

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.586-591 OF 2017

RAM AVTAR. ETC.

APPELLANT(S)

VERSUS

THE STATE OF HARYANA & ORS.

RESPONDENT(S)

WITH

C.A. No. 3245-3246/2017

C.A. No. 1444-1445/2017

C.A. No. 3247-3248/2017

C.A. No. 2384-2385/2017

C.A. No. 3174-3175/2017

C.A. No. 1447-1448/2017

C.A. No. 592-594/2017

C.A. No. 2322-2329/2017

C.A. No. 298-299/2017

C.A. No. 321-325/2017

C.A. No. 3244/2017

C.A. No. 906-910/2017

C.A. No. 625/2017

C.A. No. 288-290/2017

C.A. No. 617/2017

C.A. No. 848/2017

C.A. No. 660/2017

SLP(C) D 28083/2016

SLP(C) No. 28384/2014

SLP(C) No. 1139/2015

SLP(C) No. 1132-1133/2015

SLP(C) No. 15571/2016

SLP(C) No. 17524-17536/2016

ORDER

C.A. Nos.586-591/2017, C.A. Nos. 3245-3246/2017, C.A. Nos. 1444-1445/2017, C.A. Nos. 3247-3248/2017, C.A. Nos. 2384-2385/2017, C.A. Nos. 3174-3175/2017, C.A. Nos. 1447-1448/2017, C.A. Nos. 592-594/2017, C.A. Nos.2322-2329/2017, C.A.Nos.298-299/2017, C.A. Nos. 321-325/2017, C.A. No. 3244/2017, C.A. No. 617/2017, SLP(C) D 28083/2016, SLP(C) No. 28384/2014, SLP(C)No.1139/2015, SLP(C) Nos. 1132-1133/2015, SLP(C) No. 15571/2016

1. The question that arises for consideration is whether we have to follow the previous order passed by this Court in the acquisition, in which the only point raised before this Court was with respect to the grant of compensation annual increase cumulatively at the rate of 12% increase per year for 10 years and 3 months. This court had granted cumulative increase instead of flat as it was granted in the case of *Asharfi Devi* and passed the following order in SLP [C] Nos.20531-65/2014 - *Narbadi Devi & Ors. etc. v. State of Haryana & Ors. etc.* on 22.8.2014 :

“Issue notice.

Mr. Narender Hooda, learned senior counsel appearing for the respondents in all the matters states that he is ready to argue the matters finally. Even learned counsel for the petitioner in all the matters is ready to make the submissions on the merits of the case.

From the impugned judgment of the High Court, it transpires that the High Court has followed the judgment of this Court in *Asharfi* and others Vs State of Haryana and others 2013(5) SCC 527 and has given increase at the rate of 12%. This was the demand of the petitioners herein which has been accepted following the ratio in *Asharfi* Case(supra). To the extent there is no quarrel. However, it is pointed out by the learned counsel for the petitioner that in *Asharfi* case (supra),

yearly increase of 12% was granted cumulatively and not at flat rate. *This position as contained in Asharfi case (supra) could not be disputed by Mr. Narender Hooda, learned senior counsel for the State.* Accordingly, the 12% increase granted by the High Court shall be worked out on cumulative basis.

The special leave petitions stand disposed of accordingly.”

(emphasis

supplied)

2. Facts in short giving rise to the appeals unfold that the land of the appellants had been acquired under the same notification dated 13.11.2002 for the purpose of Sectors 3 and 5 at Hissar, Haryana.

3. Land Acquisition Collector had determined the compensation for two categories of land at the rate of Rs.6,00,000/- (Rupees Six Lacs) per acre and for other at the rate of Rs.5,00,000/- (Rupees Five Lacs) per acre. Aggrieved thereby, the land owners sought reference under section 18 of Land Acquisition Act, 1894, the reference court determined the compensation at the rate of Rs.670 per square yard. The High Court has determined the compensation at the rate of Rs.724.75 per square yard on the basis of the judgment in *“Asharfi and others Vs State of Haryana and others”* 2013(5) SCC 527.

4. Learned counsel for the appellants had relied upon the decision of this Court in *Narbadi Devi* case (Supra) in which this Court has granted an increase of 12% per annum cumulatively relying upon the decisions in *Asharfi & Ors.* (Supra). Though the High Court granted 12% increase but not on a cumulative basis.

5. The learned counsel for the State has refuted the submission on the ground that the compensation awarded is already on the higher side, he has attracted our attention to various sale transactions. In the case of *Asharfi Devi* the determination of value was made in the year 1993. By taking 1983 as the base year, this court has determined the market value by applying 12% cumulative increase per annum. Learned counsel has also submitted that considering the comparable sale deeds executed before issuance of notification under section 4 of the Act compensation would not come to what has been awarded by the High Court. Thus no case for further enhancement is made out taking the base year of 1983 as done in the case of *Asharfi Devi* for determining compensation in the year 2002.

6. We are required to examine whether we can base our judgment on the basis of *Asharfi Devi's* case and grant 12%

cumulative increase. In the case of *Asharfi Devi v. State of Haryana*, this court has dealt with different notifications with respect to different lands in the various districts of the State of Haryana. In the case of *Sailak Ram* section 4 notification it was issued on 7.9.1992 and in district of Faridabad the notification under section 4 was issued on 26.5.1981. The Reference Court fixed the compensation at Rs.45 per sq.yd. The High Court had determined the compensation at Rs.220 per sq. yd. This court had awarded the compensation at Rs.350 per sq.yd. giving annual increase cumulatively in the case of *Asharfi Devi*. In *Asharfi Devi's* case as several cases were decided together, for determination of compensation in *Asharfi Devi* case reliance was placed by this Court on a decision of *Mukesh Kumar v. State of Haryana & Ors.* -- SLP {C} No.19668/2007, same was decided along with *Asharfi Devi's* case itself. In the case of *Mukesh Kumar*, High Court had allowed yearly flat increase of 12% taking 1983 as base year. This Court observed that value in *Mukesh Kumar* should have been arrived at by making annual increase on a cumulative basis. This Court enhanced compensation to Rs.325 per sq.yd. applying cumulative increase to 1983 rate as for the notification issued in the year 1992. For determination in the case of *Asharfi Devi* this Court

has relied on *Mukesh Kumar* and the compensation at Rs.350 per sq.yd. has been granted for notification in 1993.

7. The Reference Court had discussed about following exemplars :

(i) Sale deed P2 dated 7.2.1991 for 8 kanal land sold at the rate of Rs.12 lakhs per Acre equivalent to Rs.247.93 per sq.yd.

(ii) Sale deed P-18 dated 8.11.2001 in which 9 Marlas of land was sold for Rs.1,11,000 @ Rs.19,73,280 per acre i.e. Rs.407 per sq.yd. As per this comparable sale the value on the date of notification i.e. 13.11.2002 in this case was determined at Rs.455.84 per sq.yd.

(iii) Sale deed P-24 dated 8.6.2001 of 11 Marlas abutting acquired land sold for Rs.250,000 @ Rs.36,36,320 per acre, value per sq.yd. comes to Rs.751 and giving an increase of 12%, the Tribunal worked out the price as on the date of notification 13.11.2002 at Rs.882 per sq.yd.

(iv) Sale deed P-25 dated 18.5.1992 one kanal land, sold for Rs.4,23,500 i.e. Rs.33,88,000 per acre i.e. Rs.700 per sq.yd. giving 12% annual increase for 10 years 6 months price would be Rs.2300.84 per sq. yd.

(v) Sale deed P-31 dated 8.8.1995 relating to 4 Marlas of land, sold for Rs.28,000 equivalent to Rs.420,000 per acre, Rs.231 per sq.yd. after giving the increase from 1992 to 2002. The Tribunal determined the price as on the date of notification under section 4 in the case at Rs.525.34.

(vi) Sale deed P-34 dated 11.5.1992 for land ad-measuring 3 ½ Marlas sold for Rs.28,000 i.e. @ Rs.1280,000 per acre, value of per sq.yd. comes to Rs.264, giving an increase of 12% from 1992 to 2002, the price was determined at Rs. 580.

8. The Tribunal observed on the basis of 3 exemplars for the highest price Ex. P-1, P2 and P25 and determined the price as on the date of notification under section 4 in this case on 13.11.2002 at Rs.917.25 per sq.yd. without any deduction. After deduction it would come to less than what has been awarded by the High Court. However the Tribunal has held it was bound by the decision of the High Court and relied upon on a decision in the judgment P-22 in which compensation was assessed at Rs.235 per sq.yd. and has given 12% increase for 9 years and 3 months to arrive at the figure of Rs.670 per sq.yd. that was awarded.

9. The High Court in the impugned order has relied upon the decision in *Asharfi Devi* and has taken it as basis for determination of the compensation that the compensation determined taking 1983 as base year for a notification in 1993 in the case of *Asharfi Devi* at Rs.325 per sq.yd. and gave 12% flat increase and determined the value at Rs.724.75. In this case the appellants are again before us for its enhancement on that basis for a notification issued in 2002 after 20 years, of the base year 1983, for cumulative increase annually. This would tantamount to accepting 1983 as base year for giving cumulative increase for 20 years in spite of availability of relevant comparative sale exemplars.

10. This court has laid down umpteen number of times that when sale instances are available, reliance cannot be placed on determination made on an award or a judgment in which notification had been issued more than 10 years before. In the case of *Asharfi Devi* which has been made the basis reliance had been placed on *Mukesh Kumar's* case in which the base year taken was 1983 and then 12% increase was given cumulatively and again in *Asharfi Devi*, decision had been followed in which the price had been determined in 1993 on the basis of year 1983. Again for the notification issued in 2002

after 20 years same pattern had been followed by the High Court which in our opinion was not a permissible mode of determining compensation. This would amount to act mechanically and total abdication of judicial function. If that is made permissible for all the time to come there is no necessity for any adjudication later on. This Court in *The General Manager, Oil and Natural Gas Corpn. Ltd. V. Rameshbhai Jivanbhai Patel & Anr.* (2008) 14 SCC 745 has observed that mode of determining the market value by providing appropriate escalation over the market value is permissible when there is no evidence of any contemporaneous sale transaction or acquisition of comparable lands in the neighbourhood. The sale transaction/acquisition precedes by only a few years that is up to 4 or 5 years. Beyond that it may be unsafe to act upon it and it is unsafe and unreliable standard where the gap is larger. To determine the market value in the year 1992 on a transaction of 1970 or 1980 may have many pitfalls. Relevant portion is extracted hereunder:

“12. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions

of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the `rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial

layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage *to be deducted* to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes *unreliable*. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.”

11. This Court in *Lal Chand v. Union of India & Anr.* (2009) 15 SCC 769 has relied upon the aforesaid decision in *O.N.G.C.’s* case and observed thus:

“18. The appellants contend that some lands in Rithala were acquired under Section 4(1) notification dated 24.10.1961 for the planned development of Delhi and compensation was awarded at the rate of Rs. 7000 per bigha. Their contention is that as the present acquisition is in the year 1981, the market value of the acquired land should be determined with reference to the market value determined for the 1961 acquisition

by providing an appropriate increase at the cumulative/ compounded rate of 12% per annum.

19. ... Even if the relied upon transaction is only two to three years prior to the acquisition, court should, before adopting a standard escalation, satisfy that there were no adverse circumstances. For example, if the acquisition is of this year 2009, it may not be possible to determine the market value, based on the 2007 or 2008 prices, by providing an increase of 12% or 15% per year, as the newspaper reports disclose that the price of immovable properties in most areas of the country came down by more than 40% to 50% from the 2007 rates. Caution is therefore necessary before increasing the price with reference to the old transactions. Be that as it may. It is clear that the award made in regard to a 1961 acquisition will not be of any use for determining the market value for a 1981 acquisition.

36. The learned Counsel for DDA contended that market value determined by the High Court required to be reduced with reference to the market value of the acquired lands in the neighbouring village. He relied upon the decision of this Court in *Union of India v. Ram Phool* : 2003 (10) SCC 167, which related to acquisition of 5484 bighas of land in revenue village Poothkalan on the outskirts of Delhi, in regard to which the preliminary notification was issued on 11.12.1981. The reference court had, after referring to several sale transactions, determined the market value as Rs. 15,700/- per bigha in one case and Rs. 18,500/- per bigha in another case. On appeal by the claimants, the High Court excluded several sale transactions relied upon by the reference court as not inspiring confidence, and on the basis of a solitary transaction dated 10.9.1981 in regard to a small area of one bigha, increased the market value to Rs. 30,000/- per bigha. This Court held that the High Court erred in relying upon a single sale deed relating to a small extent of one bigha to determine the market value of a large extent of 5484 bighas. It further held that if that sale deed

was excluded, there was no other evidence to support the increase in compensation made by the High Court. Consequently, this Court set aside the increase awarded by the High Court and restored the market value determined by the reference court. The learned Counsel for DDA submitted that a rate in that range (Rs. 15700 to Rs. 18500 per bigha) should therefore be adopted for the Rithala lands also. But that decision relating to Poothkalan is not of any assistance with reference to the Rithala acquisitions for the following reasons:

(i) It is now well settled that sale transactions or awards relating to neighbouring village will not be relied on when acceptable evidence by way of contemporaneous sale transactions or awards are available in regard to the very village where the acquisition took place. (Where there are no contemporaneous sale deeds or awards relating to the same village, then the sale transactions or awards of the same period relating to the neighbouring village can be considered provided there is evidence to show that the acquired lands and the lands covered by the exemplar deeds of the neighbouring village are similarly situated).

(ii) The decision in *Ram Phool* itself lays down as follows: 'Contemporaneous award no doubt is a useful guide for every court to determine the market value but that award must be taken into evidence in accordance with law by giving an opportunity to the other side for rebutting the same and that has not been done in the case on hand.' In this case while the learned Counsel for respondents contended that the lands at Rithala and Poothkalan were similar, the learned Counsel for the appellants submitted that the acquired lands in Rithala were far more valuable than the lands in Poothkalan and that Rithala was nearer to the city when compared to Poothkalan. Neither stand is supported by any evidence or material on record. In the absence of any evidence, we cannot assume that acquired lands in Rithala and lands acquired in Poothkalan were similarly situated.

(iii) In *Ram Phool*, this Court set aside the decision of the High Court and restored the award of reference court, not because it came to the conclusion that the market value was only Rs. 15,700/-/Rs.18,500/- as decided by the reference court, but because the only piece of evidence that was relied on by the High Court to fix the market value of Rs. 30,000/- was found to be not reliable and no other evidence was available. Therefore, decision of this Court in *Ram Phool* was not a positive determination of market value of Poothkalan lands, but the rejection of a determination of a higher value by High Court for want of acceptable evidence.”

12. In *Subh Ram & Ors. v. Haryana State and Anr.* (2010) 1 SCC 444 with respect to relevancy of other acquisition in the same village the court has to apply the mind as to whether land is similar or not even if there is difference of only 1 or 2 years. This Court has laid down thus :

“14. Learned Counsel for the appellants lastly contended that having regard to two judgments of Punjab & Haryana High Court relating to acquisition in the same village in *Azad Singh v. State of Haryana and Anr.* RFA No. 2 of 1991 decided on 30.9.1997 and *Kabul Singh and Ors. v. Haryana State and Anr.* RFA No. 556 of 1994 decided on 13.5.1999 the compensation to be awarded should not be less than Rs. 68/- (plus 25%) per sq.yd. In both cases Rs. 68/- per sq. yard was awarded as compensation for acquisitions of land in village Jharsa in the years 1982 and 1983. It was also submitted that as the subject acquisition was two years later in 1984, at least 25% should be added to Rs. 68/- per sq.yd. But the map of the area produced by the appellants show that the lands which are the subject matter of those two decisions are more advantageously situated as they adjoin National Highway No. 8 and

are next to well developed areas (like Hidayatpur Cantonment/ etc.) whereas the acquired lands are farther away from National Highway No. 8 and any developed area. Hence, the said decisions, though relating to Jharsa village, are not of any assistance.”

13. This Court again in *Special Land Acquisition Officer v. Karigowda & Ors.* (2010) 5 SCC 708 has laid down that every case has to be examined on its own facts and courts are expected to scrutinise the evidence led by the parties in such proceedings.

“21. We may notice that Part III provides for procedure and rights of the claimants to receive compensation for acquisition of their land and also states various legal remedies which are available to them under the scheme of the Act. Under Section 18 of the Act, the Reference Court determines the quantum of compensation payable to the claimants. Section 23 provides guidelines, which would be taken into consideration by the court of competent jurisdiction while determining the compensation to be awarded for the acquired land. Section 24 of the Act is a negative provision and states what should not be considered by the court while determining the compensation. In other words, Sections 23 and 24 of the Act provide a complete scheme which can safely be termed as statutory guidelines and factors which are to be considered or not to be considered by the Court while determining the market value of the acquired land. These provisions provide a limitation within which the court has to exercise its judicial discretion while ensuring that the claimants get a fair market value of the acquired land with statutory and permissible benefits. Keeping in view the scheme of the Act and the interpretation which these provisions have received in the past, it is difficult even to

comprehend that there is possibility of providing any straitjacket formula which can be treated as panacea to resolve all controversies uniformly, in relation to determination of the value of the acquired land. This essentially must depend upon the facts and circumstances of each case. It is settled principle of law that, the onus to prove entitlement to receive higher compensation is upon the claimants. In the case of *Basant Kumar and Ors. v. Union of India and Ors.* (1996) 11 SCC 542 this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimant, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in the case of *Gafar v. Moradabad Development Authority* (2007) 7 SCC 614 and the Court held as under:

As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award.

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay

fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinize the evidence led by the parties in such proceedings.”

19. When the comparable sale deed evidence had been adduced on record in this case in close proximity of time of preliminary notification issued under section 4 of the Act that as a matter of fact it was safe evidence that was required to be relied upon. When we consider sale instances P18 dated 8.11.2001 as per that giving 12% increase the value would come to Rs.455.84 per sq.yd. on 13.11.2002. As per sale deed P24 dated 8.6.2001 a small plot was sold at Rs.751 per sq.yd. in the same area giving 12% increase from the date of preliminary notification under section 4 in this case the value determined by the Tribunal was Rs.882 per sq.yd. The sale deed P2 of 1992 by which the value was determined at Rs.2300 after giving 12% increase from 1993 to 2002 cannot be taken into consideration because it was executed more than 10 years before and was a singular such transaction relating to small area 1 kanal land, it was for commercial or residential purpose. When we take into consideration the other sale deed of 1995 closer in point of time giving 12% increase till the date of notification under section 4 issued in this case the value

comes to Rs.525.34, other sale transactions of 1992 for Rs.264 per sq.yd. as per exemplar P34. As per P1 executed in 1991 the value was Rs.247 per sq.yd. There was singular transaction of Rs.700 per sq.yd. on 18.5.1992 of P2 for higher value. The Tribunal has observed average price on the basis of 4 sale deeds of P1, P2, P4 and P25. The value in November 2002 comes to Rs.917.25 per sq. yd. There has to be certain deduction made of at least 1/3<sup>rd</sup> from the same for development and smallness. The price would come to what was determined by the Reference Court. Thus the Reference Court has rightly determined the value in this case but by applying a wrong method. As per the comparative sale exemplars no case was made out for further enhancement as made by the High Court.

20. The High Court has increased compensation by relying on *Asharfi Devi* case by giving 12% increase. We find that when sale deed evidence was available and in the case of *Mukesh Kumar* from 1983 to 1992, 12% cumulative increase was given and the price was determined on that basis on the basis for notification issued in 1992 in the said case that could not have been followed by giving cumulative increase w.e.f. 1993 to 2002. This scenario cannot go in perpetuity. This mode is not

permitted. The current sale transactions have to be taken into consideration. Said scenario cannot be permitted to prevail for all the time to come by ignoring current price.

21. *Narbadi Devi's* case related to acquisition in question. However, the only question raised in the appeal by the counsel for the appellant was that they were satisfied about the base rate but only cumulatively increase should have been given to them from 1993 to 2002 as that was given in the case of *Asharfi Devi* for 1983 to 1993 and the said position was not disputed by the counsel for the State of Haryana on the basis of that concession and factual situation that a cumulative increase had been given by this Court in *Asharfi Devi* case it was so granted. When judgment is based on concession it could not be said to be binding.

22. In *M.S.M. Sharma v. Sri Krishna Sinha & Ors.* AIR 1959 SC 395 this Court has considered that the decision in *Gunnupati Keshavram Reddy v. Nafisul Hasan* AIR 1954 SC 636 and held that the decision in *G.K. Reddy* (supra) which was based on a concession of the counsel cannot be regarded as a considered opinion on the subject. This Court in *M.S.M. Sharma* (supra) observed thus :

“Our decision in AIR 1954 SC 636, also relied on by learned advocate for the petitioner, proceeded entirely on a concession of counsel and cannot be regarded as a considered opinion on

the subject. In our judgment the principle of harmonious construction must be adopted, and so construed, the provisions of Art.19(1)(a), which are general, must yield to Art. 194(1) and the latter part of its cl.(3) which are special.”

23. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta* AIR 1967 SC 997 this Court also considered the question of a decision based upon concession. This Court considered a decision of the Privy Council in *Province of Bombay v. Municipal Corporation of the City of Bombay* (1945-46) 73 IA 271 and observed :

“10. .... The decision made on a concession made by the parties even though the principle conceded was accepted by the Privy Council without discussion, cannot be given the same value as one given upon a careful consideration of the pros and cons of the question raised. Further, no argument was raised before the Privy Council that the Common law of England had legal force only in the said three Presidency towns and not in the rest of the country, for that case happened to be one that arose in the City of Bombay. The observations of the Privy Council that the principles obtaining in England also governed the Crown in India are, rather wide. Nor any argument was raised before the Privy Council making a distinction between substantive branches of common law and mere rules of construction. It is not possible to predicate what the Privy Council would have said if that distinction had been placed before it. Be that as it may, this decision cannot be taken as finally deciding the question that is raised before us.”

24. While said case was decided it was not urged whether the determination made by the High Court was proper, how it was determined. Whether High Court could have based the decision on the basis of *Asharfi Devi* case basing decision on 1983 for acquisition made in 2002 in view of the comparable sale

instances available in this case. The High Court has granted much more compensation than the entitlement as per the comparable sale instances and judgment not being inter parties cannot be said to be binding and the method of valuation adopted by the High Court was not questioned in *Narbadi Devi* case, that cannot create estoppels though the plea of discrimination has been raised but compensation has to be in accordance with law. There is no concept of negative equality, a mistake or illegality cannot be perpetuated. There is no concept of negative equality even in the matter of enforcement of the decision as held by this Court in *Basawaraj & Anr. v. Special Land Acquisition Officer* (2013) 14 SCC 81 :

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise,

Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: *Chandigarh Administration and Anr. v. Jagjit Singh and Anr.* (1995) 1 SCC 745, *Anand Buttons Ltd. v. State of Haryana and Ors.* (2005) 9 SCC 164; *K.K. Bhalla v. State of M.P. and Ors.* (2006) 3 SCC 581; and *Fuljit Kaur v. State of Punjab* (2010) 11 SCC 455).”

25. In *Fuljit Kaur v. State of Punjab & Ors.* (2010) 11 SCC 455, this Court again considered the concept of negative equality created by the decision thus :

“12. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Administration and Anr. v. Jagjit Singh and Anr.* AIR 1995 SC 705; *Sneh Prabha v. State of U.P. and Ors.* AIR 1996 SC 540; *Jalandhar Improvement Trust v. Sampuran Singh* AIR 1999 SC 1347; *State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr.* AIR 2000 SC 2306; *Union of India and Ors. v. Rakesh Kumar* AIR 2001 SC 1877; *Yogesh Kumar and Ors. v. Government of NCT, Delhi and Ors.* AIR 2003 SC 1241; *Union of India and Anr. v. International Trading Company and Anr.* AIR 2003 SC 3983; *Anand Buttons Ltd. v. State of Haryana and Ors.* AIR 2005 SC 565; *K.K. Bhalla v. State of M.P. and Ors.* AIR 2006 SC 898; and *Krishan Bhatt v. State of J&K* (2008) 9 SCC 24).”

26. This Court in *State of Orissa & Anr. v. Mamata Mohanty* (2011) 3 SCC 436 has considered the question of negative equality thus :

“56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Admn. v. Jagjit Singh* AIR 1995 SC 705; *Yogesh Kumar v. Government of NCT of Delhi* AIR 2003 SC 1241; *Anand Buttons Ltd. v. State of Haryana* AIR 2005 SC 565; *K.K. Bhalla v. State of M.P.* AIR 2006 SC 898; *Krishan Bhatt v. State of J&K* (2008) 9 SCC 24; *Upendra*

Narayan Singh (supra); and *Union of India v. Kartick Chandra Mondal* AIR 2010 SC 3455).

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in *Hotel Balaji and Ors. v. State of A.P.* (1993) Supp (4) SCC 536 observed as under: (SCC p. 551, para 12)

“12. ... ‘2....To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in *Pierce v. Delameter* (A.M.Y. page 18:

“a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors”.”

(See also *Ministry of Information & Broadcasting, In re* (1995) 3 SCC 619; *Nirmal Jeet Kaur v. State of M.P.* (2004) 7 SCC 558; and *Mayuram Subramanian Srinivasan v. CBI* AIR 2006 SC 2449).”

27. We find that in the case of *Narbadi Devi* as the question of method of determining compensation was not urged for consideration, this Court granted 12% cumulative increase as done in *Asharfi Devi* case but when we consider the comparable sale evidence in the instant case and even if we give cumulative increase thereon in our opinion compensation awarded by the High Court is higher than what could have been awarded. It requires no further enhancement.

28. The previous judgment in *Narbadi Devi* does not operate as res judicata in the instant case. It was not inter parties and we cannot bind State of Haryana by the said order as it was based on a concession and its decision could not be said to be an authority for the point which was not urged, considered and decided by this Court. Thus the submission raised by learned counsel about discrimination cannot be accepted. There is no concept of negative equality as settled by several decisions of this Court. Thus we are not inclined to take base year as 1983 for determination of compensation in 2002. The appeals/petitions are devoid of merit and deserve dismissal and are dismissed. Parties to bear their own costs.

Order in Civil Appeal Nos.906-910/2017, CA No.625/2017, CA Nos.288-290/2017, SLP [C] Nos.17524-17536/2016, CA No.848/2017 & CA No.660/2017

In these appeals/petition learned counsel additionally urged that the High Court should not have deducted the interest for the period of delay in filing of appeal. We find that there was enormous delay in filing appeals. It appears that they were filed as an afterthought. The High Court has still condoned delay and enhanced compensation but denied interest for period of delay. We find appellants were not entitled to interest

for delay on their part. Learned counsel further urged that it was a case of mistake of the counsel in not filing the appeal within time. Statement cannot be relied on particularly in view of enormous delay, it was a case of indifference on the part of appellant to their cause.

Hence, we are not inclined to interfere in that part of the order, thus, the appeals/petition are dismissed.

.....J.  
[ARUN MISHRA]

.....J.  
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI  
SEPTEMBER 20, 2017

ITEM NO.1

COURT NO.10

SECTION IV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 586-591/2017

RAM AVTAR ETC.

Appellant(s)

VERSUS

THE STATE OF HARYANA & ORS.

Respondent(s)

WITH

C.A. No. 3245-3246/2017 (IV)

C.A. No. 1444-1445/2017 (IV)

C.A. No. 3247-3248/2017 (IV)

C.A. No. 2384-2385/2017 (IV)

C.A. No. 3174-3175/2017 (IV)

C.A. No. 1447-1448/2017 (IV)

SLP(C) No. 28384/2014 (IV-B)

C.A. No. 592-594/2017 (IV)

C.A. No. 2322-2329/2017 (IV)

C.A. No. 298-299/2017 (IV)

C.A. No. 321-325/2017 (IV)

SLP(C) No. 1139/2015 (IV-B)

SLP(C) No. 1132-1133/2015 (IV-B)

C.A. No. 3244/2017 (IV)

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C.A. No. 625/2017 (IV)

C.A. No. 288-290/2017 (IV)

SLP(C) No. 17524-17536/2016 (IV-B)

SLP(C) No. 15571/2016 (IV-B)

C.A. No. 617/2017 (IV)

C.A. No. 848/2017 (IV)

C.A. No. 660/2017 (IV)

SLP(C) D 28083/2016 (IV-B)

Date : 20-09-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Parties

Mr. Sanchar Anand, Adv.  
Mr. Apoorv Singhal, Adv.  
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Mr. K. K. Mohan, AOR

Mr. Siddharth Batra, Adv.  
Mr. Ravinder Kumar, Adv.  
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Mr. Deepak Thakral, Adv.

Mr. Abhinash Jain, Adv.

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Mr. Alok Sangwan, Adv.

Mr. Sunny Kadiyan, Adv.

Mr. B. K. Satija, AOR

Mr. Anish Kumar Gupta, Adv.

Mr. R. K. Rajwanshi, Adv.

Mr. Chander Shekhar Suman, Adv.

Mr. Sanjay Kumar Visen, AOR

Mr. Kaustubh Khera, Adv.

Mr. S. S. Hooda, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Matters are dismissed in terms of the Signed Order.

Pending application(s), if any, stand(s) disposed of.

(RASHI GUPTA)  
SENIOR PERSONAL ASSISTANT

(TAPAN KUMAR CHAKRABORTY)  
BRANCH OFFICER

[CORRECTED SIGNED ORDER IS PLACED ON THE FILE]

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 586-591/2017

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