

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No.454 of 2018

Reserved on: 29.06.2026

Date of decision: 22.07.2026

Date of uploading on website: 22.07. 2026

State of HP and others

....Appellants

Versus

Yoginder Chand

...Respondent

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?* Yes

For the appellants: Mr. Balwinder Singh Ballu, Deputy
Advocate General.

For the respondent: Mr. H.C. Sharma, Advocate.

Sushil Kukreja, Judge

The instant appeal has been preferred under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act'), by the appellants/ State against the award dated 27.04.2018, passed by the learned Additional District Judge-II, Shimla, HP (for short 'the Reference Court'), whereby the respondent (hereinafter referred to as the petitioner) was held entitled to enhanced compensation @ Rs.50,000/- per biswa, irrespective of the classification of the acquired land alongwith all statutory benefits, with the prayer that

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

the impugned award may be set aside and the reference petition be ordered to be dismissed.

2. The facts of the case, in brief, are that a notification under Section 4 of the Act was issued by the Government of Himachal Pradesh on 30.07.2008 for acquisition of the land of the petitioner comprised in Khasra No.23, measuring 0-20-81 hectares, situated in Village Annu, Tehsil Theog, District Shimla, for the purpose of construction of *Narail- Kelvi- Dharampur* road, which was published in Rajpatra on 08.08.2008 as well as in two newspapers, i.e. *Dainik Bhaskar* and *Dainik Tribune* on 09.08.2008. Notification under Sections 6 & 7 of the Act was published in Rajpatra on 16.05.2009 and in two newspapers, i.e. *Hindustan Times* and *Dainik Jagran* on 20.05.2009 and public notice in locality on 29.06.2009 and after detailed inquiry, the Collector announced Award No.44/2011, dated 18.08.2011, whereby the market value of the land of the petitioner under acquisition was determined @ Rs.16,220.34 per biswa for *Bakhal Awa* and a total compensation of Rs.13,63,845/- was awarded in favour of the petitioner.

3. Feeling aggrieved and dissatisfied with the aforesaid award dated 18.08.2011, the petitioner preferred a reference

petition under Section 18 of the Land Acquisition Act, with a prayer that the amount of compensation awarded by the Land Acquisition Collector may be enhanced.

4. The learned Reference Court, vide impugned award dated 27.04.2018, allowed the reference petition and the petitioner was held entitled to enhanced compensation at the rate of Rs.50,000/- per biswa, irrespective of the classification of the acquired land, alongwith solatium, additional compensation, interest on the enhanced amount of compensation etc. Hence, the appellants/State preferred the instant appeal with a prayer to set-aside the impugned award dated 27.04.2018, passed by the learned Reference Court.

5. I have heard learned Deputy Advocate General Counsel for the appellants as well learned counsel for the respondent and have also carefully gone through the records.

6. Learned Deputy Advocate contended that the Land Acquisition Collector had assessed the market value of the acquired land on the basis of one year average, however, the learned Reference Court has arrived at an erroneous conclusion about the market value of the land, without any basis. He further contended that the learned Reference Court has also erred in not

allowing the standard deduction between 33% to 53% on the awarded amount as the land in question was acquired for rural connectivity road as such he submitted that the instant appeal deserves to be allowed and impugned award passed by the learned Reference Court be set aside.

7. Conversely, learned counsel for the respondent supported the impugned award by contending that the learned Reference Court had rightly assessed the market value of the acquired land.

8. As per the settled principle of law, compensation for the land acquired has to be determined at market value. Market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality

means capacity or possibility for changing or developing into state of actuality.

9. In ***Mehta Ravindraraaj Ajitrai (deceased) through his heirs and LRs & others vs. State of Gujarat (1989) 4 SCC 250***, the Hon'ble Supreme Court held that the market value of a property for the purpose of Section 23 of the Act is the price at which the property changes hands from a willing seller to a willing purchaser, but not too anxious a buyer, dealing at arms length.

The relevant portion of the aforesaid judgment reads as under:

"4. The market value of a piece of property for purpose of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidences of market value."

10. In ***Atma Singh & others vs. State of Haryana & another (2008) 2 SCC 568***, the Hon'ble Supreme Court held that the market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing conditions with all its existing advantages and its potential possibilities when led out in most advantages manner, excluding any advantage due to carrying out of the scheme for which the

property is compulsorily acquired. In considering market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The question whether a land has potential value or not, is primarily one of the facts depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. The relevant portion of the aforesaid judgment reads as under:

“4. The expression “market value” has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm’s length nor façade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value.

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for

changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration.”

11. For ascertaining market value of the acquired land, the Court can no doubt rely upon such sale transactions, which would offer a reasonable basis to fix the price, for which purpose, a sale transaction relating to a smaller parcel of land can be considered for the purpose of assessing the market value in respect of a large tract of land, after making appropriate deductions such as for development of land, for providing space for roads, sewers, drains, expenses involved in formation of a layout, lump- sum payments, as well as for the waiting period required for selling the sites that would be formed and other expenses involved therein, but before doing so, the evidentiary value of such a sale deed is required to be carefully scrutinized. As held in the case of ***Land Acquisition Officer vs. Nookala Rajamallu reported as (2003) 12 SCC 334***, in order to adopt the price reflected in the sale deed, the following conditions are required to be met:-

"9. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages.

10. It is only when these factors are present, it can merit a consideration as a comparable case."

12. In ***Union of India vs. Pramod Gupta (dead) by LRs & others, 2005 (12) SCC 1***, the Hon'ble Supreme Court held that the best method, as is well-known, would be the amount which a willing purchaser would pay to the owner of the land. In the absence of any direct evidence, the Court, however, may take recourse to various other known methods. Evidence admissible therefor inter alia would be the sale deeds, judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighboring villages. Such a judgment/award in the absence of any other evidence like deed of sale, report of the expert and other relevant evidence would have only evidentiary value. The relevant portion of the aforesaid judgment reads as under:

“24 While determining the amount of compensation payable in respect of the lands acquired by the State, the market value therefor indisputably has to be ascertained. There exist different modes therefor.

25. The best method, as is well known, would be the amount which a willing purchaser would pay to the owner of the land. In absence of any direct evidence, the court, however, may take recourse to various other known methods. Evidences admissible therefor inter alia would be judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighboring villages. Such a judgment and award, in the absence of any other evidence like the deed of sale, report of the expert and other relevant evidence would have only evidentiary value.”

13. In support of his case, the petitioner had examined PW-1 Kumari Veena Negi, Patwari, who proved on record the copy of notification under Section 4 of the Act as Ext. PW1/A, copy of notification under Sections 6 & 7 of the Act as Ext. PW1/B, copy of award statement Ext. PW1/C and copy of award dated 18.08.2011 Ext. PW1/D. Petitioner-Yoginder Chand, while appearing in the witness-box as PW-2, tendered in evidence his affidavit Ext. PW2/A and one year average w.e.f. 01.08.2007 to 31.08.2008 of Village Shalli Teer as Ext. PW2/B. PW-3 Mohan Lal deposed that he had purchased land in Village Shalli Teer for Rs.1,00,000/- from one Hira Singh and placed on record copy of sale deed Ext. PW3/A.

14. On the other hand, the respondents examined two witnesses. RW-1 Veena Negi, Patwari, who had placed on record copy of approved rate Ext. RW1/A, copy of notice dated

27.11.2011 Ext. RW1/B, copy of notice under Section 12(2) of the Act Ext. RW1/C. RW-2 Shiv Vardan Gupta, Junior Engineer, PWD Section Shilaroo, tendered in evidence his affidavit Ext. RW2/A, wherein he stated that adequate compensation, alongwith all statutory benefits stood already paid to the petitioner. He further stated that the market value worked out in this case was reasonable and the Land Acquisition Collector had also given 30% solatium market value of the land apart from other benefits.

15. The onus is upon the petitioner to prove the true and correct market value of the land at the time of the issuance of the notification under Section 4 of the Act. The petitioner is expected to lead cogent and satisfactory evidence in support of his claim. In ***Special Land Acquisition Officer vs. Karigowda & others, (2010) 5 SCC 708***, it has been held that the onus to prove entitlement to receive higher compensation is upon the claimants but it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The court cannot lose sight of the fact and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. The relevant portion of the aforesaid judgment reads as under:

“29. It is a settled principle of law that the onus to prove

entitlement to receive higher compensation is upon the claimants. In Basant Kumar v. Union of India [(1996) 11 SCC 542] this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in Gafar v. Moradabad Development Authority [(2007) 7 SCC 614] and the Court held as under: (SCC p.620, para 12)

“12. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award.”

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the courts are expected to scrutinise the evidence led by the parties in such proceedings.”

16. In the instant case, the perusal of the impugned award shows that the reference court has assessed the market value of the land under acquisition @ Rs.50,000/- per biswa on the basis of the award passed in Land Reference No.13-S/4 of 2016/2010, titled as *Kanshi Ram Vs. State of HP and others*. However, in the

opinion of this court, in the absence of any cogent and satisfactory evidence on record, the market value of the land under acquisition could not have been assessed on the basis of the aforesaid award as the land in the case of Kanshi Ram is situated in Village Kanchhi, whereas, in the present case, the land is situated in Village Annu. Moreover, the said award has been modified by this Court in RFA No. No.382 of 2018.

17. Now, the question which arises for consideration before this Court, is as to how the market value of the land in the present case is to be assessed in view of the evidence available on record. Admittedly no sale transaction had taken place in Village Annu one year prior to the last date of the publication of notification under Section 4 of the Act as such one Year Average Market Value of the adjoining Mauza Jungle Shalli Teer was procured by the filed staff and the same was sent to the District Collector, Shimla for approval. The District Collector approved the same, which is reproduced as under:-

	<i>Classification of land</i>	<i>Rate per biswa</i>
1	<i>Kiar Doem.</i>	<i>Rs.20,974.58</i>
2.	<i>Bakhal Abbal</i>	<i>Rs.16220.34</i>
3.	<i>Bakhal Doem</i>	<i>Rs.10,347.00</i>
4.	<i>Karyali Abbal</i>	<i>Rs.8,669.49</i>
5.	<i>Karyalki Doem</i>	<i>Rs.6,991.53</i>

6.	<i>Banjar Jaded</i>	<i>Rs.3,355.93</i>
7.	<i>Banjar Kadeem</i>	<i>Rs.1,677.97</i>
8	<i>Ghasni and Bani</i>	<i>Rs.838.98</i>

18. However, the Land Acquisition Collector had determined the market value of the land under acquisition classification wise i.e. @ Rs.16,220.34 per biswa for *Bakhal Abbal*.

19. It is also a settled law that where the entire area is similarly situated, the value of the land under acquisition is to be assessed as a single unit irrespective of its classification and nature ignoring the purpose to which it was being put prior to the acquisition, as well as to the one it is likely to be put thereafter. In ***Gulabi & etc. vs. State of H.P., AIR 1998 HP 9***, it has been held as under:-

"11. As a result of this discussion it is held that the market value of the land on the date of acquisition is Rs.4,000/- per biswa. In this context it is further held that the value of the land under acquisition is to be assessed irrespective of its classification and nature ignoring the purpose to which it was being put prior to the acquisition, as well as to the one it is likely to be put thereafter, Consequently, the appellants are held entitled to compensation at the rate of Rs. 4,000/- per biswa uniformly for all qualities of land and it is ordered accordingly. In taking this view, we are guided by the judgment of the Hon"ble Apex Court reported in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, and the relevant abstracts from the said judgment are as under (paras 7, 11, 13):--

"In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value

paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in a important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction.

The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc., then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted.

In the instant case it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilize the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. Therefore, no deduction could be made on ground, that large tract of land is required."

20. In ***Land Acquisition Officer vs. L Kamalamma (1998) 2 SCC 385, H.P. Housing Board vs. Ram Lal & others 2003(3) Sim.L.C. 64, Executive Engineer & Anr. Vs. Dilla Ram Latest HLJ 2008 (HP) 1007***, it was held that when the entire land acquired belongs to one block, classification of the same into different categories is not reasonable. In case acquired land is to be used/developed as a single unit for a purpose having no relevancy with quality of land, the classification of land completely loses its significance.

21. A co-ordinate bench of this Court in ***Dinesh Chhetry v. State of H.P. and others, RFA No.156 of 2003***, and connected matters, decided on 20.8.2007, has uniformly awarded the highest amount of compensation determined by the Collector, with regard to all categories of acquired land. In fact, the Court observed as under:

"The learned Advocate General submitted that keeping in view the ratio of law laid down by this Court in LAC,

Solan and another vs. Bhoop Ram, reported in 1997 (2) Sim.L.C. 229, the highest amount of compensation awarded by the Collector should be uniformly applied to all the landowners whose land stand acquired in terms of the awards in question and are subject matter of the present appeals regardless of classification of the land as the purpose of acquisition is same and similar. Therefore, according to him all the claimants in the present appeal whose land has been acquired for the construction of Kumarhatti – Oachghat road should be awarded Rs.1,33,333.20 or say Rs.1,33,330.00 per bigha. His submission is based on the fact that there is enough evidence on record to show that the acquired land in different villages are having the same advantage and potentiality of increase in value due to its location in and around the areas where the land is put to commercial use.

In Bhoop Ram (supra), this Court has held as under:-

“The Land Acquisition Collector and the District Judge have determined the market value at a lesser rate for the acquired land, which was classified as Bangar Doem, Bangar Kadim, Ghasni, Charand and Gair Mumkin but in our view the classification of acquired land for the agricultural purpose is not relevant looking to the common purpose of acquisition for the construction of road and uniform rate of Rs.40 per sq. metre or Rs.30,000/- per Bigha should be awarded irrespective of the classification of the acquired land.”

The aforesaid judgment has been consistently followed by the Court and in RFA No.2 of 1995, titled Phul Singh vs. LAC, this Court has held that if the land has potential for setting up of industry, the whole of it, irrespective of the kind and class of the land can legitimately presumed to be same market value.

In my view, the submission of the learned Advocate General is extremely fair and totally in consonance with the principles of law laid down by the Apex Court.

Perusal of the some of the award shows that the Court below has already held that even if one category of the land is better than the other category for the agricultural purposes, however, in view of the probable further use of the land for the public purpose, the land of different categories would be deemed to be having similar potentiality and as such similar rate is required to

be awarded uniformly irrespective of the category of land. In these cases, I am in agreement with the view taken by the Court below and do not find any infirmity in the decision so arrived. The amount offered by the Collector for the best value of the land i.e. Rs.1,33,330/-, therefore, is fair. Needless to add that I have not gone into the various exhibited sale deeds for determining the just, fair and reasonable market value of the acquired land in view of the submission made by the learned counsel for the parties at the Bar."

22. In the case on hand, as discussed above, no sale transaction had taken place in Village Annu one year prior to the last date of the publication of notification under Section 4 of the Act. Perusal of the record reveals that the acquired land is situated near Dharampur-Kelvi having all the facilities like school, dispensary and other offices and having great potential for agriculture and horticulture. In such circumstances, it becomes clear that acquired land was having greater market value than the one, as determined by the Land Acquisition Collector at the rate of Rs.16,220.34 per biswa. As per the rates approved by the District Collector, Shimla, the highest rate of the land acquired at the time of issuance of notification under Section 4 of the Act as on 30.07.2008 was Rs.20,974.58 per biswa as per the One Year Average Market Value of the adjoining Mauza Jungle Shalli Teer.

23. The perusal of the record reveals that the land has been acquired as the single unit for the public purpose, i.e., for the

construction of Narail-Kayartoo-Dharampur Road. Therefore, in view of the aforesaid decision rendered by a co-ordinate bench of this court, ***in Dinesh Chhetry's case (supra)*** highest amount assessed by the District Collector in the sum of Rs.20,974.58/- per biswa for the best category of land ought to have been granted to the petitioner by the Land Acquisition Collector irrespective of its classification. Hence, the market value of the land is determined as Rs.20,974.58 per biswa irrespective of its classification .

24. The learned counsel for the respondent/petitioner next contended that the possession of the land was taken by the appellants-State in the year 1988-89 but no additional interest, as damages for the period from the date of dispossession till the date of issuance of notification under Section 4 of the Act has been granted. According to him, respondent need not file separate cross-objections, as Order 41 Rule 33 Civil Procedure Code gives ample power to this Court to do complete justice between the parties .

25. Before examining the entitlement of the petitioner to the grant of compensation for the period w.e.f. taking-over of the possession of the land till the issuance of the notification under Section 4 of the Act, the question which arises for consideration

before this court in the instant case is as to whether the exercise of the discretionary power given under Order 41, Rule 33 can be invoked and exercised by this court for granting damages to the petitioner for the period with effect from the date of dispossession till the date of issuance of notification under Section 4 of the Act.

26. Order XLI, Rule 33 of Code of Civil Procedure reads as under:-

"O.XLI, R.33 - Power of Court of Appeal- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross suits or where two or more decrees are, passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

27. The scope of the above provision has been examined by the Hon'ble Supreme Court in a catena of judgments. In ***Nirmala Bala Ghose and another v. Balai Chand Ghose, AIR 1965 SC 1874***, Hon'ble Supreme Court observed that aforesaid Rule is primarily intended to confer power upon the appellate court to do justice by granting relief to a party who has not appealed, when refusing to

do so, would result in making inconsistent, contradictory or unworkable orders. Relevant paragraph thereof is extracted below:

"23.....When a party allows a decree of the Court of First Instance to become final, by not appealing against the decree, it would not be open to another party to the litigation, whose rights are otherwise not affected by the decree, to invoke the powers of the appellate Court under Order 41 Rule 33, to pass a decree in favour of the party not appealing so as to give the latter a benefit which he has not claimed. Order 41 Rule 33 is primarily intended to confer power upon the appellate court to do justice by granting relief to a party who has not appealed, when refusing to do so, would result in making inconsistent, contradictory or unworkable orders. We do not think that power under Order 41 Rule 33 of the Civil Procedure Code can be exercised in this case in favour of the deities."

28. The issue was subsequently considered by Hon'ble Supreme Court in ***K. Muthuswami Gounder v. N. Palaniappa Gounder, (1998) 7 SCC 327***. The relevant portion is extracted below:

"12. Order 41 Rule 33 enables the appellate court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (1) the appeal is as to part only of the decree; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the Court and the question raised properly arises (sic out of) one of the judgments of the lower Court and in that event, the appellate Court could consider any objection to any part of the order or decree of the Court and set it right. We are fortified in this view by the decision of this Court in Mahant Dhangir v. Madan Mohan, 1987 Supp. SCC 528. No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41, Rule 33, Civil Procedure Code and each case must depend upon its own facts....."

29. In **Banarsi and others v. Ram Phal, (2003) 9 SCC**

606, wherein the Hon'ble Supreme Court held as under:-

"14. The learned counsel for the respondent forcefully argued that even in the absence of appeal preferred by the plaintiff or cross objection taken by the plaintiff-respondent the Appellate Court was not powerless to grant the decree which it has done in exercise of the power conferred by Rule 33 of Order 41 of the CPC....."

15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The abovesaid provisions confer power of widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject matter of appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the Appellate Court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left

untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the respondent by the appellate court exercising power under Rule 33 of Order 41."

30. In a case titled as ***Pralhad & Ors Vs. State Of Maharashtra & Anr*** reported in **2010 (10) SCC 458**, the Hon'ble Supreme Court held as under:-

"17. Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of CPC.

18. The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

19. In fact, the ambit of this provision has come up for consideration in several decisions of this Court. Commenting on this power, Mulla (CPC, 15th Edition, pg. 2647) observed that this Rule is modelled on Order 59, Rule 10 (4) of the Supreme Court of Judicature of

England, and Mulla further opined that the purpose of this rule is to do complete justice between the parties.

20. In Banarsi vs. Ramphal, AIR 2004 SC 1989, this Court construing the provisions of Order 41 Rule 33 of CPC held that this provision confers powers of the widest amplitude on the appellate court so as to do complete justice between the parties. This Court further held that such power is unfettered by considerations as to what is the subject matter of appeal or who has filed the appeal or whether the appeal is being dismissed, allowed or disposed of while modifying the judgments appealed against. The learned Judges held that one of the objects in conferring such power is to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration is achieving the ends of justice. The learned Judges also held that the power can be exercised subject to three limitations: firstly, this power cannot be exercised to the prejudice of a person who is not a party before the Court; secondly, this power cannot be exercised in favour of a claim which has been given up or lost; and thirdly, the power cannot be exercised when such part of the decree which has been permitted to become final by a party is reversed to the advantage of that party. (See para 15 at pg. 1997). It has also been held by this Court in Samundra Devi and others vs. Narendra Kaur and others, (2008) 9 SCC 100 (para 21) that this power under Order 41, Rule 33 of CPC cannot be exercised ignoring a legal interdict.

21. In the instant case, the right of the landowner to receive the benefit under section 23(1A) of the Principal Act is legally permissible in view of the majority decision in Paripoornan (supra). Therefore, the law declared by this Court in Paripoornan (supra) is binding on the High Court under Article 141 of the Constitution and High Court is bound to follow the same, especially when an application has been made by the landowner under Order 41 Rule 33 of CPC."

31. Thus, a conspectus of the above pronouncements establishes that Order XLI, Rule 33 confers power of widest amplitude on the appellate Court so as to do complete justice between the parties. but however, discretion to use such power is

to be exercised judiciously with care and caution. The underlying object of the provisions of Order 41, Rule 33 would clearly go to show that the Parliament has enacted such a provision with a view that the court could rise to the occasion and render substantial justice between the parties even in absence of cross-objections or appeal. Therefore, in absence of the cross-objections filed by the petitioner, this court can invoke the provisions of Order 41, Rule 33 CPC to grant compensation to the petitioner for the period w.e.f. taking-over of the possession of the land till the issuance of the notification under Section 4 of the Act.

32. Now, the question which arises for consideration is as to whether the petitioner is entitled to additional interest, as damages for the period with effect from the taking-over of the possession of the land till the issuance of the notification under Section 4 of the Act. In the reference petition filed under Section 18 of the Act, the petitioner had averred that his land was not acquired at the time of the construction of the road in the year 1988-89 when the road was constructed upon his land, but the possession of the land was taken by the respondents in the year 1988-89. The respondents (appellants herein), in their reply, had admitted the aforesaid averments made by the petitioner being a

matter of revenue record. Perusal of the record reveals that petitioner Yoginder Chand, while appearing in the witness-box as PW-2, has categorically deposed that the possession of the land was taken in the year 1988-89, by constructing the road on the said road. However, no cross-examination was conducted on behalf of the State on this aspect. Therefore, in view of the categoric admission made by the appellant/state, it has become clear that the possession of the land was taken in the year 1988-89. Admittedly the notification under Section 4 of the Act was issued on 30.07.2008 and published in State Rajpatra on 08.08.2008.

33. This issue of granting use and occupation charges for the period w.e.f. taking-over of the possession of the land till the issuance the notification under Section 4 of the Act is no longer *res integra*. In ***Madishetti Bala Ramul (dead) by LRs vs. Land Acquisition Officer (2007) 9 SCC 650*** Hon'ble Supreme Court allowed the interest @ 15% per annum on the market value assessed by the Reference Court on the ground that the land was utilized for public purpose without acquisition and payment of compensation for considerable long period. The relevant extract from the aforesaid judgment is quoted for reference as under:

- “9. The short question which, therefore, arises for consideration is as to whether Section 25 of the Act will have any application in the fact of the present case. Two notifications were issued separately. The second notification was issued as the first notification did not survive. Valuation of the market rate for the acquired land, thus, was required to be determined on the basis of the notification dated 23.12.1991. The earlier notification lost its force. If the notification issued on 16.03.1979 is taken into consideration for all purposes, the subsequent award awarding market value of the land @ Rs. 65/- per square yard cannot be sustained. As the said market value has been determined having regard to the notification issued on 23.12.1991, possession taken over by Respondent in respect of 3 acres 5 guntas of land, pursuant to the said notification dated 16.03.1979 was in the eye of law, therefore, illegal. The High Court evidently directed grant of additional market value @ 12% per annum on the enhanced market value from the date of the publication of the notification dated 23.12.1991 as also interest thereupon from the said date instead and place of 18.05.1979. We generally agree therewith.*
- 15. The Land Acquisition Officer took possession of the land on the basis of a notification which did not survive. Respondent could not have continued to hold possession of land despite abatement of the proceeding under the 1984 Act. It was directed to be decided by the High Court upon a reference made by the Collector in terms of Section 30 of the Act. The State, therefore, itself realized that its stand in regard to the ownership of 3 acres and 5 guntas of land was not correct. It, therefore, had to issue another notification having regard to the provisions contained in the Land Acquisition (Amendment) Act, 1984. Whereas the High Court may be correct in interpreting the question of law in view of the decision of this Court, but the same would not mean that Appellants would not get anything for being remaining out of possession from 1979 to 1991.*
- 20. In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the amount of compensation to which the Appellants would be entitled for being remained out of possession since 1979, we are of the opinion that the interest of justice would be met if this appeal is disposed of with a*

direction that additional interest @ 15% per annum on the amount awarded in terms of award dated 02.01.1999 for the period 16.03.1979 till 22.12.1991, should be granted, which, in our opinion, would meet the ends of justice."

34. In ***Tahera Khotoon & others vs. Revenue Divisional Officer/Land Acquisition Officer & others, (2014) 13 SCC 613,***

the Hon'ble Supreme Court has held as under:

"14. In the instant case, it is not in dispute nor can it be disputed by either side that the property in dispute was in possession of the Warangal Municipal Committee. In fact the said Municipal Committee had developed the aforesaid land into a part. Since there was a dispute among the owners of the land with the Municipal Committee, the Municipal Committee had sought the assistance of the State Government to acquire the property and to hand over the same to the Municipal Committee for its use and development.

15. It is also not in dispute that the Municipal Committee was in possession of the aforesaid property right from 1-1-1938 till the Notification was issued by the State Government on 10-1-1996. Keeping in view the observations made by this Court in Madeshetti Bala Ramul (2007 (9) SCC 650), we direct the State Government to pay rents/damages at the rate of 15% on the compensation awarded from the date the landowners were dispossessed, namely, from 1-1-1938 till the date of issuance of the preliminary Notification i.e. 10-1-1996. The calculations shall be made by the State Government as expeditiously as possible and disburse the aforesaid amount to the appellants as early as possible, at any rate, within three months from the date of receipt of copy of this order."

35. In ***Balwan Singh & others vs. Land Acquisition Collector & another, (2016) 13 SCC 412,*** the same view was

reiterated by the Hon'ble Supreme Court and a direction was issued to the acquiring authority to award additional interest by

way of damages from the date when the respondents-claimants were dispossessed till the date of notification under Section 4 of the Act. Relevant paras of **Balwan Singh's** judgment (supra) for the sake of ready reference are extracted hereunder:

- “1. The short issue arising for consideration in this appeal is whether the appellants are entitled to interest for the period from the date of dispossession to the date of Notification under Section 4(1) of the Land Acquisition Act, 1894 (For short 'the Act'). That issue is no more res integra. In *R.L. Jain Vs. DDA* (2004) 4 SCC 79 at para 18, this Court has taken the view that the land owner is not entitled to interest under the Act. However, it has been clarified that the land owner will be entitled to get rent or damages for use and occupation for the period the Government retained possession of the property.
2. Noticing the above position, this Court in *Madishetti Bala Ramul Vs. Land Acquisition Officer* (2007) 9 SCC 650, took the view that it may not be proper to remand the matter to the Collector to determine the amount of compensation to which the appellants therein would be entitled for the period during which they remained out of possession and hence, in the interest of justice, this Court directed that additional interest at the rate of 15% per annum on the amount awarded by the Land Acquisition Collector, shall be paid for the period between the date of dispossession and the date of Notification under Section 4(1) of the Act.
3. The said view was followed by this Court in *Tahera Khatoon Vs. Land Acquisition Officer* (2014) 13 SCC 613.
4. Following the above view taken by this Court, these appeals are disposed of directing the respondents to award additional interest by way of damages, at the rate of 15% per annum for the period between 1.7.1984, the date when the appellants were dispossessed till 2.9.1993, the date of Notification under Section 4(1) of the Act. Needless to say, that this compensation will be on the basis of land value fixed by the Reference Court. The amount as above, shall be calculated and deposited before the Reference Court within a period of three months from today.”

36. In the case on hand, as observed earlier, the possession of the land in question was taken in the year 1988-89, whereas, the notification qua acquisition under Section 4 of the Act was issued on 30.07.2008. Hence, in view of the aforesaid authoritative pronouncements of the law laid down by the Hon'ble Supreme Court on the subject, this Court is of the view that since the possession of the land in question was taken way-back in year 1988-89, whereas, the notification qua the acquisition under Section 4 of the Act was issued on 30.07.2008, therefore, the petitioner is entitled to additional interest, as damages, @ 15% per annum for the period from the year 1988-89 (the date when the petitioner was actually dispossessed from the land in question) till 30.07.2008 (the date of issuance of notification of acquisition of the land in question, under Section 4 of the Act).

37. No other point was urged before me.

38. Hence, in view of what has been discussed hereinabove, the instant appeal is partly allowed and the impugned award dated 27.04.2018 is modified to the extent that the market value of the land is assessed at Rs.20,974.58 per biswa irrespective of its classification. The petitioner is also entitled

to interest at the rate of 12% per annum on the market value from the date of notification under Section 4 of the Act till the date of award. In addition to the market value, the petitioner is held entitled to get solatium or compulsory acquisition charges at the rate of 30% on such market value as provided under Section 23(2) of the Act and interest at the rate of 9% per annum from the date of notification under Section 4 of the Act upto one year and thereafter at the rate of 15% per annum till payment is made, as provided under Section 28 of the Act. The petitioner is further entitled to additional interest, as damages, @ 15% per annum for the period from the year 1988-89 (the date when the petitioner was actually dispossessed from the land in question) till 30.07.2008 (the date of issuance of notification of acquisition of the land in question, under Section 4 of the Act).

The appeal stands disposed of, so also the pending application(s), if any.

July 22, 2026
(V.Himalvi)

(Sushil Kukreja)
Judge