THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1428 of 2015 (M/S)

Bhaw Hari Har Lal ..... Petitioner

versus

The Collector / District Magistrate,
Dehradun & others ..... Respondents

Mr. T.A. Khan, Senior Advocate assisted by Mr. Rajesh Joshi, Advocate for the petitioner.
Mr. K.N. Joshi, Deputy Advocate General for the respondent State.
Mr. B.S. Adhikari, Advocate for respondent nos. 3, 4 and 5.

With

Writ Petition No. 3727 of 2018 (M/S)

U.P. Avas Evam Vikas Parishad..... Petitioner

versus

State of Uttarakhand & another ..... Respondents

Mr. B.S. Adhikari, Advocate for the petitioner.
Mr. K.N. Joshi, Deputy Advocate General for the State.
Mr. T.A. Khan, Senior Advocate assisted by Mr. Rajesh Joshi, Advocate for respondent no. 2.

List of cases referred:

1. (2015) 5 SCC 423, Radhey Shayam and another vs Chhabi Nath and others
2. (1995) 2 SCC 326, U.P. Avas Evam Vikas Parishad Vs Gyan Devi (dead) by LRs and others
3. (1986) 2 SCC 343, Santosh Kumar & others Vs Central Warehousing Corporation & another
4. AIR 1967 SC 1, Naresh Shridhar Mirajkar vs State of Maharashtra

Hon'ble Lok Pal Singh, J. (Oral)

Since common question of law and fact is involved in both the writ petitions, filed under Article 226 of the Constitution of India, therefore, the same are taken up together and are being

decided by this common judgment for the sake of brevity and convenience.

2) Writ petition no. 1428 (M/S) of 2015, Bhaw Hari Har Lal Vs Collector / District Magistrate, Dehradun and others has been filed by the petitioner stating therein that petitioner is the owner of the land plot no. 269, admeasuring 1.26 Acres, situated in revenue Village Jakhan, Pargana Central Doon, District Dehradun. The U.P. Avas Evam Vikas Parishad acquired 30.35 Acres of land in Village Jakhan for residential housing scheme known as "Rajpur Road Bhumi Vikas and Grah Sathan Yogna-1, Dehradun", which includes the land of the petitioner. Notification under U.P. Avas Evam Vikas Parishad Act, 1965 (hereinafter referred to as 1965 Act) was published in the official Gazette on 15.07.1972. Award was made on 18th March 1983. The possession of the acquired land was taken by the U.P. Avas Evam Vikas Parishad on 28th January 1981. The said land of the petitioner was notified and possession was taken, but no award was made by the Special Land Acquisition Officer (SLAO for short), pursuant to the acquisition Notification dated 15.07.1972.

3) Feeling aggrieved by non-awarding of the amount of compensation, the owner of the land (petitioner herein) preferred a Writ Petition no. 7290 of 1988, Bhaw Hari Har Lal Vs Special Land Acquisition Officer and others, before Hon'ble Allahabad High Court. After the creation of State of Uttarakhand, the aforesaid writ petition was received by transfer to this Court and was

renumbered as WPMB no. 184 of 2005. This Court vide judgment and order dated 04.09.2006 disposed of the writ petition holding that since the award has not been made within two years from the date of Notification, in view of Section 11A of the Land Acquisition Act, 1894, the acquisition proceedings have lapsed and it was directed to issue fresh Notification under Sections 28 and 32 of the 1965 Act and make the award in accordance with law within a period of two months from the date of production of certified copy of the order.

4) Feeling aggrieved by order dated 04.09.2006, U.P. Avas Evam Vikas Parishad preferred Special Leave to Appeal (C) no. 6952 of 2007. The Hon'ble Apex Court vide its judgment and order dated 22.07.2013 was pleased to dismiss the Special Leave Petition. Thereafter, the review and curative petitions were also dismissed on 23.07.2014. In the meantime, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act no. 30 of 2013') came into force which repealed the Land Acquisition Act, 1894. Despite the directions issued by this Court vide judgment and order dated 04.09.2006, the award was not made by the SLAO. Then, another Writ petition, being WPMS no. 2765 of 2014, Bhaw Hari Har Lal Vs State of Uttarakhand and others was filed, but the same was withdrawn by the petitioner with liberty to file afresh with complete and better particulars. The said writ petition was dismissed as withdrawn by this Court

vide order dated 17.04.2014. Thereafter, the present writ petition has been filed.

5) The grievance of the petitioner in instant writ petition is that since the award has not been made, therefore, direction be issued to the SLAO concerned to pass an award in view of the provisions contained in the Act no. 30 of 2013. As the acquisition proceedings were not initiated by the U.P. Avas Evam Vikas Parishad pursuant to the directions issued by the Division Bench of this Court vide order dated 04.09.2006, as affirmed by Hon'ble Apex Court in the Special Leave Petition, the matter was taken up before a co-ordinate Bench of this Court on 20.08.2016. Assurance was made by learned counsel for U.P. Avas Evam Vikas Parishad that negotiations were going on between the parties and there is likelihood that the grievance of the petitioner will be redressed shortly. But, despite the assurance made to this Court, no efforts were made to get the matter decided amicably, then the co-ordinate Bench of this Court was constrained to ensure the presence of Commissioner, U.P. Avas Evam Vikas Parishad. The Commissioner, who had joined recently made a statement that he will do the needful, but nothing was done. Then this Court was again constrained to pass order dated 08.08.2019, and held that the respondents are deliberately not complying with the directions issued by this Court. The order passed by this Court was challenged before the Division Bench and the operation of the order dated 08.08.2019 was stayed. Appeal was dismissed. Feeling aggrieved, the U.P. Avas Evam Vikas Parishad preferred

Special Leave to Appeal (C) no. 33909 of 2018. The Hon'ble Apex Court was pleased to pass the following order:

> "Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to dispose of this special leave petition by requesting the High Court to decide writ petition nos. 1428/2015 & 3727/2018 pending in the High Court between the parties to this special leave petition analogously on merits.
>
> We make it clear that we have not gone into the merits of the issue which is the subject matter of these two writ petitions and hence the High Court will decide the writ petitions without being influenced by any of the observations.
>
> During pendency of the writ petitions the interim order dated 13th March, 2019 of this Court shall continue.
>
> We request the High Court to dispose of the writ petitions preferably within a period of six months from today.
>
> With the aforesaid observations, the special leave petition is disposed of.
>
> Pending applications, if any, stand disposed of."

6) The said Special Leave Petition was finally disposed of by Hon'ble Apex Court vide judgment and order dated 22.04.2019. It was directed that during the pendency of the writ petitions the interim order dated 13.03.2019 shall continue. The Hon'ble Supreme Court also directed this Court to dispose of the writ petitions preferably within a period of six months from the date of order.

7) Arguments were heard on both the writ petitions by this Court and the judgment was reserved. During the course of dictation of judgment, this Court felt that since the U.P. Avas Evam Vikas Parishad has challenged the impugned award dated 18.09.2019 in writ petition whereof

land owner has preferred the reference under Section 64 of the Act no. 30 of 2013 before the competent authority, this Court felt that any decision in the writ petition would affect the reference filed by the land owner under Section 64 of the Act no. 30 of 2013. Thus, this Court vide order dated 06.11.2019 adjourned the hearing of the writ petitions with the direction, let the reference be decided first.

8) Feeling aggrieved by the order dated 06.11.2019, passed by this Court, the U.P. Avas Evam Vikas Parishad preferred Special Leave Petition (C) No(s) 27161-27162 of 2019, U.P. Avas Evam Vikas Parishad Vs Nituj Hari Har Lal and another before the Hon'ble Supreme Court. The Hon'ble Apex Court vide order dated 25.11.2019 issued notices to the respondents and directed the matter to be listed on 20.01.2020. It is also directed that in the meantime, operation of the impugned interim order shall remain stayed.

9) Having perused the judgment passed by the Hon'ble Apex Court, this Court in its order dated 09.12.2019 has observed that since the order dated 06.11.2019 has been stayed by the Hon'ble Apex Court, therefore, having considered the judgment dated 22.04.2019 passed by Hon'ble Supreme Court, this Court felt that the matter be decided on merit. The judgment passed by the Hon'ble Apex Court on 22.04.2019 is being extracted hereunder:

> "Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to

> dispose of this special leave petition by requesting the High Court to decide Writ Petition nos. 1428/2015 & 3727/2018 pending in the High Court between the parties to this special leave petition analogously on merits.
>
> We make it clear that we have not gone into the merits of the issue which is the subject matter of these two writ petitions and hence the High Court will decide the writ petitions without being influenced by any of the observations.
>
> During pendency of the writ petitions the interim order dated 13th March, 2019 of this court shall continue.
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> We request the High Court to dispose of the writ petitions preferably within a period of six months from today.
>
> With the aforesaid observation, the special leave petition is disposed of.
>
> Pending applications, if any, sand disposed of."

10) Learned counsel for the parties would submit that so far as writ petition no. 1428 (M/S) of 2015 is concerned, since the award has been made, thus the same has rendered infructuous.

11) In view of the above statement, the writ petition no. 1428 M/S) of 2015 is dismissed as infructuous.

12) Also, heard learned counsel for the parties on Writ Petition no. 3727 (M/S) of 2018.

13) Petitioner U.P. Avas Evam Vikas Parishad has filed the present petition seeking writ in the nature of certiorari / quashing of the impugned award dated 11.09.2018, passed by the SLAO, Dehradun in case no. 03 of 2017 (contained as Annexure 6 to the writ petition), inter alia, on the grounds that Notification was issued on 15.07.1972

under Sections 27 and 32 of the 1965 Act, for acquiring 30.35 Acres of land for residential housing scheme called “Rajpur Road Bhumi Vikas and Grah Sathan Yogna-1, Dehradun”. The possession was taken over of 28.96 Acres of land on 28.01.1981. The amount of compensation was deposited before the SLAO, Meerut for the entire land acquired. The award was made on 23rd March 1985, leaving 1.6 Acres of land of plot no. 269 of respondent no. 2 as the ceiling proceedings under the Urban Land Ceiling Act were going on. The averments in regard to filing the writ petition by the land owner has already been discussed in the foregoing paragraphs, therefore, the same need not to be repeated again for the sake of brevity.

14) It is contended that during the pendency of writ petition Notifications under Sections 29 and 31 of the Act of 1965 were issued and final Notification under Section 32 of the 1965 Act has been published on 04.12.2017. The SLAO determined the tentative amount of award at Rs.15,69,59,458/-. The petitioner U.P. Avas Evam Vikas Parishad filed its objection and copies of the sale deeds in support of its claim showing that the market rate of the acquired land is on lower side. It is further contended that without considering the objections raised by the petitioner and without taking into consideration the sale deeds filed by the petitioner for exemplar, the SLAO in an arbitrary manner has passed the impugned award dated 01.09.2018, whereby petitioner was directed to deposit Rs.24,11,96,359/-. It is further contended that the amount so deposited by the petitioner

before the SLAO Meerut ought to have been considered against the amount awarded, but the same has not been considered. It is further contended that a huge chunk of land was acquired by the U.P. Avas Evam Vikas Parishad for development of a residential colony, thus 20-50 per cent should be deducted towards the set up and carving out of roads and parks etc., but the same has not been done by the SLAO while passing the impugned award. It is contended that out of total 76 sale deeds, the SLAO prepared the list of 38 sale deeds with highest market rate and calculated the average of that, without considering the fact that many of those sale deeds are of the land which are not in the close vicinity of the area. It is contended that land belonging to khasra nos. 34-35 have been sold to Max hospital and its Vana Resort for commercial purposes, therefore, the SLAO has committed illegality in taking these sale deeds as exemplar to find out the average of the land. It is contended that the petitioner has no right to prefer a reference under Section 64 of the Act no. 30 of 2013. Therefore, petitioner has no alternative or efficacious remedy to challenge the impugned award dated 01.09.2018, as such, the petitioner is left with no remedy except to prefer a writ petition seeking quashing of the impugned award dated 01.09.2018.

15) Nituj Hari Har Lal, legal heir of original tenure holder (respondent no. 2 herein) filed his counter affidavit stating therein that Section 95 of the Act no. 30 of 2013 permits the acquiring body or local authority to participate in reference proceedings and produce its evidence before the

reference Authority. Thus, the writ petition is not maintainable. It is contended that in view of Section 26 of the Act no. 30 of 2013, the SLAO ought to have considered the market value as envisaged in the circle rate list issued by the Collector, Dehradun and the compensation should have been determined by the SLAO in view of Section 26 of the Act no. 30 of 2013 on the basis of the circle rate list issued by the District Magistrate, Dehradun, but the SLAO has collected the average of the market value on the strength of the sale deeds obtained by him from the office of Sub Registrar, Dehradun.

16) Section 26 of the Act no. 30 of 2013 is extracted hereunder:

> "26. Determination of market value of land by Collector. –(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely: -
>
> (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
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> (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
>
> (c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects,
>
> Whichever is higher:
>
> Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11."

17) It is further contended that since the appropriate amount of compensation has not been paid to the land owner and reference is pending

under Section 64 of the Act no. 30 of 2013 before the reference authority and there are chances of enhancement of compensation, thus the writ petition is liable to be dismissed.

18) Learned counsel appearing for respondent no. 2 would submit that as the petitioner has remedy to file objection, the writ petition is not maintainable.

19) Since the question of maintainability of writ petition has been raised by respondent no. 2, thus, this Court is duty bound to first decide the maintainability aspect of the writ petition.

20) Learned counsel for the petitioner would submit that so far as the contention raised by the respondent that under Section 95 of the Act no. 30 of 2013, the petitioner has a right to participate and adduce evidence is not an appropriate remedy without there being any challenge to the award as no statutory remedy under the Act is available to the petitioner, therefore, writ petition is maintainable.

21) Learned counsel for the petitioner placed reliance on the judgment rendered by Hon'ble Apex Court in **U.P. Avas Evam Vikas Parishad Vs Gyan Devi (dead) by LRs and others[2].** Paragraph 20 of the judgment is extracted under-in-below:

> "20. In a case where no notice is given to the local authority the position of the local authority is not different from that of the Municipal Corporation in Neelgangabai & Anr. v. State of Karnataka (1990) 3 SCC 617. In that case

there was an express provision in section 20 of L.A. Act as modified by Land Acquisition (Mysore Extension Amendment) Act, 1961 providing for service of notice on the person or local authority for whom the acquisition is made. On a construction of Section 50(2) we have found that service of such a notice is implicit in the right conferred under Section 50(2) of the L.A. Act, Since the failure to give a notice would result in denial of the right conferred on the local authority under Section 50(2) it would be open to the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge the award made by the Collector as was done in Neelgangabai case (supra). In a case where notice has been served on the local authority and it has appeared before the Collector the local authority may feel aggrieved on account of it being denied opportunity to adduce evidence or the evidence adduced by it having not been considered by the Collector while making the award or the award being vitiated by malafides. Since the amount of the compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the L.A. Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the local authority has failed to appear in spite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by malafides or is perverse."

22) The five Judges Bench of Hon'ble Apex Court in Gyan Devi case (supra) has relied on the

judgments rendered by it in Union of India Vs Sher Singh (1993) 1 SCC 608; Union of India Vs Kolluni Ramaiah (1994) 1 SCC 367; Himalayan tiles and Marble (P) Ltd Vs Francis Victor Coutinho (1980) 3 SCC 223; Udit Narain Singh Malpaharia Vs Additional Member, Board of Revenue AIR 1963 SC 786. The Hon'ble Supreme Court has also considered the judgment of **Santosh Kumar & others Vs Central Warehousing Corporation & another[3].**

23) Hon'ble Apex Court by its majority judgment has held that the Acquiring Body is a necessary and proper party before the SLAO, an opportunity of hearing should be given to it in the proceedings before the reference court. It further recorded a finding that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of question involved in the proceeding. It is further observed that where a person having no enforceable right, yet affected or likely to be affected by order passed by public authority. Hon'ble Justice R.M. Sahai (the then) has delivered a dissenting judgment and partly relied upon the case of Santosh Kumar (supra). In view of the principle of law laid down by Hon'ble Apex Court by majority decision in five Judges judgment rendered in Gyan Devi case (supra), since the petitioner is an aggrieved party and in adhering the principle of natural justice as there is a likelihood to affect the petitioner by impugned judgment, the petitioner has a legal right

to maintain the writ petition under Article 226 of the Constitution of India.

24) Mr. T.A. Khan, learned Senior Counsel appearing for respondent no. 2 has placed reliance in the case rendered by Hon'ble Supreme Court in Santosh Kumar case (supra). Santosh Kumar case (supra) has been impliedly overruled by the Constitutional Bench judgment despite the fact that Santosh Kumar case (supra) has been considered and impliedly overruled by the Hon'ble Apex Court, the learned Senior Counsel Mr. T.A. Khan has placed reliance on a impliedly overruled judgment. It appears to this Court that Mr. T.A. Khan, learned Senior Counsel has deliberately in order to mislead this Court has cited the said judgment. While sitting in a Division Bench, I have deprecated such practice of citing overruled judgments having considered catena of judgments in the case of *Sunita Pandey and another Vs State of Uttarakhand and others*, Writ Petition (PIL) no. 132 of 2014 (decided on 26th October, 2018). This court records its displeasure in advancing the misleading argument by Mr. T.A. Khan, learned Senior Counsel by showing impliedly overruled judgment while arguing the case for the benefit of his client.

25) Having heard learned counsel for the parties and on perusal of the provisions contained in Act no. 30 of 2013 that there is no provision made in the Act which provides that the acquiring body may have a right to challenge the award passed by the SLAO. Section 64 of the Act no. 30 of 2013 provides the remedy of reference before the reference

authority to the person whose land has been acquired. As far as submission of learned counsel for the respondent that the petitioner has a right to participate and adduce evidence under Section 95 of the Act no.30 of 2013 is concerned, the submission of learned counsel for the respondent is misconceived. Section 95 of the Act no. 30 of 2013 stipulates that the requiring body can participate and adduce evidence before the reference authority so the reference authority while acting under Section 64 of the Act may consider the evidence so adduced by the requiring body, but it does not provide an opportunity to the requiring body to challenge the award if an award is made arbitrarily or the amount of award is exorbitant and illegal award has been passed. Thus, appropriate remedy to challenge the award on illegality is not available to the requiring body under Section 95 of the Act no. 30 of 2013.

26) In view of the fact that no statutory remedy to challenge the impugned award is available to the petitioner having considered the principle of law that no one should be left remediless and in view of the law laid down by the Constitutional Bench of the Hon'ble Apex Court in Gyan Devi case (supra), which has binding precedent upon this Court, it is held that the writ petition against the award dated 01.09.2018 is maintainable. The core issue in regard to the maintainability of the writ petition is accordingly decided in favour of the petitioner.

27) Now, the second core issue to be determined by this Court is as to whether the SLAO has committed any illegality or arbitrariness in passing the impugned award dated 01.09.2018, whereby, according to the petitioner, the objections and the evidence of exemplars submitted by the petitioner has not been considered by the SLAO.

28) Learned counsel for the petitioner would submit that the SLAO has recorded its finding that the objector in support of his objection has not adduced any evidence on record. He would further submit that the land acquired by the U.P. Avas Evam Vikas Parishad is within 200-400 meters, but the SLAO did not consider the sale deeds of the nearest vicinity of the acquired land. The SLAO has illegally considered those sale deeds which pertain to the market value of the commercial land. It is contended that the SLAO in an arbitrary and illegal manner has relied upon the exemplar sale deeds having the market value of commercial areas and awarded an exorbitant award in favour of respondent no. 2. It is further contended that the exemplar sale deeds filed by the petitioner have not been considered at all. The SLAO has illegally recorded a finding that no evidence has been led by the U.P. Avas Evam Vikas Parishad, thus, the award has been passed without application of mind.

29) Per contra, learned counsel appearing for respondent no. 2 admits that though finding has come in the award that the objector has not adduced any evidence of the sale deeds in support of its objections, but the fact remains that the SLAO

has summoned as many as 188 sale deeds from the office of the Sub Registrar, Dehradun and having considered several sale deeds in close vicinity to the acquired land, the award has been made. However, he would submit that as the circle rate list prepared by the Collector was before the SLAO, therefore, in view of the provisions contained in Section 26 of the Act no. 30 of 2013, the SLAO should have made the award on the basis of the circle rates provided in the circle rate list of the Collector, Dehradun and should ascertain the value of the property on the basis of the circle rate list. Along with counter affidavit, a copy of the circle rate list issued by the Collector, Dehradun dated 16.06.2016, as amended w.e.f. 04.01.2016, is also annexed. The acquired land is situated within 200-250 meters on the left side of Rajpur Road. As per the circle rate list dated 16.06.2016, Rajpur Road from RTO office to Mussoorie bypass the rate list upto 0-50 meters is Rs.40,000/- per sq. mt. in regard to the land situated beyond 50 meter and the rate list upto 350 meter is Rs.28,000/- per sq. mt. The location of the acquired land has not been disputed by the petitioner that the acquired land is situated within 200-250 meters from the Rajpur Road.

30) Indisputably, the acquired land is located within 200-250 meter from the Rajpur Road, Derhadun. A perusal of the impugned award would reveal that the SLAO has taken into consideration the average of the sale deeds as the mechanism prescribed under Section 26(b) of the Act no. 30 of 2013, whereof a conjoint reading of Section 26 of the Act no. 30 of 2013 contemplates the procedure

for determination of market value of land by the Collector. In view of the provisions contained in Section 26(a), criteria has been fixed for assessing and determining the market value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreement to sell, as the case may be, in the area, where the land is situated; or the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of land for private companies or for public private partnership projects, whichever is higher. As per the circle rate list for the purpose of payment of stamp duty for the registration of sale deed of the land in question has been mentioned Rs.28,000/- per sq. mt., whereof the SLAO has considered the average market price on the basis of the exemplar sale deeds at Rs.18,971/- per sq. mt.

31) Be that as it may, any sale deed provided by the petitioner U.P. Avas Evam Vikas Parishad or anyone has not been considered by the SLAO to determine the market value of the land has no relevance in view of the definition clause of Section 26 of the Act no. 30 of 2013, whereby it is provided that the highest market value has to be paid to the land owner. Thus it is held that the SLAO has opted clause (b) of Section 26 and left to invoke the provisions of clause (a) of Section 26 of Act no. 30 of 2013, thus, it is held that the SLAO has committed illegality in applying the criteria to determine the market value at the rate of Rs.18,971/- per sq. mt., however, in view of the definition of clause (a) of

Section 26 of Act no. 30 of 2013, the SLAO should have applied the criteria to determine the market value for determining the compensation on circle rate i.e. Rs.28,000/- per sq. mt.

32) The next submission of learned counsel for the petitioner is that 20-50 per cent of land acquired should be deducted towards development of roads, parks etc. In so far as for the development of the residential colony, not more than 20 per cent of land could be reserved and utilized for carving the roads and parks etc., the petitioner has not pleaded that how much land from the entire acquired land has been left for carving the roads and parks etc. The possession was taken in the year 1981 and all the details of the land sold by the petitioner is with the petitioner as well as the land utilized for carving the roads and parks is also with the petitioner. It appears that the petitioner is not coming with clean hands before this Court and has suppressed the material fact as to how much land has been utilized by it for carving of the roads and parks. However, a prudent person can easily assess that no more than 20% land would be required for carving of roads, parks etc.

33) Submission of learned counsel for the petitioner is that at least 20% cost of the land has to be deducted for the development of colony. I do not find any reason not to consider the submission of learned counsel for the petitioner towards deduction of 20% amount towards development charges of the property in question viz. carving of roads and parks etc. Indisputably, the market value of the acquired

land on the date of Notification as per the circle rate list of the Collector for the purpose of payment of stamp duty on sale deeds or agreement to sell is Rs.28,000/- per sq. mt., whereof the SLAO has passed the award at the rate of Rs.18,971/- per sq. mt., which is on lower side. Having considered the contention of learned counsel for the petitioner that 20% from the market value should be deducted towards carving of roads and parks etc. and being convinced on this point of deduction of 20% from the rate of Rs.28,000/- per sq. mt., the 20% amount comes to Rs.5,600/-. On deduction of 20% amount of Rs.5,600/- from the market value of Rs.28,000/- per sq. mt. the amount thus arrived at is Rs.22,400/- per sq. mt. Thus, this Court is of the view that having deducted the aforesaid amount, the SLAO should have passed the award at the rate of Rs.22,400/- per sq. mt., however, the amount at the rate of Rs.18,971/- per sq. mt. has been awarded, which is on lower side.

34) The powers under Article 226 of 227 of the Constitution of India may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

35) Unless the petitioner succeed in convincing this Court in regard to the three

ingredients as mentioned above necessary to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, the Court should be loath to exercise such jurisdiction to differ with the reasons and the conclusion arrived at by the competent authority or court of law. In the instant case the petitioner has failed to show any perversity, illegality or jurisdictional error in the impugned award. Besides this, the petitioner has also failed to show any miscarriage of justice occasioned with him.

36) My view is supported by the dictum of Hon'ble Apex Court in ***Radhey Shayam and another vs Chhabi Nath and others***[1] wherein, Hon'ble Supreme Court while considering the nine-Judge Bench judgment in *Naresh Shridhar Mirajkar vs State of Maharashtra*[4], has held that the remedy under Article 226 / 227 of the Constitution of India is not an appealable remedy and can be used only in a very exceptional cases when manifest miscarriage of justice has been occasioned and where there is some perversity in the order passed by the Tribunal or subordinate court.

37) In view of the findings recorded above, this Court is of the view that the petitioner could not make out any case of interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition no. 3727 (M/S) of 2018 is devoid of merit and is liable to be dismissed. The same is hereby dismissed. No order as to costs.

38) Though this Court is of the view that the present case is a gross abuse of process of law and wants to impose exemplary cost on the petitioner, but on the request of learned counsel for the petitioner, this Court has restrained itself with great difficulty in not doing so.

39) It is, however, made clear that any observations made in this order will not come in the way of Reference Authority in deciding the reference filed by the respondent no. 2 under Section 64 of the Act no. 30 of 2103.

(Lok Pal Singh, J.)

Dt. January 02, 2020.
Negi