Union Of India vs Pramod Gupta (D) By Lrs. & Ors on 7 September, 2005

Author: S.B. Sinha

Bench: Ashok Bhan, S.B. Sinha

```
           CASE NO.:
Appeal (civil)  6825-26 of 2003

PETITIONER:
Union of India

RESPONDENT:
Pramod Gupta (D) by LRs. & Ors..

DATE OF JUDGMENT: 07/09/2005

BENCH:
Ashok Bhan & S.B. Sinha

JUDGMENT:
```

J U D G M E N T WITH C.A. Nos. 6827-6832/2003, 950, 2661 of 2005, CIVIL APPEAL NOS. 5566-5569 OF 2005 [arising out of SLP(C) Nos. 14383 OF 2004, 17913, 17915, 17916 OF 2005] S.B. SINHA, J :

Leave granted in the special leave petitions.

INTRODUCTION :

These appeals are directed against a common judgment and order dated 5.10.2001 passed by a Division Bench of the High Court of Delhi in R.F.A. No. 85 and 86 of 1987 under Section 54 of the Land Acquisition Act, 1894 (for short "the Act") whereby and whereunder the amount of compensation in respect of acquisition of land in village Masoodpur with china clay and without china clay was fixed @ Rs. 56/- per sq. yard and Rs. 30/- per sq. yard respectively in relation to the notification dated 24.10.1961 and Rs. 98/- per sq. yard and Rs. 72/- per sq. yard with China Clay and without China Clay respectively in relation to the notification dated 23.01.1965.

The basic fact of the matter is not in dispute. Two notifications dated 24.10.1961 and 23.01.1965 were issued for acquisition of the lands measuring 1105.04 bighas and 3895.07 bigha respectively situated in village Masoodpur for the public purpose of planned development of Delhi, i.e., for construction of Jawahar Lal Nehru University. Declarations under Section 6 of the Act were issued on 6.08.1966 and 6.12.1966. Two

awards being award Nos. 2040 and 2225 were made on 2.12.1967 and 8.04.1969. The Land Acquisition Collector for the purpose of computation of the amount of compensation payable for acquisition of said land divided the acquired lands in three categories viz. Blocks A, B & C and awarded compensation @ Rs. 1000/- per bigha for Block A, Rs. 900/- per bigha for Block B and Rs.

600/- per bigha for Block C in respect of the acquisition of land under notification dated 24.10.1961 and Rs. 1580/- per bigha for Block A, Rs. 1175/- per bigha for Block B and Rs. 600/- per bigha for Block C in respect of the acquisition of land under notification dated 23.01.1965. The owners of the lands being aggrieved by and dissatisfied with the said awards filed applications seeking reference in terms of Section 18 of the Act pursuant whereto and in furtherance whereof the Reference Court by a judgment and award dated 28.07.1986 awarded compensation @ Rs. 18000/- per bigha for the lands covered by Award No. 2225 and Rs. 12000/- per bigha for the lands covered by Award No. 2040. The Reference Court further granted compensation @ Rs. 10,000/- per bigha for minor mineral, i.e., China Clay.

On or about 8.12.1986, the Appellants herein preferred appeals in terms of Section 54 of the Act being aggrieved by and dissatisfied with the said judgment and award which were marked as R.F.A. No. 85 & 86 of 1987. The Respondents herein upon service of notice filed cross objections seeking enhancement of compensation both in respect of land as well as the mineral China Clay.

HIGH COURT:

The High Court by reason of the impugned judgment dismissed the appeals filed by the Appellants herein holding, inter alia, that the judgments and awards granting compensation for the lands acquired in the neighbouring villages which were upheld by it in R.F.A. Nos. 567/1990 and 694/1990, would attract the principle of res judicata and, thus, the appeals filed by the Appellants were not maintainable. The High Court, however, allowed the cross-objections filed by the Respondents herein in part.

The High Court further refused to entertain an application filed by the Appellants herein under Order XLI Rule 27 of the Code of Civil Procedure for bringing on record inter alia a sale deed whereby and whereunder one of the Respondents herein obtained assignment of 1/8th of the amount of compensation in the year 1980 for a sum of Rs. 30,000/- holding that the same was not relevant for disposal of the appeals and in any event the same should have been brought on records by the Appellants before the Reference Court.

The Appellants before the High Court, inter alia, had raised a contention that as the proceeding arising out of reference having remained stayed at the instance of the Respondents for the period January, 1972 and May, 1980; they were not entitled to any interest which was rejected opining that the statutory provisions for grant of interest as contained under Sections 28 and 34 of the Act being mandatory in nature

cannot be waived.

For computing the market value of the lands, the High Court proceeded on the basis that the lowest category of residential developed plots, as in the year 1965, should be taken to be the base therefor i.e. @ Rs. 150/- per sq. yd. and directed deduction of 40% therefrom on the premise that some time would have been necessary for excavating minor minerals and to make the lands fully developed having regard to their tremendous building potential. The High Court also directed further deduction of 20% from the wholesale price opining that Rs. 72/- per sq. yard would be a fair market price for the acquired land in the year1965. However, as regard the lands which were the subject matter of acquisition in terms of notification dated 24.10.1961, relying on or on the basis of a decision of the High Court in Rameshwar Solanki & Anr. Vs. Union of India & Anr. [57 (1995) DLT 410], further deductions @ 12% p.a. were directed to be made therefrom working out the amount of compensation at Rs. 30/- per sq. yard for lands without China Clay and Rs. 56 per sq. yard with China Clay.

Aggrieved by and dissatisfied with the said judgment and order, the Union of India and the Delhi Development Authority are before us.

SUBMISSIONS :

The learned Additional Solicitor General appearing for the Appellants raised the following contentions in support of these appeals:

(i) The nature of the lands being 'Gairmumkin Pahad' and 'Banjar Kadim', as described in the entries made in the revenue record of rights for the years 1907 and 1908, the Respondents were entitled to such amount of compensation only payable to a holder of Bhumidari rights in terms of the provisions of the Delhi Land Reforms Act and no other, wherefor Sections 5, 6, 7, 11, 22, 23 and 154 thereof were required to be read conjointly.

(ii) China Clay being a minor mineral, in terms of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 as also the Punjab Minor Mineral Rules, 1934, the same having vested in the Central Government; no compensation was payable therefor.

(iii) Judgments and awards made in favour of other claimants having only evidentiary value, the principle of res judicata was wholly inapplicable.

In any event as such judgments and awards were passed by courts having no jurisdiction therefor; the principle of res judicata was not applicable.

(iv) Even if it be found that any amount of compensation was payable to the Respondents herein, the High Court misdirected itself in passing the impugned judgment insofar as it failed to take into consideration that the Respondents having made a claim of Rs. 25/- per sq. yard before the Land Acquisition Collector were estopped and precluded from claiming any higher amount in view of Section 25 of the Land Acquisition Act, as it then stood.

(v) In view of the fact that the Respondents themselves prayed for stay of the proceedings before the Reference Court, no interest was payable for the period between 17th January, 1972 and 27th May, 1980.

(vi) The High Court failed to take into consideration the fact that the Respondents themselves purchased the land at the rate of Rs. 6/- per sq. yard in the year 1960 and 1/8th share of the acquired land for a sum of Rs.36,000/- in the year 1980 and the market value of the acquired lands should have been determined only on that basis.

(vii) In any view of the matter, as the appeal had been held to be not maintainable by the High Court applying the principles of res judicata, the cross objections filed by the Respondents were also not maintainable.

Mr. Harish Salve, Mr. P.P. Rao, and Mr. Ramamurthy, learned senior counsel appearing on behalf of the Respondents, on the other hand, would support the impugned judgment.

At the outset we may notice that Mr. Salve conceded that the principles of res judicata and/ or issue estoppel were not applicable to the fact of the present case. The learned counsel would, however, point out that the High Court in fact entertained the appeals preferred by the Appellants as regard : (a) ownership of China Clay, (b) value of the land and (c) application of Section 25 of the Act.

It was furthermore submitted :

> (i) The Land Acquisition Act being an existing statute on the date of coming into force of the Constitution of India the right to property was a fundamental right in terms of Article 19(1)(f) and 31 of the Constitution of India when the notifications under Section 4 were issued and, thus all the procedural requirements laid down therein were required to be scrupulously complied with in fulfillment of the legislative purpose.
>
> (ii) Section 25(2) of the Act has no application in the fact of the matter as the High Court has arrived at a finding that 'admittedly no notice under Sections 9(3) and 10 was served on the Respondents', in which event only the bar envisaged under Section 25(2) of the Act, would be attracted.
>
> (iii) The Respondents having amended their Memo of Appeal as also the Reference in terms of Order VI Rule 17 of the Code of Civil Procedure, vis-

`-vis Section 53 of the Act, the High Court had the requisite jurisdiction to enhance the amount of compensation in favour of the Respondents.

(iv) The notifications issued by the Union of India were admissible in evidence as no other admissible evidence was available on record.

(v) In view of the fact that the Respondents are armed with the four decrees passed in their favour by courts of competent jurisdiction, it is not open to the Appellant to contend that Bhumidhars had no right in the minor mineral China Clay. Distinguishing the judgment of this Court in Gaon Sabha and Anr. Vs. Nathi and Ors. [JT 2004 (4) SC 36 : (2004) 12 SCC 555], the learned counsel would submit that the Respondents therein were not Bhumidhars and, thus, the said decision must be held to have been rendered in the fact situation obtaining therein. In any event, the question as regard title is not an issue herein as the matters in relation thereto are pending consideration, if any, before the High Court.

(vi) Mineral right contained in the land did not vest in the Government in terms of Section 41 of the Punjab Land Revenue Act, 1887 and the said right would be presumed to have vested in the recorded tenants in terms of sub- section (2) of Section 42 thereof.

(vii) Punjab Minor Minerals Rules, 1934 and the Mines and Minerals (Regulation and Development) Rules, 1957 or the Delhi Land Reforms Act, 1954 do not contain any provision divesting the right of the proprietor in the minor minerals either expressly or by necessary implication and in that view of the matter, the ownership on minor minerals continued to remain vested in the landowners.

FACTUAL BACKGROUND:

As the fact of the matter has been noticed at some length by a Constitution Bench in Sardar Amarjit Singh Kalra (Dead) by Lrs. and Others etc. vs. Pramod Gupta (Smt.) Dead) by Lrs. and Others etc. [(2003) 3 SCC 272], it may not be necessary for us to traverse the same over again. Suffice it to notice that the Respondents herein claimed their right, title and interest in the lands in question measuring 4307 bighas, 17 biswas from one Gulab Sundari who was said to be the proprietor of M/s Kesri Pottery Works having a non-occupancy tenancy right therein. It is not in dispute that several proceedings had been initiated before different forums by Gulab Sundari on the one hand and the Gaon Sabha of the village and the Union of India, on the other, in respect of the right, title and interest of the respective parties after coming into force of the Delhi Land Reforms Act.

The aforementioned Gulab Sundari had allegedly been declared Bhumidhar by the Deputy Commissioner of Delhi.

It may be noticed that an intervention application has been filed on behalf of Shri Madan Gopal Gupta and Shri Sudhir Jain contending that there exists an inter se dispute as regard the ownership of the property in question inasmuch as the

applicants therein are proprietors/owners thereof. According to the said applicants the principal dispute between the parties is as to whether the said Gulab Sundari had had any right, title or interest as Bhumidhar or otherwise in the said land and the same is pending determination before the High Court of Delhi in RFA Nos.309-310 of 1980. Briefly stated the contention raised on behalf of the said applicants is that a lease was granted by the proprietor in the year 1939 and the lessee in turn granted a sub-lease in favour of M/s Kesri Pottery Works, a partnership firm, in the year 1942. The period of lease granted in favour of the lessee having expired, Gulab Sundari ceased to have any interest in the property. In any event, a lessee or a sub-lessee could not have been declared Bhumidhar in terms of Section 7 of the Delhi Land Reforms Act as only the proprietor of the village was entitled thereto and in that view of the matter the declaration of Bhumidhari rights in favour of Gulab Sundari was wholly illegal and without jurisdiction.

The Appellants, however, contend that Gulab Sundari or for that matter any person other than the Central Government or the Gaon Sabha in view of the provisions contained in the Delhi Land Reforms Act, 1954 and other statutes, as referred to hereinbefore, did not derive any right, title and interest in the minor minerals. In any event, right over mines and minerals in proprietors being limited under the provisions of the Punjab Land Revenue Act, Punjab Minor Minerals Rules, 1934 and the Mines and Minerals (Regulation and Development) Act, 1957, they did not derive any right to exploit the area for commercial purposes and in that view of the matter, the Reference Court and the High Court acted illegally and without jurisdiction in computing the amount of compensation in respect of mineral rights on the premise that if they were entitled thereto.

PROCEEDINGS BEFORE THE REFERENCE COURT :

From the claim applications filed before the Reference Court, it appears that there were five claimants, namely, Smt. Promod Gupta, Shri Rajiv Gupta, Sanjay Gupta, Smt. Sumangli Gupta and Shri LR. Gupta. However, in the claim petitions Shri L.R.. Gupta did not put his signature. The Reference Court in the proceedings under Section 18 of the Act framed the following issues :

"i) Whether the petitioners are the Bhumidars of the land in dispute ?

ii) To what enhancement in the amount of compensation, if any, are the petitioners entitled ?"

It was noticed :

"One set of claimants in the reference against each award is Smt. Parmod Gupta, Sri Ram Gupta, Mehar Chand Gupta and Babu Ram Gupta and they jointly have claimed 1/4th share in the land acquired by these awards and the other set of claimants

against each award was Surinder Gupta, who was substituted by Rattan Lall Gupta in proceedings u/s 30/31 of the Act before Shri P.L. Singla. Now Rattan Chand Gupta has been substituted by Rajiv Gupta, Sanjay Gupta, Parmod Gupta and Sumangli Gupta. The first set of claimants, Sri Ram Gupta, Mehar Chand Gupta and Babu Ram Gupta stand substituted by Rajiv Gupta, Sanjay Gupta, Shri L.R. Gupta, Smt. Parmod Gupta and Sumangli Gupta being the members of the L.R. Gupta HUF. They jointly have 1/8th share in the land acquired by both the awards."

The aforementioned five claimants, viz., Smt. Promod Gupta, Shri Rajiv Gupta, Sanjay Gupta, Smt. Sumangli Gupta and Shri LR. Gupta have also been arrayed as Respondents in the appeals filed before the High Court by the appellants herein.

RES JUDICATA :

The principle of res judicata has been applied by the High Court in relation to two issues, viz., determination of market value and title of the Respondents in respect thereof.

We have noticed hereinbefore that Shri Salve conceded that the High Court has committed an error in applying the principle of res judicata. Having regard to the said concession, although it may not be necessary for us to delve deep into the said question but in view of the order proposed to be passed by us, we think it fit and proper to deal briefly therewith.

A bare perusal of the judgments and awards passed by the Reference Court would indicate that the amount of compensation was fixed on the basis of some judgments passed by the High Courts in matters which were said to be involving similar lands.

DETERMINATION OF MARKET VALUE:

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

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 neighbouring villages. Such a judgment and award in absence of any other evidence like deed of sale, report of expert and other relevant evidence would have only evidentiary value.

Therefore, the contention that as the Union of India was a party to the said awards would not by itself be a ground to invoke the principles of res judicata and/ or

estoppel. Despite such awards it may be open to the Union of India to question the entitlement of the claimants Respondents to the amount of compensation and/ or the statutory limitations in respect thereof. It would also be open to it to raise other contentions relying on or on the basis of other materials brought on the records. It was also open to the Appellant to contend that the lands under acquisition are not similar to the lands in respect whereof judgments have been delivered. The area of the land, the nature thereof, advantages and disadvantages occurring therein amongst others would be relevant factors for determining the actual market value of the property although such judgments/ awards, if duly brought on records, as stated hereinbefore, would be admissible in evidence.

Even if the Union of India had not preferred any appeal against the said judgment and award; it would not be estopped and precluded from raising the said question in a different proceeding as in a given case it is permissible in law to do the same keeping in view larger public interest.

In Government of West Bengal vs. Tarun K. Roy [(2004) 1 SCC 347] repelling the contention that the State is estopped from maintaining an appeal while from a similar matter which has been implemented no appeal was filed, it was observed :

"28. In the aforementioned situation, the Division Bench of the Calcutta High Court manifestly erred in refusing to consider the contentions of the appellants on their own merit, particularly, when the question as regards difference in the grant of scale of pay on the ground of different educational qualification stands concluded by a judgment of this Court in Debdas Kumar1. If the judgment of Debdas Kumar is to be followed, a finding of fact was required to be arrived at that they are similarly situated to the case of Debdas Kumar which in turn would mean that they are also holders of diploma in Engineering. They admittedly being not, the contention of the appellants could not be rejected. Non-filing of an appeal, in any event, would not be a ground for refusing to consider a matter on its own merits. (See State of Maharashtra v. Digambar.)

29. In State of Bihar v. Ramdeo Yadav wherein this Court noticed Debdas Kumar by holding: (SCC p. 494, para 4) "4. Shri B.B. Singh, the learned counsel for the appellants, contended that though an appeal against the earlier order of the High Court has not been filed, since larger public interest is involved in the interpretation given by the High Court following its earlier judgment, the matter requires consideration by this Court. We find force in this contention. In the similar circumstances, this Court in State of Maharashtra v. Digambar and in State of W.B. v. Debdas Kumar had held that though an appeal was not filed against an earlier order, when public interest is involved in interpretation of law, the Court is entitled to go into the question.""

The principle of res judicata would apply only when the lis was inter- parties and had attained finality in respect of the issues involved. The said principle will, however, have no application inter alia in a case where the judgment and/ or order had been passed by a court having no jurisdiction therefor and / or in a case involving pure question of law. It will also have no application in a case where the judgment is not a speaking one.

The courts while determining the amount of compensation for acquisition of land would be bound to take into consideration only the materials brought on records. However, factors which would be relevant for determining the amount of compensation would vary from case to case and no hard and fast rule can be laid down therefor. The principle of res judicata will, therefore, have no application in the fact of the present matter.

RIGHT OVER MINES & MINERALS:

> It may be true that the principles of res judicata may be applicable in respect of the question of title but even for the said purpose it was obligatory on the part of the High Court to refer to the previous judgments whereupon reliance had been placed by the Respondents for the purpose of arriving at a decision as to whether they have been rendered by a competent court or not. The question as to whether a civil court will have jurisdiction in respect of declaration and / or cancellation of bhumidhari right was not adverted to by the High Court. We may notice that this Court in Nathi (supra) held that in terms of the provisions of the Delhi Land Reforms Act, 1954 a person can either be a Bhumidhar or Asami and there is no other class of proprietors or tenure-holder after coming into force of the said Act. It was further opined:
>
> "11.1. Therefore, the legal position is absolutely clear that a person can be either a bhumidhar or an asami of the agricultural land in a village. He can also be an owner of the property of the type which is enumerated in Section 8 of the Act, like private wells, tanks, groves, abadis, trees and buildings. Except for these, all other kinds of lands and property would vest in the Gaon Sabha. The proprietors and the concept of proprietors of land stands totally abolished with the enforcement of the Act. The respondents neither claimed to be bhumidhar nor asami of the land which has been acquired. The acquired land does not come within the purview of Section 8 of the Act. In such circumstances the only inference possible is that the land stood vested with the Gaon Sabha on the date of the commencement of the Act and it was the Gaon Sabha which was the owner thereof and was entitled to receive the entire amount of compensation."

From the impugned judgment of the High Court, it does not appear that it had taken into consideration the relevant factors, viz., (i) implication of the provisions of the Delhi Land Reforms Act vis-a-vis the nature of the land and/ or the source of title; and (ii) the statutory effect as regard the claim of the Respondent on the sub-soil mineral right in the light of several existing statutes.

Even if the proprietors and consequently the bhumidhars were entitled to mineral right, independently, the statutory interdicts limit the user of such mineral. The question would have relevance not only for the purpose of determination of the claim of ownership over such land and/ or mineral embedded therein but also the nature and extent thereof. Ordinarily, the zamindar of the tauzi is the owner of the sub-soil mineral. Such zamindars must be holders of revenue paying estate. If the zamindars had granted a lease, the extent of right of lessee would depend upon the terms of the lease and in absence of an express grant the lessee would have no right to work quarries or mines other than those which were open when he entered.

In F.F. Christian vs. Tekaitni Narbada Koeri and Others [(1914) CLJ (20) 527] where a maintenance grant was made for life, it was held that thereby no right of mines and minerals had been conveyed, observing :

> " This, it is contended, shows that the grantor Moharaj Singh was aware of the existence of mica mines when he made the maintenance grant in 1894. Let such knowledge in his part be assumed for purposes of argument; the fact is really inconclusive. The view may well be maintained that if he intended to vest all the subsoil rights on the grantee, he would have explicitly stated so, as he did in the mortgage instrument of the 2nd December, 1889 "

In Bageswari Charan Singh vs. Kumar Kamakhya Narain Singh [(1931) ILR (X) PC 296 : AIR 1931 PC 30], referring to the statutory presumption as between zamindar and jagirdar, it was held that the former must be regarded as the owner of the minerals. It was further observed :

> "...Apart from the statutory presumption arising in this case, there is a general presumption that the land in a zamindari is the property of the zamindar, and held under him "

Yet again in Ras Behari Mandal and Others vs. Raja Jagadish Chandra Deo Dhaubal Deb, [1936 IC (160) 114], the Patna High Court reiterated the presumption that the lessor retains all rights in mines and quarries. It also noticed the decision of House of Lords in Great Western Railway Co. vs. Carpalla United China Clay Co. Ltd. [(1910) AC 83], wherein a grant reserving minerals was held to exclude a deposit of China clay despite the fact that the same was found near the surface.

In Jagat Mohan Nath Sah Deo vs. Pratap Udai Nath Sah Deo and Others [AIR 1931 PC 302], the Privy Council affirmed its earlier decision in Gobinda Narayan Singh vs. Sham Lal Singh [AIR 1931 PC 89] stating:

> "A long series of recent decision by the Board has established that if a claimant to subsoil rights holds under the zamindar or by a grant emanating from him, even though his powers may be permanent, heritable and transferable, he must still prove the express inclusion of the subsoil rights."

[See also H.V. Low and Company Ltd. vs. Raja Bahadur Jyoti Prosad Singh Deo AIR 1931 PC 299; Onkarmal Agarwalla and Others vs. Bireswar Hazra and others, AIR 1959 Calcutta 195; and Bageswari Charan Singh (supra)] Yet again in Bejoy Singh Dudhoria vs. Surendra Narayan Singh [1929 ILR (56) Cal. 1], it was held that in absence of any reference to minerals or to the subsoil; or to the right to excavate for making bricks or to anything in the deed of lease, even the patni tenure-holder did not derive any right in the mines and minerals.

The provisions of Punjab Land Revenue Act govern the rights of the tenants. Before us, the original deeds under which the right of proprietorship, if any, said to be created in favour of Smt. Gulab Sundari, in terms whereof she became occupancy tenant as also the deeds of sale/ grants made in favour of her predecessors have not been produced, in absence whereof it will not be prudent for this Court to venture to arrive at a conclusion as regard the nature of the right of the proprietor or the lessee as the case may be. Even the judgments and decrees passed by the civil courts and the revenue courts are not before us and, thus, this Court may only briefly indicate the legal position, the application whereof would depend on a finding of a court of competent jurisdiction as regard the nature and extent of right.

Sections 41, 42(2), 60-C of the Punjab Land Revenue Act, 1887 read as under:

> "41. Right of the Government in mines and minerals. All mines of metal and coal, and all earth-oil and gold washings shall be deemed to be the property of the Government for the purpose of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government's rights thereto.
>
> 42. Presumption as to ownership of forests, quarries and waste land (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste-land, spontaneous produce or other accessory interest in land belong to the landowners, it shall be presumed to belong to the Government.
>
> (2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the landowners.
>
> (3) The presumption created by sub-section (1) may be rebutted by showing:-
>
> (a) from the records or report made by the assessing officer at the time of assessment; or
>
> (b) if the record or report, is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist, any forest or quarry, or any such land or interest.

That the forest, quarry, land or interest was taken into account in the assessment of the land-revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government.

60-C. Power to issue instructions. The State Government or the Financial Commissioner with the approval of the State Government may, for the guidance of Revenue-officers, from time to time issue executive instructions relating to all matters to which the provisions of this chapter apply, provided that such instructions shall be consistent with the provisions of this Act and the rules made thereunder."

Section 60-C of the Punjab Land Revenue Act, 1887 empowers the State to issue general instructions which are binding on the tenure-holders. Pursuant to or in furtherance of the said power, the State of Punjab made rules known as Punjab Minor Minerals Rules, 1934, Rules 3, 5 and 7 whereof read, thus:

> "3. (1) No person shall quarry any minerals belonging to Government from land, whether privately owned or otherwise included within any revenue estate, or situated in land the property of Government not included within the limits of a revenue estate, unless he has first obtained a permit in the manner hereinafter prescribed.
>
> (2) A person, not being a permit-holder, who is found in possession of any recently quarried mineral, shall be deemed to have quarried the said mineral without a permit, unless he furnishes proof to the satisfaction of the Collector, that the said mineral was quarried by a permit-

holder.

5. Any person being an owner or occupancy tenant of agricultural land desiring to quarry in the revenue estate within which his land is situated for use within such revenue estate any mineral

(a) for his own personal, agricultural or domestic purposes, and not for alienation by sale or otherwise, nor for contract work; or

(b) for construction, otherwise than by contract, a hospital, school, dharamsala, well, piao, tank, mosque, temple, or any other work of public utility or religious worship, within the said estate, shall make an application in form M. 1 to the Collector either directly or through the patwari of revenue estate. If the land from which the mineral is to be quarried is not in the applicant's possession the application shall also be signed by the owner or occupancy tenant thereof as a token of consent.

7. (i) A person who desires to quarry minerals in circumstances other than those related in paragraph 5 shall make his application to the Collector.

(ii) Every application by a contractor for quarrying minerals on behalf of a Government Department or a local body shall be made to the Collector in form M. 2, through the Executive Engineer or other official of corresponding authority concerned, or through the Secretary of the local body concerned, as the case may be.

(iii) Application in cases other than those provided for in the rule 5 and in sub-rule (ii) of the rule, shall be made in form M. 3."

Validity of the said Rules has not been questioned by the Respondents in an appropriate proceeding.

Rule 3 is not applicable in the instant case. But in terms of Rule 5 even if a mineral is found in the agricultural land, the same could be extracted only for personal, agricultural or domestic purposes and not for any commercial one including carrying out any contract. Even for the permissible purposes, an application for grant of permit was necessary. Assuming that the Bhumidhars were entitled to the mineral right in the lands in question, minor minerals could have been extracted therefrom only for their personal use and that too after obtaining a requisite permit in terms of the Rules.

Government of India Act came into force in the year 1935. Entry 36 of List I of the Seventh Schedule contained in the Government of India Act empowered the Governor General in Council to make laws relating to regulation of mine and mineral development. Pursuant to or in furtherance of the said power, Mines and Minerals (Development and Regulation) Act, 1948 was enacted; in terms of Section 4 whereof mining operation could be carried out only under a licence or lease to be granted in the manner prescribed under the rules framed thereunder.

The Parliament thereafter enacted Mines and Minerals (Development and Regulation) Act, 1957; section 4 whereof reads as under:

> "4. Prospecting or mining operations to be under licence or lease.--(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:
>
> Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:
>
> Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration

> Corporation Limited, a Government company within the meaning of section 617 of the Companies Act, 1956:
>
> Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.
>
> (1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.
>
> (2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.
>
> (3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease"

In terms of Section 14 of the said Act, Sections 5 to 13 will have no application in relation to minor minerals. Section 15 of the said Act empowers the respective State Governments to make rules in respect of minor minerals. Sub-section (2) of Section 15 provides that so long as no rules are framed by the State in terms of sub-section (1) of Section 15 the old rules would continue to govern the field. Pursuant to or in furtherance of the said power, the State of Punjab framed rules known as Punjab Minor Mineral Rules, 1964 in terms whereof the Punjab Minor Mineral Rules, 1934 were repealed. In terms of Rule 2 of the 1934 Rules China Clay was declared to be a minor mineral. The State of Delhi, however, made rules only in the year 1969. Prior thereto, presumably the rules made by the State of Punjab were governing the field.

The attention of the High Court and the Reference Court was not drawn to the aforementioned statutes and the statutory rules. The application of the said rules will go a long way in not only determining the question of res judicata but also the question as regard to the limited nature of right the Respondents under the aforementioned statutes, if any. Determination on the said issues would be relevant for the purpose of computing the amount of compensation.

> "Ownership" in respect of an immovable property would mean a bundle of rights. Only a proprietor of a surface land will have the sub-soil right. But such rights may also have certain limitations. Tenure holder or sub-tenure holder and / or an agricultural tenant created for carrying out agricultural operation per se would not become the owner of the sub-soil right. The right granted in favour of such sub-tenure holder, tenure holder or the agricultural tenant would, thus, depend upon

the concerned statute and/ or the relevant covenants contained in the grant.

A three-Judge Bench of this Court in the State of Punjab vs. M/s Vishkarma and Co. etc. [JT 1993 (1) SC 448], construing the provisions of Sections 31, 41 and 42 of the Punjab Land Revenue Act, 1887, held :

"Brick-earth with which we are concerned in the present appeals, is a minor mineral was not disputed, although it is not any of the mines or minerals covered by Section 41 of the Revenue Act as would make it become the property of the State. If the owner of such brick-earth is the State of Punjab, liability to pay royalty for removal of such brick-earth and to obtain permit or licence for such removal, necessarily arises because of the operation of the Act and the Rules. But the courts below have concurrently found that the brick-earth concerned in the suits out of which the present appeals have arisen was in lands which formed the estates of the private owners and as such the same belonged to such landowners. It is so found on their reading of the entries in Wajib-ul-arz pertaining to the concerned estates. That Wajib-ul-arz is a document included in the record-of-rights cannot be disputed since it contains the statements on matters envisaged under clauses (a) and (b) of sub-section (2) of Section 31 of the Act. According to the courts below Wajib-ul-arz document being record-of-rights of estates completed after November 18, 1871, and there being nothing expressly stated in them that the forest or quarry or land or interest in the estates belong to the Government, the lands in such estates including brick- earth in them shall be presumed to belong to the concerned landowners as is declared in sub-section (2) of Section 42 of the Revenue Act."

From the aforementioned passage it is evident that the brick-earth was the subject matter of transfer in favour of the land owners which was apparent from the entries in Wazib-ul-arz pertaining to the concerned estates.

The entry in the Wazib-ul-arz in the instant case reads as under:

"

Section Detail Subject Ownership of the Nazul land or Forest or without ownership or unpossessed or untitled or non-residential land or Mines or Ruins or old buildings or self-fertile and no other land which give natural fertility is situated within the revenue estate village Masood Pur.

Except the 29 bighas land of road not any other land of Forest, Mines, buildings, Nazal, self-

fertile, Marbal, metals, stones, coal, sand is under the ownership of the Government. But within the boundires of this village mountain is stated to be existed.

If the Government wants to take the stone then the Govt. will not liable to pay the price of that stone. If any mine is found then the same will be property of the Government.

"

The evidentiary value of wazib-ul-arz is no longer res integra in view of the decisions cited at the bar including Prem Chand vs. State of Haryana [AIR 1972 (P&H) 50 (DB)]; Man Chand vs. State of Haryana [74 (1972) PLR 508], Chunni Lal vs. State of Haryana [73 (1971) PLR 159], Gram Panchayat vs. State of Himachal Pradesh [AIR 1973 HP 7].

The said decisions lay down the principle that in absence of any entry made in favour of the Government, with respect to mines and minerals a presumption shall be drawn that the same belongs to the landowner being a tenure-holder.

We have noticed hereinbefore a large number of decisions of the Judicial Committee and different High Courts which lay down the principle that only the landowners have subsoil rights but so far as the sub- tenureholders and others are concerned no such presumption shall be raised unless it is proved from the express covenants made in the grant and/or the deed of assignment or sale that such right has expressly been conveyed. Section 42(2) of the Punjab Land Revenue Act merely states that in absence of any entry made in the record-of-rights after 18.11.1971, it shall be presumed that the right in any forests, quarries or any such land or interest would be in the landowners. 'Wazib-ul-arz' also indicates the custom prevailing in the village. The entry in the Wazib-ul-arz is categorical about the fact that the Government is not the owner of any forest, mines, buildings nazul, self-fertile, marble, metals, stones, coal or sand. It, however, categorically states that there are mountains in the village and the Government can extract stones without paying any price therefor. It further categorically states that if any mine (in future) is found, the same would be the property of the Government. The entry ex facie does not show that china clay as a minor mineral was available in the land in question. Existence of the said mineral having not been expressly recorded in the record of rights, no presumption can be raised that the grantor had an intention to pass on title of the subsoil in relation to china clay in favour of the grantee. It is one thing to say that the Government or the State did not have any right over the minor minerals per se but it is another thing to say that the Government did not have any right in respect of the minerals or metals which had been mentioned therein but in the event a new mine is found, the same would vest in the Government. The presumption envisaged under sub-section (2) of Section 42, therefore, in our considered opinion may not be raised in favour of the grantee as it is not shown that mines of china clay were existing at the relevant time. The expression 'Mine' having regard to its definition contained in Section 2(j) of the Mines Act, 1952 is of wide import. In the village in question there may exist one mine for extracting one mineral at one point of time but other mines containing either the same or different minerals might not be existing in other parts of the same village at the relevant time and may be found in other part of the village at the later part of time. The expression 'mine', thus, may have to be given its natural meaning having regard to the purpose for which such entries are made. It is true that the legislature used two different phraseologies 'shall be presumed' and 'may be presumed' in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards right to mines and minerals said to be vested in the Government vis-`-vis absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words 'shall presume' would be conclusive. The meaning of expressions 'may presume' and 'shall presume' have

been explained in Section 4 of the Indian Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression 'shall presume' cannot be held to be synonymous with 'conclusive proof'. It is interesting to note that this Court in Raja Rajinder Chand vs. Mst. Sukhi and Others [AIR 1957 SC 286] whereupon Mr. Rao has placed strong reliance observed :

> " Whether the statutory presumption attaching to an entry in the Wajib-ul-arz has been properly displaced or not must depend on the facts of each case. In cases under our consideration, we hold, for the reasons already given by us, that the entries in the Wazib-ul-arz with regard to the right of the Raja in respect of chil trees standing on cultivated and proprietary lands of the adna-maliks, do not and cannot show any existing custom of the village, the right being a sovereign right; nor do they show in unambiguous terms that the sovereign right was surrendered or relinquished in favour of the Raja. In our view, it would be an unwarranted stretching of the presumption to hold that the entries in the Wajib-ul-arz make out a grant of a sovereign right in favour of the Raja: to do so would be to hold that the Wajib-ul-arz creates a title in favour of the Raja which it obviously cannot".

The said decision, therefore, is an authority for the proposition that no title can be claimed on the basis of an entry made in the revenue records as it is for the grantee to show that such title has been conveyed to him by the owner thereof.

We may, however, point out that in M/s Vishkarma and Co. (supra), the effect of the provisions of the Punjab Minor Minerals Rules, 1934 or the provisions of the Mines and Minerals (Regulation & Development) Act, 1957 did not fall for consideration.

In Bheemagari Bhaskar and others Vs. Revenue Divisional Officer, Bhongir and others [2002 (1) ALT 159] the Division Bench of the Andhra Pradesh High Court, wherein one of us was a member, while analyzing the provisions of the A.P. (A.A.) Estates (Abolition and Conversion into Ryotwari) Act, 1948 vis-`-vis Mines and Minerals (Regulation and Development) Act, 1957 and A.P. Minor Mineral Concession Rules, 1966, held that the agriculturists could not have had any right over minor mineral stating:

> "In terms of Entry 54 of List I of the VII Schedule of the Constitution of India, by enacting the said Act, the Parliament has taken over control over mines and minerals. Keeping in view the declaration made in that regard under Sections 18 and 20 thereof, as envisaged in Entry 54 of List I of the VII Schedule of the Constitution of India, the State has no legislative competence even to make any law in this regard, far less grant any settlement except in terms of the provisions of the said Act, for the rules framed therein."

In Shakuntala Devi Vs. Kamla & Ors. [JT 2005 (4) SC 315], this Court referring to various decisions of this Court including Mathura Prasad Bajoo Jaiswal & Ors. Vs. Dossibai N.B. Jeejeebhoy [(1970) 1

SCC 613], Chief Justice of Andhra Pradesh & Ors. Vs. L.V.A. Dixitulu & Ors. [(1979) 2 SCC 34], Ashok Leyland Ltd. Vs. State of T.N. & Anr. [(2004) 3 SCC 1], Management of M/s. Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [JT 2005 (2) SC 481] observed :

> "15. From the above principles laid down by this Court, it is clear that if the earlier judgment which is sought to be made the basis of res judicata is delivered by a court without jurisdiction or is contrary to the existing law at the time the issue comes up for reconsideration such earlier judgment cannot be held to be res judicata in the subsequent case unless, of course, protected by any special enactment."

In Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani [(2004) 1 SCC 497], in which one of us (S.B. Sinha, J.) was a member, it was observed:

> " Principles of res judicata is a procedural provision. The same has no application where there is inherent lack of jurisdiction."

The question of application of principle of res judicata, thus, is required to be considered afresh in the light of the discussions made hereinbefore.

For the views we have taken, it is axiomatic, the principles of res judicata shall have no application in respect of the cross-objections filed by the Respondents. In that view of the matter, the decision of this Court in Municipal Corporation of Delhi and Others Vs. International Security & Intelligence Agency Ltd. [(2004) 3 SCC 250], relied upon by the Additional Solicitor General, is not applicable.

PUNJAB LAND REVENUE ACT AND DELHI LAND REFORMS ACT:

> The lands in question indisputably were governed by the Punjab Land Revenue Act, 1887 and the Punjab Tenants (Security of Tenure) Act, 1950. The Punjab Land Revenue Act 1887 is still applicable save and except those provisions which are inconsistent with the provisions of the Delhi Land Reforms Act. The claim of the Respondents is stated in their counter- affidavit filed in this Court. The Respondents claimed themselves to be occupancy tenants.
>
> Punjab Land Revenue Act, 1887 was enacted to amend and declare the law in force in the State of Punjab with respect to "making and maintenance of record-of-rights in land, the assessment and collection of land-revenue and other matters relating to land and the liabilities incident thereto". The said Act provides for preparation of record of rights of different types of land held by the owners or tenure holders. For our purpose the definitions of "estate", "land-owner" and "holding" may be noticed :
>
> "(1) "estate" means any area
>
> (a) for which a separate record-of-rights has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land-

revenue had not been released, compounded for or redeemed; or

(c) which the State Government may, by general rule or special order, declare to be an estate;

(2) "land-owner" does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate;

(3) "holding" means a share or portion of an estate held by one land-owner or jointly by two or more land- owners;"

Section 61 of the Land Revenue Act provided for security for payment of land revenue. In terms of the provisions thereof, the land owners need not necessarily be the owners of the land. The term "land- owner" is a wider term and it does not include a tenant as specifically mentioned in the definition.

What was the actual status of Smt. Gulab Sundari vis-`-vis her predecessors is not known.

Section 31 of the Punjab Land Revenue Act, 1887 provides for preparation of record of rights and other documents in respect of an estate including the nature and extent of the interest of the land owners and the conditions and liabilities attached thereto. Section 32 provides for special provision for record of rights in the situations specified therein. Section 41 provides that minerals mentioned therein shall vest in the Government. Section 42, however, provides that when such right has not been stated to be vested in the land owners, the same would be presumed to be belonging to the Government although such presumption is not absolute. Sub-section (2) of Section 42, however, states that when in any record of rights it is expressly provided that any forest or quarry or any such land or interest does not belong to the Government, the same shall be presumed to be belonging to the land owner.

In the aforementioned backdrop, the provisions of the Delhi Land Reforms Act are required to be interpreted considered.

The Delhi Land Reforms Act, 1954 was enacted to provide for modification of zamindari system so as to create an uniform body of peasant proprietors without intermediaries for the unification of the Punjab and Agra systems of tenancy laws in force in the State of Delhi and to make provision for other matters connected therewith.

In terms of Section 2 of the said Act, the Punjab Tenancy Act, 1887 as also the Punjab Land Revenue Act, 1887 are repealed insofar as they are inconsistent with the said Act, the effect whereof would be that the right of the land owners, proprietors, zamindars or other superior landlords which were conferred upon them under the provisions of the said two Acts would no longer exist. The Delhi Land Reforms Act contemplates creation of a new right in two classes of the land owners, viz., only one class of tenure holder, that is to say, Bhumidhar and one class of sub-tenure holder, that is to say, Asami.

We in this case are concerned with bhumidhari rights. A bhumidhar would be a person who is liable to pay land revenue directly to the State. Section 5 provides that every person belonging to any of the following classes shall be a bhumidhar and shall have all the rights and be subject to all the liabilities conferred or imposed upon a bhumidhar by or thereunder:

"(a) a proprietor holding sir or khudkasht land a proprietor's grove holder, an occupancy tenant under section 5 of the Punjab Tenancy Act, 1887, paying rent at revenue rates or a person holding land under Patta Dawami or Istamrari with rights of transfer by sale, who are declared Bhumidhars on the commencement of this Act;

(b) every class of tenants other than those referred to in clause (a) and sub-tenants who are declared Bhumidhars on the commencement of this Act; or

(c) every person who, after the commencement of this Act, is admitted to land as Bhumidhar or who acquires Bhumidhari rights under any provisions of this Act."

Section 7 provides for termination of rights of individual proprietors as specified therein. Such rights vest in Gaon Sabha. Section 11 provides for declaration of bhumidhari rights by the Deputy Commissioner. Such declaration is said to have been made in case of the aforementioned Smt. Gulab Sundari but it is not on record of the case. The effect of such declaration is also required to be considered for the purpose of determining the questions arising in these matters. Section 22 confers a right upon a bhumidhar in exclusive possession of all land comprised in his respective holding so as to enable him to use the land for any purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming and to make any improvement thereupon. Section 23 provides use of holding for industrial purposes. Section 154 provides for vesting of certain lands in Gaon Sabha.

By Section 185 a hierarchy of courts has been created for the purpose of determination of the question relating to rights and liabilities regarding such lands in terms whereof the jurisdiction of the Civil Court is ousted for certain purposes.

Interpretation of the provisions of the Delhi Land Reforms Act came up for consideration before this Court in Nathi (supra). It opined that the Act contemplates only bhumidhari or asami right of an agricultural land in a village subject of course to the right conferred upon them in terms of Section 8

of the Act. It was held that Gair mumkin pahar land is not a khudkasht land.

It may be true that as submitted by the learned counsel for the Respondents that in that case the Respondent was not favoured with any declaration of the bhumidhari right in terms of Section 11 of the Act nor the question of the effect of the provisions thereof as regard the right of the land owner in relation to mines and minerals was raised, but there cannot be doubt that therein the law as regard extent of right of a Bhumidhar has been delineated.

The Act maintains a silence about the right of the land owners in respect of mines and minerals. In absence of the documents which would throw a light on the right of Smt. Gulab Sundari, we think that it would not be proper for us to determine the question finally and we must leave the matter at the hands of the High Court for the said purpose. We may, however, observe that such a question may have to be determined having regard to the provisions contained in Article 31A of the Constitution of India vis-`-vis the repeal of the Punjab Land Tenure Act on one hand and the Delhi Land Reforms Act, on the other. It is possible to hold that as by reason of the said provision only limited rights were conferred upon them, all other rights stood excluded. We, however, would clarify that as the said question has not been raised specifically before us and keeping in view of the fact that Smt. Gulab Sundari might not have any proprietary rights over mines and minerals, as had been claimed, having regard to the provisions of the Punjab Tenants (Security of Tenure) Act, we would refrain ourselves from determining the question at this stage.

We may, however, notice a few decisions cited at the bar.

In Atma Ram Vs. State of Punjab [AIR 1959 SC 519], this Court considered the conflict of opinion between two Full Benches of the High Court of Punjab in Bhagirath Ram Chand Vs. State of Punjab, AIR 1954 Punj 167 and State of Punjab Vs. Keshar Singh [AIR 1959 Punj 8], holding that the view taken by the earlier Full Bench was correct. It was stated::

> "12 The judgment of the Full Bench on this part of the case is based entirely upon the definition of an estate, as contained in the Punjab Land Revenue Act, set out above. It has not stopped to consider the further question why a holding, which is a share or a portion of an estate, as defined in the Punjab Act, should not partake of the characteristics of an estate. Keeping in view the background of the legislative history and the objective of the legislation, is there any rational reason for holding that the makers of the Constitution thought of abolishing only intermediaries in respect of an area constituting one entire estate but not of a portion thereof? On the other hand, as indicated above, they have used the expression "estate" in an all-inclusive sense. They have not stopped at that; they have also added the words "or any rights therein". The expression "rights" in relation to an estate again has been used in a very comprehensive sense of including not only the interests of proprietors or sub-proprietors but also of lower grade tenants, like raiyats or under-raiyats, and then they added, by way of further emphasizing their intention, the expression "other intermediary", thus, clearly showing that the enumeration of intermediaries was only illustrative and not exhaustive. If the makers of the Constitution have, thus, shown

> their intention of saving all laws of agrarian reform, dealing with the rights of intermediaries, whatever their denomination may be, in our opinion, no good reasons have been adduced in support of the view that portions or shares in an estate are not within the sweep of the expression "or any rights therein". A recent decision of this Court in the case of Ram Narain Medhi v. State of Bombay dealt with the constitutionality of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956, which contains similar provisions with a view to doing away with intermediaries, and establishing direct relationship between the State and tillers of the soil. In that case also, the contention had been raised that the expression "estate" had reference to only alienated lands and not to unalienated lands, and this Court was invited to limit the meaning of the expression in the narrower sense ."

We are not suggesting, as at present advised, that mineral rights or rights over minerals can in no situation remain in the hands of the private individuals. There may be cases where having regard to the statutory provisions, the mineral rights may continue to remain in the hands of the private owners. But while examining the question of computing the quantum of compensation, the Courts are required to bear in mind the extent of such rights and in particular the statutory provisions which prohibit carrying out mining operations without obtaining appropriate mining lease, prospective licence or permits. The Courts must also bear in mind that even in a case where owners are entitled to the minerals having regard to the provisions contained in the Punjab Minor Mineral Rules, 1934, the amount of compensation would be much less and with the acquisition of land the right to use the minerals would come to an end. Compensation for such minerals may not be computed on the basis of the profits earned by a mining lessee having a valid mining lease therefor. Furthermore, a person having a right to use mines and minerals for his personal use and not for sale will still have to obtain an appropriate permit in terms of the statutory provisions. It may not be out of place to notice that right to receive royalty is a mineral right as has been held by Wanchoo, J. in Hingir Rampur Coal Co. Ltd. vs. State of Orissa [1961 (2) SCR 537] [See also India Cement Ltd. and Others Vs. State of Tamil Nadu and Others, (1990) 1 SCC 12] Mineral may be found in the mineral-bearing land. Mineral-bearing land may, thus, contain mineral as the product of nature.

Thus, in a case it may be theoretically possible for the State to grant a mining lease of quarry or permit, in favour of an applicant in respect of an area over which a mineral right is also held by a private owner but in that event the private owner would be only entitled to royalty. The legislative intent contained in the 1957 Act envisages that even in certain cases the Central Government or the State Government, as the case may be, in the event of their undertaking of mining operations from the land belonging to the private owners may have to pay royalty to them. The rate of royalty, however, will be limited to the amount prescribed in the 1957 Act or the rules framed thereunder The amount of compensation, therefore, in view of the statutory provisions will depend upon several factors, as noticed hereinbefore. In any event, the profit earned by illegal mining i.e. carrying on mining operations contrary the 1957 Act or the rules framed thereunder, would by no means be a safe criteria for determining the amount of compensation.

COMPENSATION We have earlier noticed that one of the modes of computing the market value may be based on a judgment or award in respect of acquisition of similar land, subject of course to

such increase or decrease thereupon as may be applicable having regard to the accepted principles laid down therefor and as may be found applicable.

We may notice some precedents in this behalf:

> In Delhi Development Authority vs. Bali Ram Sharma and Others [(2004) 6 SCC 533], 5% increase in the market value was granted having regard to the fact that the notification in question was issued about five years after the notification involved in the earlier judgment.
>
> In Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. vs. Nookala Rajamallu and Others [(2003) 12 SCC 334], it was observed :
>
> "Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion "

It was further observed:

> " While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser..."

In Lila Ghosh (Smt.) (Dead) Through LR Tapas Chandra Roy vs. State of W.B. [(2004) 9 SCC 337], a Division Bench of this Court has observed that if a plot is large, then there must be depreciation for largeness, as large plots always fetch less than small plots. [See also Viluben Jhalejar Contractor (Dead) By Lrs. vs. State of Gujarat, (2005) 4 SCC 789] In V. Hanumantha Reddy (Dead) by Lrs. vs. Land Acquisition Officer & Mandal R. Officer [(2003) 12 SCC 642], the law is stated in the following terms :

> " It is now a well-established principle of law that the land abutting the national highway will fetch far more higher price than the land lying interior "

It is also well-settled that for the purpose of determining the market value of the acquired lands, the comparable sales method i.e. the lands sought to be compared must be similar in potentiality and nature may be adopted. [See Panna Lal Ghosh and Others vs. Land Acquisition Collector and Others (2004) 1 SCC 467].

It is also trite to state that the market value of agricultural land is lower than that of land suitable for commercial purposes [See Om Prakash (Dead) By LRs. and Others vs. Union of India and Another (2004) 10 SCC 627] .

The Reference Court, it is trite, has to apply the comparable sales method as also the situation of the land which is to be appreciated keeping in view the fact as to whether acquired land is similar to any land sold in the vicinity.

In Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others [(2001) 7 SCC 650], this court observed:

> "3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land ."

[See also P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, (1995) 2 SCC 305] The Courts will also have to take into consideration the enormity of the financial implication of enhancement in view of the size of the land acquired for a particular project.

In Viluben Jhalejar Contractor (supra), this Court held :

> "18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-`-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors Negative factors

(i) smallness of size (i) largeness of area

(ii) proximity to a road (ii) situation in the interior at a distance from the road

(iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth

(iv) nearness to developed area (iv) lower level requiring the depressed portion to be filled up

(v) regular shape (v) remoteness from developed locality

(vi) level vis-`-vis land under acquisition (vi) some special disadvantageous factors which would deter a purchaser

(vii) special value for an owner of an adjoining property to whom it may have some very special advantage

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."

It was further observed :

"24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In Basavva v. Spl. Land Acquisition Officer7 deduction to the extent of 65% was made towards development charges."

The Court noticed a large number of decisions wherein deductions had been made at different rates varying from 20% to 53%. The Court also noticed an earlier decision of this Court in K.S. Shivadevamma vs. Assistant Commissioner and Land Acquisition Officer [(1996) 2 SCC 62], wherein it was opined :

> "It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal."

[See also Basavva (Smt.) and Others vs. Spl. Land Acquisition Officer and Others - [(1996) 9 SCC 640] The High Court, as has been noticed hereinbefore, without assigning any reason discarded the method of valuation adopted by the reference court. Before the reference court, the Respondents herein only relied upon the judgments and awards granting compensation for acquisition of similar lands. The High Court while allowing an application for adduction of additional evidence referred only to certain notifications issued by the Union of India in the year 1965 which were meant for the residential plots whereby allegedly the market value was stated to be 150 per sq. yd. for lands situated at Vasant Vihar wherefor certain deductions were made @ 12% p.a. therefrom in respect of the lands acquired under the notification dated 24.10.1961.

We fail to understand as to how or on what basis, the High Court took recourse to the said method wholly ignoring the other materials on records.

We may also observe that the High Court failed to take into consideration that recourse to such circulars may be impermissible and particularly in the facts and circumstances of the present case.

In Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A.P. and Others [(1994) 4 SCC 595], this Court observed :

> " The market value of the land for proper stamp duty has to be determined as per the law under Section 47-A itself. That view was followed by another learned Single Judge in P. Sasidar v. Sub-Registrar It is, therefore, clear that the Basic Valuation

> Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value."

See also in Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun through its Secretary vs. Bipin Kumar and Another [(2004) 2 SCC 283].

We may at this juncture notice a decision of this Bench relied upon by Mr. Harish Salve being DDA and Others vs. Joginder S. Monga and Others [(2004) 2 SCC 296]. Therein this Court was not concerned with valuation of land under the Land Acquisition Act. In that case DDA granted lease in favour of a cooperative society in terms of the Delhi Development Act, 1957 and the rules framed thereunder, known as the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. Some members of the cooperative society intended to sell the land wherefor the DDA was entitled to recover a portion of unearned increase in value i.e. difference between the premium paid and market value of plot at the time of sale. The Government of India, however without enforcing any increase in the sale price of the land extended the validity of the land rates in force till 31.3.1996 by a circular dated 11.11.1994. A case of discrimination was raised by Monga vis-`-vis one Rajiv Gupta. Although the latter received the benefit of priority under the policy of conversion from leasehold to freehold, the respondent therein was denied the same. The said decision, therefore, will have no application to the fact of the present matter, as therein 50% of the unearned increase was to be paid to the DDA in terms of the covenant contained in the deed of lease; and while determining the amount DDA was required to take into account the amount of consideration specified in the agreement and/or clearance certificate issued by the Income Tax Officer, which was not done.

In Shakuntalabai (Smt.) and Others vs. State of Maharashtra [(1996) 2 SCC 152], this Court categorically held that if the owner himself has purchased some lands, the same should be taken into consideration having regard to the admission on market value of the land made by him stating :

> "5. It is seen that the reference court blissfully overlooked the admission of the owner on the surmise that it is an estimate made by the claimant and the evidence of the sale deeds under Exs. 38 and 44 being prevailing prices, it acted thereon and determined the compensation. The approach of the reference court is clearly illegal and that of the High Court is quite correct and it was the only way in which the market value could be determined on the face of the evidence on record. The reference court committed manifest error in determining the compensation on the basis of sq. ft. When lands of an extent of 20 acres are offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the reference court has to consider the valuation sitting on the armchair of a willing prudent hypothetical vendee and to put

> a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the conclusion. The answer is obviously no. This aspect of the matter was totally ignored by the reference court and mechanically accepted the two sale deeds to enhance the compensation at a value of nearly Rs 35,000 per acre. In State of M.P. v. Shantabhai and V.M. Salgoacar & Brother Ltd. v. Union of India, this Court had accepted the principle that when the owner himself has purchased the land under acquisition, the consideration mentioned in the sale deed would form the basis to determine the market value. Though the High Court has relied on the sale deeds under Exs. 65 and 66 relating to the lands in Nityanand Nagar Colony, it is also necessary to go into that aspect of the matter in the view we have stated above."

Having noticed the legal principles, we are of the opinion that this case merited a different treatment at the hands of the High Court. The land in question was acquired for a University. The University was constructed in a large area. By reason of the two notifications in question alone, about 5000 bighas of lands were acquired. Out of the said 5000 bighas, the lands needed for actual construction of the building may be a few bighas only. A large portion of the land must have been kept vacant for future development as also for other purposes e.g. sport and other activities. The area consisting of stones might not have been utilized for the purpose of raising any construction. A portion of land admittedly contained minerals. A number of minerals were said to be deposited in the land in question, namely, mica, berill quards and china clay. The Respondents, however, having regard to the materials on records confined their claim only to China clay. 19% of the total minerals bearing land is said to have been exploited. How far these minerals bearing land were suitable for raising construction is a matter of guess. As per the evidence on record the minerals can be found upto a depth of 60 ft. It is not necessary for us to go into this question in details as the High Court did not advert thereto. But suffice it to say that for the purpose of carrying out mining operation, the Respondents were required to comply with the safety provisions contained in the Mines Act, 1952 and the rules and regulations framed thereunder.

The Reference Court and the High Court unfortunately did not consider the question as to what amount was required to be expended for bringing the said area back to the normal so as to enable the University authorities to raise construction thereon. Minerals were evidently taken out by taking recourse to the quarry method, but there is no evidence adduced by the Respondents to show that the pits caused by such mining activities have already been filled up.

We have been taken through the evidence adduced on behalf of the Respondents. The witnesses examined on behalf of the Respondents did not state as to when the pits had been filled up or what was the costs incurred therefor. It is also difficult to rely on the said evidence as witnesses examined on behalf of the Respondents were not expert witnesses. No document has also been filed in support of the case of the Respondents. Mr. Ramamurthi when confronted with this question, conceded that there does not exist any satisfactory evidence on the said issue.

In fact the Reference Court or the High Court did not address themselves on the question that the market value of the acquired lands was required to be determined having regard to the largeness of

area and the purpose for which they are required, namely, for the University and not for the development of the township or the residential colony wherefor different standards may have to be adopted. The Reference Court and the High Court should have also taken into consideration the fact that the lands in question being of different categories would fetch different prices and same price might not have been available for all types of lands. Recourse taken by the High Court to the circulars issued for the lands acquired for residential purpose only therefore will have no application in the facts and circumstances of the present case.

PAYMENT OF INTEREST DURING THE PERIOD 17TH JANUARY, 1972 TO 27TH MAY, 1980 It is not in dispute that the proceedings between 17th January, 1972 to 27th May, 1980 remained stayed on the representation of the Respondents that they would not be claiming interest at the enhanced amount of compensation, if any, during the period of stay. By an order dated 17th January, 1972, the Reference Court recorded:

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

Similar orders were passed on 25th February, 1981 and 5th March, 1923 in Land Acquisition Case Nos. 189/81 and 188/81 respectively.

It appears that in the reference arising out of the award No. 2225 Smt. Pramod Gupta and Ors. Vs. Union of India and Ors, proceedings were stayed suo moto by the court, presumably having regard to the orders passed in other cases.

The contention of the Appellant was negatived on the ground that Sections 28 and 34 being imperative in character the purported undertaking /representation made on behalf of the Respondents would not amount to estoppel or waiver.

Sections 28 and 34 of the Act read as under:

> "28. Collector may be directed to pay interest on excess compensation.--If the sum which, in the opinion of the court, the Collector ought to have a awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.
>
> Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the

> date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.
>
> 34. Payment of interest.--When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.
>
> Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry"."

It may not, thus, be correct to contend that the said provisions are so imperative in character that waiver thereof is impermissible in law or would be against public interest. Grant of interest in terms of Section 28 of the Land Acquisition Act is discretionary. Only rate of interest specified therein is mandatory. Section 34 of the Act ex facie, however, appears to be imperative in character as the word 'shall' has been used. A discretion vested in the court, it is trite, may not be exercised where the right to claim interest has been waived expressly by the parties and/or their counsel. Even a mandatory provision of a statute can be waived.

The effect of Section 28 of the Act came up for consideration before this Court in Raghubans Narain Singh Vs. The Uttar Pradesh Government, through Collector of Bijnor [AIR 1967 SC 465] wherein this Court held the said provision to be discretionary in character observing that it is for the court to consider whether in the facts and circumstances of the case, such interest should be directed to be paid at all. It is now trite that the court having regard to the facts and circumstances of a particular case as, for example, where there is a short interval between the award and the payment, may not direct grant of any interest.

The question came up directly for consideration before a Division Bench of this Court in State of Assam and another Vs. Jitendra Kumar Senapati and others [AIR 1981 SC 969 : (1981) 2 SCC 221] wherein the claimants agreed to the amount awarded to them subject to Government making payment within the 31st March, 1969 stating:

> "We further agree that we will make no further claim in regard to compensation for the same land provided actual payment is received within the above period of 31st March, 1969"

In that case, before the High Court a plea was raised that the representation of the claimants was confined to the amount of compensation but the High Court negatived the same stating:

> "Although it is true that in the agreement dated February 24, 1969 which the respondents signed and sent to the government along with their letter of that date they stated that they would not make any further claim in regard to "compensation", but that expression, in our opinion, was clearly used by them not in the sense in which it is used in Sections 23 and 34 of the Act but more comprehensively, meaning reimbursement in full satisfaction of their claim in respect of the acquisition. That this was so was made clear in the letter addressed to them by the Under-Secretary in which he expressly stated that "you and your co-sharers will make no further claim for the land thus acquired by the Government".

The Under-Secretary did not use the word "compensation" in his letter nor did the respondents use it in their reply in which, on the other hand, they made a grouse of the hardship which the delay in payment had caused to them and brought it to the pointed attention of the Under-Secretary that immediate payment was an essential part of the bargain. In the agreement signed by them (as pointed out above) they no doubt used the word "compensation" but they added that they would make no further claim in regard to it if actual payment was received by them before March 31, 1969. The condition thus attached by them to the agreement would show that by the acceptance of the quantified sum of Rs 4,41,202.45 they condoned the delay in payment and also relinquished all future claims to interest. If it were otherwise, there is no reason why the respondents would not have expressly reserved their right to claim interest under Section 34 of the Act. The tenor of the two letters coupled with the agreement leads to no other conclusion."

It is not in dispute that if a person alters its position pursuant to the representation made by the other side, the principles of estoppel would be applicable and by reason thereof, the person making the representation would not be allowed to raise a plea contra thereto. In Krishna Bahadur Vs. Purna Theatre and Others [(2004) 8 SCC 229] this Court held:

"9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

[See also Vijay Cotton & Oil Mills Ltd. Vs. The State of Gujarat, 1969 (2) SCR 60 at 63].

Yet again recently in State of Karnataka and Another Vs. Sangappa Dyavappa Biradar and Others [(2005) 4 SCC 264], the principles of estoppel was applied in relation to a consent award holding that once a consent award had been passed, the claimants were precluded from applying for a reference under Section 18 of the Act.

The High Court has relied upon a decision of this Court in Suptd. Of Taxes, Dhubri and others Vs. M/s. Onkarmal Nathmal Trust [AIR 1975 SC 2065 : (1976) 1 SCC 766]. In that case the proceedings were not stayed pursuant to any undertaking or representation made by the claimant. The order of interim injunction was passed whereunder the claimants enjoyed certain benefits and in that fact situation the plea of waiver was raised. The Constitution Bench observed:

> "23. The third contention of the Solicitor-General is that the respondents waived service of a notice within two years of the expiry of the return period by reason of the order of injunction obtained by them. Waiver is either a form of estoppel or an election. The doctrine of estoppel by conduct means that where one by words or conduct wilfully causes another to believe in the existence of certain state of things and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at that time. The fundamental requirement as to estoppel by conduct is that the estoppel must concern an existing state of facts. There is no common law estoppel founded on a statement of future intention. The doctrine of promissory estoppel is applied to cases where a promiser has been estopped from acting inconsistently with a promise not to enforce an existing legal obligation. This doctrine differs from estoppel properly so called in that the presentation relied upon need not be one of present fact. The second requirement of an estoppel by conduct is that it should be unambiguous. Finally, an estoppel cannot be relied on if the result of giving effect to it would be something that is prohibited by law. Estoppel is only a rule of evidence. One cannot found an action upon estoppel. Estoppel is important as a step towards relief on the hypothesis that the defendant is estopped from denying the truth of something which he has said."

The ratio of the said decision, therefore, runs counter to the opinion of the High Court. In that case a question as regard the jurisdiction of the court was raised as is explicit from the following observations:

> "28. In the present case, the respondent cannot be said to have waived the provisions of the statute. There cannot be any waiver of a statutory requirement or provision which goes to the jurisdiction of assessment. The origin of the assessment is either an assessee filing a return as contemplated in the Act or an assessee being called upon to file a return as contemplated in the Act. The respondents challenged the Act. The order of injunction does not amount to a waiver of the statutory provisions. The issue of a notice under the provisions of the Act relates to the exercise of jurisdiction under the Act in all cases. Revenue statutes are based on public policy. Revenue statutes protect the public on the one hand and confer power on the State on the other."

It is, therefore, not correct to contend that there cannot be any waiver of the right to claim interest. Statutory provisions are made for payment of interest with a view to compensate a party who had suffered damages owing to a positive action or inaction of the other resulting in blockade of money which he would otherwise have received. A party who himself represents before the court of law that

he would not claim interest with a view to obtain an order of stay which would be for his own benefit, in our opinion, could not be permitted to take advantage of his own wrong. [See Sushil Kumar Vs. Rakesh Kumar, (2003) 8 SCC 673 and Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another (2003) 5 SCC 413] Even otherwise it is now well-settled that a person cannot be made to suffer owing to an action by the Court. (Actus curiae neminem gravabit) [See Ram Chandra Singh Vs. Savitri Devi and Ors., (2003) 8 SCC 319 and Board of Control For Cricket in India and Another Vs. Netaji Cricket Club and Others [(2005) 4 SCC 741] We, therefore, are of the view that the High Court committed a manifest error in allowing interest for the said period. In fact, Mr. Ramamoorthy, learned senior counsel appearing for the Respondents frankly conceded that interest for the said period shall not be payable..

We are not oblivious of various decisions of different High Courts taking one view or the other as regard the mandatory or directory character of Sections 28 and 34 but in view of our findings aforementioned, it may not be necessary to advert thereto.

APPLICABILITY OF SECTION 25 OF THE ACT It is not in dispute that in the proceeding giving rise to Award No. 2040 dated 2.12.1967 a claim was made by the Respondent Smt. Pramod Gupta claiming compensation to the extent of 1/4th share in the entire land. It has also not been disputed before us that Section 25 contains a substantive provision of law and not a procedural one and, thus, the statutory provision as it existed prior to its amendment in the year 1984 shall apply. [See Land Acquisition Officer cum DSWO, A.P. Vs. B.V. Reddy and Sons, (2002) 3 SCC 463 and Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal and Others, (2000) 7 SCC 756] Section 25 of the Act, as it stood prior to its amendment reads:

> " 25. Rules as to amount of compensation. (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.
>
> (2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.
>
> (3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount awarded by the Collector."

The High Court negatived the contention of the Appellant in regard to the bar under sub-section (2) of Section 25 of the Act opining :

> (i) For attracting the said provision service of notice upon the occupier or the person interested as envisaged under Section 9(3) is mandatory and admittedly no notice under Sections 9 and 10 had been served by the Collector upon the Claimant-Respondent.

(ii) Having regard to the Parliamentary amendment carried out by reason of Land Acquisition Act, 1984, the bar ceases to exist.

(iii) In view of the decision of this Court in Bhag Singh Vs. Union Territory of Chandigarh [AIR 1985 SC 1576] and Union of India and Anr.

Vs. Raghubir Singh (dead) by L.R.s etc., JT 1989 (2) SC 427, it becomes obligatory upon the State to pay compensation on the basis of the market value of the land acquired and in particular having regard to the judgments of the courts operating in the field.

It is not necessary for us to dilate on the second and third reasonings of the High Court in view of the authoritative pronouncement of the court in B.V. Reddy (supra) wherein the applicability of unamended provision of Section 25 in a case arising prior to amendment has been upheld.

So far as non-service of notice under Sub-section (3) of Section 9 is concerned, we may, however, notice that in the awards of the Collector, it was categorically stated that the notice under Sections 9 and 10 of the Act had been issued. Before the High Court only the records of the Reference Court were available. The learned counsel appearing on behalf of the Respondents stated before us that the fact as to whether such notices had been served or not could only be ascertained from the records of the Collector.

Although the question as regard service of notice is a pure question of fact, we may observe that the said question may have to be answered keeping in view certain legal principles, viz., (i) the object for which Section 9 has been enacted; (ii) the situation in which the Respondent had filed a claim having knowledge of the proceedings under the Land Acquisition Act as also service of notice in terms of Sub-section (1) of Section 9 thereof; (iii) service of notice under Sub-section (1) of Section 9 together with service upon those persons may substantially serve the purpose; and (iv) the prejudice doctrine.

In the report submitted before the Reference Court, the Land Acquisition Collector stated that such notices had been served. Presumption, thus, may be raised as regard their proper service.

In Uggar Sen Kashyap vs. Union of India & Ors. [1973) 9 DLT 59], the Delhi High Court held that if the petitioner has taken part in a proceedings although the claimant has not been served with any notice, he cannot raise any grievance in this behalf. In a situation of this nature, even the doctrine of prejudice may be invoked [See State of Punjab vs. Sawaran Singh [2005 (5) SCALE 601].

We may furthermore notice that in Sureshchandra C. Mehta Vs. State of Karnataka and Others [1994 Supp (2) SCC 511], this Court held that service of notice upon the recorded persons whose names appear in the revenue records only would subserve the purpose for which notice is required to be served.

In a case where the Calcutta High Court distinguished the said decision arising out of the West Bengal Land (Requisition and Acquisition) Act, 1948 stating that the said decision was not

applicable having regard to the statutory provisions contained in Section 17(5) of the Bangalore Development Authority Act, 1976, this Court in W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others [(1997) 6 SCC 207] differing with the view of the Calcutta High Court opined:

> "21 The Calcutta High Court in the impugned judgment distinguished this judgment of the Supreme Court in Sureshchandra C. Mehta case on the ground that in that case the law itself prescribed notice to be served on a person whose name was entered in the revenue record. But the observations of the Supreme Court in that case that "the authority is not required to make a roving inquiry as to who is the person entitled to a notice" is quite apt and has to be given due weight and consideration."

Although the question is to be considered by the High Court afresh, we may point that in the event it is found that the unamended provision of Section 25 of the Act is held to be applicable, the High Court could not have awarded compensation at the rate of Rs. 98/- per sq. yard whereas the claim was made only for Rs. 25/- or Rs. 50/- per sq. yard by the claimants.

At this juncture, it would also be relevant to note that before the Reference Court the Respondents made their claim only on the basis of certain awards/ judgments made by the Reference Court/ High Court. Before the Reference Court in relation to the notification dated 24.10.1961 it was contended that the compensation at the rate of Rs. 12,000/- per bigha should have been awarded by the Land Acquisition Collector. It is true that a faint argument was advanced before the Reference Court that the lands under acquisition were superior to those situated in Munirka and Ber Sarai. Even for the purpose of determination as regard superior quality of land under acquisition vis-`-vis the lands situated in the villages which were the subject matter of the other acquisition cases, it was obligatory on the part of the High Court to consider the contra plea raised by the Appellants herein. Furthermore, it was also obligatory on the part of the High Court to consider the question that a part of the lands consisted of hills and furthermore pits have been dug up while extracting minerals; the same may not be equated with the land, which had potential for building purposes. The High Court in its impugned judgment has not adverted to this aspect of the matter at all.

It is relevant to notice the following observations of the Reference Court:

> "But even if we take that the land in dispute is superior to the land acquired in village Ber Sarai because of the factors pointed out above by the ld. Counsel for the claimants, the claimants cannot be given compensation at a rate higher than Rs. 12,000/- per bigha because the claimants have not been able to produce any evidence on record with regard to higher compensation having been given in respect of any other superior land in village Munirka or Ber Sarai nor is there any measure to increase the compensation over and above Rs. 12,000/- per bigha because of the superiority of this land over the land in village Munirka and Ber Sarai."

Nothing has been shown before the High Court that the said findings of the Reference Court were unfounded. The High Court in its judgment has proceeded computing the amount of compensation

on the basis of the circle rates without considering this aspect of the matter.

AMENDMENT OF REFERENCE AND ADDITIONAL EVIDENCE :

> It has not been disputed before us that the claimant Smt. Pramod Gupta purchased 1/4th share of the land in question by a deed dated 14.4.1960. The Appellants filed an application under Order 41, Rule 27 of the Code of Civil Procedure for bringing Xerox copy of the said sale deed on records but the same was rejected inter alia on the ground that prior thereto no effort was made to rely upon the said sale deed.

It is now well-settled that if an owner himself has purchased the land, the same would be the best evidence for determining the amount of compensation. [See Shakuntalabai (supra)] The High Court furthermore committed a serious error in coming to the conclusion that the said deed was executed prior to the date of acquisition inasmuch as the notification under Section 4 was issued on 24.10.1961.

It further appears that Shri Rajiv Gupta purchased 1/8th share of the amount of compensation payable to his predecessors-in-interest for a sum of Rs. 30,000/- by a deed of sale dated 23.1.1980, a copy whereof has been annexed with I.A. 8 of 2005.

We have noticed hereinbefore that before the Land Acquisition Collector the Respondents had claimed only a sum of Rs. 12,000/- per bigha. Despite the same the Respondents filed an application purported to be under Order 6, Rule 17 of the Code of Civil Procedure praying for amendment of Memo of Appeal and the Reference claiming higher compensation. The Respondents appear to have further filed applications under Order 41, Rule 27 of the Code for adduction of additional evidence in support of their amended claim. The High Court while rejecting the claim application filed by the Appellants allowed the application for amendment as also the application for adduction of additional evidence filed by the Respondents.

Mr. Salve submitted that the bar under Section 25 of the Act must be considered having regard to Section 53 thereof which provides for applicability of the provisions of the Code of Civil Procedure. The learned counsel urged that the Respondents had already filed an application for amendment of Memo of Appeal in terms of Order 41, Rule 3 of the Code of Civil Procedure, which having been allowed, would amount to amendment of the claim application in the reference case itself. Strong reliance in this behalf has been placed on Harcharan Vs. State of Haryana [(1982) 3 SCC 408] Ghaziabad Development Authority Vs. Anoop Singh and Another [(2003) 2 SCC 484].

We do not agree. The pleadings before the Trial Court are the basis for adduction of evidence either before the Trial Court or before the Appellate Court. By amending the memo of appeal the original pleadings cannot be amended. The claimants Respondents made their claim before the Reference Court claiming compensation for the lands acquired under two different references at a certain rate. They are bound by the said pleadings. Section 53 merely provides for applicability of the provisions of the Code of Civil Procedure including the one containing Order 6, Rule 17 thereof. Order 6, Rule 17 of the Code of Civil Procedure postulates amendment of pleadings at any stage of the proceedings.

Before an amendment can be carried out in terms of Order 6, Rule 17 of the Code of Civil Procedure the court is required to apply its mind on several factors including, viz., whether by reason of such amendment the claimant intends to resile from an express admission made by him. In such an event the application for amendment may not be allowed. [See. M/s. Modi Spinning & Weaving Mills Co. Ltd. and another Vs. M/s. Ladha Ram & Co. [AIR 1977 SC 680], Heeralal Vs. Kalyan Mal and Others [(1998) 1 SCC 278] and Sangramsinh P. Gaekwad & Ors. Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. & Ors.[JT 2005 (1) SC 581] Delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings. The High Court neither assigned sufficient or cogent reasons nor applied its mind as regard the relevant factors while allowing the said application for amendment. It has also not been taken into consideration that the application for amendment of pleading might not have been maintainable in view of statutory interdict contained in Sub-section (2) of Section 25 of the Act, if the same was applicable.

In Anoop Singh (supra), whereupon reliance has been placed by Mr. Salve, the Division Bench of this Court did not have any occasion to consider that decisions of this Court in Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal and Others [(2000) 7 SCC 756] and B.V. Reddy (supra), which, it will bear repetition to state, are authorities for the proposition that once it is held that Section 25(2) of the Act would be attracted in a given case, the parties are estopped and precluded from claiming any amount higher than that claimed in their claim petition before the Collector. An observation made to the effect that an application under Order 6, Rule 17 would be maintainable having regard to Section 53 of the Act, with utmost respect, does not constitute a binding precedent. No ratio has been laid down therein and the observations made therein are without any discussion. Furthermore no reason has been assigned in support of the said proposition of law.

In Harcharan (supra) also this Court did not address the question as to whether Order 6, Rule 17 would be applicable in relation to the original claim petition or memo of appeal.

It may be true that not only the memorandum of appeal but also the reference was amended. Mr. Rao pointed out that the necessary amendments have been carried out in the application for reference or memorandum of appeal. In terms of Order VI Rule 18 of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party who has obtained leave to amend his pleadings within the time granted therefor and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order VI Rule 18 of the Code is that the party shall not be permitted to amend his pleadings thereafter unless the time is extended by the court. It is not in dispute that such an order extending the time specified in Order VI Rule 18 has not been passed.

Mr. Rao, however, would contend that in any event, three Respondents claimed compensation @ Rs.50/- per sq. yd and one @ Rs.25/- per sq. yd. and in that view of the matter having regard to the cross- objections filed by them, the High Court could have exercised its jurisdiction while allowing the cross-objections to enhance the amount of compensation to the extent of Rs.50/- per sq. yd. The said argument was advanced on the premise that the Respondents had, as noticed hereinbefore,

raised a specific contention before the Reference Court that the land situated in Village Masoodpur was better than the land situated at Munirka or Ber Sarai. We are not persuaded. The finding of fact arrived at by the Reference Court to the effect that the Appellants had not been able to show that the land situated at the aforementioned village are not only inferior to the land situated at village Masoodpur and which finding having not been reversed by the High Court, any consideration other than those which found favour with the Reference Court could not have been entertained. The High Court in its judgment has referred to various decisions showing that the rates specified in the notification issued by the Union of India would be admissible in evidence. There is nothing to show that the said judgments were brought on record in accordance with law. There is also nothing to show that any application under Order VI Rule 17 of the CPC was filed and allowed by the High Court permitting the Respondents to bring the said judgment on records. In fact, several reported judgments have been referred to by the High Court not for the purpose of applying the ratio therein as precedent that such notifications are admissible in evidence but for the purpose of computing the amount of compensation on the basis of the rates at which the market price was fixed therein. The High Court had referred to the judgments whereby the market value of the land had been calculated on the basis of the rates specified in such notification in respect of Vasant Vihar, Defence Enclave and several other areas, without arriving at any finding that the said judgments are admissible in evidence or otherwise have relevance for determination of the market value of the land in question. The rights of the parties, it is well- settled, must be determined on the basis of the case pleaded and proved by leading proper evidence and just not on the basis of other reported judgments [See Surendra Kumar Vakil and Others Vs. Chief Executive Officer, M.P. and Others, (2004) 10 SCC 126 and Sanjay Gera vs. Haryana Urban Development Authority and Another (2005) 3 SCC 207].

We have noticed hereinbefore that the amendments have not been carried out in the pleadings in terms of Order VI, Rule 18 of the Code of Civil Procedure. The said provision being mandatory, if not complied with the consequences flowing therefrom shall ensue.

The purported amendments of the Memo of Appeal and the Reference applications, therefore, could not have been the basis for allowing adduction of additional evidence as has been done by the High Court.

The submission of Mr. Rao that all the procedural requirements contained in the Land Acquisition Act were required to be strictly complied with having regard to the fact that at the relevant point of time, the right to property was a fundamental right, is misconceived. We are not, in these appeals, concerned with the action of the State in acquiring the properties but only concerned with determination of the market value thereof.

I.A. NOS.7-8 OF 2004 :

> One of the claimants Shri Rajiv Gupta s/o Shri L.R. Gupta filed an application marked as I.A. Nos.7-8 of 2004 wherein the following prayers were made :
>
> "1. Stay the operation of the judgment and order dated October 5, 2001 passed by the Hon'ble High Court of Delhi in RFA Nos.83/87, 84/87, 85/87 and 86/87.

2) Set aside the judgment and order dated October 5, 2001 and to remand the case back to the High Court of Delhi for fresh disposal.

3) To stay the payment to L.R. Gupta HUF decree holder in Execution Petitions No. 117/2002, 119/2002 titled Rajiv Gupta & Others vs. U.O.I. and Ex.

No. 114/2002 & 118/2002 entitled Pramod Gupta & Ors. vs. U.O.I. before the Court of Shri A.K. Pahak, A.D.J. Tis Hazari Courts, Delhi.

4) To pass any other order which this Hon'ble Court deems just, fit and proper in the circumstances of the case."

The contention of the applicant is that the High Court committed a serious error in issuing a direction to the effect that the amount of compensation deposited by the Appellants should be disbursed in favour of Shri L.R. Gupta HUF as in relation thereto a lis is pending in a partition suit between the parties in a competent court of civil jurisdiction.

It is not in dispute that the inter se disputes between the parties are pending decision in several first appeals before the High Court in terms of Sections 30 and 31 of the Land Acquisition Act. The Respondents herein as also the interveners are persons interested but the question as regard their entitlement to the amount of compensation determined by the High Court is yet to be determined. The Division Bench of the High Court, however, despite noticing that the first appeals are pending wherein the inter se dispute/claims between the parties are to be adjudicated upon, without any application made by Shri L.R. Gupta HUF has authorized it to collect the entire amount of compensation directing :

"The amount of compensation has thus to be realized, received and withdrawn only by the Karta of L.R. Gupta HUF, through Shri L.R. Gupta. The amount of compensation, therefore, deserves to be paid to L.R. Gupta, HUF through its Karta Shri L.R. Gupta. Ordered accordingly."

It is interesting to note that the said direction had been passed on an application filed by Shri Rajiv Gupta for deletion of the three names of Shri Sanjay Gupta, Smt. Sumangli Gupta and Shri L.R. Gupta and for continuing with the proceedings in his name and in the name of Smt. Pramod Gupta, inter alia, on the ground that the bhumidhari rights continued to remain in his name and in the name of Smt. Pramod Gupta only and not on any application filed by any party to the said proceeding in this behalf. We fail to appreciate as to how the aforementioned directions had been made by the High Court on the application made by Shri Rajiv Gupta. We may also notice that Shri L.R. Gupta had already withdrawn a sum of money as awarded by the Reference Court, the details whereof are as under :

"

Name Compensation Amount Interest Received upto 31.03.91 Interest refundable upto 31.03.91 At the rate of 15% p.a. in case of restitution as per terms of order dated 23.03.87 passed by this Hon'ble Court Deficit

1. Sh. L.R. Gupta 2,87,72,757.60 68,09,404/-

1,54,66,355/-

86,55,951

2. Mrs. Pramod Gupta 10,07,04,651.23 2,87,05,730/-

5,41,28,748/-

2,54,23,018/-

3. Sh. Rajiv Gupta 5,27,50,055.56 1,25,11,387/-

2,83,53,153/-

1,58,41,766/-

4. Sh. Sanjay Gupta 5,27,50,055.56 1,15,22,534/-

2,83,53,153/-

1,68,30,619/-

5. Ms. Sumangli Gupta 5,27,50,055.60 1,47,26,420/-

2,83,53,153/-

1,36,26,733/-

Total 28,27,27,575.55 7,42,75,475/-

15,46,53,562/-

8,03,78,087/-

"

The aforementioned direction, as has been rightly submitted by the learned counsel Mr. Bhat, is wholly unjustified and unwarranted. The said direction is, therefore, set aside.

It will also be relevant to notice the third proviso appended to sub- section (2) of Section 31 of the Land Acquisition Act which reads as under :

> "Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

In view of the aforementioned provision there cannot be any doubt whatsoever that if and when an occasion arises either on the basis of an application filed by the interested parties or otherwise and/or upon disposal of the pending appeals, in the event Shri L.R. Gupta, HUF is found to have no title over the land in question, it would be bound to refund the entire amount of compensation received by it together with such interest thereon, as may be determined applying the doctrine of 'restitution'.

I.A. NOS. 17-18 OF 2005 :

> We have hereinbefore noticed the claim of Shri Madan Gopal Gupta and Shri Sudhir Jain. The contention of the interveners in the aforementioned application, is that no Bhumidhari right could be granted in favour of Gulab Sundari and in that view of the matter any finding on Issue No.1 as framed by the Reference Court and affirmed by the High Court, should be set aside by this Court. In these appeals, this Court is concerned only with the determination of the question raised before us and not the inter se dispute of title between the parties. Such a question as and when adjudicated upon by the competent courts in appropriate proceedings will be binding on the parties thereto inasmuch as only who succeeds in the said proceedings will be entitled to the amount of compensation. Keeping in view the fact that neither the Reference Court nor the High Court had any opportunity to examine the said question as has been contended by the applicants herein, we would observe that this Court had not determined the question that the Respondents herein being successors of Gulab Sundari were entitled to the Bhumidhari rights by reason of the alleged deed of sale executed in their favour, but we only have proceeded on the basis that assuming they are Bhumidhars; in what manner their claim for awarding compensation should be dealt with. Any observation made herein by us should not be taken to mean that we have determined the question of entitlement of the Respondents herein as Bhumidhar under the Delhi Land Reforms Act finally or otherwise. Such a finding has to be arrived at by the courts determining the said question in the pending proceedings.
>
> CONNECTED MATTERS:
>
> We may, however, notice that in the appeal arising out of SLP (Civil) CC No.5724 of 2004 an award was made @ Rs. 1.74 per sq. yard, although the claim of Rs.30/- per sq. yard was made and the High Court despite the fact that neither application for amendment nor adduction of additional grounds was filed, blindly followed its

decision in other appeals filed by the Union of India. No finding therein has also been arrived as to how the judgment and award of the Reference Court was unsustainable.

CONCLUSION:

It is true that Union of India did not question the orders disallowing the application for amendment filed by the Appellants and allowing the application for amendment as also adduction of additional evidence by the Respondents herein but having regard to the peculiar facts and circumstances of this case and in particular the fact that a large amount of public money is involved, we are of the opinion that it is a fit case where our jurisdiction of this Court under Article 142 of the Constitution should be invoked for the purpose of setting aside the said orders with a view to do complete justice between the parties.

In a case where the lis was mishandled by the State and different courts passed different orders, this Court relying upon a decision of this Court in Deb Narayan Shyam and Others Vs. State of W.B. and Others [(2005) 2 SCC 286] invoked its inherent jurisdiction under Article 142 of the Constitution stating:

"26 Therefore, in order to do complete justice to the parties, it is a fit case where we need to invoke our inherent power under Article 142 of the Constitution. Learned Senior Counsel appearing for the State of West Bengal has made a categorical submission that all the Amins irrespective of their qualifications will be entitled to Pay Scale 6 and no money which has been drawn by the Amins in the 36 writ petitions will be recovered from them prior to 1-10-2001 as directed by the Division Bench of the High Court. Therefore, we direct that all the Amins irrespective of their qualification in the minimum scale of pay will be given Scale 6 and they will be entitled to promotion as per rules in Scales 7 and 8 as the case may be. Though the Division Bench has directed that no recovery shall be made from the Amins drawing higher pay scale for the period prior to 1-10-2001 but since the law has now been declared by this Court, we extend that period till this date i.e. no recovery shall be effected from all these Amins in 36 writ petitions and they shall be properly fixed in the pay scale provided for Amins in the ROPA Rules and their pay should be protected in the respective pay scales. This is being done because of the fact that the State Government is responsible for creating such anomalous situation. Had the State Government contested the matter and consequently pursued the remedies available under law, then this anomalous situation would not have been created. Though the Division Bench has given the benefit of the pay scales up to 1-10-2001, the said cut-off date is extended till this date because we are invoking the inherent jurisdiction under Article 142 of the Constitution."

CIVIL APPEAL NOS. 6825- 6832 OF 2003 For the reasons aforementioned, the impugned judgments are set aside and the matters are remitted to the High Court for fresh consideration, in the light of the observations made hereinbefore. The appeals are disposed of accordingly. No costs.

CIVIL APPEAL NOS. 950, 2661 OF 2005, CIVIL APPEAL NOS m66-5569 OF 2005 [Arising out of SLP (Civil) No. 14383 of 2004, CC Nos. 5724, 9371, 11751 of 2004] These appeals were disposed of by the High Court on the basis of the judgment rendered by a Division Bench of the Delhi High Court in Bhooria & Ors. vs. Union of India [95 (2002) DLT 100 (DB)].

In view of the fact that in Civil Appeal Nos.6825-26 of 2003 etc., the impugned judgments are being set aside and the matter is remitted to the High Court, the judgments and awards passed in these appeals must also be set aside on the same lines. The Appeals are disposed of accordingly. No costs.