Deputy Director Land Acquisition vs Malla Atchinaidu And Ors on 12 December, 2006

Equivalent citations: AIR 2007 SUPREME COURT 740, 2006 (12) SCC 87, 2007 AIR SCW 425, 2006 (14) SCALE 1, (2007) 53 ALLINDCAS 210 (SC), (2007) 67 ALL LR 510, (2007) 2 LANDLR 280, (2007) 1 MAD LW 84, (2007) 1 RECCIVR 894, (2006) 14 SCALE 1, (2007) 2 ICC 402

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Bench: Ar. Lakshmanan, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  6497-6500 of 1994

PETITIONER:
Deputy Director Land Acquisition

RESPONDENT:
Malla Atchinaidu and Ors.

DATE OF JUDGMENT: 12/12/2006

BENCH:
Dr. AR. Lakshmanan & Tarun Chatterjee

JUDGMENT:
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JUDGMENT Dr. AR. Lakshmanan, J.

Leave granted in SLP (C) No. 16443 of 1994.

The appellant in Civil Appeal Nos. 6497-6500 of 1994 is the Deputy Director Land Acquisition and the respondents are Malla Atchinaidu and Ors. These appeals were preferred against the orders dated 31.12.1993 and 18.01.1994 in CRP No. 363 of 1992 and judgment and order dated 11.03.1994 in AS No. 147 of 1994 of the High Court of Andhra Pradesh. SLP No. 16443 of 1994 was filed by the respondents in CA Nos.6497-6500 of 1994 against the judgment and order passed in AS No. 19 of 1992 dated 11.03.1994.

The facts herein are that, on 07.03.1982, an extent of Ac. 19.87 cents of dry land in Sy. Nos. 3/1 to 3/42 of Pisinikada Village, in the outskirts of Anakapalli Town, was acquired under section 4 (1) of the Land Acquisition Act (hereinafter referred to as the Act), for the provision of house sites for the weaker sections. Urgency clause under section 17 (4) of the Act was invoked and a draft declaration under section 6 (1) was also published simultaneously on the same date.

On 31.07.1982, the Land Acquisition Officer and Social Welfare Officer (Land Acquisition) issued notice under section 9(1) of the Act directing that all the matters to be posted on 24.08.1982 for conducting the award enquiry. On 24.08.1982 and 03.09.1982, award enquiry was conducted.

The Land Acquisition Officer on 03.02.1983, gave an award granting compensation of Rs.11,500/- per acre to the respondents. The Land Acquisition Officer also valued certain Palmyrah trees at Rs. 2,000/- (Rs. 10/- for big Palmyrah tree, Rs. 5/- for small Palmyrah tree and Rs. 50/- for cashew trees.) There were 176 Palmyrah trees and 7 cashew trees. On 24.03.1983, possession of the said land was taken.

The respondents were, however, not happy with the compensation awarded by the Land Acquisition Officer. Hence the matter was referred to the Civil Court under Section 18 of the Act and it was numbered O.P. No. 21/87.

On 27.04.1991, the Sub-Judge, Anakapalli passed an order whereby the compensation amount was enhanced to Rs. 55,000/- per acre. The compensation with regard to the palmyrah trees was enhanced to Rs. 100/- for a big tree and Rs. 50/- for a small tree and Rs. 200/- for a cashew tree. On 29.07.1991, however, the respondents filed I.A. No. 70/91 in O.P.No. 21/87 contending that there were 10,000 big palmyrah trees and 4,500 small palmyrah trees and that the order of the Sub-judge contained a typographical error.

The Sub-judge in his order dated 28.09.1991, rejected the application of the respondents.

Aggrieved by the order of the Sub-judge, the respondents approached the High Court of Andhra Pradesh by way of Civil Revision Petition No. 363/92 and filed an appeal in the High Court which was numbered A.S. No. 19/1992.

On 31.12.1993, the Single Judge allowed the revision and directed that the order of the Sub-judge be amended. On the request of the Govt. Pleader on 18.01.1994, the matter was heard again. However, the Single Judge confirmed the order passed on 31.12.1993. An appeal was preferred by the appellants in the High Court against this order of the Single Judge which was numbered A.S. No. 147/1994.

On 11.03.1994, the Division Bench of the High Court allowed the appeal of the respondents numbered 19/1992 and dismissed the appeal of the appellants and enhanced the compensation to Rs. 1,50,000/- per acre relying on Ex.A-11, a registered sale deed.

It is against this decision of the High Court of Andhra Pradesh dated 11.03.1994 the appellants are before this court by way of Civil Appeal Nos. 6497-6500/1994 and the respondents have also approached this court by way of SLP (C) No.16443/1994.

We heard learned senior counsel Mr. Sundaravardan assisted by Mr. Manoj Saxena, learned counsel appearing for the appellants and Mrs. Anjani Aiyagari and Mr. Subhash Sharma, learned counsel appearing for the respondents.

Learned senior counsel Mr. Sundaravardan submitted on facts that after the publication of 4(1) notification on 07.03.1982 in respect of 19 acres-31 cents of land in the concerned village with some trees thereon, the Land Acquisition officer passed an award on 03.02.1983, granting compensation at Rs.11,500/- per acre and for palmyrah trees at Rs.2000 (Rs. 10/- for big palmyrah trees, Rs.5/- for small palymyrah trees and Rs.50/- for cashewnut trees). It may be noted that before the compensation officer no contention was ever raised that the trees were more in number than what the officer had found.

The respondents took the matter under section 18 of the Land Acquisition Act before the learned subordinate Judge Anakapalli. By order dated 27.04.1991 the learned sub-judge enhanced the compensation to Rs. 55,000/- per acre and enhanced the compensation for the value of trees at Rs. 100 per big palmyrah tree and at Rs.200 per cashew nut tree. There was no enhancement of the number of trees at all, nor was any such point argued as to the number of trees.

Both the State and the respondents took the matter on appeal before the High Court of Andhra Pradesh. Just on the eve of these appeals before the High Court, a certain development occurred before the sub-court of Anakapalli (the reference court). The respondents filed I.A.70/91 in O.P.87 before the transferee subordinate Judge contending that there were 10,000 big palmyrah trees, 4500 small palmyrah trees and the statement and findings in the decree has to be so corrected instead of the original figures of 1000 and 500. The learned subordinate Judge held that it is not a matter for correction under section 152 C.P.C. but one for appeal and adjudication.

It was stated that the predecessor subordinate judge in his judgment under section 18 of the Act, on appreciation of evidence on record found: "there were 1000 big palmyrah trees, 500 small palmyrah trees and 25 cashewnut trees in the entire land under present acquisition".

The 1st respondent himself has stated there were 25 big palmyrah trees and three cashewnut trees in his land.

PW1 claimant no.14 deposed that in his acquired land of 1 acre and 0.8 cents, there were only 4 palmyrah trees and 8 small ones of the same nature.

It was submitted that on the evidence and finding there could be no basis for an exaggerated claim as to the number of trees as now claimed by the respondent, which claim if allowed would make a phenomenal addition of compensation to nearby 15 lakhs of rupees.

Notwithstanding the dismissal of the I.A for correction of the decree and judgment, the claimants filed C.R.P 363/92 under section 115 C.P.C before the High Court of Andhra Pradesh. It may be mentioned that when the C.R.P was taken for final hearing the matter was already seized by a Division Bench of the High Court. Inspite of this aspect of the matter being brought to the notice of the learned Single Judge, the learned Single Judge by order dated 31.12.1993 allowed the CRP and held that it was only a clerical mistake. The result is a jump from a thousand trees to ten thousand big trees and from five hundred to five thousand small trees resulting in additional compensation of about Rs. 15 lakhs.

It was also submitted that by no stretch of imagination the entire area of 19 acre 37 cents could ever cover and hold ten thousand big palmyrah trees and 4500 small palmyrah trees, nor was this matter ever raised either before the Land Acquiring officer. Indeed section 13A of the Act enables such objection to be raised.

The appeals by the state and also by the respondents before the High court came to be disposed off on 11.03.1994 thereby enhancing the land value to 1,50,000 per acre. By this order there was no addition to the number of trees as over and above a thousand, but the enhanced value per tree was maintained. It is of interest to note that no grievance as to the number of trees was made by the claimants in their grounds of appeal in the High Court.

Learned counsel Mrs. Anjani Aiyagari appearing for the respondents/claimants submitted that, in the instant case an extent of Ac. 19.87 cents of agricultural land was acquired by making the Notification under Section 4(1) of the Land Acquisition Act in the year 1982. Possession was taken in the year 1983 and Award was also passed granting compensation @ Rs.11,500/- per acre. There were Palmyrah and cashewnut trees on the land, for which an additional compensation was awarded.

The respondents stated that the appellants herein have raised the objection for the first time before this Court that trees are not to be valued separately and compensation should be awarded both for land as well as for trees. On this point the respondents sought a preliminary objection saying that that, such a plea cannot be taken up for the first time before this Court. Also, the compensation awarded cannot be lower than that awarded by the learned Land Acquisition Officer. Further, the respondents emphasized that, the compensation awarded for the trees is however justified, as the value of the trees was awarded at the fuel rate and the use the trunks of the big palmyrah trees can be put to for construction purposes.

The respondents drew our attention to the decisions of this court in the case of Koyappathodi M. Aysha Umma v. State of Kerala, [1991] 4 SCC 8, this Court held that compensation cannot be awarded to land separately and the trees again valued by the capitalization method by taking the annual yield. However, this Court has held that the trees are to be valued separately as fuel, timber etc; as follows : "It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available, on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalization of 15 years would be the proper and fair method to determine the market value but not both. In the former case, the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land". Similarly, this Court in Administrator General of West Bengal v. Collector, Varanasi [1988] 2 SCR 1025 held that where the land is valued with reference to its potentiality for building purposes, the tree growth on the land cannot be valued independently on the basis of its horticultural value or with reference to the value of the yield. But this principle does not come in the way of awarding the timber-value after deducting costs for cutting and removing

them from the lands as salvage value. The compensation awarded for the building and tree growth was enhanced from Rs.57,660/- to Rs.2,00,000 and from Rs.355.85 to Rs.7500/- respectively.

In Ratan Kumar Tandon and Ors. v. State of U.P., [1997] 2 SCC 161, this Court upheld the award of Rs.23,000/- given by the LAO for the trees.

The respondents later contended that, in this case respondents had mentioned the numbers of the trees as 10,000 big palmyrah trees, 4,500 small palmyrah trees and 25 cashewnut trees in their claim petition, which was not denied by the appellant. Due to a typographical mistake, the Judgment of the reference Court put the number of trees at 1000 big palmyrah trees, 450 small palmyrah trees and 25 cashewnut trees. Such a mistake can be corrected under Section 152 CPC.

The respondents referred to the decision of this court in the case of State of Punjab v. Darshan Singh, [2004] 1 SCC 328 where it was held that, "Section 152 provides for correction of clerical or arithmetical mistakes in judgments decrees or orders or errors arising therein from any accidental slip or omission."

It was submitted that, the High Court had awarded compensation to the respondents by relying upon Ex.A-11, which is a registered sale deed dated 20.01.1982 and fixed the market value at Rs. 31/- per sq.yd. and deducted 35% out of that for amenities.

It was also submitted that the reliance on small plots of land for determining the market value of large tracts of land is permissible if no other evidence is available by making necessary deductions.

Also it was argued by the respondents that, the deduction of 35% towards development is not justified following the verdict of this court in the case of Kasturi & Ors. v. State of Haryana, [2003] 1 SCC 354, where it was held that, the land being acquired in an already developed area, having potential of construction of residential and commercial buildings, not more than 20% ought to have been deducted towards development.

Learned counsel further submitted that, the High Court has failed to take into consideration Ex. A-5, A-6 and A-17, which are agreements of sale wherein the rate per acre was between 2 lakhs to 2.5 lakhs per acre.

Concluding her submissions, learned counsel submitted that, the market value is much less than the value the land was worth and the deduction was much more than what should have been applied to a developed land.

We heard both parties in detail and perused through all the records placed before us.

We have carefully considered the rival submissions made by learned counsel appearing for the respective parties and also with reference to the pleadings, annexures and the decisions cited.

On the facts and circumstances of the case, the following substantial questions of law arise for consideration by this Court:-

(1) Whether the learned Single Judge of the High Court was right in law in upholding the plea of the claimants that their grievance (which is not sustainable even on evidence) is amenable for correction under Section 152 of the C.P.C?

(2) Whether the learned Single Judge was right in entertaining the respondents' Revision under Section 115 C.P.C., more so, when the matter was seized by a Division Bench and thus pre-empting an adjudication by the latter?

(3) Was the Division Bench of the High Court right in law in enhancing the compensation to Rs. One lakh and fifty thousand, per acre, principally relying on Ex.A7 covering a small area of .08 cents only?

(4) In any case, is it permissible to make separate valuations of land and tree?

Question Nos. 1 and 2:

Mr. Sundaravardan, learned senior counsel, in support of his contention relied on the judgment reported in [1996] 11 SCC 528 State of Bihar & Anr v. Nilamani Sahu & Anr., Which, according to him, is on all fours with the contention of the appellant-State of Andhra Pradesh. This Court in para 6 at page 529 held thus:

"We find force in the finding of the Division Bench that an appeal would not lie against the amendment of the decree and it is only revisable; since the learned Single Judge had amended the decree in appeal, a revision to the Division Bench would not lie. The view taken by the Division Bench cannot be faulted. However, the question is whether the learned Single Judge, was right in correcting the decree and directing payment of the aforesaid amount of Rs. 76,21,630.30 by way of order under sections 151 and 152 of CPC, we find that the view taken by the learned Single Judge, Justice R.K. Dev, with due respect, if we can say so, is not atrocious. It is an admitted position that the valuation of the trees and the quantification was done by the Land Acquisition Officer at Rs.2466. On reference, after adduction of evidence, the reference court confirmed the same. When regular appeal was filed under Section 54 of the Act, the High Court had gone into the question and did not accept the number of trees and value thereof; it accordingly confirmed the award of the reference court. In other words, the decree of a sum of Rs.2466 granted by the reference court stood upheld and became final. The question is an amendment of the decree, could the High Court go behind the order which had become final and correct the valuation, as stated earlier, to the tune of a sum of Rs.25,39,919.50? The High Court obviously was in gross error in reconsidering the matter and came to a fresh conclusion as to the number of the trees and value thereof under the guise of arithmetical mistake. The learned Single Judge, therefore, was wholly wrong in his conclusion as to the amount

> above referred to for correction of the decree."

This case is approved and followed in Jayalakshmi Coehlo v. Oswal Joseph Coehlo, (2001) 4 SCC 181.

In the petition for divorce moved on consent, parties jointly incorporated an agreement under which the wife had to relinquish her rights in the flat on receipt of a certain sum from husband. In their prayer they sought only the relief of divorce. Later, an amendment under Section 152 was sought by husband seeking a relief among others, the transfer of the flat which was agreed to be transferred in the body of the petition. The family court as well as the High Court granted the prayer and amended the decree.

This Court however set aside the order of both the Courts below holding that the exercise is impermissible under Section 152 CPC.

At page 189 para 13, Placitum E, it was observed thus "In a case reported in Dwarka Das v. State of A.P., [1999] 3 SCC 500, this court has held that the correction should be of a mistake or an omission which is accidental and not intentional, without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter, add to the terms of the original decree so as to pass an effective Judicial order after the Judgment in the case - Liberal use of the provisions of Section 152 has been deprecated. While taking the above view, this court had approved the Judgment of the Madras High Court in AIR 1940 Madras 29. Similar view is found to have been taken by this court in a case reported in State of Bihar v. Nilamani Sahu (supra) where the Court under the guise of arithmetical mistake, on a reconsideration of the matter came to a fresh conclusion as to the number of trees and the valuation thereof in a matter which had been decided finally."

Similarly in another case enhanced interest on solatium under Section 23 A(1) Section 28 omitted to be awarded originally, could not be awarded later by resort to Section 152 CPC (1996) 4 SCC 533).

Again in para 14 (page 190) it is stated thus:

> "on second though the Court may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification under Section 152 CPC."

In [2001] 6 SCC 683 Plasto Pack, Mumbai v. Ratnakar Bank Ltd., it was held at page 687 para 12 :

> "...Such of the prayers as were not granted by decree dated 3-3-1995 would be deemed to have been refused and to that extent the suit shall be deemed to have been dismissed..... the Court cannot substitute a new decree."

In [2001] 5 SCC 37 K. Rajamouli v. A.V.K.N. Swany At para 6, page 41 - Placitum G it is held;

> "S 152 provides that a clerical or arithmetical mistake .....
>
> The question therefore arises is whether omission of pendente lite interest to the decree by the trial court was an accidental or clerical error. In the case of Dwaraka Das v. State of M.P, [1999] 3 SCC 500 it was held that the omission in not granting pendente lite interest could not be held to be an accidental omission or mistake and therefore neither the trial court nor the appellate court has the power to award pendente lite interest under Section 152 CPC."

The Privy Council in Piytatna Unnase v. Waknikar Sonutara Unnasi 54 Calcutta Weekly notes page 568 with Section 189 of Ceylon code dealing with Section 189 of cyclone code corresponding to Section 152 CPC has laid down similar principle. The contention of the party in the appeal before the Privy Council was that while Judgment on which the decree was based had conceded the right to an additional area of land edged green in the plain called "Spenser's plan, the decree does not follow suit and hence it has to corrected by resort Section 189 of Ceylon code corresponding to Section 152 CPC. The Privy Council negatived the plea and held at 571-para 2-Right hand side column as ;

> "The highest that case can be put on behalf of the Appellants is that there are passages in the Judgment which suggest that if the Judge had been minded to decide the question, he would have decided it in favour of the Appellants. The Judge may have had good reasons for not deciding the question. He may have thought it inappropriate to decide on the title to a piece of open land when he was dealing only with issues relating to the cost of improvements in buildings, or he may have thought that any such decision might be embarrassing to parties not before the Court who had interest in land .....
>
> The general rule is clear that once an order is passed and entered or otherwise perfected in accordance with the practice of the Court, the Court which passed the order is functus officio and cannot set aside or alter the order however wrong it may appear to be. That can only be done on appeal, Section 189 of Civil Procedure Code of Ceylon, which embodies the provisions of Or 28 R. 11 of the English Rules of the Supreme Court to ensure that its order carries into effect the decision at which it arrived, provides an exception to the general rule, but it is an exception within a narrow compass. The Section does not take away any right of appeal which the parties may possess' it merely provides a simple and expeditious means of rectifying an obvious error. In the present case there was no clerical error or accidental omission in the decree and the case of the Appellants is based on an alleged variance between the Judgment of the Court and the decree based upon it. In such a case the variation should appear on a perusal of the Judgment and decree. No such variation is apparent in the present case.
>
> Mr. Sundarvardhan submitted that from all these dicta quoted above, it is clear that the learned Single Judge's order in CRP is wholly without jurisdiction. As rightly pointed out by learned senior counsel the exercise involved is one of adjudication, a

deductive function which Court has to do from proved and admitted facts and that it is not a case of clerical/arithmetical factor.

Learned counsel for the respondents submitted that these facts are admitted by the rule of non-traverse stated in Order 8 Rule 5 CPC. In our opinion, the said argument of the learned counsel for the respondent overlooks that admissions are explainable under Section 21 of the Evidence Act, that under the proviso to the very rule of non-traverse the Court can require the party to lead evidence and that the utmost that could be said is that a piece of evidence as to admission is not considered by the Court. All these are not clerical/arithmetical errors.

Learned Single Judge who heard the civil revision petition could have directed the CRP to be posted with the Appeals that were pending before the Division Bench on 31.12.1993 when the CRP was finally heard and on 18.01.1984 when it was again heard by learned Single Judge on being mentioned, the appeals were seized before the Division Bench which rendered its judgment.

During the pendency of these appeals in this Court, an additional affidavit was filed on behalf of the appellant raising additional grounds in the above appeals. It is stated that the High Court has erred in disposing of the CRP without calling for the original records and thereby failed to notice that in the petition filed on behalf of the claimants seeking reference to Civil Court under Section 18 of the Act, they did not dispute about the number of trees (176 trees) as noted by the Land Acquisition Officer in his award and also failed to notice that even in the evidence, P.Ws. 1 to 3 did not speak about the existence of more number of trees than noted by the Land Acquisition Officer in the award and further in the written argument submitted by the counsel for the claimants, whose copy was furnished to the Assistant Government Pleader, there was no claim of more number of trees than the one noted in the award by the Land Acquisition Officer and there was no point framed by the sub-Court and no discussion was made regarding the number of trees existed in the land and the Court discussed only about the value of each tree noted by the Land Acquisition Officer and enhanced tree value from Rs. 5/- to Rs. 50/- and from Rs. 10/- to Rs.100/-. In this regard, it is submitted that the Ist page of the written arguments was mischievously substituted subsequent to the disposal of the O.P. by the Sub Court forgetting the fact that the copy of the written arguments was supplied to the Asstt. Govt. Pleader and in that substituted page one line was added mentioning that there were 10,000 big palmyrah and 4,500 small palmyrah trees and the said tampering of the record was confirmed by the C.B.C.I.D. in its investigation.

It is further submitted that the High Court failed to notice that the learned Sub-Judge nowhere gave direction in the Judgment that the above enhancement of the value of the trees (from Rs.5/- to Rs.50/- and from Rs.10/- to Rs.100/-) was applicable to more number of trees mentioned in the claim statement filed on behalf of the claimants and on the other hand, the learned Sub-Judge in the operative portion of

the Judgment ordered that the enhanced tree value to be paid after deducting the value already paid, which clearly indicates that the enhanced tree value was made applicable only to those trees for which Rs.5/- and Rs.10/- was granted by the L.A.O. He also submitted that the High Court further failed to note that the High Court while exercising only revisional powers has no jurisdiction to give a finding that the enhanced trees value shall be applied to the trees mentioned in the claim statement in the absence of the direction by the trial Court to that effect, and thus the High Court exceeded its jurisdiction in ordering consequential amendment of the decree to apply the enhanced tree value for '10000' big and '4500' small Palmyrah trees.

He further submitted that the High Court failed to note that these '10000' big and '4500' small Palmyrah trees were fraudulently introduced in the claim statement by way of substitution of some pages in the claim statement and the High Court disposed of the revision even without sending for the original claim statement. In this regard it is submitted that the original claim statement was tampered with after the claim statement was filed into Court and the same was confirmed in the investigation conducted by the C.B.C.I.D. and that the High Court failed to notice that it is impossible for the existence of 10000 big and 4500 small Palmyrah trees besides 25 Cashew nut trees in a cultivable land of Ac. 19.87 cents as according to the evidence of the claimants, the land was levelled and the crops were being raised in the lands by the date of notification.

That the High Court also failed to note that the Court has no power to value the trees separately and award both the value of the land and also the value for trees as per the decision of this Court in State of Haryana v. Gurucharan Singh, [1995] suppl. 2 SCC 637 wherein it was held that the compensation for the lands as well as for the trees cannot be determined separately.

It is also seen from the special leave petitions filed by the State the following grounds have been raised:

(1) By his order dated 27.4.1991, the learned subordinate Judge, Anakapalli enhanced the compensation to Rs.55,000/- per acre in respect of the land. He also enhanced the compensation in respect of the trees to Rs.100/- per big palmyrah tree, Rs.50/- per small palmyrah tree and Rs.200/- per cashewnut tree. The compensation was for 1,000 big palmyrah trees and 500 small palmyrah trees. The learned Subordinate Judge also awarded 12% interest from the date of the 4(1) Notification to the date of taking possession and also granted interest @ 9% per annum for one year from the date of taking possession and thereafter at 15% till the date of deposit of the compensation amount in the Court.

(2) On 29-7-1991, the respondents filed I.A. No. 70/91 in OP No. 21/87 contending that, in fact, there were 10,000 big Palmyrah trees and 4,500 small palmyrah trees on the acquired land and that the order of the Subordinate Judge contains a

typographical error since the order had erroneously recorded that there are only 1,000 big palmyrah trees and 500 small palmyrah trees.

(3) On 26-9-1991, the learned Sub-Judge Anakapalli rejected the application. Aggrieved by the order of the learned Subordinate Judge, the respondents filed Civil Revision Petition No. 363/92 in the High Court of Andhra Pradesh. Further, aggrieved by the order of the learned Sub-Judge in O.P. No. 21/87 dated 27-4-1991, the respondents also filed an appeal in the High Court of Andhra Pradesh and the same was numbered as A.S. No. 19 of 1992.

(4) By his order dated 31-12-1993, a learned Single Judge allowed the revision and directed that the order of the learned sub-Judge be amended.

Again in the grounds while questioning the correctness of the learned Single Judge in allowing the revision, the following grounds have been specifically raised:

(1) The learned Single Judge ought to have noticed that there was no evidence either before the Sub-Judge, Anakapalli or before the High Court to the effect that there existed 10,000 big palmyrah trees and 4,500 small palmyrah trees on the acquired land.

(2) The High Court ought to have noticed that the judgment and decree of the learned Sub-Judge was passed after an elaborate enquiry and after considering all the evidence on record and yet the learned Sub-Judge found no reason to record a finding that there existed such large number of trees on the acquired land.

We are, therefore, of the opinion that the learned Single Judge of the High Court has erred in law in upholding the plea of the claimants that their grievance is amenable for correction under Section 152 of the CPC and that the learned Single Judge was not right in entertaining the respondents' revision under Section 115 CPC more so, when the matter was seized by the Division Bench and thus preempting an adjudication by the latter.

We, therefore, have no hesitation to set aside the order passed by the learned Single Judge of the High Court in CRP No. 363 of 1992 dated 31.12.1993 and allow the appeal filed by the State of Andhra Pradesh insofar as the quantum of compensation awarded for the trees pursuant to the order passed by the High Court to amend the number of trees in para No.6 of the order in O.P. No. 21 of 1987 as 10,000 big palmyrah trees and 4,500 small palmyrah trees and restore the order passed by the sub-Judge enhancing the compensation in respect of the trees to Rs. 100/- per big palmyrah trees and RS.50/- per small palmyrah trees and Rs. 200/- for cashew nut trees and allow the civil appeal filed by the State only with reference to the palmyrah trees in question.

Question No.3:

Mr. Sundarvardhan submitted that the High Court has rightly held that since Exh. A-11 relates to a small extent of 0.0.5 cents just before the publication of notification ought to have held that no reliance can be placed on the said sale. However, the High Court fixed the market rate at Rs. 31/- per sq. yard and deducted 35% from out of that towards amenities.

Mr. Sundaravardhan further cited [2003] 10 SCC 167 Union of India v. Ramphal and submitted that reliance on a sale deed comprising a small area is not a guide to determine the compensation of larger area. In this case, it has been held that the sale price in respect of small piece of land would not be a determining factor for deciding the market value of vast stretch of land.

Per contra, Mrs. Anjani Aiyagari submitted that where the land is valued with reference to the potentiality for building purposes the trees on the land cannot be valued independently on the basis of its horticultural value or with reference to the value of the yield but this principle does not come in the way of awarding the timber value after deducting costs for cutting and removing them from the lands as salvage value. In support of the above submission, she relied on Admn. General of West Bengal v. Collector, Varanasi. (supra). She also further relied on State of Gujarat v. Govind Mamaiya & Ors., [2005] 10 SCC 141 which held that the compensation of Rs. 120 per eucalyptus trees ought not to be interfered with. She also relied on Ratan Kumar Tandon v. State of U.P. (supra) wherein this Court upheld the award of Rs.23,000/- given by the Land Acquisition Officer for the trees.

She submitted that the appellants herein have raised the objection for the first time before this Court that trees are not to be valued separately and compensation awarded both for land as well as for trees. She also submitted that the compensation awarded cannot be lower than that awarded by the Land Acquisition Officer and that the compensation awarded for the trees is however justified as the value of the trees was awarded at the fuel rate and the used trunks of the big palmyrah trees can be put to for construction purposes. In this context, she invited our attention to page 70, para 37 of the Order dated 27.04.1991 of the reference Court in O.P. No. 21 of 1987 which is filed as annexure-A of Volume-2 by the appellant. Insofar as number of trees are concerned, she submitted that due to a typographical mistake the judgment of the reference Court put the number of trees at 1000 big palmyrah trees and 450 small palmyrah trees and 25 cashew nut trees and, therefore, such a mistake can be corrected under Section 152 CPC. We have already considered the rival submissions on this issue and the order passed by the High Court by the learned Single Judge of the High Court in CRP is unsustainable in law for the reasons stated (supra) in this order.

We, therefore, reject the submission made by the learned counsel for the respondent-claimant insofar as it relates to the total number of trees are concerned.

With reference to the argument of Mr. Sundaravaradan that reliance on sales of small area is not a guide to determine compensation of large area the learned counsel for the respondent submitted that the High Court has awarded compensation by relying upon Exh. A-11, a registered sale deed dated 20.01.1982 and fixed the market value at Rs. 31/- per sq. yard and deducted 35% out of that for amenities.

Learned counsel submitted that the reliance on small plots of land for determining the market value of large tracts of land is permissible if no other evidence is available by making necessary deductions. The land in the present case is on the Southern side of the National High way facing the road and in close proximity from the well-developed area of Kothuru. The acquired land is situated in the Anakapalli Municipal area and Anakapalli town and surrounded by poultry farms. The reference Court has held on page 62 that 'there is nothing to disbelieve the version of P.Ws. 1 to 3 about the existence of various colonies and warehousing corporation godowns and residential houses nearby to the land in question and the Government has also acquired land covered by Ex.A-4 for the purpose of housing colonies under Award No. 5/82 prior to the Section 4(1) notification in this case.' 'There is no dispute about the existence of A.M.A. High School, A.M.A.L. College, warehousing godowns, other Government offices as referred in the claim statement of the claimants and even though the acquired land was registered as an agricultural dry land, the way it was acquired for the purpose of house sites go to establish that it has got potentiality for using the same as house sites even by the time of 4(1) notification and the neighbouring lands were being utilized for construction of colonies both by the Government and private individuals.' The lands covered by Exs. A-7 to A-11 are in very close proximity to the land acquired, as held by the reference court.

The land acquired being in an already developed area, having potential of construction of residential and commercial buildings, not more than 20% ought to have been deducted towards development, as held by this Court in Kasturi & Ors. v. State of Haryana (supra). Therefore, the deduction of 35% towards development is not justified.

Moreover, the High Court has failed to take into consideration Ex.A-5, A-6 and A-17, which are agreements of sale wherein the rate per acre was between 2 lakhs to 2 1/2 lakhs per acre. The reference court, held that 'recitals in Ex.A-1, A-5 to A-7 and A-15, A-16 and A-18 go to establish that there were willing purchasers for the lands of the claimants at rupees more than 2 lakh and the recitals in Ex.A-13 further go to show that even a wet land which is not fit for using it as house sites was agreed tobe purchased atRs.1000/- per cent.' It was submitted that the market value is much less than the value that the acquired land was worth, and the deduction was much more than what should have been applied to a developed land.

We see much force and merit in the above submission. The Division Bench of the High Court on a consideration of the entire materials placed before it has awarded

compensation by relying upon Exh. A-11 a registered sale deed dated 20.01.1982 and fixed the market value at Rs. 31/- per sq. yard and deducted 35% out of that for amenities. No fault can be founded on the conclusion arrived at by the High Court insofar as awarding the compensation relying upon Exh A-11 is concerned. We, therefore, are not inclined to interfere with the market value fixed by the High Court at Rs. 31/- per sq. yard.

Question No.4:

Mr. Sundarvardan submitted that valuation of land and trees separately is not permissible in view of judgment of this Court in State of Haryana v. Gurcharan Singh and Anr. etc., AIR (1996) SC 106. This Court in para 3 held thus:

"Ms. Suruchi Agarwal, learned counsel for the State, contended that the High Court has committed grave error of law in upholding the determination of the compensation both to the land as well as fruit bearing trees and has also further committed error in enhancing the market value to the fruit bearing trees in addition to the confirmation of the compensation separately awarded for the land and the fruit bearing trees. It is against the settled principle of law as laid down by this court in catena of decisions. We find force in the contention. Sri Bagga, learned counsel for the respondents, contended that in the year 1966 the price index was at 144 points whereas in 1970 the index was found to be at 213 points. The High Court, therefore, was right in increasing the compensation to the fruit bearing trees by 60%. We find no force in the contention. It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land....."

Again in Niranjan Singh and Anr. v. State of U.P. and Ors., this Court in para 6 held thus:

"It is unnecessary in view of this factual position to consider the legal submission of the appellants' counsel that the land and the trees should have been valued separately by reason of the provisions of the Land acquisition Act cited by him. Were it necessary to consider this contention we would have preferred to hold that since the land was acquired as a forest, it would have to be valued as a forest and that value would depend upon the kind of trees and the number of trees standing in the forest on the date of acquisition. If the value of trees is taken into consideration while valuing the forest, the trees cannot be valued once again for arriving at the total compensation payable to the owners of the forest."

Mr. Sundarvardan, therefore, prayed that the appeals on behalf of the State of Andhra Pradesh by the Director may be allowed and that of the respondents be dismissed.

In view of our discussion in the foregoing paragraphs in regard to the trees, we allow the appeal of the State only to the extent as indicated in paragraphs (supra) and set aside the order passed by the High Court in CRP No. 363 of 1992. Insofar as awarding of compensation for the land basing on A-11 is concerned, we affirm the judgment and decree passed by the High Court.

In the result, the order passed by the High Court in CRP No. 363 of 1992 stands set aside and the judgment passed by the Division Bench. Insofar as awarding compensation for the land is concerned basing on Exh. A-11 stands affirmed.

We also ratify the judgment and decree passed by the High Court ordering the additional amount calculated @ 12% p.a. on such market value for the period commencing on and from the date of the publication of the notification under Section 4(1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land whichever is earlier as contemplated under Section 23(1a) of the amended Land Acquisition Act, 1968 of 1984. We also hold that the claimant shall also be entitled to solatium @ 30% on the market value fixed by the High Court as stipulated under Section 23(2) of the Act. The Claimant shall also be entitled to interest ordered by the High Court in its judgment and decree.

During the pendency of the appeals before this Court, certain interim orders were passed by this Court directing payment of 1/3rd of the enhanced amount together with proportionate accrued interest and proportionate solatium shall be paid to the claimants. This Court stayed the operation of the rest of the award subject to the aforesaid condition. The claimants were permitted to withdraw the same without need to furnish any security. The respondent shall adjust the payment, if any, made by them to the claimants and pay the entire balance amount for the land as per the market value fixed by the High Court together with solatium, interest, etc. etc. We also make it clear that the claimants will be entitled for payment of compensation only with reference to the number of trees as ordered by the Subordinate Judge and not as ordered by the order in the CRP in regard to the total number of trees and the value.

In the instant case, 4(1) notification was issued under the Land Acquisition Act on 07.03.1982. Both parties are litigating in the Court for the last 25 years. The litigation must reach its finality one day or the other. That stage has come now. We, therefore, direct the respondents to work out the compensation for the land as ordered by the High Court based on Exh A-11 and also the compensation for the value of trees as ordered by the Sub-Court and after adjusting the payment which have already been made to pay the entire balance together with solatium, interest, etc. to the claimants within 3 months from today.

This direction should be punctually obeyed by the authorities concerned. The Government has acquired the land in question in the year 1982 by exercising its

power of eminent domain. The Government is bound to pay the compensation lawfully due to the claimants.

We, therefore, direct the respondents to pay the balance compensation and solatium, interest etc. as indicated by us in our earlier part of this judgment. No costs.