applications. The learned counsel has also countered the judgments relied upon by the respondents, and has submitted that in those cases it was where multiple suits had been filed and in view of their commonality of issues were tried together and disposed of by a common judgment, but followed by individual decrees. It is further submitted that even while seeking correction of the impugned judgment dated 17.03.2020, the claimants had filed a single application being Misc. Case No. 2 of 2021. It has also been contended that Section 26 of the LA Act, 1984, the award of the reference is a deemed decree and as such, there is no necessity to draw up individual decrees. Lastly, he submits that even the respondents themselves have filed a Cross Appeal jointly, on behalf of 47 respondents assailing the judgment and decree dated 17.03.2020, while at the same time seeking to question the instant First Appeal filed by the Collector.

11. On the other question that no Vakalatnama had been filed by the Collector, it has been simply submitted by the learned counsel that a Collector is a Public Officer, as defined under Section 2(17) CPC, and therefore, is entitled to be represented by a Government Pleader as defined in Section 2(7) of the CPC. The judgment passed in the case of ***Sharda Devi vs. State of Bihar*** reported in ***(2003) 3 SCC 128***, has been placed by the learned counsel, wherein it has been held that the Collector acts as a Representative of the State, while holding proceedings under the LA Act, 1894.

12. In the opinion of this Court, the question of maintainability needs to be addressed first, before proceeding further to enter into the merits of the appeals. This Court notes that in the judgment namely ***Shri. Gangai Vinayagar Temple (supra)*** relied upon by the respondents, the facts are dissimilar, inasmuch as, it is a case where there are multiple suits which were clubbed together by a consolidation order, where a common trial was held and a common judgment rendered therefrom, but individual decrees were drawn in the respective suits. In the case of ***Chitivalasa Jute Mills vs. Jaypee Rewa Cement*** reported in ***(2004) 3 SCC 85***, the Supreme

Court at Para – 12 of the said judgment thereof, had directed that “*as the suits are two, the Court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits*”. The case of ***Union of India & Anr. vs. Ranchod & Ors. (supra)***, cited by the respondents also will be of no assistance to their case, inasmuch as, it is a case of where a large number of land holders whose land has been acquired, had filed separate objections under Section 9 of the Act, and had also separately sought references under Section 18, whereas in the instant case, a single reference application has been made by all the land owners. With regard to the last judgment placed by the learned Senior counsel for the respondents i.e. ***Deputy Collector, Northern Sub-Division vs. A. Comunidade de Bamboolin (supra)***, on the question of lack of authority, the said judgment it appears has since been overruled by the Supreme Court by its judgment between the same parties and has been reported in ***(1995) 5 SCC 333*** and as such, merits no further discussion.

13. Another aspect which is relevant is that the award has been passed in terms of Section 26 of the L.A. Act, which as submitted, at

Section 26(2) thereof, that such award shall be deemed to be a decree. For the sake of convenience Section 26 of the L.A. Act is reproduced herein below.

“26. Form of awards.- [(1)Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908).J”

14. It is also noted that the respondents themselves have preferred a Cross Appeal jointly on behalf of the 47 respondents, against the impugned judgment dated 17.03.2020, while at the same time seeking to maintain their objections to the common appeal filed by the Collector/Appellant.

15. Accordingly, in the light of discussions made herein above, F.A No. 1 of 2022 is held to be maintainable, and as such this Court will now proceed to examine the merits.

.....**XXX**.....

ON MERITS

16. Coming to the merits of these appeals, firstly, looking at the challenge made by the Collector, the same has been made on the following grounds, with the accompanying submissions which are as follows: -

REFERENCE COURT GRANTED UNIFORM MAXIMUM MARKET RATE IN VIOLATION OF SETTLED PRINCIPLES

(i) As per the Respondents claims and as recorded in the impugned judgment dated 17.03.2020, it is submitted that the Respondents had prayed for market value based on the following classification of lands viz. (a) Homestead land; (b) Paddy fields; (c) Arable lands; and (d) Quarry lands/waste land, but however, while determining the market rate the learned Reference Court, did not award compensation as per the rates for the different categories of land and instead awarded 'Maximum rate'

without examining the entitlement of the individuals to get the maximum compensation.

(ii) It is submitted that determination of market rate of land under acquisition must be based on reasonable criteria and cannot be arbitrary and several factors ought to be taken into consideration in determining the value of the land such as, location of the land acquired, proximity to an access road, main road, high way, city, town etc.

(iii) Reliance has been placed on the case of *Haridwar Development Authority v. Raghubir Singh and others* reported in (2010) 11 SCC 581 (para 7), wherein while dealing with the issue of whether acquired land had to be valued uniformly at the same rate or whether different areas in the acquired lands have to be valued at different rates, the Supreme Court has laid down the principles including adoption of the belting method.

(iv) In the present case it is contended, a large area of land was acquired for the purpose of construction of a highway and while granting enhanced compensation by awarding the maximum rate and by homogenizing all the

lands, the learned court deviated from the above settled parameters and granted the compensation in a manner not recognized by law.

It is further submitted that the determination of the market rate was without reference to any materials pertaining to the advantages or disadvantages of the lands and merely premised on a 'just' and 'equitable' approach which is bereft of any legal reasoning.

(v) It is also submitted that the award of compensation based on classification, is inherently more just and equitable for each landowner involved in the process and this approach, ensures and promotes fairness and balance in the distribution of compensation based on entitlement.

(vi) The Respondents/Claimants it is submitted by the Learned GA, have defended the award of maximum market value and contended that in case of acquisition for a single purpose, classification of land was not necessary, whereas in their reference application dated 22.09.2003, the Respondents have themselves prayed for compensation based on the classification of land. Even as late as the final hearing before the Reference Court, the Respondents claimed rates based on the following classification

of land which was recorded by the learned court below in the impugned judgment dated 17.03.2020 (Pg. 134 Paper Book I):

- a) For Homestead – Rs. 4,000/- per sq mtr.
- b) For paddy field – Rs. 10,000/- per sq mtr.
- c) For arable land – Rs. 4,000/- per sq mtr.
- d) For Quarry land – Rs. 4,000/- per sq mtr.

(vii) It is thus submitted that by urging that acquisition for a single purpose does not require classification, the Respondents have contradicted their own case before the learned court below and set up a new case before this Hon'ble Court. With regard to the cases relied upon by the Respondents on this point which namely are:

- i) Union of India v. Harinder Pal Singh, (2005)12 SCC 564*
- ii) The Land Acquisition Collector v. Shri. Roshan Lal & Ors., 2018 SCC Online HP 928*
- iii) Ranjeet Singh v. Land Acquisition Collector, 2018 SCC Online HP 928*

The learned counsel has submitted that, these decisions cannot be treated to be an authoritative pronouncement on the Respondent's proposition as it does not provide a reasonable and acceptable basis for the same. Further, the latter two decisions being rendered by a coordinate

bench of the High Court of Himachal Pradesh, the said decisions are not binding on this Hon'ble Court.

(viii) In ***Ranjeet Singh*** case he submits, there has been a reliance on the judgment of the Hon'ble Supreme Court in ***Union of India v. Harinder Singh (supra)*** reported in ***(2005) 12 SCC 564***, wherein the said case, acquisition was undertaken for extension of the Cantonment at Amritsar and not for a highway and the court dealt with grant of uniform rate of compensation for 5 different villages by taking the market value adjudged for one village as a comparative unit for determination of market value of the other lands. A reading of para 15 and 16 of the said judgment he submits, reveals that the court adopted the rates awarded for acquisition of an adjoining village by examining the surrounding the attending facts and holding that it was a comparative unit. He therefore contends that the judgment of the case of ***Union of India vs. Harinder Singh (supra)*** will have no application.

GRANT OF SOLATIUM IS ONLY PERMISSIBLE ON THE MARKET VALUE AND NOT ON THE ENTIRE COMPENSATION

(i) The learned Reference Court it is submitted, granted solatium @ 30% per annum on the entire compensation and that on the Respondent's application being Misc. Case No. 2 of 2021 vide order dated 15.4.2021, the Reference Court ordered that '30% solatium per annum' be read as '30% solatium'. The learned counsel then asserts that the expression 'compensation' occurring in Section 23 includes various categories of payments which in their entirety form 'compensation' and that the Reference Court wrongly granted 30% on an amount which included the market value as well as the amount awarded for others losses suffered, inasmuch as, grant of solatium on any other amount is impermissible.

(ii) In support of his contention reliance has been placed on the case of *State of Punjab v. Amarjit* reported in (2011) 4 SCC 734 (para 11), wherein the Supreme Court of India while dealing with this issue held that the additional amount under Section 23(1A) and solatium under Section 23(2) of the Act and not on any other amount and that Solatium and additional amount are also not payable on the damages/expenses that may be awarded under second to sixth factors under Section 23(1) of the Act. In

addition, it is submitted, the Reference Court did not take into account the fact that in its Award, Collector had awarded Solatium @ 30% which amount was withdrawn by the Respondents and as such therefore, it is necessary to direct necessary adjustment/deduction.

However, it may be noted herein that during the course of the hearing, the Respondents have fairly acknowledged that solatium @ 30% is to be paid only on the market value and not on the total compensation.

COURT GRANTED 12% INTEREST ON EXCESS COMPENSATION WHEREAS SECTION 28 ONLY PRESCRIBES GRANT OF 9%

(i) On this point it is submitted that Grant of interest under the Act of 1894, is governed by Section 28 and Section 34 with Section 34 pertaining to the Collector's power to grant interest in his award, whereas section 28, empowers the Court to grant interest in its discretion on the excess or enhanced compensation that it may pass in a reference proceeding under Part III of the Act.

(ii) Under Section 28, in its discretion, it is submitted, the Court has the authority to direct the Collector to award interest on the excess amount of compensation that it may pass in the reference proceedings and the rate of

interest to be applied is contingent upon the two distinct periods delineated within this section. Interest @ 9% per annum he further submits is prescribed from the date on which the Collector took possession of the land to the date of payment of such excess sum into Court, and in case the excess compensation is paid into Court after the date or expiry of a period of one year from the date on which possession is taken, interest @ 15% per annum is prescribed from the said period of one year.

(iii) The learned counsel has placed reliance on the case of the *Commissioner of Income Tax, Faridabad v. Ghanshyam* reported in *(2009) 8 SCC 412* (para 30, 35), wherein he submits, it was underscored that Section 28 embodies judicial discretion concerning its applicability and that its invocation is contingent upon the court's evaluation of the pertinent circumstances. The provision he contends, does not mandate automatic application but rather vests the judiciary with the authority to exercise discretion in determining its applicability based on the merits of each case presented before it.

(iv) Vide the impugned judgment, he submits, the Court below has awarded interest of 12% on the excess compensation w.e.f. date of taking over of the land till payment is made in Court in violation of the mandate of Section 28, which is legally impermissible.

GRANT OF INTEREST UNDER SECTION 28 IS ONLY ON THE EXCESS AMOUNT AWARDED BY THE COURT

(i) From a reading of the decision rendered in *CIT v. Ghanshyam (HUF) supra* (para 33, 34), it is submitted, it is clear that award of interest under Section 28 of the Act of 1894 is only on the excess amount granted by Court in the reference amounts and not in the original amount granted by the Collector, and though in the impugned judgment, the learned Reference Court awarded interest on enhanced compensation, but in decree however, it computed interest on the entire sum for both the periods i.e. including the award amount already paid to and withdrawn by the Respondents under protest, which is impermissible. He therefore submits that interest is to be applied only on the excess amount and after excluding the amount that has already been received by the claimants.

SECTION 28 IS DISCRETIONARY AND THE COURT COULD HAVE CONSIDERED EXCLUDING APPLICATION OF INTEREST ON THE PERIOD WHERE THE APPELLANT WAS BONAFIDE PURSUING THE CASE AND DURING THE COVID 19 INDUCED PANDEMIC

(i) Grant of interest under Section 28 of the Act of 1894 it is averred, is discretionary and the Hon'ble Supreme Court has held the same in the case of *CIT v. Ghanshyam (supra)* at paras 33 and 34 thereof, and being a discretionary power, the Reference Court could have considered excluding application of interest for the period where the appellant was bonafide pursuing the matter in court, the period during the COVID-19 induced pandemic or at the least the period when the written argument was filed and the matter was awaiting judgment by the learned court below.

(ii) In this context, it is submitted, it may be relevant to note that on account of the COVID-19 induced pandemic and the resultant lockdown, most courts were not functioning for a considerable period of time and this was not attributable to the Appellant. As such, he contends, the learned Reference Court could have considered excluding application of interest during this period, especially taking into account that written arguments

were filed by the parties on 06.03.2017, matter was heard and fixed for judgment since 25.05.2017 and thereafter heard again and reserved for judgment on 16.12.2019 till 17.03.2020.

(iii) It is nobody's case he submits that the delay during the entire period of the reference proceedings is attributable to the Appellant and as such therefore, the learned Reference Court ought to have considered excluding application of interest for such period where the Appellant was bonafide pursuing the matter and exclude this period as grant of interest @ 15% for this period results in significant financial implication on the state exchequer.

(iv) It is further submitted that since the grant of interest is discretionary, exercise of such power has to be informed by reason, and in this regard has referred to the case of *Lanka Venkateswarlu (D) By Lrs. vs State of A.P. & Ors.* reported in *(2011) 4 SCC 363* (para 29) (pg. 96-107), wherein the Supreme Court has held that all discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

LEARNED COURT GRANTED FUTURE INTEREST

(i) A perusal of the decree dated 17.03.2020 (page 327 of Paper book I) the learned counsel submits, would reveal that the learned Reference Court computed interest w.e.f. 13.09.2002 till 12.12.2021 without any plausible or comprehensible reason available in the records, to explain grant of interest till a future date and as such, the same is completely impermissible and illegal.

(ii) As a result of the illegal grant and computation in the Decree dated 17.03.2020, across the board, he submits, all the respondents have wrongly inflated their respective entitlements.

(iii) Order XX Rule 6 CPC provides that judgment shall agree with the decree whereas he submits that in the instant case, the entire decree is beyond the judgment and does not agree with the original award of compensation in the judgment and that infact, the decrees grant reliefs not comprehended by the judgment.

JURISDICTON OF COURT BASED ON THE REFERENCE ORDER

(i) It is then submitted that in the reference application dated 22.09.2003 damage to the fencing and iron gate was not pleaded in the reference application and the plea was only on non-assessment of standing crops, trees and cultivation pleaded.

(ii) The Reference order dated 31.10.2003 (pg. 108 / Paper book I) he points out, only pertained to

- i) determination of measurement
- ii) classification
- iii) rate of the land

(iii) It is the Appellant's case he contends, that the learned court's jurisdiction under Section 18 is determined on the basis of the terms of the reference order issued under Section 19 of the Act and the court cannot assume jurisdiction over an issue which is not referred to it. In the case of ***Prayag Upnivesh v. Allahabad Vikas Pradhikaran*** reported in (2003) 5 SCC 561 (para 7, 9, 10, 11) he submits, it has been held that a Reference Court can only derive jurisdiction over matter or objection referred to it

and nothing further and its jurisdiction is derived from the reference and therefore it cannot go outside the scope of the said reference else it would suffer from a lack of inherent jurisdiction.

(iv) Similarly, he submits, any claim for compensation for loss suffered on account of severance of land etc. was not pleaded in the application, not part of the reference order and thus also outside the scope of the reference.

(v) In response, to the respondents arguments that the Collector was obliged to make the reference and not referring the issue was his fault, and the judgment of the Hon'ble Calcutta High Court in *Harish Chunder Neogy v. Secretary of State* reported in *1907 SCC OnLine Cal 69*, on this point cited by the respondents, the learned counsel submits that the said case pertains to a situation where the Collector has not given any grounds for the determination whereas in the present case, vide the reference order dated 31.10.2003 the Collector has indicated the grounds thereby complying with the requirements of Section 19(1)(d) of the Act. It is also submitted that the said judgment otherwise does not lay down good law when in theories that Collector performs a quasi-judicial function and that the Special Judge fills the position of an appellate court.

The learned counsel has gone on to argue that the observations in the case cited by the respondents are incorrect, in view of a 3-judge bench of the Hon'ble Supreme Court in ***Kiran Tandon v. Allahabad Development Authority*** reported in ***(2004) 10 SCC 745*** (para 10) wherein it has been held that the Collector's award under Section 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired and that the court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

Reliance has also been placed on the case of ***Surendra Kumar Bhatia v. Kanhaiya Lal*** reported in ***(2009) 12 SCC 184*** (para 22) (230-239), wherein it has been held that any inquiry as to the market value of property and determination of the amount of compensation by the Collector is administrative and not judicial in nature and that the Collector neither acts in a judicial nor quasi-judicial capacity but purely in an administrative capacity, exercising statutory powers as an agent and representative of the Government/acquiring authority. It further held he submits, that the

Collector does not function as a judicial officer who is required to base his decision only on the material placed in the enquiry in the presence of parties, but functions as a valuer who ascertains the market value on material collected from all sources, personal inspection and his own knowledge and experience.

(vi) With regard to the case of *Ram Kumar v. Union of India* reported in *(1991) 2 SCC 247* (para - 6 and 7) relied upon by the respondents, wherein it was held that it is the duty of the Collector to send full information to the court, it is submitted that in the said case, as revealed by the facts in para 1, 3 and 5 there was an omission on the part of the Collector to refer the details (khasra numbers) of all the plots acquired, whereupon learning of the same, the claimants immediately sought alteration of the reference order.

The present case he submits, does not deal with non-reference of all the plots acquired and that the respondents, have never challenged the reference order and sought alteration of the terms of reference. As for the claims relating to iron fence and gate etc., it is contended that no such claim was ever made in the reference application and as such therefore, in

the absence of the claim in the reference application the learned Reference Court could not have assumed jurisdiction over the same and it is a case of complete lack of inherent jurisdiction an issue that can be raised at any stage.

Therefore, in the facts of the present case, he submits it is the claimants who have failed to raise objections relating to iron fence and gate etc. in their application.

GRANT OF COMPENSATION FOR LANDS SEVERED

A. CLAIMANT NO. 15

It is submitted that in the case of Claimant No. 15 (Smti Soridian Dohtdong), compensation was claimed for an area of 1030 sq.mtr. of land severed and rendered useless, and though the court found that there was no evidence of such severance nor measurement of land was proved by the claimant to the satisfaction of the court, it surprisingly awarded compensation as no rebuttal came from the Collector and proceeded to award compensation @ Rs. 100/- per sq.mtrs. for 1030 sq.mtrs.

The learned counsel submits that such a finding cannot be sustained in law and the learned Reference Court was in gross error, in inferring the existence of a fact on the ground that there was no rebuttal thereof. When the claimant failed to prove its case as regards severance of 1030 sq. mtrs he argues, there arose no occasion for the Collector's rebuttal and as such the said finding is ex-facie perverse and unsustainable.

B. CLAIMANT NO. 60

In the case of Claimant No. 60 (Smti Ruthsila Synjri), he submits, claim was for enhancement of rates and compensation for severance of her plot of land measuring 1880 sq. mtrs. and wastage of 136 sq. mtrs. of land, wherein, the learned Reference Court awarded enhancement of rates for the wasteland measuring 1880 sq. mtrs. @ Rs. 50/- per sq. mtr.

However, it is submitted, for the wastage of the balance areas of 136 sq. mtr., while the court found that there was no evidence of such wastage nor measurement of land was proved by the claimant to the satisfaction of the court, it surprisingly held that

such severed land must be there for no rebuttal came from the Collector and proceeded to award compensation @ Rs. 50/- per sq. mtrs. for 136 sq. mtrs.

It is contended that such a finding cannot be sustained in law and that the learned Reference Court was in gross error in inferring the existence of a fact on the ground that there was no rebuttal thereof, and especially when the claimant failed to prove its case as regards wastage of 136 sq.mtrs., there arose no occasion for the Collector's rebuttal. The said finding it is argued, is ex-facie perverse and unsustainable.

17. On behalf of the land owners which includes respondents, cross-objectors and appellants, Mr. V.K. Jindal, learned Senior counsel submits that the land owners had filed the Reference Petition dated 22.09.2003, under Section 18 of the LA Act, and had prayed for the actual measurement of the land, demarcation of the boundaries, market price of the land and building, standing crops, trees, cultivation etc., whereafter, the Collector vide letter dated 31.10.2003, had sent the application to the Special Judicial Officer for disposal. The Collector he submitted, has stated in the Reference that the amount of compensation was determined

on the basis of fair market value, but however, did not comply with the requirements of Section 19 in general and 19(1)(d) in particular, with regard to the grounds on which the amount of compensation was determined.

18. It is asserted that though the Reference Petition under Section 18, was signed by all the owners, the Reference Court had issued separate notices to all the land owners who filed a separate and individual claim petitions. On the pointed issues raised, first on the justification for award of uniform rate for difference categories of land, the learned Senior counsel submits that the Collector in the reference order, has not spelt out how the market value was determined, nor did he file a written statement or adduce any evidence. There is no explanation he submits on the part of the Collector, as to how and why different rates were given for the same categorization of land, and it is not a case where the Court had made its own assessment, but had relied on the assessment made by the Collector. He therefore submits, the maximum uniform rate as awarded by the Special Judicial Officer is totally justified, inasmuch as, in the absence of any evidence or necessary particulars as required under Section 19 being

supplied by the Collector, a Special Judicial Officer had no alternative, but to award maximum uniform rates. Reliance has been placed in the case of *Union of India vs. Harinder Pal Singh & Ors.* reported in (2005) 12 SCC 564. It is also submitted that though it has been argued, that the initial burden to prove that the rate assessed by the Collector was not fair or at the market value, was on the land owners, and that as they had failed to discharge this burden, the Collector was not required to adduce any evidence, the learned Senior counsel has referred to the following cases, wherein he submits, it was held that the State is duty bound to adduce evidence and prove market value of the land. The land owners on the other hand he contends, by examining themselves and the witnesses, and bringing on record the customary sale deeds have discharged the initial burden, and therefore it was duty of the Collector to adduce evidence. With regard to solatium under Section 23(2) of the LA Act, that solatium is to be awarded on the market value of the land, the learned Senior counsel concedes this point, and submits that solatium is to be awarded only on the market value of the land, as fixed by the Collector, and enhanced by the Special Judicial Officer.

19. With regard to the interest on the enhanced amount, it is contended that the same is not contrary to Section 28 read with Section 34 of the LA Act, as the word ‘compensation’ on which the interest of 9% per annum for the initial period of one year, and thereafter at 15% per annum was awarded, in these sections speak about the award of interest on the entire compensation. In support of his submissions, reliance has been placed in the case of *Sunder vs. Union of India* reported in (2001) 7 SCC 211 and *Gurpreet Singh vs. Union of India* reported in (2006) 8 SCC 457.

20. The learned Senior counsel then submits that the Court below, has rightly exercised its discretion in awarding interest at 15% per annum on the entire period, after expiry of one year, in view of the facts and circumstances of the case, and no interference was called for.

21. Coming to the Cross Appeal preferred by 47 land owners, learned Senior counsel submits that the same is mainly on 2 grounds, that first the Reference Court had erred in law and facts in rejecting the customary sale deeds (Exhibits 4, 5 and 6) exhibited by Claim Witness (CW), 69, 70 and 71 and that secondly, there was no basis or justification

to reduce the compensation to 50% from the assessment given by the expert and qualified witnesses. It is argued that the Reference Court while relying on Para – 14 and 22 of the judgment given in the case of *The Special Land Acquisition Officer vs. Sidappota Omance* reported in (1995) Supp. 2 SCC 168, in holding that the sale deeds were unregistered without land classification, not executed at the relevant time, and with regard to only a small area, did not consider Para – 13 of the said judgment, wherein it was held that sale deed of small chunks of land can be relied, if related to the area of acquisition. Various other judgments have been referred to read in conjunction with Section 36 of the Stamp Act and proviso to Section 49 of Registration Act 1908, where he submits it has been held that, once a document has been marked as exhibit in the case and the trial proceeded, on the footing that the said documents was an exhibit in the case, Section 36 of the Stamp Act comes into play and the document thereafter cannot be called in question. It is further submitted that an unregistered document can be used for a collateral purpose and that in the instant case, the documents relied upon by the land owners are customary sale deeds which require no registration, and that the same are

used only for the purpose of finding the rates of the land prevailing at the particular time.

22. With regard to the other points i.e. the type of land or categorization not being mentioned in the sale deeds, and that the sale deeds related only to small area and were not executed at the relevant time, the learned Senior counsel has placed reliance on the following judgments.

- (i) ***The Land Acquisition Collector vs. Shir. Roshan Lal & Ors.*** reported in (2018) SCC OnLine HP 928
- (ii) ***Ranjeet Singh (since deceased) through LRs. vs. Land Acquisition Collector*** reported in (2018) SCC OnLine HP 2209
- (iii) ***Ranvir Singh & Anr. vs. Union of India*** reported in (2005) 12 SCC 59
- (iv) ***Bhupal Singh & Ors. vs. State of Haryana*** reported in (2015) 5 SCC 801

23. On another issue, it is submitted that the compensation being fixed at 50% of the amount assessed by the expert, is without any basis or evidence, as the assessment was done by the experts with regard to damage to structures was as per the approved schedule of rates of PWD (Building) for 2004-05. Similarly, it is submitted that with regard to damage of forest products and damage to hybrid plantation, assessment

whereof had been conducted by the experts, the uniform deduction of the assessed compensation by 50% was without any basis. The learned Senior counsel has also asserted that the argument raised by the counsel for the Collector that the Reference Court lacked jurisdiction to award compensation for damage to buildings, forest and plantation, inasmuch as, there was no reference made by the Collector under Section 18, has no basis, inasmuch as, specific prayers are present in the reference application itself, which allowed the Reference Court to address the same.

24. In addition to the submissions which have been advanced, the learned Senior counsel has put forward 2(two) suggestions to bring about a closure to this long pending litigation i.e. to determine the market value as per the customary sale deeds or to award maximum rate of compensation at Rs.220/- per sq. mtr. as assessed by the Collector, in view of the fact that when the land is acquired for a single purpose, more particularly for construction of the highway, the classification of land into different categories is not at all warranted. On the basis of the sale deed exhibits he submits, as the rates of the land sold therein, was at Rs.1528, 1774 and 1332 per sq. mtr., perhaps the maximum rate of 1774 be applied to arrive

at a fixed and fair market rate for that relevant point of time, or in the alternative, the aggregate of the 3 sale deeds, may be taken after making suitable deductions. In support of this submission, the learned Senior counsel has cited the case of *New Okhla Industrial Development Authority vs. Harnand Singh* reported in (2024) SCC OnLine SC 1691.

25. On another aspect of the matter, the learned Senior counsel has maintained that the Reference Court was justified in awarding compensation in respect of the excess land acquired by the Collector but not assessed, inasmuch as, it is an admitted position that the Collector had not made any physical measurement or demarcation of the boundaries of the plots of the individual land owners. It is submitted that it is the Court below that had directed for physical measurement to be made, a report of which was furnished to the Court on 17.11.2006, and as there was some discrepancies in the measurement, 11 claimants had filed an application whereafter, the Collector though given an opportunity never replied. As such, he submits by order dated 20.03.2007, it was decided that the measurement of land was a matter of evidence, which was duly adduced by the claimants and not rebutted. 3 claimants also claimed compensation

in respect of severance of their land from the plot, which had rendered part of their land useless, and though, the same has been assailed as a ground of appeal, the same however, was not pressed in the hearing. The learned Senior counsel therefore submits, the award of compensation on the 2 situations mentioned herein above, is fully justified.

26. Mention has also been made of the individual appeals filed by some land owners in FA Nos. 1 to 5, with regard to enhancement of compensation, which would stand covered by the arguments already advanced. In conclusion, the learned Senior counsel prays that the First Appeal filed by the Collector be dismissed, to allow the Cross Appeal, to set aside the findings of the Court below, as far it relates to the rejection of the exhibited sale deeds and for a fresh determination of the fair and market value of the land at the relevant time, when the notification under Section 4 of the LA Act was issued.

27. Mr. S. Sen, learned counsel in his argument against the Cross Appeal, has submitted that reliance of the respondents on the case of *Periyar and Pareekanni Rubber Ltd. Vs. State Kerala* reported in (1991)

4 SCC 195, is misplaced as it has not been held therein that the Collector is duty bound to adduce evidence. In fact, he submits the burden is on the claimants who has to adduce evidence to establish that the amount of compensation awarded by the Collector is inadequate. Learned counsel has referred to Para-16 of the above quoted judgment, wherein it was held that although the Collector did not adduce evidence in rebuttal, it did not mean that the Court was bound to accept the evidence of the appellant. Learned counsel has also placed the following decisions, wherein it has been held that the burden of leading evidence to establish that the rate offered by the Collector is inadequate is squarely and always on the claimants:-

- (i) ***Kiran Tandon v. Allahabad Development Authority & Anr.*** reported in **(2004) 10 SCC 745**
- (ii) ***Ramanlal Deochand Shah v. State of Maharashtra & Anr.*** reported in **(2013) 14 SCC 50**
- (iii) ***Jawajee Nagnatham v. Revenue Divisional Officer***
(1994) 4 SCC 595
- (iv) ***Manipur Tea Co. v. Collector Hailakandi***, **(1997) 9 SCC 673**

28. On the aspect of the unregistered Sale Deed (Exhibits) not being accepted by the Court below, it is submitted that the Court below had assigned various reasons for not accepting the said unregistered Sale Deed as evidence and though it has been contended by the claimants that once an unregistered Sale Deed is admitted in evidence, the same cannot be called into question at any stage thereafter and that the same have to be accepted is incorrect. It is contended that though the appellant has not questioned the admission of the unregistered Sale Deed in evidence, as given in the case of ***Sirikonda Madhava Rao vs. N. Hemalatha & Ors.*** decided on 14.11.2022, the Supreme Court has held that the question of the effect of non-registration of the Sale Deed in terms of the transfer of property Act 1882 and the Registration Act, 1908 would have to be left open to be decided by the Trial Court. It is also further submitted that though vide an amendment, Section 51-A was inserted into the Act, of 1894, permitting the Court to accept certified copies of registered documents and dispensing with the insistence for examination, however the amendment did not permit the acceptance of unregistered Sale Deed in evidence. Learned counsel has also referred to the case of ***V. Narasaiah*** on this point and submits that in the cases relied upon by the claimants, the Courts were only considering the

presumption with regard to registered document and not unregistered document, and that even in the case of registered document, the contents thereof are not binding and it was upon the Court itself to consider.

29. The learned counsel has also asserted that an unregistered Sale Deed does not affect the property in view of their non-registration as can be seen from Section 49 of the Registration Act itself, wherein at the proviso thereto, the same when it affect immovable property and is required by the Registration Act, or the Transfer of Property Act to be registered, it may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by a registered document. As such, he submits even the purported unregistered Sale Deed have been admitted in evidence, due to their non-registration they do not affect the immovable properties comprised therein and therefore are not required to be looked into.

30. It is also submitted that there is no proof of passing consideration or the circumstance of execution and nor was the seller or purchaser examined. In the said exhibits, it is contended that they are also

visible interpolations on the area and price and the same is not countersigned. Another argument advanced is that the said documents could not have been looked into even for collateral purpose and in this context, learned counsel has referred to the judgment in the case of ***K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Limited*** reported in (2008) 8 SCC 564, wherein he submits the ratio is that a collateral transaction must be a transaction not itself required to be effected by registered document, and that an important clause or term in the unregistered document which does not constitute collateral transaction cannot be admitted in evidence. The learned counsel has also referred to the definition of ‘sale’ as contained in Section 54 of the Transfer of Property Act, to advance the argument that the price component in a sale is an intrinsic and integral part of the transaction and a sale cannot exist without the price component and the price component in a sale transaction cannot be independent, whereas for a ‘collateral purpose’ it should be something i.e. independent and divisible from the main transaction. Therefore, in the Sale Deed (Exhibits), the sale price is intrinsically connected to the sale transaction and it constitutes the primary dispute in this case, and not a collateral incident.

31. On the other argument raised by the claimants, such as entitlement to cost, grant of uniform rate to end litigation, it is submitted that Section 27 of the Act governs payment of cost only in respect of proceedings under Part-III of the Act, and is ordinarily payable when the award of the Collector is not upheld. In the present case, he submits the claimants did not succeed in their claims for market value based on the rate from the Sale Deed and the enhancement allowed was only to secure parity. On the grant of uniform rate of Rs. 220/-, it is contended that the claimants all through the reference proceedings have agitated for rates based on the classification of land, but however having failed to establish market value, they now wish to be uniformly irrespective of the classification of land. This he submits is impermissible in the absence of minimum evidence and as such cannot be paid compensation based on sympathetic consideration in violation of the settled principles of determination of market value. It is also further submitted that principles of guesstimation in estimating the value of land in the absence of direct evidence, the learned counsel has referred to the case of *Trishala Jain vs. State of Uttaranchal*, wherein it has been held that discretion of the Court in applying guesswork to the facts of the given case is not unfettered but has to be reasonable and should have a connection

to the data on record produced by the parties by way of evidence. He thus submits that in the absence of any foundational evidence, this Court cannot embark on guesswork and the principles of guesstimation therefore cannot be resorted to. On the other heads of compensation, it is submitted that the Court below was without jurisdiction in granting any amount to the claimant No. 1 for fencing, gates etc. and at perusal of the assessment made by the expert witness and an Assistant Engineer reveals that added costs of labour and contingency were factored in, which establishes that the said assessment was inflated and not reliable.

32. In conclusion thereof, the learned counsel has reiterated that the settled position of law is that in Section 18 proceedings, the claimant is a plaintiff who has to establish that the rate offered by the Collector is inadequate. The claimants having failed to discharge this burden as recorded by the Court, no enhancement in the market value is permissible.

33. Heard learned counsel for the parties.

34. As noted earlier, all the above noted appeals and Cross Appeals emanate from the same judgment and order, as they relate to the same acquisition proceedings which had been initiated on either side of Lad Umroi, Bhoirymbong Road, Ri-Bhoi District, for the public purpose of construction of the National Highway Shillong By Pass Road, connecting NH-40 and NH-44. The question of maintainability having been answered in the first part of this judgment culminating in Paragraph 15 thereof, wherein the appeal has been held to be maintainable, this Court will now proceed to examine the Appeal and Cross Appeal on merits. For a more convenient and effective examination of the issues present in the instant matter, the same are categorized into the following heads:-

- i) Grant of uniform maximum market rate
- ii) Grant of Solatium on the entire compensation
- iii) Grant of 12% interest on excess compensation
- iv) Scope of Section 28 of the LA Act in the context of the instant case
- v) Grant of future interest
- vi) Jurisdiction of the Court vis-a-vis the reference order
- vii) Grant of compensation for severed lands

- viii) Effect of Collector not adducing evidence
- ix) Admissibility of unregistered Sale Deed
- x) Entitlement to cost
- xi) Grant of uniform rate at Rs. 220/- to end litigation
- xii) Principles of Guesstimation
- xiii) Other heads of compensation

35. **Grant of uniform maximum market rate**

The question herein is whether the learned Lower Court had awarded compensation at the maximum rate without examining individual entitlement for maximum compensation. No doubt the determination of the market rate of land under acquisition must be based on reasonable criteria, considering factors like location, proximity to roads and other relevant aspects. In the case of *Haridwar Development Authority (supra)*, the principles for determining land value have been outlined at Para-7 thereof. For the sake of convenience the same is reproduced hereinbelow:-

“7. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/main

road/highway or to a city/town/village, and other relevant circumstances. We may illustrate:

(A) When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.

(B) If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometers away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the

acquired lands, may be as much as two to three kilometres may not make any difference.”

The above quoted judgment has propagated the principle of the belting method, when acquisition is done for a very large stretch of land. In the present case a large area had been acquired for Highway construction and the Lower Court had granted enhanced compensation by homogenizing all lands by awarding the maximum market rate and as such, the materials which were available before the learned Lower Court, in awarding such amount will also need to be examined. It is noted that before the learned Lower Court the lands of the claimants had been classified as Waste land, Arable land, Paddy field and Homestead land and compensation had been assessed and paid by the Collector for different classifications of the land of the claimants, but different rates were also paid to several claimants for the same category or classification of land. However, the basis on which the assessment was done to arrive at the said rate was not available, as no evidence or materials were adduced by the Collector to support the assessment. The claimants therefore, vide their representation dated 16.12.2002 (Paper mark 7) exhibited by the respondent No. 1, and common to all the claimants had prayed for enhancement for all categories or

classification of land. The learned Lower Court in the absence of any written statement by the Collector, nor any evidence, thus had to consider only the evidence adduced by the claimants in support of their claims for enhancement. All the claimants were examined and it is worthwhile to observe and record herein, that three Sale Deeds marked as Exhibits 4, 5 & 6 respectively, had been produced by the claimant No. 1, in support of the claimed enhanced market value. However, these exhibits were disregarded and not relied upon by the learned Lower Court in arriving at the findings, as the said exhibits were not registered, nor executed at the relevant time of acquisition and the lands apart from the varied rates given therein, were of small plots without any classification as to the type of land. The learned Lower Court therefore being unable to derive any assistance from the said exhibits, found that the claimants were not able to establish their claim as to the prevalent market rate on the basis of the said unregistered Sale Deeds. This Court on this finding, and on appreciating the evidence tendered and also the examination of these exhibits, concurs with the decision of the learned Lower Court on this aspect. Though a decision of the case of ***Sirikonda Madhava Rao vs. N. Hemalatha & Ors. rendered in SLP (C) No. 14882-14883/2022*** has been pressed into service by the respondents to

support their contention that once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped and that objection as to admissibility on the ground of sufficiency of stamp has to be raised when the document is tendered in evidence, this proposition however will not be of assistance, as in the said judgment itself, the effect of non-registration of the Sale Deed was left open to be decided by the Trial Court. Moreover, Section 51-A of the LA Act allows the Court to accept certified copies of documents registered under the Registration Act, 1908, which may be accepted as evidence, but the words ‘may be accepted as evidence’ as held in the case of *V. Narasaiah (supra)* indicates that there is no compulsion on the Court to accept such transaction as evidence, but it is open to the Court to treat them as evidence. Para-14, which is relevant is reproduced hereinbelow:-

“14. The words ‘may be accepted as evidence’ in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like

any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.”

36. The scope of Section 51-A of the LA Act was then considered again in the case of *Cement Corporation of India vs. Purya & Ors.* reported in (2004) 8 SCC 270 on which reliance has been placed upon by the respondents and the Supreme Court then exhaustively examined the entire issue and from paragraphs 28 to 40, held as follows :-

“28. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term “acceptance of evidence” relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale

deed by itself could not be held to be inadmissible as thereby secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word “may”. A discretion, therefore, has been conferred upon a court to be exercise judicially i.e. upon taking into consideration the relevant factors.

29. In V. Narasaiah case this Court correctly understood the said scope and object of insertion of Section 51-A in the LA Act when it held thus: (SCC p. 535, para 13)

“It was in the wake of the aforesaid practical difficulties that the new Section 51-A was introduced in the LA Act. When the section says that certified copy of a registered document ‘may be accepted as evidence of the transaction recorded in such document’ it enables the court to treat what is recorded in the document, in

respect of the transactions referred to therein, as evidence.”

30. While coming to the above conclusion in Narasaiah case, this Court found support from similar provisions in the other statutes like Section 293 of the Code of Criminal Procedure which enables the court to use report of a government scientific expert as evidence in any enquiry, trial or proceeding under the said Code, even without examining any person as a witness in a court for that purpose. Notice was also taken of Section 13(5) of the Prevention of Food Adulteration Act pertaining to the report of a Public Analyst which says that any document purporting to be a report signed by a Public Analyst may be used as evidence of the fact stated therein in any proceeding under the said Act. In Narasaiah case, this Court (at SCC p. 536, para 15) also relied on a judgment of the Constitution Bench of this Court in Mangaldas Raghavji Ruparel v. State of Maharashtra which held thus:

“[T]hat the sub-section clearly makes the contents of the report of Public Analyst admissible in evidence and the prosecution cannot fail solely on the ground that the Public Analyst had not been examined in the case, but what value is to be attached to such report must

necessarily be for the court to consider and decide”

31. Thus, the reasoning of this Court in Narasaiah case that Section 51-A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position in law. This finding in Narasaiah case is also supported by the decision of this Court in the case of Mangaldas Raghavji Ruparel .

32. Therefore, we have no hesitation in accepting this view of the Court in the Narasaiah case as the correct view.

33. The submission of Mr. G. Chandrashekhar to the effect that the contents of a sale deed should be a conclusive proof as regards the transaction contained therein or the court must raise a mandatory presumption in relation thereto in terms of Section 51-A of the Act cannot be accepted as the court may or may not receive a certified copy of sale deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, as would appear from the discussions made hereinbefore, the same by

itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. When materials are brought on record by the parties to the lis, the court is entitled to appreciate the evidence brought on record for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other.

34. In M.S. Madhusoodhanan v. Kerala Kaumudi (P) Ltd. it is stated: (SCC p. 240, para 119)

“119. ... They are rules of evidence which attempt to assist the judicial mind in the matter of weighing the probative or persuasive force of certain facts proved in relation to other facts presumed or inferred (ibid.). Sometimes a discretion is left with the court either to raise a presumption or not as in Section 114 of the Evidence Act. On other occasions, no such discretion is given to the court so that when a certain set of facts is proved, the court is bound to raise the prescribed presumption. But that is all. The presumption may be rebutted.”

35. A registered document in terms of Section 51-A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf.

36. Similar is the view taken by this Court in V. Narasaiah case wherein this Court held thus: (SCC p. 535, para 14)

“14. The words ‘may be accepted as evidence’ in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence,

just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.”

37. Having noticed the scope of Section 51-A of the LA Act as understood by this Court in V. Narasaiah case to be the correct interpretation, we will now consider whether such evidence is mandatory binding on the authority or the court concerned or it is only an enabling provision.

38. In relation to the argument pertaining to Section 13(5) of the Food Adulteration Act a Constitution Bench of this Court in Mangaldas Raghavji Ruparel and another v. State of Maharashtra stated as follows:

“[T]hat the sub-section clearly makes the contents of the report of Public Analyst admissible in evidence and the prosecution cannot fail solely on the ground that the Public Analyst had not been examined in the case, but what value is to be attached to such report must necessarily be for the court to consider and decide.”

(Emphasis supplied)

39. *While it is clear that under Section 51-A of the LA Act a presumption as to the genuineness of the contents of the document is permitted to be raised, the same can be relied upon only if the said presumption is not rebutted by other evidence. In the said view of the matter we are of the opinion that the decision of this Court in the case of Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah lays down the correct law.*

40. *Having settled the scope of Section 51-A of the LA Act as stated hereinabove, we will consider the facts in Civil Appeal No. 6986 of 1999. In this appeal originally the Land Acquisition Officer awarded Rs 3707 per acre for the acquired land. On reference being made by the claimant, the Reference Court enhanced the said compensation to Rs 8000 per acre which was challenged by the beneficiary of the acquisition before the High Court in a writ petition which was allowed and the matter was remanded back for fresh disposal to the Reference Court. Before the Reference Court, the respondent herein produced two certified copies of two sale transactions which were marked as Exts. P-1 and P-2. The Reference Court, however, refused to place reliance on the said documents on the ground that the*

contents of the said documents were not proved. Hence, it rejected the reference. Being aggrieved by the said order, the respondent claimants preferred an appeal before the High Court, the High Court disagreeing with the Reference Court relied on the contents of Exts. P-1 and P-2 and enhanced the compensation to Rs 15,000 per acre. While doing so, the High Court proceeded merely on the contents of Exts. P-1 and P-2 and did not take into consideration the other evidence available on record in regard to the comparative nature of the land, location of the land, the market potentiality of the land, etc. and fixed the compensation on an arithmetic calculation based on the value found in Exts. P-2 and P-2. We do not think this is the correct approach. While it is true the contents of Exts. P-1 and P-2 should be looked into as evidence produced by a party the evaluation of such evidence should be made taking into consideration other evidence if available on record like other sale transactions that may be produced, the comparative nature of the location, suitability, marketability, etc. to fix the market value of the land acquired. Since such a comparative examination of evidence has not been made by the High Court in the above appeal, even though there was material available on record, we think it proper that the impugned judgment in the above appeal be set aside and the

matter be remanded to the High Court for consideration in accordance with law laid down and the directions given in this case. Accordingly, this appeal succeeds to the extent stated herein above.”

The above quoted case it is thus seen however, also does not come to the aid of the respondents as the Courts considered only the presumption with regard to registered documents and not un-registered documents.

37. This Court also finds force in the arguments advanced by the counsel for the appellant on the point that the un-registered Sale Deeds though admitted in evidence would have no legal value as it does not effect the properties mentioned therein as mandated by Section 49 (c) of the Registration Act, 1908, wherein it is provided as follows:-

“49. Effect of non-registration of documents required to be registered.- No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.”

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

Further, it is also important to note that the Sellers and Purchasers were not examined as to the veracity of the Sale Deeds exhibits and the only person examined was the Village Head. The Sale Deed exhibit No. 4 also has visible interpolations on the area and price which has not been re-authenticated or countersigned and therefore, the said exhibit cannot be taken to be a reliable piece of evidence.

38. The un-registered documents as held in the case of ***K.B. Saha & Sons Private Limited vs. Development Consultant Limited*** reported in ***(2008) 8 SCC 564*** can be looked into only for collateral purpose and in Para - 34 of the judgment, such principles have been crystalized as follows:-

“34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

39. Therefore, as can be seen from the discussions and judicial pronouncements quoted above, the exhibits were rightly not relied upon by the learned Lower Court to determine the market value.

40. **Grant of Solatium on the entire compensation**

The learned Court below granted solatium @ 30% per annum on the entire compensation, which is not permissible, inasmuch as, solatium under Section 23 of the LA Act to be awarded only on the market value of the land as fixed by the Collector or enhanced by the Special Judicial Officer. This point having been conceded by the learned Senior counsel for the respondents claimants, therefore needs no further discussion and this part of the judgment and decree granting solatium at 30% per annum on the entire compensation is accordingly set aside and it is held that grant of solatium will be only on the market value as determined.

41. **Grant of 12% interest on excess compensation and Scope of Section 28 of the LA Act in the context of the instant case**

Grant of interest under the Act of 1894 is governed by Section 28 and Section 34. In the instant case, the Court below has awarded interest

of 12% on the excess compensation w.e.f. the date of taking over of the land till the payment was made in Court. This Court is therefore to examine the scope of Section 28 and whether the learned Lower Court was correct in awarding the said interest of 12%. In the case of ***Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF)*** reported in ***(2009) 8 SCC 412***, Section 28 of the LA Act has been discussed in its manner of application and the circumstances thereof. At Paras – 33-36, it has been held as follows:

“33. The award of interest under Section 28 of the 1894 Act is discretionary. Section 28 applies when the amount originally awarded has been paid or deposited and when the court awards excess amount. In such cases interest on that excess alone is payable. Section 28 empowers the court to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. The compensation awarded by the court includes the additional compensation awarded under Section 23(1-A) and the solatium under Section 23(2) of the said Act. This award of interest is not mandatory but is left to the discretion of the court.

34. Section 28 is applicable only in respect of the excess amount, which is determined by the Court after a reference under Section 18 of the 1894 Act. Section 28 does not apply to cases of undue delay in making award for compensation (see

Ram Chand v. Union of India). In *Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat* this Court has held that interest is different from compensation.

35. To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for the delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under Section 34.

36. It is clear from a reading of Sections 23(1-A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under Section 23(1-A) and 23(2) whereas Section 28 is available in respect of the entire compensation.”

A plain reading of the above quoted paragraphs, highlights the fact that judicial discretion is to be exercised with regard to the application and invocation of the said provision. Further, it is also clear that award of

interest under Section 28 of the LA Act is only on the excess amount granted by the Court and not in the original amount granted by the Collector. Though it has been contended by the learned Senior counsel on behalf of the respondents/claimants that Section 28 and 34 of the LA Act uses the word ‘compensation’ and that this word would encompass the award of interest on the entire compensation, this argument is not accepted by this Court, in view of the fact in the judgment of the Constitution Bench of the Supreme Court rendered in the case of *Sunder vs. Union of India* reported in *(2001) 7 SCC 211*, it has been held that interest awardable under Section 28 would include within its ambit, both the market value and the statutory solatium.

42. In this context, it would also be beneficial to refer to the case of *Mehrawal Khewaji Trust (Registered), Faridkot & Ors. vs. State of Punjab & Ors.* reported in *(2012) 5 SCC 432*, wherein at paragraphs 25 and 26, the position with regard to award of interest under Section 28 has been elaborated.

“25. This aspect has been considered and answered by the Constitution Bench in Sunder vs. Union of India. While considering various decisions of the High Courts and approving the decision of the Punjab and Haryana High

Court rendered in State of Haryana v. Kailashwati, this Court held that the interest awardable under Section 28 would include within its ambit both the market value and the statutory solatium. In view of the same, it is clear that the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

26. The above position has been further clarified by a subsequent Constitution Bench judgment in Gurpreet Singh v. Union of India. Based on the earlier Constitution Bench decision in Sunder, the present Constitution Bench held that the claimants would be entitled to interest on solatium and additional market value if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium and additional market value or where the claim had not been rejected either expressly or impliedly.”

Thus, the grant of interest under Section 28 can only be on the enhanced compensation, and cannot be allowed on the entire sum which includes the award amount already paid and withdrawn by the respondents/claimants under protest. To reiterate, the interest to be applied

therefore, would be only on the excess amount and on the solatium, excluding the amount that had already been received by the claimants.

43. On another aspect raised by the appellant that Section 28 being discretionary and the Court below having failed to consider excluding the application of interest on the period where the appellant was bona fide pursuing the case and also the COVID – 19 pandemic, wherein most Courts were not functioning, this Court in Appeal is not inclined to interfere with the said exercise of discretionary power in this regard, and this contention stands rejected.

44. **Grant of future interest**

Under this caption, wherein challenge has been made by the appellant with regard to the computation of interest w.e.f. 13.09.2002 till 12.12.2021, in the decree dated 17.03.2020, this Court finds force in the contention raised by the appellant, inasmuch as, there is no finding or material to support the same. Further, it is also noted that the decree has travelled beyond the judgment and order of the Lower Court and is at odds with the original award of compensation in the judgment. To illustrate this fact, a perusal of one of the decrees passed in the case of claimant No. 1

(page – 327 of Paperbook I) would go to show the following discrepancies:-

- (i) Claimant No. 1, had already drawn compensation awarded by the Collector under protest on 19.08.2003, for an amount of Rs.2,55,685/- (rate of Rs.80 per sq mtr).
- (ii) Compensation was enhanced including rates for damage to trees and fencing to Rs.15,61,100/- (rate of Rs.160 per sq mtr of land).
- (iii) Solatium at the rate of 30% or enhanced award that is 30% of Rs.15,61,100/- amounting to Rs.4,68,330/- was granted instead of being confined to market value.
- (iv) Rs.1,87,332/- was granted at 12% interest on Rs.15,61,100/- under Section 28 for first period that is w.e.f. 13.09.2001 till 12.09.2002, that is one year from the date of taking over possession.
- (v) Enhanced compensation plus solatium at the rate of 30% plus interest at the rate of 12% was fixed at Rs.22,16,762/-

- (vi) Amount already drawn of Rs.2,55,685/- then deducted from the enhanced rate, leaving the amount of Rs.19,61,077/-.
- (vii) Additional interest at the rate of 15% on the net compensation granted w.e.f. 13.09.2002 till 12.12.2021, amounting to Rs.55,89,069.45/- at the rate of Rs.2,94,161.55/- per year for 19 years.
- (viii) Total enhanced compensation that is 30% solatium plus interest at 12% for 1 year plus interest at the rate of 15% thereafter total amounting to Rs.76,23,687/-.

The discrepancy that is present is that firstly, the amount of Rs.2,55,685/- awarded under Section 11 and accepted by the claimant No. 1 under protest on 19.08.2003, should have been deducted in the beginning itself and not at the fag end of the computation, which has inflated the award. The solatium of 30% granted was also on the entire compensation which resulted in the same being granted on the market value as well as other amounts awarded for other losses. This defective formula was uniformly applied by the learned Lower Court in all the cases, therefore the decrees of all the claimants will necessarily have to be re-examined and

recomputed. The grant of future interest from the date of the decree i.e. 17.03.2020 till 12.12.2021, will also have to be factored out and not taken into account.

45. **Jurisdiction of the Court vis-a-vis the reference order**

It is noted that in the instant case, reference was made by the Collector under Section 18 of the Act, on the basis of a single petition dated 22.09.2003 (page – 96 of Paperbook I), wherein all the claimants had appended their signatures. In the said application, the claimants had prayed for determination of the actual measurement of the land, classification, demarcation or boundaries, market price of the land and buildings, standing crops, trees, and cultivation etc. The reference order dated 31.10.2003 (page – 108 of Paperbook I), however, shows that the reference was made only on the determination of measurement, classification and rate of land. It is the appellant's case that Courts jurisdiction under Section 18 is to be determined on the basis of the terms of the reference order issued under Section 19 of the Act and the Court cannot assume jurisdiction over an issue which is not referred to, and therefore, the Reference Court can only derive jurisdiction over a matter, or objection referred to it and nothing further. It has been thus contended by the appellant that the Lower Court having

travelled beyond the terms of reference the award suffers from a lack of inherent jurisdiction. On this point, it is noted that the appellant had never raised this issue before the Lower Court, but has now sought to advance the same at the appellate stage. It is no doubt necessary that at the time of reference under Section 19 of the Act, the Collector specify exactly the terms of reference, but however, as has been seen in the instant case, the terms of reference are vague and is only for determination of measurement, classification and rate of land, without any further details being specified. This was inspite of the fact that in the joint application for reference by the claimants, damage to land and crops had been mentioned, as also the prayer which should have been considered by the Collector at the time of making the reference. Further, no justification had been provided by the Collector as to the grounds on which the compensation had been determined, or as to why different rates had also been valued for similar grades of land. As held in the case of *Harish Chunder Neogy vs. The Secretary of State for India in Council* reported in (1907) SCC OnLine Cal 69, cited by the Senior counsel for the respondents, it is also incumbent on the Collector to justify the award before the Special Judge, and further as held in the case of *Ram Kumar & Ors. vs. Union of India & Ors.* reported in (1991) 2 SCC 247, it

is the duty of the Collector to send full information to the Court. Though, these two cases may be in slight variance on facts with the present case, what they underline is the duty of the Collector as contained in Section 19 of the LA Act must be fulfilled. The reference by the Collector in the instant matter not being in consonance with or as per the mandate of the LA Act, the Reference Court therefore, in the absence of any objection thereto, had thus proceeded with the materials available and had arrived at the awarded amounts. Moreover, it is pertinent to observe herein that the jurisdiction exercised by the Lower Court in dealing with the reference, is well within the set parameters of Section 19 itself, and the impugned judgment and order on this count not being perverse and in the absence of any challenge on the issue of jurisdiction at the trial stage, it is found that there is no lack of inherent jurisdiction in answering the reference.

46. **Grant of compensation for severed lands**

A contention has also been raised on the grant of compensation to claimant No. 15 and claimant No. 60, for severed lands, on the ground that the claimants could not substantiate the same, but that the Reference Court only on the absence of a rebuttal had allowed compensation. Though, on perusal of the judgment, the contention of the appellant is correct,

looking into the two pieces of land and the amount of compensation granted for which Rs.100/- per sq mtr for 1030 sq mtrs was granted to claimant No. 15 and Rs.50/- per sq mtr for 136 sq mtr was granted to claimant No. 60, it would be futile to remand this aspect for reconsideration, and as such, the said award for these two pieces of land for the ends of justice is not interfered with.

47. **Effect of Collector not adducing evidence**

The appellant/Collector, neither filed a written statement nor was any evidence led on his behalf, and the claimants therefore, have contended that the Collector being bound to adduce evidence, on his failure thereof, the rates furnished by them should be accepted. The respondents/claimants had placed reliance in the case of *Periyar and Pareekanni Rubbers Ltd.(supra)* on this point, but however, a perusal of the same, especially Paras - 15 and 16 thereof, speak otherwise and are reproduced hereinbelow:

“15. In the light of these principles, the further contention that having rejected the documents produced by the State, the High Court ought to have relied upon the documents produced by the appellant as comparable sale and would have

*confirmed the compensation awarded by the civil court does not impress us as well founded. It is well settled law that the amount awarded by the Land Acquisition Collector forms an offer and that it is for the claimants to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value and the amount offered by the Land Acquisition Collector was inadequate and he proceeded on a wrong premise or principle. In *Ezra v. Secretary of State for India*, it was held that the amount awarded by the Collector forms an offer. It was reiterated by this Court in *Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer*, *Khorshed Shapoor Chenai v. Assistant Controller of Estate Duty* and *Dr. G.H. Grant v. State of Bihar*. In *Dr Hari Singh* case, A.P. Sen, J. held (and majority did not disagree) at p. 191 C to E that: (SCC p. 244, para 16)*

"In a reference under Section 18 of the Act, the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant, and he must show affirmatively that the Collector had proceeded upon a wrong basis. The nature and the burden of establishing that he was wrong, depends on the nature of the enquiry held by him It is equally well settled that where the claimant leads no evidence to show that the conclusions reached in the award were inadequate, or, that it offered

unsatisfactory compensation, the award has to be confirmed."

In that case it was held that the evidence produced was untrustworthy. Same is the view of Bombay High Court in Asstt. Development Officer v. Tayaballi Allibhoy Bohori and of A.P. High Court in Narasingh Rao case and T.W. Higgins-claimant v. Secretary of State, Naresh Chandra Bose v. State of West Bengal, Smt. Kusumgaury Ramray Munshi v. Special Land Acquisition Officer, Ahmedabad, and Maharao Shri Madansinhji v. State of Gujarat. It is also the duty of the State to adduce evidence in rebuttal.

16. This Court in Chaturbhuj Panda & Ors. v. Collector, Raigarh, has rightly pointed out that: (SCR p. 414 G)

"It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life. As judges of fact, it was open to the appellate judges to test the evidence placed before them on the basis of probabilities."

[Emphasis supplied]

48. Another judgment relied upon by the respondents/claimants that is *Land Acquisition Officer & Mandal Revenue Officer(supra)*, which however, in the considered opinion of this Court was rendered in the context of Section 51-A of the LA Act, and deals with the aspect of proving the market value of lands depending upon the prices of lands similarly situated which were sold or transacted in the neighbouring areas, and it has not held that the Collector is bound to adduce evidence.

49. On the other hand, the Hon'ble Supreme Court in the case cited by the appellant that is *Kiran Tandon(supra)*, at Para – 10 has held as follows.

“10. Before examining the merits of the contentions raised, it will be useful to bear in mind the legal principle in the matter of determination of compensation. The Collector's award under Section 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired. The burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in the position of a plaintiff. The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the

material produced before it. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. The material produced and proved by the other side will also be taken into account for this purpose.”

[Emphasis supplied]

50. What emerges therefore is that the burden or the duty is on the claimants to adduce evidence to establish that the acquired lands were capable of fetching a higher market value and that the amount awarded by the Collector was inadequate. As held in series of other judgments, the burden lies upon the claimant as he is in position of a plaintiff and that courts have to treat references, as original proceedings for determination of the market value on the basis of the materials produced before it. The non-adducing of evidence by the Collector therefore, or the non-rebuttal of the materials, in the instant case Exhibits 4, 5 and 6 (Sale Deeds) cannot be a ground that the rates as suggested by the claimants for the different categories of land be accepted in toto, inasmuch as, a reference court has to arrive at its own findings in this regard.

51. **Admissibility of unregistered Sale Deed**

The above captioned point having been substantially discussed at Paragraphs – 35-39, hereinabove, no further discussion of the same is deemed necessary. Further, as observed earlier, though the unregistered Sale Deeds had been admitted in evidence, due to their non-registration they do not affect the immovable properties comprised therein, and as such, were not required to be looked into.

52. **Grant of uniform rate at Rs. 220/- to end litigation and use of the principles of guesstimation to arrive at the market rate**

The claimants have also advanced a proposition that in order to put an end to the litigation, they should be paid a uniform rate of Rs. 220/- for their lands irrespective of its classification. It is noted that all along through the reference proceedings, the claimants have sought for rates based on the classification of the land, and in hindsight due to the fact that not enough materials could or were produced, on which they could establish their claim of market value have now resorted to such prayer. The prayer in the considered view of this Court lacks merit and as such, is disregarded. This Court will also not hazard an exercise of guesstimation to arrive at the

market value, moreso, with the passage of time, especially in the backdrop of the sketchy materials and evidence that had been tendered before the Reference Court. In this context, the case relied upon by the claimants that is ***New Okhla Industrial Development Authority v. Harnand Singh & Ors.*** reported in ***(2024) SCC OnLine SC 1691***, to urge this Court to resort to the principles of guesstimation is also in the view of this Court of no assistance, as the claimants in the instant case have not brought on record any substantial or reliable evidence that can be utilized for the purposes of arriving at the correct market rate.

53. **Other heads of compensation**

With regard to the other heads of compensation granted by the reference court, the same having been arrived at, after due consideration had also on the opinion of experts, the same is not interfered with and the contention of the appellant that the same was without jurisdiction especially in the case of claimant No. 1, for fencing, gates etc. is rejected.

54. Having traversed all the relevant aspects of the matter, this Court though sitting in appeal to examine the fairness of the award and whether the impugned judgment suffered from any illegality or had been

passed without a balanced consideration and due appreciation to the facts and materials before it, apart from the findings at Paragraphs – 42 and 44, given hereinbefore, wherein, the awards need correction, cannot but arrive at a conclusion that the award does not require any substantial interference. This is primarily due to the fact that there is a total absence of materials on record or any evidence that would weigh in favour of the appellant, to hold that the rates decreed by the reference court was in excess of fair market value. One of the most important causes which led the Reference Court to award uniform rates of compensation for the respective categories of lands at the maximum rate computed by the Collector, it is clearly seen, is due to the non-filing of a written statement and the non-adducing of evidence by the Collector to justify or explain as to how different rates had been awarded to the various claimants for the same category of acquired land.

55. Even from the side of the respondents, apart from the unregistered Sale Deeds, which were found not to be reliable or relevant, no cogent evidence was produced before the reference court to substantiate their claim as to the rates prayed for the different categories of land. Apart from the expert evidence, which has been given due consideration by the reference court, no tangible or reliable material was placed by the claimants,

to allow the reference court to embark upon an exercise that may be would have yielded a correct finding on the prevalent market rate, at the time of acquisition.

56. Further, the terms of reference being very sketchy, the Reference Court was indeed handicapped in dealing with the various issues raised by the claimants, added with the fact that no evidence had been brought on record by the claimants to show any perversity in the award of the Collector, in granting different rates of compensation for the same category of land to individual land owners/claimants. This Court therefore, finds no illegality in the homogenization of all claims for each category of land and awarding the maximum rate as given by the Collector for that category of land, due to the absence of evidence or materials that would go to prove the contrary. Therefore, the reason given by the Reference Court that the rates allowed that is the maximum rate for every category of land as fixed by the Collector being fair, just and adequate is also accepted.

57. In the other connected appeals i.e. FA Nos. 1, 2, 3, 4 and 5 of 2023, the findings of the Reference Court in FA Nos. 3 and 4 of 2023 have already been dealt with in this judgment. As regards FA Nos. 1, 2 and 5 of

2023 on the same premise of the main judgment, the order of Reference Court is upheld.

58. The findings recorded in this judgment with regard to the testimony of common witnesses i.e. PW 69, 70 and 71 and the veracity of the unregistered Sale Deeds which though produced in evidence, but not accepted by the Reference Court, has also answered the grounds raised in Cross Appeal No. 1 of 2023, and as such, the Cross Appeal stands dismissed.

59. In all fairness, to ensure that justice is substantially done to all the parties, the instant case is a case fit for remand, inasmuch as, as observed earlier, there was no benchmark or indicator available in the form of evidence to allow the Reference Court to gauge or fix the correct market value, nor any reason given by the Collector for fixation of the rates as awarded. Severe other lapses and laches such as the non-filing of written statement or the adducing of any evidence, with regard to the other details such as size of plots acquired, the terrain, proximity to the then existing or proposed highway (by-pass), commercial centers or establishments by the Collector has thwarted any further attempt by this Court to arrive at any

other finding, as regards the market value of the land at the relevant time, when the notification under Section 4 of the LA Act was issued.

60. Appeal is a valuable right of the parties conferred by prevalent law or statute, wherein there is a hierarchical or tiered structure made in the law, to conclusively decide the controversy of the parties litigating so as to avoid any further litigation. The First Appellate Court, is a very important link in the hierarchical chain because the First Appellate Court is the last court of the fact finding. It is, therefore, incumbent upon the First Appellate Court being the final court of fact finding to meet with the reasonings of the Trial Court and to indicate its own reasons for the conclusion which it might arrive at. In the instant case, though as remarked earlier, that though the same is a case for remand, however, considering the fact that the proceedings of land acquisition had commenced since 28.08.2001, and has been under litigation till date, it would be unfair to subject the claimants to another round of litigation. Further, it is not a case where the appellant or the claimants were prevented from adducing evidence in the reference proceedings, and on this ground also, perhaps this appeal can be closed to put an end to the controversy. In this context, it would be apposite to refer to judgment in the case of *K. Krishna Reddy & Ors. vs. Special Deputy*

Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh

reported in (1988) 4 SCC 163, wherein at Para – 12, it had been given as follows:

“12. We can very well appreciate the anxiety and need of claimants to get compensation here and now. No matter what it is. The lands were acquired as far back in 1977. One decade has already passed. Now the remand means another round of litigation. There would be further delay in getting the compensation. After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. If remand is imperative, and if the claim for enhanced compensation is tenable, it

would be proper for the appellate court to do modest best to mitigate hardships. The appellate court may direct some interim payment to claimants subject to adjustment in the eventual award.”

[Emphasis supplied]

61. In the result, the award of the maximum uniform rate for the categories of lands by the Reference Court, as assessed by the Collector is upheld, however, the award or decrees shall stand modified, as per the findings of this judgment recorded in Paragraphs – 42 and 44 thereof, with regard to the grant of interest under Section 28, to be only on the enhanced compensation, and not on the entire sum which includes the award, and further, to correct the discrepancies with regard to grant of future interest, the deduction of the awarded amount under Section 11, and the correction on the grant of solatium on the entire compensation.

62. This judgment along with the records shall be transmitted back to the Reference Court for drawing up the corrected award and decrees in terms of this judgment, and for recalibration of the balance amount payable by the appellant to the claimants, in each case. On such exercise being completed, the appellant shall deposit the amount within 3(three) months thereafter.

63. With regard to entitlement to cost, though Section 27 of the LA Act mandates that when the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, in the instant case, due to the peculiar facts, there shall be no order as to costs.

64. Accordingly, FA No. 1 of 2022, FA No. 1 of 2023, FA No. 2 of 2023, FA No. 3 of 2023, FA No. 4 of 2023, FA No. 5 of 2023 and also the Cross Appeal No. 1 of 2023 stand closed and disposed of.

Judge

Meghalaya
07.02.2025
“D.Thabab-PS”