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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 11.11.2019

Judgment Delivered on : 06.12.2019

Writ Appeal No. 07 of 2019

(Arising out of common judgment dated 18/09/2018 passed by the learned Single Judge in WPC No.3154 of 2017)

1. Ashutosh Agrawal S/o Late Shri Kumbhaj Lal Agrawal Aged About 53 Years Residing At Malti Devi Rice Mill, Simga, Balodabazar Bhatapara Chhattisgarh.
2. Kanaklata Agrawal W/o Shri Ashutosh Agrawal Aged About 54 Years Residing At Malti Devi Rice Mill, Simga, Balodabazar Bhatapara Chhattisgarh.

---- Appellants

Versus

1. Union of India Through Its Ministry Of Road, Transport And High Ways, Department of Road, Transport And High Ways, Transport Bhavan, 1, Parliament Street, New Delhi - 110075,
2. National Highways Authority of India, Through Project Director Project Implementation Unit, Raipur., District : Raipur, Chhattisgarh
3. State of Chhattisgarh Through Sub Divisional Officer (Revenue) And Competent Authority Under The National Highways, Act 1956, NH-200, Bhatapara, District Balodabazar And Bhatapara Chhattisgarh.
4. Sub Divisional Officer (Revenue)/ Land Acquisition Officer, Simga Tehsil - Simga, District Balodabazar Bhatapara Chhattisgarh.
5. State of Chhattisgarh Through Secretary, Department of Revenue, Mahanadi Bhawan, New Raipur Chhattisgarh.

---- Respondents

WA No. 9 of 2019

(Arising out of common judgment dated 18/09/2018 passed by the learned Single Judge in WPC No.3158 of 2017)

1. Aatmaram Sahu S/o Shri Samay Lal Sahu Aged About 43 Years R/o Simga, District - Balodabazar-Bhatapara, Chhattisgarh.
2. Dauprasad Sahu S/o Shri Samay Lal Sahu Aged About 36 Years R/o Simga, District - Balodabazar-Bhatapara, Chhattisgarh.
3. Puran Sonker S/o Late Shri Bodhan Sonker Aged About 43 Years R/o Simga, District - Balodabazar-Bhatapara, Chhattisgarh.

---- Appellants

Versus

1. Union of India Through Its Ministry of Road, Transport And High Ways, Department of Road, Transport And High Ways, Transport Bhawan 1, Parliament Street, New Delhi - 110075.



2. National Highways Authority of India Through Project Director Project Implementation Unit, Raipur Chhattisgarh.
3. State of Chhattisgarh Through Sub Divisional Officer (Revenue) And Competent Authority Under The National Highways Act 1956, NH - 200, Bhatapara, District - Balodabazar And Bhatapara Chhattisgarh.
4. Sub Divisional Officer (Revenue)/land Acquisition Officer Simga, Tahsil - Simga, District Balodabazar-Bhatapara, Chhattisgarh.
5. State of Chhattisgarh Through Secretary, Department of Revenue, Mahanadi Bhawan, New Raipur Chhattisgarh.

---- Respondents

WA No. 819 of 2018

(Arising out of common judgment dated 18/09/2018 passed by the learned Single Judge in WPC No.3147 of 2017)

1. Bhagwati Sonker S/o Late Shri Poonaram Sonker Aged About 43 Years R/o Simga, Balodabazar-Bhatapara, Chhattisgarh
2. Sonalal Sonker S/o Late Shri Poonaram Sonker Aged About 37 Years R/o Simga, Balodabazar-Bhatapara, Chhattisgarh
3. Durgesh Sonker S/o Late Shri Poonaram Sonker Aged About 35 Years R/o Simga, Balodabazar-Bhatapara, Chhattisgarh
4. Bhagirathi Sonker S/o Late Shri Poonaram Sonker Aged About 31 Years R/o Simga, Balodabazar-Bhatapara, Chhattisgarh
5. Anusuiyabai Sonker W/o Motiram Sonker Aged About 41 Years R/o Atarjholia, District- Bemetara, Chhattisgarh
6. Sashi Sonker W/o Gajendra Sonker Aged About 39 Years R/o Bhatagaon, District- Raipur, Chhattisgarh
7. Saraswatibai Sonker W/o Heera Sonker Aged About 33 Years R/o Rawanbhata, District- Raipur, Chhattisgarh
8. Dukalheenbai Sonker W/o Late Shri Poonaram Sonker Aged About 60 Years R/o Simga, Balodabazar-Bhatapara, Chhattisgarh

---- Appellants

Versus

1. Union of India Through Its Ministry of Road, Transport And High Ways, Department of Road, Transport And High-Ways, Transport Bhavan, 1, Parliament Street, New Delhi-110075
2. National Highways Authority of India Through Project Director Project Implementation Unit, Raipur, Chhattisgarh
3. State of Chhattisgarh Through Sub Divisional Officer (Rev) And Competent Authority Under The National Highways, Act 1956, NH-200, Bhatapara, District-Balodabazar And Bhatapara, Chhattisgarh
4. Sub Divisional Officer (Revenue)/ Land Acquisition Officer, Simga, Tehsil- Simga, District- Balodabazar-Bhatapara, Chhattisgarh



5. State of Chhattisgarh Through Secretary, Department of Revenue,
Mahanadi Bhawan, New Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Amit S. Agrawal, Senior Advocate with Shri Abhishek Vinod Deshmukh, Advocate
For Respondents/NHAI	:	Shri Navin Shukla, Advocate appears on behalf of Smt. Fouzia Mirza, Advocate
For Respondents/State	:	Shri Sudeep Agrawal, Deputy Advocate General

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

CAV JUDGMENT

Per P. R. Ramachandra Menon, Chief Justice

1. (a) Whether the '**minimum value**', if any, stipulated in the Indian Stamp Act, 1899 (for short, 'the Stamp Act') or the relevant Rules/Guidelines stipulated for fixing stamp duty in respect of the conveyance to be registered reflects the '**actual market value**' to be paid to a land owner, pursuant to the compulsory acquisition of his property ?

(b) In respect of an acquisition under the National Highways Act, 1956 (for short 'the N.H. Act'), read with the relevant provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the 'Act, 2013'), can the market value of the property be fixed simply with reference to the extent/area of land owned by the land owner, as adopted by the Respondents, giving paltry compensation on the basis of the higher extent/area of the land (which is lesser than the compensation in respect of the adjoining lands) resulting in payment of higher compensation to the land owner having lesser extent ?



(c) Does the Scheme of either the N.H. Act or the Act, 2013 envisage a course of action detrimental to the land owner having higher extent of land, than the land owner having exactly similar land situated nearby, but of lesser extent, in turn, providing for unlawful gain to the requisitioning authority / acquisitioning authority ?

(d) Is Clause '3' of Annexure-P/16 Guidelines stipulating for payment of compensation with reference to the extent of land owned by a person is correct and sustainable or if the stipulation therein has been correctly interpreted and applied by the Competent Authority while passing Annexure-P/14 award ?

(e) Can the payment of Rs. 1 crore for 999 sq.mt. of land to one land owner and payment of just Rs. 25 lakhs for a land owner having property of 1001 sq.m. (both exactly identical and of equal importance and potential value situated side by side) be justified, with reference to the area/extent of Rule/Guidelines applied by the Competent Authority; when it stipulates that property having area/extent upto 1000 sq.mts. will be given full market value and only 25% of the market value for land having area/extent of more than 1000 sq.mts. ?

(f) If there is patent arbitrariness in the 'decision making process' and the decision taken, should the party be relegated to the remedy by way of Arbitration and whether the course pursued by the learned Single Judge declining to interfere under Article 226 of the Constitution of India can be justified ; more so, where there is no disputed question of fact ?



- (g) Is the alternate remedy a bar of law, or rule of convenience ?
- (h) What is the Scheme of the N.H Act and does it take away or lessen the right of the land owner to get full compensation payable to him under the 'Act, 2013', on compulsory acquisition of land ?

These are some of the important points formulated to be considered and answered in these appeals.

2. The appeals arise from a common judgment dated 18.09.2018 passed by a learned Judge of this Court declining to interfere with the course of action pursued by the Competent Authority as to fixation of compensation in respect of compulsory acquisition of land, and to set aside paragraph 3 of "Praroop-I" of the Circle Rate Guidelines fixed by the Collector vide Annexure-P/16. Writ Appeal No. 07/2019 arising from Writ Petition (C) No.3154 is treated as the lead case and parties and proceedings are referred to, as given therein, except to the extent where it is separately mentioned, based on the context.
3. We heard Shri Amit S. Agrawal, the learned Senior Advocate on behalf of the Appellants and Mr. Sudeep Agrawal, learned Deputy Advocate General on behalf of the Competent Authority/State and Shri Navin Shukla, learned counsel for the National Highways Authority.
4. The crux of the grievance projected by the Appellants is with regard to sustainability of the Award granting only a sum of Rs.16,97,430/- in respect of 1370 sq.mt. of agricultural land situated on the side of the National Highway, while granting a sum of Rs.65,01,600/- in respect of a



piece of land having an extent of 144 sq.mt. and such other higher amounts in respect of similar lesser extents of properties situated side by side or nearby, wrongly applying the formula for fixing the compensation; which is stated as contrary to the scheme of enactment and the binding precedents rendered by the Apex Court.

5. The sequence of events reveals that an extent of 1670 sq.mt. agricultural land comprised in Survey No.1570/1 belonging to the Appellants was acquired in the year 2011-12 for construction of road / widening of the National Highway 200 (Raipur to Bilaspur Sector) and the Appellants were paid compensation of Rs.11,550/-, which was stated as accepted without any dispute. Later, on re-assessment of the land requirement for construction of road / widening of the National Highway 200, some more portions of the land of the Appellants were also notified to be acquired as per Annexure-P/2 Notification dated 30.06.2016 issued under Section 3A of the N.H Act. The said Notification as well as subsequent paper publication vide Annexure-P/3 showed the different extents of land owned by the Appellants in Survey No.1460/1 - 1370 sq.mt. (agricultural land on the side of the road) and 1460/2 and 1460/4 - total 1950 sq.mt. (both diverted land situated on the side of main road). The Appellants filed detailed objection on 01.10.2016 vide Annexure-P/5. After notifying declaration (Annexure-P/8) dated 03.03.2017 and the paper publication effected vide Annexure-P/9, the Appellants submitted a claim petition (Annexure-P/11) on 31.07.2017, leading to Annexure-P/15 Award dated 02.05.2017. In respect of the Survey No.1460/2 and 1460/4 a total compensation of Rs.8,88,42,500/- was awarded and the same has been



accepted without any protest. However, as against the total compensation of Rs. 6,24,44,600/- claimed by the Appellants in respect of the 1370 sq.mt. in Survey No. 1460/1, the Competent Authority awarded only a paltry sum of Rs.16,97,430/-. At the same time in respect of exactly similar land situated in the same ward and on the side of the main road, the Competent Authority has awarded a much higher compensation, as mentioned already, adopting a "per sq.m. Rate"; while adopting differential treatment based on "per hectare rate" in the case of the Appellants, absolutely without any basis of law and in violation of the vested right of the Appellants under the relevant provisions of the statute and the Constitution. It was subjected to challenge by filing writ petitions before this Court, which however came to be dismissed with reference to the alternate remedy available by way of Arbitration under Section 3G of the N.H. Act. This, according to the Appellants, is not correct or sustainable and hence the challenge.

6. Shri Amit S. Agrawal, the learned Senior Counsel for the Appellants submits that there is no dispute with regard to the applicability of the provisions of the 'Act, 2013' for calculation of compensation for acquisition of the property under the N.H. Act. It has been effected accordingly, though wrongly adopting the Principles/Guidelines fixed by the District Collector for reckoning market value for registration of conveyance in terms of the various provisions of the Stamp Act, which is merely with reference to the actual extent/area of the property involved, which is stated as not correct or applicable for working out the compensation payable for the land on acquisition of the property.



7. To have proper understanding as to the applicability of the relevant statute, a brief history / reference to the objects and provisions of the statute will be relevant. Compulsory acquisition of land for any public purpose and fixation of compensation were governed by the provisions of the Land Acquisition Act, 1894 (for short, 'the L.A. Act'). On issuing Section 4(1) Notification, any person having interest in the land had the right to submit objections on all the relevant aspects, including against the acquisition itself. After completing the procedural formalities including the hearing of objections / declaration under Section 6 and steps under Section 9, an Award has to be passed by the Collector under Section 11 determining the compensation payable as specified under Section 15, with reference to Sections 23 and 24 of the L.A. Act (i.e. matters to be considered for fixing the compensation - Section 23 and matters to be neglected in determining the compensation - Section 24).
8. Considering the necessity to provide the declaration of certain Highways to National Highways and the matters connected therewith, the 'N.H. Act' was enacted by the Parliament, with further amendments effected as amendment Act 16/1997 w.e.f. 21.09.1997. On issuance of Notification under Section 3A of the N.H. Act declaring the intention of Central Government to acquire land for a public purpose as mentioned in sub-section (1), a person interested in the land could object to the 'use' of the land for the 'purpose' mentioned in that sub-Section as stipulated under Section 3C of the N.H. Act. After completion of the procedural formalities, including the declaration under Section 3D, an Award is to be passed by the Competent Authority, which, if not to the satisfaction of the



interested party, it could be challenged by way of Arbitration as provided under Section 3G(5) of the N.H. Act. Both the Competent Authority and the Arbitrator, while determining the amount under sub-sections (1) and (5), as the case may be, shall take into consideration the following aspects :-

"(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the serving of such land from other hand;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interest is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

The circumstances noted under (a), (b), (c), (d) are provided under sub-section (7) of Section 3G of the N.H. Act.

9. Section 3J of the N.H. Act specifically stipulates that nothing in the L.A. Act shall apply to an acquisition under the N.H. Act. But this provision came to be struck off by the Apex Court as per the judgment rendered in ***Union of India and Another Vs. Tarsem Singh and Others***¹ holding that there cannot be differential classification with reference two different statutes, for two different acquisitions for two different purposes, in respect of different portions of the same or similar property. The judgment rendered by a 'Seven-Judges Bench' of the Apex Court in ***Nagpur Improvement Trust Vs. Vithal Rao***² was relied on to explain

¹ (2019) 9 SCC 304

² (1973) 1 SCC 500



the nexus / object theory. As it stands so, the acquisition under the N.H. Act as on date has to be made with reference to the 'Act, 2013' and in particular Section 26 of the 'Act, 2013', for determination of the market value, which reads as follows :

"26. Determination of market value of land by Collector.-(1) The Collector shall adopt the following criteria in assessing and determining the market value of land, namely:-

- (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
- (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
- (c) consented amount of compensation as agreed upon under sub-section(2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,

which ever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.- The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.- For determining the average sale price referred to in *Explanation 1*, one half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.- While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.





Explanation 4.- While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that -

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

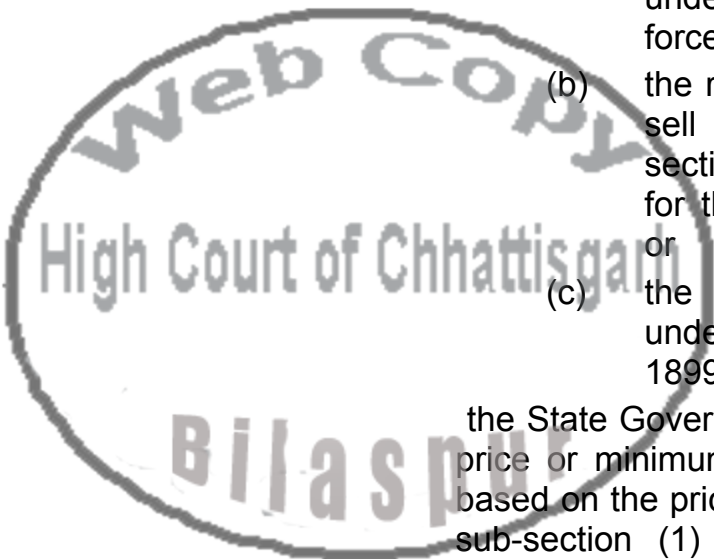
the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas :

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be :

Provided further that the Requiring Body shall in no case compel any owner of land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1) :

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area :

Provided also that the appropriate Government shall ensure that the market value determined for acquisition





of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

10. The learned Senior Counsel for the Appellants submits that, insofar as Section 26(1) of the 'Act, 2013' clearly stipulates that the Competent Authority is bound to reckon the higher market value fixed by adopting the 'three' different criteria mentioned under Clauses (a), (b) and (c) and as such, ignoring the average sale price for similar type of land situated in the nearest village or nearest vicinity/area, as given under Section 26(1)(b) and fixing the same detrimental to the interest of the land owner having higher extent of land by wrongly applying Annexure-P/16 Guidelines issued by the Collector (for the year 2016-2017) for realisation of stamp duty while registering various conveyances under the Registration Act is not correct or proper.
11. It is true that Section 105(1) of the 'Act, 2013' stipulates that the provisions of the said statute shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule - which includes the N.H. Act as well. But as mentioned in sub-section (1), it is ofcourse subject to sub-section (3). Sub-section (3) of Section 105 of the Act, 2013 stipulates the power conferred upon the Central Government to issue modification and direct that any provisions of the 'Act, 2013' relating to determination of the compensation in accordance with the relevant Schedules mentioned therein shall apply to the land acquisition under any enactment under the Fourth Schedule or shall apply with such exceptions or modifications as stated therein. However, Section 3J of



the N.H. Act excluding the operation of the L.A. Act has been struck off by the Apex Court in **Tarsem Singh's case** (supra); by virtue of which, the L.A. Act stands applicable for fixing the compensation under the N.H. Act. But since the 'L.A. Act' has been repelled as per the 'Act, 2013', the latter Act has taken its position by virtue of which, the provisions in the 'Act, 2013' will govern the field for fixing the compensation, in the said circumstance.

12. With regard to the sole reason for declining interference by the learned Single Judge, with reference to existence of alternate remedy by way of Arbitration under Section 3G(5) of the N.H. Act, the learned submits that the Arbitration is governed by the provisions including the Guidelines. The arbitrariness of the Guidelines fixed by the Collector for fixing compensation, merely with reference to the actual area/extent of land of the land owner cannot be changed, as the Arbitrator is having no plenary power in this regard. As it stands so, Arbitration can never be an efficacious remedy; which aspect has been omitted to be noted by the learned Single Judge, despite the specific pleadings raised in the writ petition and pressed before the Court by filing a review (which came to be dismissed holding that there was no error apparent on the face of the record). The learned counsel also points out that alternate remedy is no bar for exercising the discretion of this Court under Article 226 of the Constitution of India. Reliance is sought to be placed in **Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District Calcutta and Another**³ (paragraphs 26 & 27); which principles

³ AIR 1961 SC 372



are reiterated in **Whirlpool Corporation Vs. Registrar of Trade Marks Mumbai and Others**⁴ (paragraphs 15, 16 & 20), **Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others**⁵ (paragraph 7) and **Union of India Vs. Tania Construction Private Limited**⁶ (paragraphs 21, 22 & 33). In support of the case that market value cannot be fixed with reference to the extent/area of the property, the learned counsel seeks to place reliance on **Ali Mohammad Beigh and Others Vs. State of Jammu and Kashmir**⁷ (paragraphs 12 & 13) and a judgment dated 26.09.2013 of the Apex Court in Civil Appeal No. 225 of 2005 (paragraphs 18 & 23) and also **Narendra and Others Vs. State of U.P. and Others**⁸ (paragraphs 11, 15 & 16).

13. Referring to the scope and intent of the Chhattisgarh Preparation and Revision of Market Value Guideline Rules, 2000 framed in exercise of power under Section 75 of the Stamp Act read with Section 47-A of the State amendment, it is pointed out that the Rules operate only in a limited field i.e. with reference to payment of stamp duty in terms of Section 3 of the Stamp Act. Rule 2(e) of the above Rules is extracted below :

"2 (e) "Market Value Guidelines" means the set of values of immovable properties in different villages, Municipalities, Corporations and other local areas in the state, arrived at by the respective committees from time to time in term of these rules."

14. The learned counsel submits that both the L.A. Act and the Stamp Act derive the source of power to legislate as traceable to Entry No. 42 of List

⁴ (1988) 8 SCC 1

⁵ (2003) 2 SCC 107

⁶ (2011) 5 SCC 697

⁷ (2017) 4 SCC 717

⁸ (2017) 9 SCC 426



III of 'Concurrent list'. Although one provision may be quite alright in its field, if it violates the Constitution in other context, it has to be read down, applying the 'doctrine of reading down', as explained by the Apex Court in ***Cellular Operators Association of India and Others Vs. Telecom Regulatory Authority of India and Others***⁹ (paragraphs 50 & 51).

15. Shri Sudeep Agrawal, learned Deputy Advocate General submits that the writ petitions were rightly dismissed by the learned Single Judge as separate and efficacious alternate remedy has been provided under the statute by way of Arbitration under Section 3G(5) of the Act, 1956. The learned counsel for the Government submits that the challenge against the relevant clauses, particularly, Clause '3' of the Annexure-P/16 Guidelines for fixing of compensation is not correct or sustainable and that the norms have been correctly applied by the Competent Authority. It is pointed out that, even according to the writ petitioners /Appellants / Claimants, Clause '7' of the Guidelines would provide a better compensation and if this be the position, "which clause should be applied" was a matter that could to be decided by the Arbitrator, as held by the learned Single Judge, which finding hence does not require interference. It is asserted by the learned counsel that, when there is a complete mechanism to have the grievance considered, Writ Courts are normally not to entertain the challenge in view of the ruling rendered by the Apex Court in ***Harbanslal Sahnia's case*** (supra) {paragraph 7}. It is also pointed out that no violation of any fundamental right is involved, but for such other rights and there is no infringement of any natural justice as

⁹ (2016) 7 SCC 703



well, by virtue of which, the rulings sought to be relied on by the Appellants are not attracted. Reference is made to the dictum of the Apex Court in **Commissioner of Income Tax and Others Vs. Chhabil Dass Agrawal**¹⁰ explaining the scope of Article 226 of the Constitution of India; besides citing the verdict dated 04.10.2019 passed by a Division Bench of this Court in Writ Appeal No. 319 of 2019 in this regard.

16. The learned Senior Counsel appearing for the Appellants submits, in reply, that the challenge raised against Clause '3' of Annexure-P/16 Guidelines in mechanically fixing the compensation with reference to actual extent of land / area of the land involved cannot be quashed by the Arbitrator, for want of power or jurisdiction, but for deciding the issue on the basis of available materials / provisions.

17. After hearing both the sides and also in view of the precedents cited from both the sides, we do not have any doubt to hold that power of this Court under Article 226 of the Constitution of India, which is even wider of the power of the Apex Court under Article 32 cannot be curtailed by any statute. The existence of alternate remedy is more a 'rule of convenience' and the parties would be relegated to pursue such remedy, under normal circumstances. But if special circumstances are involved or whether the proceeding under challenge is *per se* arbitrary and illegal or if it has resulted in total miscarriage of justice, the discretionary power vested in this Court to have the matter considered under Article 226 is always there, to be invoked. In view of the particular nature of challenge raised and the factual position demonstrated by the Appellants, resulting in

¹⁰ (2014) 1 SCC 603



payment of higher compensation to an adjoining / identical property having a lesser extent/area while awarding only a lower amount to the Appellants (merely for the reason that the property involved is having a higher extent) cannot but be held as an arbitrary exercise and we find it appropriate to have it considered by this Court. The question is answered in favour of the Appellants and against the Respondents.

18. With regard to the determination of "Market Value" for the land compulsorily acquired from the persons like the Appellants, the course of action to be pursued is stipulated under Section 26 of the 'Act, 2013' (extracted already). Section 26(1) contemplates 'three different criteria' for determination of the "Market Value" and it says that the amount whichever is higher under the three different circumstances shall be adopted. There is an observation in Annexure-P/14 Award that, as per the relevant norms, a comparative determination of the "Market Value" is necessary and 'whichever higher' has to be taken, simultaneously observing that, as per the materials on record, the 'Circle Rate' stipulated by the Collector as per the Guidelines was higher and hence the same was being adopted. It has been noted that, as per Annexure-P/16 Guideline, in the Nagar Panchayat area as per Form (1), when the area is less than or equal to 0.050 hectare, 100% of the 'sq.mt. rate' has to be adopted; (2) when the area is more than 0.050 hectares but less than or equal to 0.100 hectare, 25% of the sq.mt. rate has to be applied and where the area of entire agricultural land is more than 0.100 hectare, the value would be determined on 'per hectare rate'. Though the Competent Authority has noted that, as per the Guidelines for 2016-17, the



properties situated on the side of the main road in Ward No.12 (Hardevlal Ward) and Ward No.13 (Kankalinpara Ward) were to have value of Rs.21,500 per sq.mt., when it came to be applied to the properties of the Appellants and the nearby properties having equal credentials and potential value, there arose a differential treatment as evident from Annexure-A/3 produced along with the appeal and reproduced below :

**"DETERMINED COMPENSATION IN AWARD
DATED 12.05.2017**

Khasra No.	Type of Land	Location	Ward No.	Acquired Area in Sq.Mtr.	Awarded Compensation	Awarded at rate per Sq.Mtr.
1620/1, 1621/1	Agricultural	On Main Road	13	860	2,68,41,675/-	21500/-
1460/2, 1460/4	Diverted	On Main Road	13	1950	8,88,42,500/-	21500/-
1460/1	Agricultural	On Main Road	13	1370	16,97,430/-	590/-
1463/1G, 1464/1G	Agricultural	On Main Road	13	20	9,03,000/-	21500/-
1617/1	Agricultural	On Main Road	12	144	65,01,600/-	21500/-
1584/4/1	Agricultural	On Main Road	12	190	95,76,000/-	24000/-
1584/3	Diverted	On Main Road	12	200	1,00,80,000/-	24000/-
1584/3	Agricultural	On Main Road	12	1048	12,98,472/-	590/-
1581/4/1	Agricultural	Away from Road	12	2120	12,02,040/-	270/-
1581/8	Agricultural	Away from Road	12	80	25,20,000/-	15000/-
1581/1/4	Agricultural	Away from Road	12	488	1,53,72,000/-	15000/-
1579/1	Agricultural	Away from Road	12	1120	6,35,040/-	270/-
1483/2	Agricultural	Away from Road	12	880	1,88,84,250/-	15000/-
1484/5/1	Agricultural	Away from Road	12	730	1,77,03,000/-	15000/-
1484/5/2	Agricultural	Away from Road	12	300	94,50,000/-	15000/-
1484/5/3	Agricultural	Away from Road	12	480	1,51,20,000/-	15000/-
1484/5/4	Agricultural	Away from Road	12	620	1,68,36,000/-	15000/-
1484/5/5	Agricultural	Away from Road	12	480	1,51,20,000/-	15000/-
1484/5/6	Agricultural	Away from Road	12	530	1,61,28,000/-	15000/-
1484/5/7	Agricultural	Away from Road	12	480	1,51,20,000/-	15000/-
1484/5/8	Agricultural	Away from Road	12	480	1,51,20,000/-	15000/-
1484/5/9	Agricultural	Away from Road	12	560	1,63,64,250/-	15000/-
1484/5/10	Agricultural	Away from Road	12	400	1,26,00,000/-	15000/-



19. From the above, it is evident that the agricultural property of the Appellant comprised in Survey No. 1460/1 having an extent of 1370 sq.mts. and situated on the side of the main road and in Ward no. 13 (Kankalinpara Ward) is awarded only a compensation of Rs.16,97,430/- (adopting 'per hectare' rate) but the nearby property having an extent of just 20 sq.mts. is awarded a compensation of Rs.9,03,000/- (adopting sq.mt. rate of Rs.21500/- per sq.mt.). Similar discrepancy in awarding much higher compensation in respect of similar agricultural lands situated nearby, on the side of main road in Ward No.12 (Hardevlal Ward) {Rs.65,01,600/- for an extent of 144 sq.mt. and Rs.95,76,000/- for an extent of 190 sq.mt.} is evident from the Table, which demonstrates the glaring inconsistency in fixing the compensation. To say the least, the Competent Authority has reckoned an area upto 1000 sq.mts. situated on the side of the main road to be granted a compensation @ Rs.21500/- per sq.mt.; whereas in the case of the Appellants having similar property of 1370 sq.mts., a meagre amount of Rs.16,97,430/- has alone been awarded, adopting 'per hectare rate', which is nothing but arbitrary in all respects.
20. Now the question to be considered is whether it is by virtue of a mistake in Rule (3) of the Annexure-P/16 Rules/Guidelines or because of wrong interpretation or application of the same by the Competent Authority, without any proper application of mind.
21. In order to answer the above question, we find it appropriate to extract the guiding principles in respect of 'Market Price of Immovable Properties' notified for the year 2016-17 as applicable to the Office of the Sub-Registrar, Simga, District - Baloda Bazar - Bhatapara (C.G.) (as involved



herein), which provides separate rates in respect of 15 wards comprised therein, as approved by the Central Evaluation Board. The 'heading' of the 'Form - One' in respect of Ward No.12 (Hardevlal Ward) and Ward No.13 (Kankalinpara Ward) and the relevant data are given as below :

प्रारूप—एक

नियम—7 देखिये

नगर पंचायत सिमगा

नगरीय संपत्तियों के बाजार मूल्य मार्गदर्शक सिद्धांत वर्ष 2016—17
कार्यालय उप पंजीयक सिमगा

दर प्रति वर्ग मीटर रूपये में

सरल क्रमांक	कंडिका क्रमांक	मोहल्ला / कालोनी / सोसायटी	संपत्ति मार्ग पर स्थित होने की स्थिति में 20 मीटर तक दर	संपत्ति मार्ग से अंदर होने पर दर (जिसमें मुख्य मार्ग से 20 मीटर पश्चात् दर भी सम्मिलित है)
1	2	3	4	5
1	xxx	xxx	xxx	xxx
2	xxx	xxx	xxx	xxx
3	xxx	xxx	xxx	xxx
4	xxx	xxx	xxx	xxx
5	xxx	xxx	xxx	xxx
6	xxx	xxx	xxx	xxx
7	xxx	xxx	xxx	xxx
8	xxx	xxx	xxx	xxx
9	xxx	xxx	xxx	xxx
10	xxx	xxx	xxx	xxx
11	xxx	xxx	xxx	xxx
12	हरदेवलाल वार्ड			
	1	मंगतू ढाबा से महिन्द्रा ट्रेक्टर	21500	12500



		शोरूम होते हुए जे.डी. फेमिली ढाबा तक (रायपुर-बिलासपुर रा.रा.मार्ग)		
	2	जे.डी. फेमिली ढाबा से कुलवंत सिंह पेट्रोल पम्प होते हुए भाटिया पेट्रोल तक (रायपुर-बिलासपुर रा.रा.मार्ग)	24000	15000
	3	भाटिया पेट्रोल पम्प से शारदा मेडिकल स्टोर तक (रायपुर-बिलासपुर रा.रा.मार्ग)	26500	17900
	4	शारदा मेडिकल से ओम तम्बोली के मकान श्रृंगारिका जनरल स्टोर्स तक (सिमगा-तिल्दा रोड)	15500	9500
13	कंकालिनपारा वार्ड			
	1	पाईप फेक्ट्री से दाऊ बाड़ी होते हुए हाजी शकूर के फार्म हाऊस तक (रायपुर-बिलासपुर रा.रा. मार्ग)	21500	11900
	2	हाजी शकूर के फार्म हाऊस से बस स्टैण्ड होते हुए न्यू अजमेरी हॉटल तक (रायपुर- बिलासपुर रा.रा.मार्ग)	24000	15000
	3	न्यू अजमेरी हॉटल से भाटिया ढाबा होते हुए गजरू सेन के मकान तक (रायपुर- बिलासपुर रा.रा.मार्ग)	26500	17200
	4	बेमेतरा चौक (दोनों तरफ) भाटिया हॉटल एवं शुक्ला हॉटल से वार्ड के अंतिम छोर तक (सिमगा-बेमेतरा रोड)	15500	9800

Verbatim English translation is as given below :

**"Form - One
(see Rule - 7)
Nagar Panchayat Simga
Market Price of Urban Properties Guiding Principles 2016-17
Office of the Sub-Registrar - Simga
Rate in Rupess per Square meter**

Ward	Para No.	Mohalla (Neighbourhood) / Colony / Society	Rate till 20 meters in the event of the property being situated on road	In the even of the property being inwards from road (which also includes the rate of beyond 20
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				meters from the main road)
1	2	3	4	5
1	xxx	xxx	xxx	xxx
2	xxx	xxx	xxx	xxx
3	xxx	xxx	xxx	xxx
4	xxx	xxx	xxx	xxx
5	xxx	xxx	xxx	xxx
6	xxx	xxx	xxx	xxx
7	xxx	xxx	xxx	xxx
8	xxx	xxx	xxx	xxx
9	xxx	xxx	xxx	xxx
10	xxx	xxx	xxx	xxx
11	xxx	xxx	xxx	xxx
12	Hardevlal Ward			
	1	From Mangtu Dhaba (motel) to Bhatiya Perol Pump via Mahindra Tractor Showroom (Raipur - Bilaspur National Highway)	21500	12500
	2	From J.D. Family Dhama (motel) to Bhatiya Petrol Pump via Kulwant Singh Petrol Pump (Raipur - Bilaspur National Highway)	24000	15000
	3	From Bhatiya Petrol Pump to Sharda Medical Store (Raipur - Bilaspur National Highway)	26500	17900
	4	From Sharda Medical to the house of Om Tamboli, Shringarika General Stores (Simga Tilda Road)	15500	9500
13	Kankalinpara Ward			
	1	From Pipe Factory to Haji Shakoor's farm via Dua <i>Badi</i> (croft) (Raipur - Bilaspur National Highway)	21500	11900
	2	From Haji Shakoor's Farm House to New Ajmeri Hotel via Bus Stand (Raipur-Bilaspur National Highway)	24000	15000
	3	From New Ajmeri Hotel to Gajru Sen's House via Bhatia Dhaba (motel)	26500	17200



	4	From Bemetara Chowk (both sides), Bhatia Hotel and Shukla Hotel to the end of the ward. (Simga - Bemetara Road)	15500	9800
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22. All the properties of the Appellants involved herein are situated in Ward No.13 (Kankalinpara Ward) and admittedly, the said properties are situated on the side of the main road. Since the agricultural properties on the side of the main road in Ward Nos. 12 & 13 are to fetch a market rate of 21500/- per sq.mt., as accepted by the Competent Authority itself to grant the compensation, whether the calculation effected in the case of the Appellants is correct, is the next question.

23. To resolve the issue in this regard, we find it appropriate to extract the relevant provisions of Annexure-P/16 Guidelines (Clause 3)

“3—नगर पंचायत के नगरीय क्षेत्र में कृषि भूमि के भू-खण्डों के विक्रय होने पर बाजार मूल्य की गणना के लिये उपबंध :-

(एक)	जब क्षेत्र 0.050 हेक्टेयर से कम या बराबर हो	:	उस क्षेत्र के प्लॉट दर का 100 प्रतिशत
(दो)	जब क्षेत्र 0.050 हेक्टेयर से अधिक हो परन्तु 0.100 हेक्टेयर से कम या बराबर हो	:	उस क्षेत्र के प्लॉट दर का 25 प्रतिशत

टीप :- 1) 0.100 हेक्टेयर से अधिक कृषि भूमि का विक्रय होने पर संपूर्ण रकबे पर उस क्षेत्र के लिये निर्धारित प्रति हेक्टेयर दर से बाजार मूल्य की गणना की जायेगी ।

2) नगर-पंचायत क्षेत्र में किसी एक दस्तावेज के द्वारा, एक से अधिक खसरा नम्बर की भूमियों का विक्रय किये जाने पर यदि कुल रकबा 0.100 हेक्टेयर से अधिक हो तो भूमि की किस्म के अनुसार समस्त रकबे का मूल्यांकन हेक्टेयर दर से किया जावेगा ।

उदाहरण:- उपरोक्त दर्शित स्लैब की परिधि में 0.100 हेक्टेयर कृषि भूमि विक्रय होने पर गणना इस प्रकार जावेगी :-



(यदि किसी क्षेत्र का मूल्य 200/- रुपये प्रति वर्गमीटर हो तो गणना इस प्रकार की जावेगी)

(एक) 0.050 हेक्टेयर तक : 100 प्रतिशत (506 व.मी. x 200) = 101200
 (दो) 0.050 हेक्टे. से अधिक : 25 प्रतिशत (506 व.मी. x 50) = 25300
 0.100 हेक्टे. तक

कुल बाजार मूल्य = 126500

Verbatim English translation is as given below :

"3. Provision for calculation of market value of plots of agricultural land within urban areas of Nagar Panchayat :-

(One)	When area is more than or equal to 0.050 hectare	:	100% of the plot rate of that area
(Two)	When area is more than 0.050 hectare but less than or equal to 0.100 hectare	:	25% of the plot area of that area

Note :-1) In case of sale of agricultural land more than 0.100 hectare the market value shall be calculated for the total area in accordance with rate fixed for per hectare of the concerned area.

2) In case of sale of lands of more than one Khasara No. with the help of one document within Nagar Panchayat area, if the total area is more than 0.100 hectare, the evaluation of total area shall be done in accordance with the type of land in hectare.

Example :- In circumference of aforementioned slab, if 0.100 hectare agricultural land is sold out, then the market value shall be calculated in the following manner :-

(If value of any area is Rs.200/- per square meter, the rate shall be calculated in following manner)

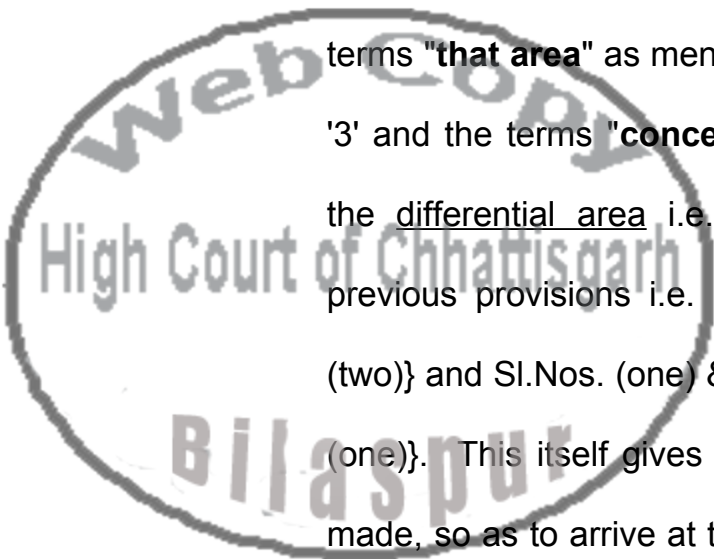
(One) upto 0.050 hectare : 100 percent (506 sq.mt. x 200) = 101200
 (Two) more than 0.050 : 25 percent (506 sq.mt x 50) = 25300
 hectare upto 0.100
 hectare.

Total Market Value = 126500

24. After specifying the way in which the compensation has to be fixed, with reference to the 'area/extent', it has been sought to the illustrated by giving an example. It is very evident from the illustration, that in respect of a property having higher area/extent, valuation for the purpose of



computation of 'stamp duty' has to be made separately for the different extents and added together. When the area is less than or equal to 0.050 hectare, 100% of the plot rate of that area has to be worked out/reckoned and when the area is more than 0.050 hectares, but less than or equal to 0.100 hectares, 20% of the plot rate of 'that area' is to be worked out/reckoned. Further, as per Note 1), where the land is more than 0.100 hectares, the market value shall be calculated for the total area as per the rate fixed 'per hectare' of the 'concerned area'. Here, the terms "**that area**" as mentioned in Sl.No. (two) of the Table under Clause '3' and the terms "**concerned area**" in Note 1) thereunder, only denote the differential area i.e. the remaining area already covered by the previous provisions i.e. Sl.No. (one) {where it is a case under Sl.No. (two)} and Sl.Nos. (one) & (two) {where it is a case covered by not Sl.No. (one)}. This itself gives a clear idea as to how the calculation is to be made, so as to arrive at the total market value of the property comprised in different segments under the very same head. Instead of effecting 'slabwise computation' of the market value and adding it together as above, the Competent Authority simply adopted the 'per hectare rate' to the property in question having a total extent of 1370 sq.mt., merely for the reason that it was above 1000 sq.mts. It ought to have been worked out separately i.e. compensation payable for the first 1000 sq.mts. at the 'circle rate' and in respect of the area beyond that, i.e. 370 sq.mts. at the 'per hectare rate' and adding them together, to arrive at the total market value of the land having an extent of 1370 sq.mt.





25. Similar terms as given in Clause '3' for determination of 'market value' under given contexts are specified in Annexure-P/16 Guidelines in respect of other cases - Clauses 1, 2, 4, 5 & 6 as well. In all cases, the Guidelines give examples as to how the calculation is to be made separately and to add them together, to fix the total 'market value'. This exercise has not been followed by the Competent Authority, but for effecting the calculation in just one go, at 'per hectare rate' as the property was having more than 1000 sq.mts. This resulted in the arbitrary and unintended consequence of resulting in higher compensation to a meagre extent of similar land, while granting only meagre compensation in respect of exactly similar land, having higher extent/area.

26. With regard to applicability of Clause '7' of Annexure-P/16 Guidelines, it reads as follows :

"7- मुख्य सड़क से 20 मीटर की गहराई/दूरी तक स्थित भू-खण्डों को मुख्य सड़क से लगी मानकर मुख्य सड़क के लिये निर्धारित दर अनुसार प्रति वर्ग मीटर में बाजार मूल्य की गणना की जावेगी । परन्तु यह भी कि यदि कोई पक्षकार 20 मीटर की गहराई/दूरी से अधिक गहराई तक की भूमि क्रय करता है तब संपूर्ण भू-खण्ड को मुख्य सड़क से लगा हुआ मानकर बाजार मूल्य की गणना की जावेगी"

Verbatim English translation is as given below :

"7 - Market value of plots situated upto 20 mtrs. away/deep from the main road shall be calculated treating the same as situated on the main road at the rate of per square meter fixed for the main road. But if any party purchases land more than 20 meter away/deep, in such case market value of the entire plot shall be calculated treating that the entire plot is situated on the main road."



The above Clause clearly shows that the property, though not situated on the side of the main road, but if located within 20 mtrs. will be treated as having the same value, as if it were situated on the side of the main road and the value will be calculated @ per sq.mt., as fixed for such properties having proximity to the main road, for the purpose of computing the stamp duty. The second limb of Clause '7' says that, even in a case where the party transects / purchases such land having a higher extent (which goes beyond 20 mtrs.), the market value will be fixed, treating the entire plot as situated on the side of the main road. It is only a provision to safeguard the revenue and nothing more.

27. This can be viewed from another angle as well. There is no dispute with regard to the credentials or the potential value of the property of the Appellants and the discrimination / classification is made only with reference to its higher extent, of being 1370 sq.mts., which made the Competent Authority to adopt the 'per hectare rate'. The Competent Authority has reckoned 'per sq.mt. rate' of Rs.21500/- in respect of exactly similar lands, where the land was having an extent of upto and less than 1000 sq.mts. There is no dispute for the Competent Authority that the Appellants would have obtained higher compensation at the 'per sq.mt. rate' of 21500/-, if it was of or less than 1000 sq.mts. as reflected from Annexure-A/3 Table (extracted already) paid to similar small extents of land. If the Appellants had conceded that they do not require any compensation for 370 sq.mts. (which is in excess of 1000 sq.mts.), the Appellants also would have obtained much higher compensation, than



the extent as now awarded. As such, despite being in a better position with possession and ownership of exactly similar land of 1000 sq.mts. + something more (370 sq.mts.), the Appellants came to be denuded of getting their vested right for compensation for the first 1000 sq.mts. on the basis of 'per sq.mt. rate' of Rs.21500/-, besides the compensation payable for the additional / excess / differential extent of 370 sq.mts. at the 'per hectare rate'. This position alone has been demonstrated in the 'examples' given in Annexure-P/16 Guidelines, pointing out the necessity to work up the value separately under different slabs and to have them added together for fixing the total market value, to work out the stamp duty payable. This vital aspect was unfortunately omitted to be noted by the Competent Authority while applying the principle / guidelines in a wrong and misconceived manner. We are of the firm view that a 're-calculation' is necessary in the aforesaid lines, working out the market value slabwise i.e. at the rate of 21500/- per sq.mt. for the first 1000 sq.mts and at 'per hectare rate' for the extent beyond it; to be added together. We hold that the fixation effected by the Competent Authority is not correct or sustainable, being totally arbitrary and perverse in all respects.

28. The minimum value insisted to be reckoned for the purpose of the stamp duty payable under the Stamp Act and shown the relevant Rules / Guidelines framed in this regard for the purpose of registration of the conveyance deed, need not necessarily reflect the actual market value always. This is obviously for the reason that, the purpose of fixation of



minimum value for registration is to prohibit the evasion of stamp duty and to have it realized to the requisite / optimum extent. As very much evident from the terminology used, it is only the minimum value and is not the actual value. No registration or conveyance will be permitted below the minimum value notified to be reckoned for working out the stamp duty. It does not mean that a *bonafide* purchaser can't show the actual value in a deed of conveyance, which may be of much higher than the minimum value and pay the requisite stamp duty accordingly. When such a property is compulsorily acquired, either under the provisions of the N.H. Act or under the provisions of the 'Act, 2013', the Competent Authority cannot say that the compensation will be paid only on the basis of 'minimum value' notified for registration of the conveyance deed, as above. Fixation of minimum value does not and cannot disable a land owner from getting the actual market value, if the same is proved as of much above the minimum value.

29. The points formulated / questions framed by this Court in the opening paragraph stand answered in terms of the discussion made above. In the said circumstances, we set aside the Award as well as the judgment passed by the learned Single Judge and direct the Competent Authority to re-work the compensation payable to the Appellants with reference to the undisputed facts, like the nature and credentials of the property as compared to other similar lands, though of smaller extent and fix it by separate slabs, with reference to the different rates for different extents and add them together, and grant all consequential benefits. The above



exercise shall be completed and the amount due shall be released to the Appellants as expeditiously as possible, at any rate within 'three months' from the date of receipt of a copy of this judgment.

30. The appeals stand allowed. No cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra

