

(2013) 12 AHC CK 0138

Allahabad High Court

Case No: First Appeal Nos. 62, 63, 64, 1062, 1063 of 1999 and 116 of 2000, 81 and 82 of 1996

Food Corporation of India

APPELLANT

Vs

Kailash Chand

RESPONDENT

Date of Decision: Dec. 12, 2013

Citation: (2014) 1 ADJ 379

Hon'ble Judges: B. Amit Sthalekar, J; Ashok Bhushan, J

Bench: Division Bench

Judgement

Ashok Bhushan, J.

All these appeals have been filed u/s 54 of the Land Acquisition Act, 1894 against two judgment and orders of the Additional District Judge/District Judge Bulandshahar in Land Acquisition References. The First six appeals have been filed against the judgment and order dated 14.9.1998 of III Additional District Judge Bulandshahar deciding Land Acquisition Reference No. 205 of 1989, Land Acquisition Reference No. 234 of 1989 and Land Acquisition Reference No. 235 of 1989. The last two appeals have been filed against the judgment and orders dated 6.11.1995 of District Judge, Bulandshahar deciding Land Acquisition Reference No. 213 of 1989 and Land Acquisition Reference No. 239 of 1989. All these appeals have arisen from the judgment and orders rendered by reference Court in reference made u/s 18 of the Land Acquisition Act arising out of the same notifications under Sections 4 and 6 of the Land Acquisition Act. For deciding all these appeals, it shall be sufficient to refer the facts and materials on record in First Appeal No. 62 of 1999, which is being treated as leading appeal. Certain facts of first appeal No. 81 of 1996 are also to be noted. A notification u/s 4 of the Land Acquisition Act dated 21.1.1970 was issued for acquisition of land situate at Qasba Baran, Tahsil and district Bulandshahar. An area of 16 Bighas, 10 Biswas and 16 Biswansis was proposed to be acquired for construction of godown and sheds by the Food Corporation of India.

Declaration u/s 6 was issued on 4.6.1971. The possession of land was taken on 27.2.1982 and the award by Special Land Acquisition Officer was given on 3.12.1985. The land was situated within the municipal area of Bulandshahar. Special Land Acquisition Officer gave an award of Rs. 64,467.22 per Pakka Bigha for the land (Jungle Awwal Aabi), and an award of Rs. 41,791.04 per Pakka Bigha for the land (Jungle Awwal Khaki). Bhagwat Prasad and Har Prasad, sons of Kale Singh were Bhumidhars of plot No. 618, area 2 Bighas, 19 Biswas and plot No. 620 area 10 Biswas. The original tenure holder accepted the compensation under protest and submitted an application before the Special Land Acquisition Officer for making a reference u/s 18 of the Land Acquisition Act for enhancement of the compensation. The original tenure holder claimed compensation at the rate of Rs. 300/- per square yard with solatium and interest. After reference u/s 18 of the Land Acquisition Act, Bhagwat Prasad died on 1.11.1989 and in reference No. 205 of 1985 his widow Smt. Kundaniya was substituted. Smt. Kundaniya widow of Bhagwat Prasad transferred her right of receiving compensation on 29.5.1997 in favour of Kailash Chand son of Ramji Lal. The deed noted that for enhancement of compensation Land Acquisition Reference No. 205 of 1989 is pending in the Court of Additional District Judge and disposal of which is likely to take sufficiently long time and she being in need of money is transferring all her rights to receive compensation or any other amount in favour of Kailash Chand. Similarly Har Prasad also transferred his right to receive compensation and any other amount towards acquisition of Plot Nos. 618 and 620 in favour of Akhtar Husain. On the basis of above registered deeds, the names of Kailash Chand and Akhtar Husain were substituted in the Land Acquisition Reference No. 205 of 1989 and by order dated 7.8.1998, passed by the Additional District Judge under Order 22 Rule 10 C.P.C. the application filed on behalf of Akhtar Husain and Kailash Chand was allowed on 7.8.1998.

2. Before the reference Court both the parties led oral as well as documentary evidences in support of their respective claims. In Land Acquisition Reference Nos. 205, 234 and 235, the claimants relied on earlier judgments of the reference Court dated 19.5.1992 in Land Acquisition Reference No. 256 of 1987, judgment dated 31.5.1994 in Land Acquisition Reference No. 150 of 1992 and judgment dated 31.5.1995 of the District Judge, Bulandshahar in Land Acquisition Reference No. 134 of 1995 and the judgment dated 6.11.1995 in Land Acquisition Reference No. 239 of 1989, Tejpal Singh and others v. State of U.P., Land Acquisition Reference No. 213 of 1989 Atul Kumar v. State of U.P. and others. As already noted above, the First Appeal No. 64 of 1999 and First Appeal No. 106 of 1999 have been filed against the judgment and orders dated 6.11.1995 in Land Acquisition Reference Nos. 239 of 1989 and 213 of 1989.

3. The claimants examined Har Prasad, Nityanand Swaroop and Dhakkan. Food Corporation of India filed ten exemplars in support of their claim and examined Mahabir (S.A.L.O. Amin), Y.P. Dewan, District Manager of Food Corporation of India, S.K. Sharma, Assistant Manager of Food Corporation of India and Mahendra Pal

Sharma Assistant Grade-2.

4. In Land Acquisition Reference Nos. 213 and 239 of 1989 claimants relied on judgments dated 19.5.1992 and 31.5.1994 and examined Shanti Swaroop, Natthu Singh. In Land Acquisition Reference No. 213 of 1989 Pratham Kumar and Atul Kumar appeared as witness for the claimant. Food Corporation of India relied on ten exemplars and examined Mahabir, Y.P. Dewan, S.K. Sharma, Mahendra Pal Singh and Nityanand Swaroop. Food Corporation of India had relied on judgment dated 31.5.1995 delivered by the District Judge, Bulandshahar in Land Acquisition Reference No. 324 Rajbala v. State of U.P. In Land Acquisition Reference No. 234 of 1989 giving rise to first appeal No. 63 and 116 of 2000, original tenure holders transferred their rights to receive compensation in favour of Hem Singh by registered sale-deed dated 7.6.1997 and 6.8.1997. Similarly in Land Acquisition Reference No. 235 of 1989 giving rise to first appeal No. 64 and 1062 of 1999, original tenure holders transferred their right to receive compensation in favour of Kaluva and Vijay by registered sale-deed dated 24.5.1997. In Land Acquisition Reference No. 213 of 1999, the original tenure holder died and in his place his legal heir (son) was substituted. The First Appeal No. 81 of 1996 arises out of Land Acquisition Reference No. 213 of 1989. Similarly in Land Acquisition Reference No. 239 of 1989, original tenure holder died who was substituted by his legal heirs, giving rise to first Appeal No. 82 of 1996.

5. From the facts as noted above, it is clear that first set of appeals i.e. first six appeals arise out of Land Acquisition Reference proceedings, wherein during the pendency of the Land Acquisition Reference u/s 18 of Act, the original tenure holders transferred their rights to receive compensation and other dues in favour of the respondents, whose names were also substituted in record of Land Acquisition Reference proceedings under Order 22 Rule 10 C.P.C. The second set of appeal No. 81 of 1996 and 82 of 1996 are the appeals arising out of Land Acquisition Reference proceedings wherein original tenure holders died and were substituted by legal heirs.

6. We have heard Sri V.B. Upadhyaya, learned Senior Advocate and Sri Prabodh Gaur on behalf of appellants. Sri K.R. Sirohi, learned Senior Advocate and Ashok Tripathi have appeared for respondents in first set of appeals. Sri B.D. Mandhyan, learned Senior Advocate has appeared for the claimants in the second set of appeals.

7. Although several grounds have been taken in the above appeals for challenging the judgment and order of Additional District Judge/District Judge Bulandshahar. However, Sri V.B. Upadhyaya, learned Senior Advocate confined his submissions to the following effect:

1. The claimants, who obtained sale-deeds from the original tenure holders during the pendency of the Land Acquisition Reference are not entitled to receive any compensation since their sale-deeds were void. The original tenure holder could not

have transferred their right to prosecute the reference since the right to receive any compensation in reference was nothing but "mere right to sue". "Mere right to sue" cannot be transferred in view of Section 6(e) of Transfer of Property Act, 1882. Compensation which was not yet determined was only an unliquidated damages which could not have been transferred. He submits that the original tenure holder having transferred their right during the pendency of Land Acquisition Reference, they had abandoned their claim for enhancement of compensation hence, those Land Acquisition References were liable to be dismissed and transferees could not have been allowed to prosecute the Land Acquisition References.

2. The exemplars filed by the Food Corporation of India were wrongly rejected by the Additional District Judge in his judgment and order dated 14.7.1998 on erroneous ground that the sale-deeds have not been proved. It is submitted by Sri Upadhyaya that certified copy of the sale-deeds were admissible in evidence by virtue of Section 51A of the Land Acquisition Act. It is submitted that according to the exemplars submitted by the Food Corporation of India, the award of compensation at the rate of Rs. 175/- per square yard was excessive. Transfers made by the original tenure holders during the pendency of Land Acquisition Reference were unconscionable and hit by Section 23 of the Contract Act. Learned counsel for the appellant have placed reliance on the various judgments of the Apex Court as well as of this Court which shall be referred to while considering the submissions in detail.

8. Sri K.R. Sirohi learned counsel for the claimants in first set of appeals refuting the submissions of learned counsel for the appellants contended that right to receive compensation as well as right to receive enhanced compensation is a property and have rightly been transferred by the original tenure holders in favour of the respondents during the pendency of the Land Acquisition Reference. It is submitted that above mentioned transfers were not hit by Section 6(e) of the Transfer of Property Act. It is submitted that the Additional District Judge after considering the oral evidence as well as documentary evidence on record have determined the compensation at the rate of Rs. 175/- per square yard which does not suffer from any error. It is submitted that the earlier award dated 6.11.1995 in Land Acquisition Reference No. 213 of 1989 and 239 of 1989 which arose from same Land Acquisition notification was relevant and has rightly been relied by learned Additional District Judge for determining the compensation. It is submitted that in the judgment dated 6.11.1995, the Court has enhanced the compensation as Rs. 200/- per square yard. He submitted that exemplars which were filed by the Food Corporation of India were photocopy of the sale-deeds attested by a Public Notary which were rightly ignored by the learned Additional District Judge as certified copy of the sale-deeds were not filed.

9. Sri B.D. Mandhyan, learned Senior Advocate appearing for the claimants in the second set of the appeals supported the judgment and order dated 6.11.1995 of the

District Judge Bulandshahar and contended that the learned District Judge after considering the oral as well as documentary evidence on record has determined the compensation at the rate of 200/- per square yard which does not suffer from any error. He submits that the claimants have been deprived to receive the benefit of enhanced compensation during the pendency of the appeal due to which the claimants have suffered.

10. We have considered the submissions raised by learned Counsel for the parties and perused the record.

11. From the submissions of the learned counsel for the parties following are the main issues, which arise for consideration in these appeals:

1. Whether transfer of right to receive compensation in pending Land Acquisition References is impermissible by virtue of Section 6(e) of the Transfer of Property Act, 1882?

2. Whether the right to receive enhanced compensation, if any is a transfer of right to property or is transfer of "mere right to sue"?

3. Whether a transferees who obtained transfer during the pendency of Land Acquisition References could have prosecuted the Land Acquisition References and are entitled to receive enhanced compensation as per the orders passed by Additional District Judge?

4. Whether the exemplars which were filed by the Food Corporation of India could have been rejected on the ground that they have not been proved?

5. Whether in Land Acquisition Reference No. 205 of 1989 and other connected Land Acquisition References, the earlier judgment dated 6.11.1995 making an award of Rs. 200/- per square yard could have been relied by Additional District Judge in his judgment and order dated 14.9.1998?

6. Whether determination of Rs. 200/- per square yard by judgment and order dated 6.11.1995 by the District Judge, Bulandshahar in Land Acquisition References No. 239 and 213 of 1989 was based on a correct appreciation of material on record?

7. Whether there was sufficient material on record in Land Acquisition Reference No. 205 of 1989 for determination of compensation at the rate of Rs. 175/- per square yard?

8. To what reliefs, the appellants are entitled in this appeal?

12. Issues No. 1, 2 and 3 being interrelated are taken together. From the facts as noted above in first set of appeals, both the parties do not dispute that during the pendency of Land Acquisition Reference, the original tenure holders/heirs of original tenure holders transferred their right to receive enhanced compensation or any other sum in pending references in favour of the respondents to these appeals. It is

also not disputed that names of the transferees on the basis of various sale-deeds executed in 1997 were substituted on the record on an application filed by the transferees under Order 22 Rule 10 C.P.C. and the transferees prosecuted Land Acquisition References. The issue is as to whether the above mentioned transferees were prohibited in view of the provisions of Section 6(e) of the Transfer of Property Act and as to whether transfer of the right to receive enhanced compensation is a transfer of any assets or property or the said transfer is only transfer of a "mere right to sue".

13. The Transfer of Property Act, 1882 was enacted to define and amend certain parts of the law relating to the transfer of property by act of parties. Section 5 defines transfer of property in following manner:

5. Transfer of property defined

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

Section 6 enumerates as to what may be transferred. Section 6(e) which is relevant for the present case is as follows:

6. What may be transferred

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(a).....

(b).....

(c).....

(d).....

(dd).....

(e) A mere right to sue cannot be transferred.

The word "property" has been defined in Law Lexicon, P. Ramanatha Aiyer 3rd Edition in following manner:

"PROPERTY" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit.

Something that is or may be owned or possessed; an estate; intangible assets or intangible right (Section 2(b), T.P. Act (4 of 1882) and Section 2(15), Estate Duty Act (34 of 1963); an exclusive right to possess, enjoy and dispose of; a quality or trait belonging to a person or thing.

Property has been defined as the right and interest which a man has in lands and chattels to the exclusion of others. The term "property" is a generic term of extensive application, and while strictly speaking it means only the right which a person has in relation to something, or that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or objects, it is frequently used to denote the subject of the property, or thing itself which is owned or in relation to which the right of property exists. In the former sense it extends to every species of valuable right or interest, in either real or personal property, or in easements, franchises, and incorporeal hereditaments, and in the latter to everything which is the subject of ownership, or to which the right of property may legally attach, or in other words every class of acquisitions which a man can own or have an interest in.

Property is no men generalissimum, and extends to every species of valuable right and interest including real and personal property easements, franchises, and other incorporeal hereditaments.

14. The compensation is payable consequent to acquisition of land in accordance with the provisions of the Land Acquisition Act. After vesting the land in the State either u/s 16 or after taking possession u/s 17, the owner of a property has no right in the land and his only right is to receive compensation. Right to receive compensation has been statutorily recognised under the Land Acquisition Act. The compensation which is to be received by land owners consequent to land acquisition is a valuable right and is a property within the meaning of Transfer of Property Act, 1882. The Apex Court had occasion to consider nature of right to receive compensation in [Union of India \(UOI\) and Others Vs. Iqbal Singh](#), Under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954. Iqbal Singh a displaced person claimed compensation under the Act. the Apex Court referring to statutory rules of compensation under the said Act held the said right as a right to property and it was held that the compensation is covered by definition of property u/s 6 of the Transfer of Property Act. Following was laid down in paragraph 9:

9. It is true that the Act is intended for payment of compensation for rehabilitation of displaced persons and matters connected therewith. There is, however, nothing in the Act to prevent a claimant from making a gift or a will in respect of the amount he may be entitled to get. No provision of the Act takes away rights of transfer of or inheritance to verified claims. Nothing like an abatement or extinction of a claim by the death of the claimant is provided for by the Act. Inheritance to and devolution of rights of claimants are clearly beyond the purview or scheme of the Act. They are

untouched by the provisions of the Act and are governed by other provisions of law. The statutory rights of claimants to compensation, which crystallize on assessment and verification of claims, are separate rights to property of each claimant covered by the wide definition of "property" in Section 6 of the Transfer of Property Act. They cannot evaporate or vanish suddenly with the death of a claimant. Rules framed u/s 40 of the Act have to be and are those reasonably necessary for carrying out the purposes of the Act. They cannot go beyond the objects for which they can be framed. Those objects are confined to determination and payment of compensation for what was left in Pakistan and do not extend to deprivation of anything acquired in India in capacities other than those relevant for purposes of compensation.

The compensation to be awarded for acquisition of land under the Land Acquisition Act is also a statutory recognised right.

15. There cannot be any dispute that the land owner is entitled for compensation consequent to acquisition of his land. It is settled proposition of law that any transfer of land after issuance of notification u/s 4(1) by the owner of the land is void as against the State and such transferee cannot be allowed to challenge acquisition of the land. However, there are series of the decisions of the Apex Court taking the view that such transferees step into the shoes of owner and is entitled to claim compensation. It is relevant to refer two cases in this regard. The Apex Court in [Union of India \(UOI\) Vs. Shivkumar Bhargava and Others](#), held that a person who purchases land subsequent to the notification u/s 4 may be entitled to claim compensation by virtue of sale-deed in his favour but he cannot be said to be owner. Following was laid down in paragraph 4:

4. The policy of the Government indicates that the person whose land was acquired means the owner as on the date, notification was notified for acquisition, and he alone will be entitled to allotment of alternative site. A person who purchases land subsequent to the Notification may be entitled to claim compensation by virtue of sale made in his favour, namely, the right, title and interest the predecessor had but, he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date on which Notification u/s 4(1) was published. This was the view of this Court in another case while considering the Full Bench Judgment of the Delhi High Court. Under these circumstances, the appeal is allowed. The respondent cannot be considered to be the owner as on the date of Notification u/s 4(1) published in the Gazette. The direction given by the learned Single Judge is accordingly quashed. The Writ Petition stands dismissed. No costs.

16. In U.P. Jal Nigam, Lucknow through its [U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties \(P\) Ltd. Lucknow and others](#), it has been laid down that the purchaser is an person interested in compensation since he steps into the shoes of erstwhile owner. In the said case also after issuance of notification u/s 4 and after possession of the land was taken on 5.7.1973, sale-deed was taken by the respondents on 3.2.1989. Following was laid down in paragraph 4:

4. The next question is: whether the respondent is entitled to compensation and, if so, from what date and at what rate? The original owner has the right to the compensation u/s 23(1) of the Act. Consequently, though the respondent acquired no title to the land, at best he would be entitled to step into the shoes of the owner and claim payment of the compensation, but according to the provisions of the Act. It is settled law that the price prevailing as on the date of the publication of the notification u/s 4(1) is the price to which the owner or person who has an interest in the land is entitled to. Therefore, the purchaser as a person interested in the compensation, since he steps into the shoes of erstwhile owner, is entitled to claim compensation.

17. Similar view was taken by the Apex Court in [V. Chandrasekaran and Another Vs. The Administrative Officer and Others](#), Following was laid down in paragraph 13:

13. On the contrary, Shri S. Gomathi Nayagam, learned Additional Advocate General appearing for the respondents, has vehemently opposed the appeals, contending that the predecessor-in-interest, of the appellants did not raise any objection u/s 5-A of the Act, with respect to such acquisition proceedings at any stage, rather they accepted the compensation granted under protest. To receive an award under protest is a legal requirement for the purpose of making a reference u/s 18 of the Act. The quashing of the declaration u/s 6 of the Act would not automatically apply to the suit land, as it was not the subject-matter of challenge with respect to the acquisition proceedings before Court. The appellants did not make any inquiry whatsoever, with respect to the title of the suit land, though inquiry was sought to be made in relation to the said land, by different persons in altogether different contexts. The report of the high powered committee appointed by the Board itself, is self-contradictory, as they clearly provided that possession had been taken and, in view of the fact that once possession is taken, the said land vests in the State, free from all encumbrances u/s 16 of the Act, the same cannot be divested. Therefore, the question of re-conveying the suit land in favour of the appellants cannot possibly arise. Land can be released from acquisition proceedings either u/s 48 of the Act, or in exercise of powers under the General Clauses Act, 1897, but this can be done only prior to the vesting of the land in the State, which in itself is prior to taking possession thereof. The appellants, being purchasers of the said suit land, after more than 20 years of the Award, cannot challenge the acquisition proceedings at such a belated stage. More so, the vendors were not competent to make any transfer, as none of them had good title over the suit land. Therefore, any and all sale transactions are illegal and void. The sale-deeds executed in favour of the appellants, do not confer upon them, any title. More so, the subsequent purchasers cannot challenge the validity of the land acquisition. The appeals lack merit and are therefore liable to be dismissed.

18. In the recent judgment of the Apex Court in [The Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing](#)

[Society Jaipur and Others](#), referring to earlier judgments of the Apex Court, same proposition was laid down.

19. The above judgments have categorically laid down that purchasers can claim compensation which was payable to original owner of the land. The distinction which has been sought to be made by learned counsel for the appellant is that the present is a case where the land owners have already received compensation and have made a reference for enhancement of the compensation. It is submitted that reference application made u/s 18 for enhancement of compensation is nothing but initiation of litigation for enhancement of the compensation which right having been transferred in favour of the respondents is only a mere right to sue and is hit by Section 6(e) of the Transfer of Property Act. Elaborating his submission, Sri Upadhyaya submits that the compensation if at all payable consequent to the order of the Civil Court is an unliquidated amount which cannot be treated to be a property. The question is as to whether the right to receive compensation consequent to acquisition of land can be demarcated in two parts i.e. (i) right to receive compensation as awarded by Special Land Acquisition Officer u/s 11 and (ii) compensation payable by order of the Civil Court in a reference u/s 18. Whether the amount of compensation received consequent to reference u/s 18 is not a part of compensation, is a question to be answered. The Apex Court had occasion to consider the nature of compensation consequent to award by Special Land Acquisition Officer and compensation which became payable consequent to reference u/s 18 in [Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others](#), Claimants right to receive compensation under Sections 11, 25 and 26 came for consideration in the said case. In the said case, the land of one Rashid Shapoor Chennai was acquired by two notifications in the years 1961 and 1962. Two separate awards were made on 31.1.1963 awarding compensation of Rs. 20,000 which was received by the land owner. Subsequently two more parcels of land were acquired by issuance of notifications on November 1, 1963 and February 1, 1964. After issuance of notification u/s 6(1) the land owner died. Award was made in the year 1965 and total compensation of Rs. 4,29,360/- was awarded which was received by widow and son of the original tenure holder. The legal heirs of tenure holder not being satisfied with the award had requested for reference u/s 18. Civil Court by its order dated 6.3.1967 enhanced the compensation by Rs. 1,90,000 and by Rs. 20,45,000/- respectively. The estate duty was assessed under the Estate Duty Act, 1953 on the basis of enhanced compensation. The notices were issued u/s 59A and Section 61 of the State Duty Act, which notices were challenged in the High Court. The High Court dismissed the writ petition and upheld the notices against which SLP was filed in the Apex Court. It was contended on behalf of the appellant that proceedings for enhancement of compensation was merely a right to litigate which could not be elevated to the status of any asset or property. It is useful to note the above contention raised on behalf of the appellant which has been noted in paragraph 8 of

the judgment in following words:

8. Dealing first with C.A. No. 2205 of 1972, wherein the notice issued u/s 59(a) of the Act has been challenged, counsel for the appellant raised three contentions against the view taken by the High Court. At the outset the counsel pointed out that so far as the E.D. assessment in respect of the, properties passing on the death of Shapoor was concerned, the respondent as well as the High Court had proceeded on the wrong assumption that the acquired lands formed part of the estate of the deceased and passed on his death, for, it was on such basis that the High Court held that having regard to the enhanced compensation granted by the Civil Court for the lands such property (meaning lands) had been under-valued in the original assessment and as such it had escaped assessment to duty. According to him the lands no longer formed part of the estate of the deceased at the date of his death, namely, on May 7, 1965, inasmuch as long prior thereto they had vested in the Government and, therefore, it was merely the right to receive compensation, which, if at all, could constitute property passing on the death of the deceased; but he contended that during the lifetime of the deceased the lands in question had not merely been acquired but even the compensation as determined under the awards made by the Special Deputy Collector was paid to and received by the deceased and hence at the time of the death the initial right to receive compensation had already merged in those awards and the only right which the deceased had was the right to agitate against the correctness of the awards and nothing more and this right to claim further compensation was a precarious right, being merely a right to litigate-a chancy and dicey right, which could not be elevated to the status of any asset or property and as such there was no question of any property having escaped the assessment to duty. It was urged that such a right to further compensation would become property only when the claim would be accepted finally by the Court and till the enhanced compensation became payable by reason of final adjudication of the Court no property could be said to have come into existence and certainly it was not in existence at the date of death. It was pointed out that against the decrees passed by the City Civil Court appeals had been preferred by the Government to the High Court and even the High Court's decision might be carried in further appeal to this Court and, therefore, till the claim was finally accepted by the highest Court no property (enhanced compensation) could be said to have come into existence, Counsel urged that it would run counter to all principles of direct taxation to regard the amount decreed subsequently by the final Court as property having come into existence retrospectively on the relevant date (being the date of death under the E.D. Act and valuation date under the W.T. Act) though, in fact, it did not exist on that date, and in this behalf reliance was placed upon the decision of the Andhra Pradesh High Court in [Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax](#), 658, two decisions of the Calcutta High Court., namely, [Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab](#), and [Commissioner of Income Tax Vs. Hindusthan Housing and Land Development Trust Ltd.](#), two decisions of the

Gujarat High Court, namely, [Topandas Kundanmal Vs. Commissioner of Income Tax, Gujarat](#), and [Addl. Commissioner of Income Tax, Gujarat Vs. New Jehangir Vakil Mills Co. Ltd.](#), and one decision of the [M. Jairam Vs. Commissioner of Income Tax](#), Secondly, counsel contended that assuming that the right to receive compensation survived and it was that right which was being prosecuted by the heirs of Rashid in the Civil Court, the impugned notice had not been issued on the ground that such right to compensation had been under-valued on the earlier occasion and required to be properly valued as at the date of death but the basis on which it was issued was clearly unsustainable in law inasmuch as the respondent had issued it on the assumption that there had been escapement of assessment to duty because the lands in the original assessment had been under-valued in view of the glaring enhanced compensation awarded by the Civil Court and the High Court's decision upholding the issuance of such notice on the wrong basis was liable to be set aside. Thirdly, counsel contended that seeking references under the Land Acquisition Act and their pendency in Civil Court could not be said to be primary facts, non-disclosure of which could amount to an omission or failure on the part of the accountable person resulting in escapement of assessment to duty.

20. On behalf of the respondents the above submission was disputed. The Apex Court after considering the submissions held that the right to receive compensation at market value was a property which constituted an asset. The argument that right to agitate the correctness of determination by Special Land Acquisition Officer being merely the right to litigate was not an asset or property, was not accepted in paragraph 10 which is quoted as below:

10. As stated above, so far as the E.D. assessment in respect of the properties passing on the death of Shapoor was concerned, counsel for the revenue fairly conceded that the lands which were the subject-matter of acquisition proceedings could not be regarded as forming part of the estate of the deceased on the relevant date and could not pass on his death inasmuch as those lands had vested in the Government long prior to his death but the right to receive compensation at market value on the dates of the relevant notifications unquestionably accrued to the deceased which was property and it would be such property that would pass on the death of the deceased. That such right is property is well-settled and if necessary reference may be made to a decision of this Court in [Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa](#), a case under the W.T. Act, 1957, where it has been clearly held that the right to receive compensation in respect of the zamindari estate which was acquired by the Government under the Bihar Land Reforms Act, 1950, even though the date of payment was deferred, was property and constituted an asset for the purpose of that taxing statute. In other words, since the lands were lost to the estate of the deceased before the relevant date, namely, the date of death, it would be the right to receive compensation under the Land Acquisition Act that will have to be evaluated under the E.D. Act. Counsel for the appellant did not dispute this position but he contended that no sooner the

Collector (the Special Deputy Collector herein) made his awards determining the amounts of compensation payable to the claimants u/s 11 of the Land Acquisition Act, the right to receive compensation must be regarded as having merged in the awards, the determination having been made by a statutory public official and what the claimants would be left with thereafter was merely a right to agitate the correctness of such determination and this right to claim further compensation being merely a right to litigate was no asset or property and further that such right would become asset or property only after the Civil Court finally adjudicated upon such claim. The High Court, while negating this contention, has held that the "right to receive extra compensation" was not a separate or different right independent of "the right to receive compensation". It has observed thus:

The right to receive compensation for the lands acquired by the Government, at their market value on the date of acquisition is one indivisible right. There is no right to "receive compensation "and a separate right to receive" extra compensation". The only right is to receive compensation for the lands acquired by the Government, which is the fair market value on the date of acquisition.

The argument of the learned counsel that the right to receive extra compensation accrued when the Civil Court passed the order and not before, does not merit acceptance. The so-called right to receive extra compensation cannot be torn from or considered separately from the right to receive the market value of the lands acquired by the Government. The right accrues to the owner of the lands as soon as the lands are acquired by the Government. It is, therefore, difficult to accept the argument of the learned counsel for the petitioner that a fresh and an independent right to "receive extra compensation "accrued to the heirs of the deceased and that it was owned and possessed by the heirs of the deceased.

21. The view of the High Court that there are no two separate rights i.e. (i) right to receive compensation (ii) right to receive further extra compensation of acquisition of land was approved. It was held by the Apex Court that there is only one right i.e. to receive compensation of land at the rate of its market value on the date of notification. The above proposition was laid down in paragraph 11, which is quoted below:

11. In our opinion, the High Court was right in holding that there are no two separate rights-one a right to receive compensation and the other, a right to receive extra or further compensation. Upon acquisition of his lands under the Land Acquisition Act the claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector u/s 11 and by the Civil Court u/s 26 of the Land Acquisition Act. It is true that u/s 11 the Collector after holding the necessary inquiry determines the quantum of compensation by fixing the market value of the land and in doing so is guided by the provisions contained in ss. 23 and 24 of the Act-the very provisions by reference to which the Civil Court fixes the valuation. It is

also true that the Collector's award is, u/s 12 declared to be, except as otherwise provided, final and conclusive evidence as between him and the persons interested. Even so, it is well-settled that in law the Collector's award u/s 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired. (vide Privy Council decision in *Ezra v. Secretary of State for India*, [1906] ILR 32 Cal 605), and this Court's decisions in [Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another](#), and [Dr. G.H. Grant Vs. State of Bihar](#). If that be the true nature of the award made by the Collector then the question whether the right to receive compensation survives the award must depend upon whether the claimant acquiesces therein fully or not. If the offer is acquiesced in by total acceptance the right to compensation will not survive but if the offer is not accepted or is accepted under protest and a land reference is sought by the claimant u/s 18, the right to receive compensation must be regarded as having survived and kept alive which the claimant prosecutes in a Civil Court. It is impossible to accept the contention that no sooner the Collector has made his award u/s 11 the right to compensation is destroyed or ceases to exist or is merged in the award, or what is left with the claimant is a mere right to litigate the correctness of the award. The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in a Civil Court. That is why when a claimant dies in a pending reference his heirs are brought on record and are permitted to prosecute the reference. This, however, does not mean that the Civil Court's evaluation of this right done subsequently would be its valuation as at the relevant date either under the E.D. Act or the W.T. Act. It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of relevant notification) as on the relevant date (being the date of death under the E.D. Act and valuation date under the W.T. Act). u/s 36 of the E.D. Act the assessing authority has to estimate the value of this property at the price which it would fetch if sold in the open market at the time of the deceased's death. In the case of the right to receive compensation, which is property, where the Collector's award has been made but has not been accepted or has been accepted under protest and a reference is sought or is pending in a Civil Court at the date of the deceased's death, the estimated value can never be below the figure quantified by the Collector because u/s 25(1) of the Land Acquisition Act, the Civil Court cannot award any amount below that awarded by the Collector, the estimated value can be equal to the Collector's award or more but can never be equal to the tall claim made by the claimant in the reference nor equal to the claim actually awarded by the Civil Court inasmuch as the risk or hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of this property as on the date of the deceased's death. The assessing authority will have to estimate the value having regard to the peculiar nature of the property, its marketability and the surrounding circumstances including the risk, or hazard of litigation looming large at the relevant date. The first contention of counsel for the appellant, therefore, fails.

22. Apex Court in [Joginder Singh and Others Vs. State of Punjab and Another](#), held that right to compensation and quantification thereof are two distinct concepts. The right to compensation arises when the land vests in the State, whereas the process of quantification may pass through several stages. Following was laid down in paragraph 3:

3..... In so far that the High Court recognises the appellants' claim to interest from that date the High Court is right, because the right to compensation arises when the land is acquired, and the judgment of the High Court merely represents a stage in the process of quantifying the compensation. The right to compensation and the quantification thereof are two distinct concepts. The right to compensation arises when the land vests in the State while its quantification may be concluded much later. Although the process of quantification may pass through several stages, from the Land Acquisition Officer to the District Judge and thereafter to the High Court, the process of quantification is merely one of computing the value of the land, on the principles enacted in the Land Acquisition Act. All along, however, the right to the compensation so quantified refers back to the date of acquisition. The additional amount of compensation awarded by the District Judge or by the High Court represents the difference between the true value of the land on the one hand and the actual amount awarded on the other which fell short of the true value. The owner of the land is entitled to be paid the true value of the land on the date of taking over of possession. Since, however, the true value is usually determined only after it is computed through a multi-tiered process passing through different levels of a hierarchical judicial structure by the very nature of things it takes sometime before the true value can be finally determined. The fact that it is determined later does not mean that the right to the amount comes into existence at a later date. And if, as the High Court has held, interest at 6 per cent per annum runs from the date possession was taken in the case of compensation determined by the learned District Judge, there is no reason why the same rate should not be applied from the date possession was taken in the case of the enhancement effected by the High Court.

23. The above case also clearly supports the view that in reference proceedings u/s 18 for determination of compensation, correct market value of the land is part and parcel of the same right of compensation to which a owner is entitled. The transferee is also entitled for the same right by virtue of he having stepped in the shoes of owner after transfer.

24. From the above judgment of the Apex Court, it is clear that right to receive compensation covers both the stages i.e. right to receive compensation as awarded by Special Land Acquisition Officer and if determination is disputed, to receive compensation as determined by the Civil Court on a reference u/s 18. the right to receive compensation consequent to determination by Civil Court cannot be said to be "mere right to sue". The right to sue is coupled with right to receive

compensation at the correct market value. The right to sue is attached with right to receive the correct market value of the land acquired and cannot be termed as "mere right to sue". Right to sue is thus attached to a property i.e. compensation which is to be determined by the Civil Court after reference u/s 18. Thus, the transfer made by owners during the pendency of reference u/s 18 was transfer of their rights to receive compensation at the correct market value of the property. In this context, it is relevant to note the contents of one of the sale-deeds executed by land owners to the transferee. The sale-deed dated 19.5.1997 executed by Smt. Kundaniya in favour of Kailash Chand and sale-deed by Har Prasad in favour of Akhtar Hussian dated 28.8.1997 have been brought on record on the paper book vol. No. 4 at item Nos. 12 and 13. The sale-deeds mention that compensation awarded by the land acquisition officer have been received with protest and reference have been made u/s 18 to the Civil Court which is pending consideration in the Court of IV Additional District Judge. The sale-deed recites that all rights to receive compensation is being transferred in favour of the transferee. There cannot be any dispute that original owners have right to receive compensation as awarded by the Civil Court in a reference u/s 18. Transfer of right to receive such compensation is a transfer of a property and cannot be termed to be transfer of "mere right to sue".

25. Learned Counsel for the appellants has placed much reliance on two Division Bench judgments of this Court in [Mahesh Chand Gupta and others Vs. State of U.P. and others](#), [Agra Development Authority Vs. State of U.P. and Others](#), In Mahesh Chand Gupta's case, the writ petition was filed by a transferee from original tenure holders for issuance of a writ of mandamus directing the respondents to pay compensation u/s 28A. The Division Bench construing Section 3(b) of Land Acquisition Act which defines the expression "person interested" held that the said expression has to be given a wide meaning. The Division Bench however, held in the said case that the petitioners of that case were not claiming compensation but claiming redetermination of compensation u/s 28A. The Court held that compensation which may be awarded as a result of determination u/s 28A is different from the compensation which is determined by the Collector u/s 11 or by Court u/s 18. Following was laid down in paragraph 5:

5. Section 3(b) of the Act defines the expression "person interested" and it includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. The expression has been given a wide meaning. However, what the petitioners are claiming is not compensation but a redetermination of compensation u/s 28A of the Act. The compensation which may be awarded as a result of redetermination u/s 28A is different from the compensation which is determined by the Collector u/s 11 of the Act or by the Court on a reference u/s 18 of the Act, Section 28A was inserted by Land Acquisition (Amendment) Act. 1984 (Act No. 64 of 1984) by which major

amendments in Land Acquisition Act, 1894 were Introduced. Para 1 of the statement of object and reasons reads as follows:

With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.

In para 2, the main proposals for amendment are given and clause (ix) reads as follows:

Considering the right of reference to the Civil Court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent land-owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same Notification to seek redetermination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference Court u/s 18 of the Act.

26. The above observation of the Court clearly makes it clear that the said judgment was delivered in context of Section 28A and Court itself has held that a transferee may be a person interested in so far as compensation under Section 11 awarded by Special Land Acquisition Officer or compensation awarded by Civil Court is concerned. The said judgment is thus clearly distinguishable and does not help the appellants.

27. Next judgment on which much reliance has been placed is judgment in Agra Development Authority (supra). In the said case award was given by the Special Land Acquisition Officer. Prior to award, the respondent society had taken different sale-deeds dated 6.6.1991 and 7.8.1991. Reference was filed by the transferee u/s 18. During pendency of the reference, the society further made transfer in favour of respondent Nos. 5 to 11. The reference Court enhanced the compensation against which order, the Agra Development Authority filed a writ petition. In the above context, the Division Bench held that mere right to sue was transferred which is hit by Section 6(e) of the Transfer of Property Act. The Division Bench held that in those cases, the respondents have not purchased any property but only the litigation. The

facts of the case have been noted in paragraphs and 3 which are quoted as below:

2. In First Appeal No. 981 of 2002 the land in question belonged to Bhoop Singh and others who sold their right in the land after notification under Sections 4 and 6 of the Land Acquisition Act in favour of a society respondent No. 3(a) to the petition, represented by its Secretary respondent No. 4 for a sum of Rs. 18,69,904 by 13 different sale-deeds executed on 6.6.1991 and 7.8.1991.

3. The S.L.A.O. gave his award u/s 11 of the Land Acquisition Act on 8.11.1991 awarding Rs. 19,12,366.70 paise which was received by the respondent No. 3(a). Thereafter, the society filed a reference application u/s 18 of the Land Acquisition Act and during the pendency of the reference application, the society transferred all its rights in respect of the property and the litigation in favour of respondent Nos. 5 to 11 for a sum of Rs. 1,35,000. The compensation awarded to respondent Nos. 5 to 11 is Rs. 1,02,99,491. Against this judgment of the Court below the first appeal has been filed.

28. The Division Bench recorded its conclusions in paragraphs 9, 10, 19, 20, 21, 23 and 24 which are quoted below:

9. These facts disclose the scandalous state of affairs prevailing in the District Courts of the U.P. and it is no wonder that the public is disgusted with this state of affairs which smacks of rampant corruption.

10. In our opinion all these appeals deserve to be allowed on the short point that a mere right to sue cannot be transferred as it is hit by Section 6(e) of the Transfer of Property Act. In all these cases the respondents have not purchased any property but only the litigation, which is violative of Section 6(e).

19. In the present case we are of the opinion that what has been transferred is a mere right to sue and not any property or an actionable claim.

20. It is crystal clear that in the present case, the land was not transferred but merely a right to pursue the litigation to recover compensation was transferred. In our opinion, this is clearly prohibited by Section 6(e) of the T.P. Act and therefore, the conveyance deeds in favour of the respondents are wholly invalid and they cannot maintain any claim on their basis.

21. The land had vested with the Government free from all encumbrances when possession of the same was taken as the Government had invoked the provisions of Section 17(1) and (4) of the Act. The deed in favour of the contesting respondent were executed long after the date of vesting, and hence the vendors and vendees were fully aware that the land was not being transferred. Hence such transfers are violative of Section 6(e) of the Transfer of Property Act.

23. First Appeal No. 981 of 2002 has been filed against the judgment and order dated 29.8.2002. In that judgment Issue No. 9 was framed as follows:

Whether the transferees of the original claimants, are entitled to the compensation in place of the original claimant? If so to what extent?

24. The answer to Issue No. 9 has been given by the Court below in the affirmative holding that the right of compensation is a transferable right. However, in view of the reasons expressed by us above we are of the opinion that the aforesaid issue has not been rightly decided and the correct Legal position is that the transferees of the original claimants, have no right to get compensation as a mere right to sue cannot be transferred.

29. Another Division Bench judgment on which reliance has been placed by learned Counsel for the claimants is Division Bench judgment in U.P. Avas Evam Vikas Parishad v. Kanak and others, decided on 26.5.2010 reported in [Allahabad Development Authority Allahabad Vs. State of U.P. and Others](#), The Division Bench in U.P. Avas Vikas Parishad's case also had occasion to consider the same submission that the transfer made by original tenure holders was of mere right to sue which was hit by Section 6(e). Repelling the said submissions, the Division Bench after referring to M/s. Khorshed Shapoor Chennai v. Assistant Controller of Estate Duty Andhra Pradesh (supra) held that transfers were not hit by Section 6(e). Following was laid down in paragraphs 51 to 63.

51. In the second category of first appeals (i.e. FA Nos. 273/94, 274/94, 368/97, 370/97, 263/98 and 555/99), the landowners themselves received the compensation amount as was determined by the Spl. LAO, who did not accept the award and sought for the reference by moving their written applications. During the pendency of the reference proceedings before the Tribunal, they assigned their rights en mass including their right to receive compensation and to prosecute their reference proceedings. Pursuant thereto, these post-award assignees got their names added/substituted by the Tribunal's orders on the basis of the consent given by the assignors and continued the reference proceedings. The Tribunal ultimately awarded a higher amount of compensation to these "post-award assignees".

52. Against the above factual backdrop, the true nature of the rights acquired by the assignees (the claimants in these 14 appeals) for both the stages i.e. "pre-award" and "post-award" needs examination.

53. For this purpose, if we examine the scheme of the LA Act, it reveals that a land "vests" in the Government absolutely free from all encumbrances when its possession is taken either u/s 16 (post-award) or 17(1) (pre-award) of the LA Act. Immediately with the taking of the possession, the rights of a landowner extinguishes who acquires a vested, irrevocable and indefeasible right to receive compensation" as per the LA Act, though it may be actually quantified later on and at different stages. In [Joginder Singh and Others Vs. State of Punjab and Another](#), it was succinctly held that "the right to compensation and the quantification thereof are two distinct concepts. The right to compensation arises when the land vests in

the State while its quantification may be concluded much later. Although the process of quantification may pass through several stages, from the Land Acquisition Officer to the District Judge and thereafter to the High Court, the process of quantification is merely one of computing the value of the land, on the principles enacted in the Land Acquisition Act. All along, however, the right to the compensation so quantified refers back to the date of acquisition."

54. Therefore, it is crystal clear that at the pre-award stage, an ex-owner is entitled to receive compensation per the Collector's award with his valuable right to seek a reference u/s 18 of the LA Act against such award. However, when an award is already made by the Collector which is not accepted by the person interested, he can, at that post-award stage, seek a reference u/s 18 of the LA Act to get his compensation judicially determined by the Reference Court subject to further appeals to the High Court and the Supreme Court. In both these "pre-award" and "post-award" stages, the rights possessed by an ex-owner constitute "property" in view of the binding dictum of Mrs. Khorshed Shapoor Chennai (supra), wherein the contrary contention raised before the Supreme Court was as below (vide para 8):

.....the compensation as determined under the awards made by the Special Deputy Collector was paid to and received by the deceased and, hence, at the time of the death the initial right to receive compensation had already merged in those awards and the only right which the deceased had was the right to agitate against the correctness of the award and nothing more and this right to claim further compensation was a precarious rights, being merely a right to litigate a chancy and dicey right, which could not be elevated to the status of any asset or property and as such, there was no question of any property having escaped the assessment to duty. It was urged there that such a right to further compensation would become property only when the claim would be accepted finally by the Court and till the enhanced compensation became payable by reason of final adjudication of the Court, no property could be said to have come into existence.....

55. The above quoted contention was rejected by the Hon"ble Supreme Court and clearly settled that the rights of an ex-owner at both the "pre-award stage" and the "post-award stage" constituted a property. While dealing with the "pre-award stage rights" (i.e. where land has already vested in the Government but the compensation was not received), it was observed as under (vide para 10):

..... the right to receive compensation at market value on the dates of the relevant notifications unquestionably accrued to the deceased which was property and it would be such property that would pass on the death of the deceased. That such right is property is well-settled and if necessary reference may be made to a decision of this Court in [Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa](#), a case under the Wealth Tax Act, 1957 where it has been clearly held that the right to receive compensation in respect of the Zamindari Estate which was acquired by the Government under the Bihar Land Reforms Act, 1950, even though

the date of payment was deferred, was property and constituted an asset for the purpose of that taxing statute.

(Emphasis added)

56. In Pandit Lakshmi Kant Jha (supra), the contention was that since the amount of compensation payable under the Bihar Land Reforms Act was not determined, therefore, it be excluded from the assets of the assessee for the purposes of the Wealth Tax Act. While rejecting this contention, the Supreme Court ruled:

Assuming for the sake of argument that the amount of compensation payable to the assessee had not been determined by the Compensation Officer by the valuation date, that fact would not justify the exclusion of the compensation payable from the assets of the assessee. The right to receive compensation became vested in the assessee the moment he was divested of his estate and the same got vested in the State in pursuance of the provision of Bihar Land Reforms Act. As the estate of the assessee which vested in the State was known and as the formula fixing the amount of compensation was prescribed by the statute, the amount of compensation was to all intents and purposes a matter of calculation. The fact that the necessary calculation had not been made and the amount of compensation payable to the assessee out of the definition of assets or make it cease to be property." (para 19)

57. Pandit Laxmikant Jha (supra) was, later, followed by the Supreme Court in [Commissioner of Wealth-tax, Kolkata Vs. Smt. Anjamli Khan](#), and [Commissioner of Wealth-tax, Calcutta Vs. U.C. Mehatab](#), . In [U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties \(P\) Ltd. Lucknow and others](#), also, the view taken by the Supreme Court was that the purchaser would be entitled to step into the shoes of the owner and to claim payment of the compensation according to the provisions of the LA Act.

58. It may also be mentioned that the Court of Appeal in England, more than a century back, in its judgment of Mrs. Dawson (supra) also held that "his right to be paid compensation under the notice to treat, which is not simply a right to claim damages for a wrongful act, but is a right to a payment under the terms of a statute and to be ascertained in the way prescribed by the legislature, which is to be regarded as the price payable for the exercise by the undertakes of their statutory powers, and as such is property." This opinion is also clearly in line with the view taken by the Hon^{ble} Supreme Court.

59. Mrs. Khorshed Shapoor Chennai (supra) also clearly lays down that even at the "post-award stage", the rights of an ex-owner constitute a property, if a reference against the award is sought u/s 18 of the LA Act. It was held as below (vide para 11):

In our opinion the High Court was right in holding that there are no two separate rights-one a right to receive compensation and other a right to receive extra or further compensation. Upon acquisition of his lands under the LA Act, the claimant

has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector u/s 11 and by the Civil Court u/s 26 of the LA Act. It is true that u/s 11, the Collector after holding the necessary inquiry determines the quantum of compensation by fixing the market value of the land and in doing so is guided by the provisions contained in Section 23 and 24 of the Act-the very provisions by reference to which the Civil Court fixes the valuation. It is also true that the Collector's award is, u/s 12, declared to be, except as otherwise provided, final and conclusive evidence as between him and the persons interested. Even so, it is well-settled that in law the Collector's award u/s 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired. [Vide Privy Council decision in *Ezra v. Secretary of State for India*, 32 IA 93 (PC) and this Court's decisions in [Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another](#), and [Dr. G.H. Grant Vs. State of Bihar](#), If that be the true nature of the award made by the Collector then the question whether the right to receive compensation survives the award must depend upon whether the claimant acquiesces therein fully or not. If the offer is acquiesced in by total acceptance the right to compensation will not survive but if the offer is not accepted or is accepted under protest and a land reference is sought by the claimant u/s 18, the right to receive compensation must be regarded as having survived and kept alive which the claimant prosecutes in Civil Court. It is impossible to accept the contention that no sooner the Collector has made his award u/s 11, the right to compensation is destroyed or ceases to exist or is merged in the award, or what is left with the claimant is a mere right to litigate the correctness of the award.

60. As to the right of an owner in a reference proceedings, it was also observed by the Supreme Court that "the claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in Civil Court. That is why when a claimant dies in a pending reference his heirs are brought on record and are permitted to prosecute the reference."

61. In view of the above binding decisions of the Supreme Court, it is crystal clear that the "right to receive compensation" in respect of an acquired land both at "pre-award" and "post-award" stages is a "property" and the contrary contention of the Parishad is totally devoid of any substance and is, accordingly, rejected.

62. The contention raised on behalf of the Parishad that the rights assigned by the ex-landowners both at "pre-award" and "post-award" stages were "mere right to sue" and their assignments were hit by Section 6(e) of the TP Act, has also no force. As held above, the rights assigned by the ex-tenure holders constituted a "property" which could not be termed as a "mere right to sue". It may be recalled that Section 6 of the TP Act provides for that the "property of any kind may be transferred except as otherwise provided by this Act or any other law for the time being in force." The exceptions to this general rule of transferability of a property, as stipulated in

Section 6, are enumerated from clauses (a) to (i) but none of these clauses forbids the transfer of the "compensation rights". No other provision of the TP Act or any other law also prohibits its transfer. Rather, Section 8 of the TP Act further envisages the incidences of a transfer by postulating that "unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof." As such, a transfer of a property "Vests" in the transferee the entire interest of the transferor with all legal incidents thereof, unless the parties intend differently. In view of Section 8 of the TP Act, it would be evident that the transfer of the property (namely, the right to receive compensation) vested in the assignees all the rights of the assignor and the assignees, thereby, entered into their shoes with the right to recover the compensation.

63. Further, the word "mere" as employed in Section 6(e) of the TP Act is significant, which depicts the distinction between a "mere right to sue" and a "right to sue". It needs mention that it is now settled law that no legal bar exists to transfer a "right to sue" as one of the incidents attached to a "property" vide [Union of India \(UOI\) Vs. Sri Sarada Mills Ltd.](#), and *Mrs. Dawson v. Great Northern & City Rail Co.* (supra). Thus, the law is that the "right to sue" can be assigned as an incidental, ancillary and subsidiary right in favour of an assignee alongwith the right to recover the assigned property. The assignment of the "right to sue" should necessarily be alongwith the property and not de hors the property.

30. In view of the above two Division Benches taking divergent views, in normal course, we would have made a reference to a Larger Bench to determine the issue but in view of the law laid down by the Apex Court in *M/s. Khorshed Shapoor Chennai v. Assistant Controller of Estate Duty Andhra Pradesh* (supra) and other cases of the Apex Court as noted above, laying down that transferee is entitled to receive compensation, who steps in the shoes of owner and said judgments having not been noticed by the Division Bench judgment in *Agra Development Authority's* case (supra), and We bound by the law declared by the Apex Court in the said case, no useful purpose shall be served by making a reference to Larger Bench. The right to receive compensation both as awarded by Special Land Acquisition Officer as well as enhanced compensation awarded by the Civil Court u/s 18 being integral part of the compensation, it is a right in property capable of transfer. We proceed, following the law laid down by the Apex Court in the above case and do not feel any necessity of making reference to a Larger Bench.

31. Learned Counsel for the appellant has also placed much reliance on the judgment of the Apex Court in [Economic Transport Organization Vs. Charan Spinning Mills \(P\) Ltd. and Another](#), In the said case, first respondent a manufacturer of the cotton yarn took a policy of insurance from the second respondent i.e. National Insurance Company Ltd. The first respondent entrusted a consignment of hosiery cotton yarn to the appellant for transportation and delivery to a consignee

at Calcutta. The goods vehicle carrying the consignment met with an accident and consequently completely damaged. On the basis of a surveyor's certificate issued after assessment of the damage, the second respondent settled the claim of the first respondent for Rs. 447,436/- On receiving the payment, the first respondent executed a Letter of Sub-rogation-cum-Special Power of Attorney in favour of the second respondent. Thereafter, respondents 1 and 2 filed a complaint under the Consumer Protection Act, 1986 against the appellant before the District Consumer Disputes Redressal Commission, claiming compensation of Rs. 447,436/with interest at 12% per annum, for deficiency in service. The claim was allowed by the District Forum. The appeal filed by the appellant before the State Consumer Dispute Redressal Commission as well as revision before the National Forum was rejected. The appellant in the above context filed the Special Leave Petition. The Apex Court in the above context laid down following in paragraphs 16 and 17:

16. If a letter of subrogation containing terms of assignment is to be treated only as an assignment by ignoring the subrogation, there may be the danger of document itself becoming invalid and unenforceable, having regard to the bar contained in Section 6 of the Transfer of Property Act, 1882 (TP Act" for short). Section 6 of Transfer of Property Act, 1882, provides that property of any kind may be transferred except as otherwise provided by that Act or by any other law for the time being in force. Clause (e) of the said section provides that mere right to sue cannot be transferred. Section 130 provides the manner of transfer of actionable claims. Section 3 defines an "actionable claim" as: (i) any debt (other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property) or (ii) any beneficial interest in movable property not in the possession, either actual or constructive of the claimant, which the Civil Courts recognizes as affording grounds for relief. A "debt" refers to an ascertained sum due from one person to another, as contrasted from unliquidated damages and claims for compensation which requires ascertainment/assessment by a Court or Tribunal before it becomes due and payable. A transfer or assignment of a mere right to sue for compensation will be invalid having regard to Section 6(e) of the TP Act. But when a letter of subrogation-cum-assignment is executed, the assignment is interlinked with subrogation, and not being an assignment of a mere right to sue, will be valid and enforceable.

17. The principles relating to subrogation can therefore be summarised thus:

(i) Equitable right of subrogation arises when the insurer settles the claim of the assured, for the entire loss. When there is an equitable subrogation in favour of the insurer, the insurer is allowed to stand in the shoes of the assured and enforce the rights of the assured against the wrongdoer.

(ii) Subrogation does not terminate nor puts an end to the right of the assured to sue the wrong-doer and recover the damages for the loss. Subrogation only entitles the insurer to receive back the amount paid to the assured, in terms of the

principles of subrogation.

(iii) Where the assured executes a Letter of Subrogation, reducing the terms of subrogation, the rights of the insurer vis-a-vis the assured will be governed by the terms of the Letter of Subrogation.

(iv) A subrogation enables the insurer to exercise the rights of the assured against third parties in the name of the assured. Consequently, any plaint, complaint or petition for recovery of compensation can be filed in the name of the assured, or by the assured represented by the insurer as subrogee-cum-attorney, or by the assured and the insurer as co-plaintiffs or co-complainants.

(v) Where the assured executed a subrogation-cum-assignment in favour of the insurer (as contrasted from a subrogation), the assured is left with no right or interest. Consequently, the assured will no longer be entitled to sue the wrongdoer on its own account and for its own benefit. But as the instrument is a subrogation-cum-assignment, and not a mere assignment, the insurer has the choice of suing in its own name, or in the name of the assured, if the instrument so provides. The insured becomes entitled to the entire amount recovered from the wrongdoer, that is, not only the amount that the insured had paid to the assured, but also any amount received in excess of what was paid by it to the assured, if the instrument so provides.

32. The Apex Court in the said case was considering the principle relating to "subrogation". In the above context, the Apex Court held that when a letter of subrogation-cum-assignment is executed, the assignment is interlinked with subrogation, and not being an assignment of a mere right to sue, will be valid and enforceable. In the above case, the arguments that transfer was hit by Section 6(e) of the Transfer of Property Act was negated. The above case is thus, clearly distinguishable and does not help the appellant in the facts of the present case.

33. Section 6(e) of the Transfer of Property Act came for consideration before the Apex Court in [Union of India \(UOI\) Vs. Sri Sarada Mills Ltd.](#), The Apex Court in the said case held that an assignment of property is valid even though that property may be incapable of being recovered without litigation. Following was laid down in paragraph 14:

14. Section 6(e) of the Transfer of Property Act states that a mere right to sue cannot be transferred. A bare right of action might be claims to damages for breach of contract or claims to damages for tort. An assignment of a mere right of litigation is bad. An assignment of property is valid even although that property may be incapable of being recovered without litigation. The reason behind the rule is that a bare right of action for damages is not assignable because the law will not recognise any transaction which may savour of maintenance of champerty. It is only when there is some interest in the subject-matter that a transaction can be saved from the imputation of maintenance. That interest must exist apart from the assignment and

to that extent must be independent of it.

34. In view of the foregoing discussions, we are of the considered opinion that transfers made in favour of the respondents during the pendency of the land acquisition reference before the Additional District Judge/District Judge was not hit by Section 6(e) of the Transfer of Property Act. Transfer of right to receive compensation consequent to reference proceedings was a right in a property i.e. compensation on true market value of the property at the time of notification u/s 4 and cannot be held to be "mere right to sue" The transferees thus after transfer of the right to receive compensation and other sums consequent to the reference proceedings, stepped into the shoes of the original owners and were rightly substituted under Order 22 Rule 10 C.P.C. by the reference Court. The respondents thus, were clearly entitled for the benefits of the order passed by the reference Court. The submissions of the learned counsel for the appellant that the transferees cannot be awarded or given any compensation, cannot be accepted.

Issue No. 4:

35. As noted above, in these appeals two judgments of the Additional District Judges are under challenge. First set of appeals (being appeal No. 62 of 1999) has been filed against the judgment and order dated 14.9.1998 of III Additional District Judge arising out of land acquisition reference No. 205 of 1989 and second set of appeals (First Appeal No. 81 of 1996 and First Appeal No. 82 of 1996) have been filed against the judgment and order dated 6.11.1995 delivered by the District Judge, Bulandshahar in Land Acquisition Reference No. 239 of 1989 and 213 of 1989. In both the above sets of appeals, claimant as well as Food Corporation of India have placed reliance on various documentary evidences including exemplars sale-deeds. Food Corporation of India relied on various sale-deeds which can be divided in two categories. One category of sale-deeds related to true copy of the sale-deeds attested by Public Notary and another category of sale-deeds were certified copy of the sale-deeds. In Land Acquisition Reference No. 205 of 1989, the Additional District Judge took the view that filing of sale-deeds in evidence is not sufficient unless seller or purchaser is produced as witness to prove the sale-deeds. Copies of the sale-deeds filed by the Food Corporation of India were held to be not admissible in evidence, which cannot be made the basis for determining the market price of the land. In Land Acquisition Reference No. 239 of 1989 and Land Acquisition Reference No. 213 of 1989, the Food Corporation of India has also placed reliance on the sale-deeds. The District Judge accepted the sale-deeds on record and while determining the market price of the land, the sale-deeds were considered and referred to. As noted above, both the Land Acquisition References arose out of the same notification issued under Sections 4 and 6 of the Land Acquisition Act. The sale-deeds which were filed by the Food Corporation of India consisted of certified copy of the sale-deeds as well as true copy of the sale-deeds attested by the Public Notaries. Whether certified copy of the sale-deeds filed by the Food Corporation of

India could be treated to be admissible in evidence and relied for determining the market value of the land is a question to be answered. Section 51A of the Land Acquisition Act was inserted in Land Acquisition Act by Act No. 68 of 1984 w.e.f. 24.9.1984, which is to the following effect:

51 A. Acceptance of certified copy as evidence.--In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

36. The Apex Court had occasion to consider the issue regarding admissibility of certified copy of the sale-deed when no witnesses are produced to prove the sale-deed in [Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah](#), In the said case, before the reference Court, the land owner had relied on certified copies of the sale-deeds relating to other land. The reference Court did not take into account those sale-deeds on the ground that no body connected with the transfer involved in those sale-deeds had been examined as witness. The Division Bench of the High Court took the view that those two sale-deeds were required to have been considered for fixing the land value of the acquired land. Against the judgment of the High Court appeal was filed by the State where submission was raised on behalf of the State that High Court ought not to have taken into consideration those documents as nobody connected with the transaction had been examined. The Apex Court relying on Section 51A of the Land Acquisition Act, repelled the submission and held that the documents can be accepted as evidence of the transaction, whereas although mere accepting them as evidence does not mean that Court was bound to consider them as reliable evidence. It is useful to quote paragraphs 6, 7, 13, 14 and 16 of the judgment:

6. Ex. A2 and Ex. A4 are the copies of sale-deed dated 15.11.1983 and 24.3.1984 respectively, which are said to be the instruments relating to small plots of land situated in the vicinity of the acquired land. The reference Court did not take into account those two sale-deeds on the ground that nobody connected with the transaction involved in those deeds had been examined as a witness. But the division bench of the High Court expressed that the reference Court should have taken into consideration those two sale-deeds also for fixing the land value of the acquired land. The High Court took them into consideration and finally reached the conclusion that the value of the acquired land could have been Rs. 75,000/- per acre as on the date of the notification issued u/s 4(1) of the L.A. Act.

7. Smt. K. Amreshwari, learned Senior Counsel for the appellant State contended that the High Court ought not have taken into consideration any of those documents as nobody connected with the transaction mentioned therein had been examined. On the other hand Sri Vidya sagar, learned counsel for the respondent submitted that Section 51A of the Act is intended to enable the Court to consider the transaction evidenced by the sale-deeds. That Section reads thus:

51 A. Acceptance of certified copy as evidence.--In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

13. If the position regarding admissibility of the contents of a document which is a certified copy falling within the purview of Section 57(5) of the Registration Act was as adumbrated above, even before the introduction of Section 51A in the L.A. Act, could there be any legislative object in incorporating the said new provision through Act 68 of 1984? It must be remembered that the state has the burden to prove the market value of the lands acquired by it for which the state may have to depend upon the prices of lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the state officials it was a burden to trace out the persons connected with such transactions mentioned in the sale-deeds and then to examine them in Court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51A was introduced in the L.A. Act. When the Section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document" it enables the Court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence.

14. The words "may be accepted as evidence" in the Section indicate that there is no compulsion on the Court to accept such transaction as evidence, but it is open to the Court to treat them as evidence. Merely accepting them as evidence does not mean that the Court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the Court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned.

16. In the case of Section 51A of the LA Act also the position cannot be different, as it is open to the Court to act on the documents regarding the transaction recorded in such documents. However, this will not prevent any party who supports or opposes the said document or the transaction recorded therein to adduce other evidence to substantiate their stand regarding such transactions. But it is not possible to hold that even after the introduction of Section 51A the position would remain the same as before.

37. Similar view has been reiterated by the Apex Court in *Church of South India Trust Association v. Land Acquisition Officer & Tehsildar*, (2006) 9 SCC 676. Following was laid down by the Apex Court in paragraphs 6 to 9:

6. The High Court observed that only Ext. A-8 and Ext. X-1 had been duly proved by examining a person connected with the transaction recorded in those documents.

In this view of the matter, the High Court did not consider it necessary to consider the remaining documents. Thus, the exhibits produced by the appellant Trust as evidence before the Reference Court, were not looked into and kept out of consideration by the High Court. Mr. Shanti Bhushan, learned Senior Counsel appearing for the appellant Trust submitted that the High Court took this view having regard to the earlier judgments of this Court which had considered the legal implications of Section 51-A of the Act which came into force by way of amendment to the Act in the year 1984. He drew our attention to the judgment of this Court in *Land Acquisition Officer & Mandal Revenue Officer v. Narasaiah* and a later Constitution Bench decision of this Court in *Cement Corpn. Of India Ltd. v. Purya*. Having regard to the law laid down by this Court in the aforesaid decisions, it could not be disputed before us by the parties that registered sale-deeds of exemplars must be admitted in evidence and considered by the Court in accordance with the principles laid down in the aforesaid judgments.

7. Thus, we must conclude that evidence which was admissible u/s 51-A of the Act was kept out of consideration by the High Court and this has vitiated the judgment of the High Court.

8. We do not wish to refer to the facts of the case and the evidence on record lest it may prejudice the case of the parties because we propose to remit the matter to the High Court for a fresh consideration of the material on record in the light of the decisions of this Court. We should not be understood to have expressed any opinion on the merit of the matter and it will be open for the High Court to consider the evidence on record in accordance with law.

9. In the result, the impugned judgment and order of the High Court is set aside and the matter remitted to the High Court for fresh consideration of the appeals and the cross-objections in accordance with law. Since the matter has been considerably delayed, we request the High Court to dispose of the appeals and cross-objections as early as possible.

38. In view of the above discussion, it is clear that certified copy of the sale-deed is admissible in evidence and the reference Court was required to consider the sale-deeds even though no witnesses was produced to prove the sale-deeds. As noted above, in Land Acquisition Reference No. 205 of 1989, certified copy of the sale-deeds filed by Food Corporation of India were not treated to be evidence and were not considered by the reference Court while determining the market value of the land. The reference Court although did not take into consideration certified copy of the sale-deed but has taken into consideration other documentary evidence including the judgment of reference Court dated 6.11.1995 in Land Acquisition Reference No. 239 of 1989 in which Land Acquisition Reference proceedings u/s 18 the market value of the land acquired by the same notification was determined. The appeals have been filed against both the judgments dated 6.11.1995 and 14.9.1998 in Land Acquisition References. The judgment dated 14.9.1998 relies on the

judgment of the reference Court dated 6.11.1995. Normally when admissible documentary evidence i.e. certified copy of the sale-deed has not been considered by the reference Court, the matter ought to be remitted to the reference Court for considering the certified copy of the sale-deeds and then determine the market value of the land but in these two sets of appeals, it is not necessary to remit the matter to the reference Court for determining the market value of the sale-deed due to following reasons:

(i) In Land Acquisition Reference No. 239 of 1989 with 213 of 1989, the Food Corporation of India has placed reliance on the sale-deeds which were also relied in Land Acquisition Reference No. 205 of 1989. The District Judge while deciding the Land Acquisition Reference No. 239 of 1989 had examined the oral as well as documentary evidence including the sale-deeds for determining the market value of the land. Certified copy of the sale-deeds relied by the Food Corporation of India as exemplar for determining the market value were considered by the District Judge in his judgment dated 6.11.1995 and the submissions of claimants were noticed by the District Judge in following words:

(2) Sale-deeds of higher valuation were available to the S.L.A.O. At serial No. 2 worth Rs. 4,00,000/- per bigha as also discussed by the S.L.A.O. In his award. This sale-deed was executed much earlier than the date of notification. The sale-deed filed by the O.P. Related to the vicinity near the Kali Nadi situated at 5 kms away from the land in question and on one side of the city.

(ii) Thus, the District Judge in his judgment dated 6.11.1995 has considered the exemplars relied by the Food Corporation of India and the judgment dated 6.11.1995 having been relied by the Additional District Judge in his judgment dated 14.9.1998, non consideration of the sale-deeds in subsequent judgment dated 14.9.1998 is of no substantial consequence.

39. In view of the foregoing discussions, we are thus of the view that certified copy of the sale-deeds relied by the Food Corporation of India were admissible in evidence which were taken into consideration by the learned District Judge while deciding the Land Acquisition Reference No. 239 of 1989 and were held not to be appropriate for determining the market price of the acquired land. The subsequent judgment dated 14.9.1998 although does not take into consideration certified copy of the sale-deeds but has placed reliance on the earlier judgment of the District Judge dated 6.11.1995. Non consideration of the sale-deeds in subsequent judgment dated 14.9.1998 thus, is of not much consequence so as to necessitate remitting the matter to reference Court for deciding afresh. The issue is decided accordingly.

Issue No. 5:

40. The next issued to be considered is as to whether the Additional District Judge committed any error in relying the earlier judgment dated 6.11.1995 passed in Land

Acquisition Reference No. 205 of 1989 making an award of Rs. 200/- per square yard, is a question to be examined. At the time when judgment dated 14.9.1998 was delivered, the judgment and order dated 6.11.1995 was under challenge before this Court in First Appeal. However, the judgment and order dated 6.11.1995 of the reference Court was not stayed by the High Court rather certain interim orders were passed regarding part payment of the compensation enhanced by the reference Court.

41. The Apex Court had occasion to consider whether the judgment determining the market value of the land is relevant for determining the market value of a land in subsequent proceedings relating to land in the vicinity in [Pal Singh and others Vs. Union Territory of Chandigarh](#), Land Acquisition Reference was decided by the Additional District Judge. The appeals were filed against the judgment of the reference Court. When the first appeal came for hearing, both the parties submitted before the High Court that the issue is covered by the decision in earlier appeal decided by the High Court. Following the earlier judgments, the appeals were decided. The appeal was filed in the Apex Court. The Apex Court in the above case held that the judgment determining the market value of a land in vicinity even though not inter-parties could be admitted in evidence. Following was laid down in paragraph 5:

5. No doubt, a judgment of a Court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not interparties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H.K. Mallick's case (supra) based on the authority of the Judicial Committee of the Privy Council in Secretary of State v. Indian General Steam Navigation and Railway Co., ILR 36 Cal 967, where the Judicial Committee did refuse to interfere with High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it. But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the cases on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgment of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgment then available to them as a previous judgment relating to market value of land in the vicinity. Much less, is there any evidence aliunde adduced by them in the cases on hand to show that due regard being given to all attendant facts and circumstances, it could form the basis

for determining the market value of their acquired lands. Hence, there is No. justification for us to act upon a subsequent judgment of the High Court, cited before us from a Law Report, to enhance the market value of the acquired lands of the petitioners merely because it was claimed on their behalf that the market value of the lands concerned therein could become evidence for determining the market value of the lands concerned in the appeals respecting which the present Special Leave Petitions are filed. Moreover, when judgment is rendered by a Court determining the market value of lands acquired under the Act, by agreement of parties, such judgment becomes final and it would not be open to any of the parties thereto to appeal against that judgment. Hence, these Special Leave Petitions are liable to be dismissed.

42. Thus the judgment of the District Judge dated 6.11.1995 which related to the land acquired by same notification under Sections 4 and 6 out of which Land Acquisition Reference No. 205 of 1989 arose was relevant while determining the Land Acquisition Reference No. 205 of 1989. Hence, the judgment dated 14.9.1998 relying on the earlier judgment of the District Judge dated 6.11.1995 cannot be faulted. The issue is decided accordingly. Issue No. 6:

43. Next issue to be considered is as to whether determination of Rs. 200/- per square yard by the judgment and order dated 6.11.1995 of the District Judge was based on correct appreciation of material on record. The appeal Nos. 81 and 82 of 1996 have been filed against the judgment dated 6.11.1995. The judgment dated 6.11.1995 arose out of Land Acquisition Reference No. 239 and 213 of 1989. Both the parties led documentary and oral evidences. Claimants have placed reliance on three earlier judgments dated 31.5.1994 in Land Acquisition Reference No. 148 of 1992, judgment dated 31.5.1995 in Land Acquisition Reference No. 152 of 1995 and judgment dated 19.5.1992 in Land Acquisition Reference No. 256 of 1987. Food Corporation of India had filed certified copy of ten exemplars sale-deeds. Claimants have examined Shanti Swaroop, Natthu Singh as witness in Land Acquisition Reference No. 239 of 1989, and Pratham Kumar and Atul Kumar in Land Acquisition Reference No. 213 of 1989. Food Corporation of India examined Mahabir (SLAO Amin), Y.P. Dewan, District Manager of Food Corporation of India, S.K. Sharma, Assistant Manager of Food Corporation of India and Mahendra Pal Sharma Assistant Grade-2 and Nityanand Swaroop. Learned District Judge while determining the market value of the land has considered both oral and documentary evidence. It was held by the learned District Judge that the acquired land is situated in the municipal limits of the district Bulandshahar. In east after railway line there was bungalow of the District Judge, Civil Court campus, on the west of the land Chandpur road was passing. Learned District Judge made following observations: It is further argued that no doubt increase of value by use of the acquired land, cannot be looked into, but future potentiality and development cannot be overlooked. Posh locality known as Hari Enclave, Avas Vikas Colony, Yamunapuram

etc have been established nearby the acquired land.

44. The District Judge after considering the submissions of the witness on record has held that the acquired land has both residential and commercial potentiality. The learned District Judge made following observations regarding market value of the land:

Taking into consideration the above citations, and the facts and circumstances of the case it is apparent that the acquired land had both residential and commercial potentiality. It is also apparent from the original record available before the S.L.A.O. that it is immaterial whether the land was used for agricultural purposes prior to the notification. Thus, the materials available on the record may be relied upon by this Court and may be referred to by the claimants. A bare perusal of the original record would show that the compensation awarded by the S.L.A.O. is inadequate and burden lies upon the opposite party to prove that adequate compensation has been paid. Railway line has not/shall not diminish the value of the land as it was most suitable for loading and unloading being situated near the railway station.

Learned Counsel for the claimants has argued that the market value of the land was above Rs. 500/- per sq. yard at the time of notification. He referred to statements of PW 1 and PW 2 stating market value of the acquired land to be Rs. 500/- per sq. yard. He also referred to statements of Dws 1 to 5 who showed their ignorance about market value of the acquired land to be Rs. 500/- per sq. yard at the time of notification. It is admitted fact that the acquired land is situated near Panniji sugar mill on Chandpur road. Village Chandpur is situated about 1 1/2 Kms. from the acquired land. Thus, the statements of PW 1 and PW 2 are un-controverted that the prevailing market rate of the acquired land was more than Rs. 500/- per sq. yard. According to the learned counsel for the claimants, this is the direct evidence and cannot be ignored.

45. During the course of arguments, learned counsel for the appellants have not assailed the findings of the District Judge in so far as appreciation of evidence on record is considered. The challenge as noted above, was confined to the submission that Additional District Judge while delivering the judgment dated 14.9.1998 ignored the certified copy of the sale-deeds on the ground that they have not been proved by the evidence of seller or purchasers. The judgment of the District Judge dated 6.11.1995 determining the market value of the land as Rs. 200/- per square yard is based on appreciation of evidence on record including consideration of exemplar and cannot be faulted. We thus uphold the determination of the market value of the land as Rs. 200/- per square yard as in Land Acquisition Reference Nos. 239 and 213 of 1989.

Issue No. 7:

46. Now comes the issue as to whether there was sufficient material on record in Land Acquisition Reference No. 205 of 1989 for determination of compensation at

the rate of Rs. 175/- per square yard. In Land Acquisition Reference No. 205 of 1989, the claimants relied on three earlier judgments of the reference Court and had examined Har Prasad, Nityanand Swaroop and Dhakkan as their witnesses. Food Corporation of India had relied on ten exemplars sale-deeds and produced witnesses Mahabir (SLAO Amin), Y.P. Dewan, District Manager of Food Corporation of India, S.K. Sharma, Assistant Manager of Food Corporation of India and Mahendra Pal Sharma Assistant Grade-2. The District Judge has considered the statements of witnesses of the claimants as well as of the Food Corporation of India. Issue No. 1 was framed as to what amount of compensation is entitled to be received by the claimants. Certified copy of the sale-deeds dated 3.6.1969, 28.7.1969, 15.9.1969 and 22.9.1969 were filed by the Food Corporation of India. Rest of the sale-deeds attested by the Public Notary were filed. The claimants had relied on the judgment dated 6.11.1995 in Land Acquisition Reference No. 239 of 1989 by which the District Judge has determined the market value of the land as Rs. 200/- per square yard. As noted above, the Land Acquisition Reference No. 239 of 1989 was relating to the same land which was acquired by the same notification giving rise to Land Acquisition Reference No. 205 of 1989. The Additional District Judge has placed reliance on the judgment dated 6.11.1995. The other two judgments relied by the claimants were held not to be relevant. It was categorically held by the Additional District Judge that claimants in Land Acquisition Reference No. 205 of 1989 are also entitled for same amount of market value of the land as determined in Land Acquisition Reference No. 239 of 1989, both lands is being covered by the same notification. It was held by the District Judge that the acquired land was situated within the municipal limits of Bulandshahar. Near the acquired land there is dense Abadi and main commercial center namely; Kala Aam, Civil Court, Central School, Narreni ground, Government bus stand, railway station which places could be reached within two minutes on foot from the acquired land. Acquired land is situated on Pakka road, electricity supply, telecommunication is available to the acquired land. The acquired land is suitable for residential colony. Evidence was also led that acquired land could have been sold at the rate of Rs. 500/- per square yard. Learned District Judge considering the situation of the land and after considering the fact that near the acquired land there was teachers colony, judges compound, had determined the market value of the land. The learned Additional District Judge however, decided to reduce the value by 12.5% from the earlier award and has determined the value as Rs. 175/- per square yard. No attempts have been made by learned counsel for the appellant to challenge the findings recorded by the learned Additional District Judge in appreciating the evidence on record except that Additional District Judge committed error in not referring to certified copy of the sale-deeds which were filed by the Food Corporation of India as exemplars. We are thus, of the view that Additional District Judge has rightly determined the market value of the land as Rs. 175/- per square yard. In view of the foregoing discussions, we are of the view that no ground has been made out to interfere in the judgments of the reference Court dated 6.11.1995 and 14.9.1998 and all the appeals filed

against the said judgments deserve to be dismissed. Consequently all the appeals are dismissed.

Parties shall bear their own costs.