MADHYA PRADESH HIGH COURT

Town Improvement Trust

Vs.

Sahajirao

Misc. Petn. No. 23 of 1971
(Bachawat, J.Shiv Dayal, C.J. and S.S. Sharma, J.)

10.08.1977

JUDGMENT

Sharma, J.

1. This is a petition under Articles 226 and 227 of the Constitution of India for issuance of a writ setting aside the Award, dated 27-4-1970, given by Land Acquisition Officer, Gwalior in Land Acquisition Case No. 8/56/23/7 (Annexure-B). The petitioner has also challenged Section 50 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") as being unconstitutional.

2. The case of the petitioner, a body corporate constituted under the Town Improvement Trust Act is that in the city of Gwalior near Jinsinala an open piece of land, commonly known as Garud Saheb ka Bada, 3 bigas and 5 biswas in area, was acquired for Housing Development Scheme. The petitioner has referred to the different notifications issued under Sections 4, 6 and 17 of the Act. Tahsildar, Gwalior obtained possession over the land and handed it over to the petitioner on 29-11-1957.

3. Notification under Section 9 was also issued in the proceedings relating to the acquisition. Some persons, as have been named in paragraph 6 of the petition, submitted their objections and claimed compensation. Respondent No. 1 was also one of the claimants and he claimed an amount of Rs. 1,81,473.45 p. as the amount of compensation. The Land Acquisition Officer after an enquiry gave an award of Rs. 1,22,284.10 p. to Respondent No. 1 for his part of the land.

4. The grievance of the petitioner is that the amount of compensation awarded by the Land Acquisition Officer was very much excessive and he did not correctly apply the

principles as are laid down in Section 23 of the Act. The petitioner in support of this has furnished documents to show that after acquisition and subsequent development wherein they had to incur expenditure the land could not fetch adequate value. As regards the principles of Section 23 of the Act it was strenuously urged that the Land Acquisition Officer completely ignored the principles and gave an award which on the face of it is arbitrary.

5. It was further urged that since the petitioner at whose costs the land was acquired has no other remedy, it could challenge the award given by the Land Acquisition Officer, which is an inferior Tribunal, only by way of this petition. At the time of hearing learned counsel for the petitioner did not advance any argument in support of his prayer in the petition that Section 50 of the Act was unconstitutional.

6. Before proceeding further it would be pertinent to refer to the award, a copy of which has been filed. In para. 29 of the award the Land Acquisition Officer has observed that the petitioner Trust did not file any evidence as regards the market value of the land sought to be acquired. The two engineers, examined on behalf of the Trust, even admitted before the Land Acquisition Officer that near-about the land under acquisition there is no land which may have been sold so that the rates could be ascertained on that ground. They, however, mentioned that the rates of the land of the Trust during the erstwhile Gwalior State was 8 annas square ft, and so the land be valued at that rate. This argument was rejected by the Land Acquisition Officer.

7. Learned counsel for the petitioner referred to a number of decisions of this Court as also of other Courts and the SC to show the principles that have to be followed while determining the amount of compensation of the land acquired under the Act. These principles are quite settled and we need not burden this order by a reference to those decisions. In the present case which is not by way of an appeal we would not scrutinize the evidence ourselves over again. The Land Acquisition Officer has given the award on the basis of the evidence before him. The award further shows that the Land Acquisition Officer was quite alive to the principles to be followed for determining the compensation. He has discussed the relevant evidence also. On going through the award what we find is that the Land Acquisition Officer has considered the relevant factors for determining the market value. The petitioner having failed to adduce the evidence cannot now be permitted to make a grievance about it in the present proceedings. In *S. Chandrojirao v. State of M.P.* [1] it has been held that the

High Court in exercise of its supervisory power in issuing a writ of certiorari, acts in exercise of supervisory and not appellate jurisdiction. The High Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based.

8. Learned counsel for the petitioner has also referred to certain decisions to show that this Court in a petition under Articles 226 and 227 of the Constitution of India has very wide powers. There can be no dispute to those principles and so we would not refer to all those decisions. He was at pains to convince us that a petition under Articles 226 and 227 of the Constitution would lie to quash an award given by the Collector under the Land Acquisition Act on the ground that while giving the award the amount of compensation determined by him was quite excessive. He referred to a decision of their Lordships of the SC in *State of Gujarat v. Vakhatsinghji* [2] and urged that in a petition the High Court can examine the question of quantum of compensation. This case, as has been cited by the learned counsel, is clearly distinguishable. In Vakhatsinghji's case (supra) their Lordships in para 14 have observed that "The High Court had jurisdiction to revise the decision of the Tribunal where the Tribunal on a misreading of the provisions of Sections 7 and 14 declined to do what was by those provisions of law incumbent on it to do. Tested in this light, it does not appear that the High Court exceeded its jurisdiction under Articles 227 in revising the decision of the Tribunal in respect of the solatium on irrigated bunds, tanks and wells. Numerous cases were pending before the Revenue Tribunal in respect of compensation payable to taluqdars under the Bombay Taluqdari Tenure Abolition Act. To prevent miscarriage of justice it was necessary for the High Court to lay down general principle on which compensation should be assessed so that the Tribunal may act within the limit of their authority." On a perusal of this judgment it appears that the decision of the Tribunal under the Abolition Act was final and conclusive and there was no other remedy. Under the Act there is a provision of reference under Section 18 as also of an appeal though the same is not available to the petitioner for the relief which has been sought in this petition but that is the scheme of the Act.

9. Learned counsel for the petitioner also referred to a decision in *Pannalal Maheshwari v. State of Bihar,* [3] to support the contention that a petition could lie against an award given under the Act by the Land Acquisition Officer. In that case it was held that the Land Acquisition Officer had failed in performance of his duties cast upon him under Sections 11 and 12 of the Act. That case also is clearly distinguishable. We have gone through other decisions also as were referred to by him

but they either refer to the principles which are well settled or they are distinguishable. So we need not burden this order by those decisions. In none of those cases a petition filed at the instance of a company or a corporate body for whom the land was acquired, was allowed on the ground that the compensation fixed by the Land Acquisition Officer was excessive. What piece of evidence should have weighed more with the Land Acquisition Officer is not a matter which can be agitated in the present petition.

10. That apart, in *Municipal Council, Pipariya v. State of M. P.* [4] a Division Bench of this Court has observed as follows :-

> "That the applicant was not entitled to demand a reference under Section 18 and has really no *locus standi* to question the amount of compensation awarded to the Respondent No. 3 is clear from Section 50 of the Act. Sub-Section (2) of Section 50 gives to the local authority or company only the right to appear in any proceeding before the Collector or a Court and adduce evidence for the purpose of determining the amount of compensation. The proviso to that sub-section says that no local authority or company shall be entitled to demand a reference under Section 18. It follows, therefore, that so far as a local authority or a company is concerned the award made by the Land Acquisition Officer is final, See *Municipal Corporation of Pabna v. Jogendra Narain,* [5] and Nagpur Corporation v, Narendrakumar, AIR 1959 Bombay 297."

The same view was followed by another Division Bench of this Court in *Jhabua Municipal Council v. State of M. P.*[6]

11. A Division Bench of the Bombay High Court in *Himalayan Tile and Marble (Pvt.) Ltd. v. Francis V. Countinho,* [7] after considering the earlier decisions of that Court, Calcutta High Court and the Gujarat High Court, as have been referred to therein, has held as follows :-

> "Having heard counsel on this preliminary objection, we are inclined to hold that there is much substance in the objection which is entitled to succeed and it is clear upon the authorities that the party for whom acquisition is being undertaken has no *locus standi* whatever except as provided in Section 50, sub-section (2) to intermeddle with the acquisition proceedings or to claim to set

aside the award under Section 18. Therefore such a party would not be entitled to challenge the same proceedings indirectly in a writ petition."

12. In view of what has been stated above the petitioner is not entitled to any relief in this petition. Consequently, this petition fails and is hereby dismissed. In the circumstances, we shall leave the parties to bear their own costs. The amount of security deposit shall be refunded back to the petitioner.

Shiv Dayal, C. J.

13. I have had the benefit of perusing the order of my learned brother.

14. In the City of Gwalior, near Jinsi Nala, there was an open piece of land which was known as "Garud Sahebka-Bada". It comprised of 3 Bighas and 5 Biswas in area. It was acquired for housing development scheme by the Town Improvement Trust, Gwalior. Prior to the acquisition a notice was published in the M. P. Government Gazette dated April 26, 1957, under Section 4 (1) of the Land Acquisition Act. It was followed by another notification under Section 6 of the Act, which was published in the M. P. Gazette dated May 17, 1957. It also contained intimation that the provisions of Section 17 (1) of the Land Acquisition Act would be applicable. The Collector, Gwalior, issued a notification dated October 5, 1957, under Section 9 of the Act, in pursuance of which the Tahsildar, Gwalior, obtained possession of the land and delivered it to the petitioner, Town Improvement Trust on November 29, 1957.

15. The respondent Sahajirao Angre, who was the owner of the land claimed Rs. 1,81,473.45 p. as compensation.

16. The Land Acquisition Officer, Gwalior Collectorate, (non-petitioner No. 2) accepted the claim and finally awarded Rs. 1,22,284.10 p. by his award dated April 27, 1970. Thus, after a long span of about 14 years, the Town Improvement Trust was called upon to pay this huge sum as compensation.

17. In this petition under Article 226 of the Constitution, the petitioner seeks to quash the award of the Land Acquisition Officer. The petitioner's contentions, inter alia, are that the award of the Land Acquisition Officer is not in accordance with the provisions and principles underlying Section 23 of the Land Acquisition Act. He has exercised

his jurisdiction illegally by not applying the settled principles for determining compensation, when land is acquired under the Act. The Land Acquisition Officer has misdirected himself in relying on two sale-deeds which are irrelevant as the lands which were sold under them, are neither similarly situate, nor of the same kind. The Land Acquisition Officer ought to have determined the market value of the land as on the date of the publication of notification under Section 4 of the Act, and according to the further amendment in Madhya Pradesh the market value shall be deemed to be the market value according to the disposition of the land at the date of publication of the declaration under Section 6 of the Act. It was also urged by the petitioner that Section 50 of the Act is *ultra vires* and unconstitutional being discriminatory, as it deprives the petitioner of the remedy contained in Section
18 and also Section 54 of the Act.

18. In my opinion, there is no substance in the petitioner's contention that Section 50 of the Land Acquisition Act is unconstitutional. It is true that to a party whose land is acquired, a right is given to demand a reference to the Civil Court under Section 18 of the Act, when he can claim enhancement in compensation he has also the right to prefer an appeal under Section 54 of the Act, if he is aggrieved by the decision of the Court about the amount of compensation or apportionment of compensation. Both these rights are denied to the local authority or company for whose benefit the land is acquired. Section 50 of the Act merely enables such local authority or company to take part in the proceedings and also to adduce evidence. There is nothing discriminatory because the person whose land is acquired and the local authority or company for whom the land is acquired art not similarly situated. The Legislature, in its wisdom, has given the right to the former to approach the Court for enhancement of compensation. The acquisition under the Land Acquisition Act is compulsory so that the person whose land is acquired cannot decline to give the land. As soon as it is held that the land is acquired for a public purpose, the declaration is final. He is entitled merely to compensation and solatium. The position of the local authority or company, for whose benefit land is acquired, is different. If it finds that the amount of compensation determined by the Land Acquisition Officer in his award is excessive, it has the option to decline to take the land on payment of that compensation and thus render the acquisition proceeding abortive. In my opinion, therefore Section 50 of the Act is not unconstitutional. The petitioner's contention must be rejected. However, the further question that arises is whether such local authority or company cannot take recourse to the remedy under Article 226 of the Constitution. That question I shall deal with presently.

19. A preliminary objection was raised at the hearing that the Improvement Trust has no *locus standi* inasmuch as in the scheme of the Land Acquisition Act, the person for whom land is acquired has no right of appeal, nor any other remedy against the adjudication of the amount of compensation.

20. In proceedings under the Land Acquisition Act, where land is acquired for the purposes of a local authority or company, such local authority or company may appear and adduce evidence for the purposes of determining the amount of compensation. But such local authority or company has not been given the right to demand a reference under Section 18. It follows that such a local authority or company cannot prefer an appeal under Section 54 of the Act from an order passed by the District Court under Section 18 in case there is a reference to the Court. The reason for this rule is apparently this. Where the amount of compensation is assessed, which is not acceptable to the local authority and is considered to be excessive or for any other reason it does not want to pay the amount of compensation, it is open to it to decline to take the land and thereby make the acquisition proceedings abortive. But such a choice is not available where land was acquired, possession taken and plots out of it were sold to strangers and houses have also been constructed on those plots, many years ago.

21. Provisions contained in Section 50 of the Land Acquisition Act do not and cannot take away the right of a party to seek redress in this court under Article 226 of the Constitution. It will, however, have to be seen whether the petitioner has *locus standi* to make a petition, that is to say, whether it is a "person aggrieved" within the meaning of their Lordships' decision in *J. M. Desai v. Roshan Kumar,* [8] once such local authority or company is held to be a "person aggrieved" in a particular case, it cannot be deprived of the remedy under Article 226 of the Constitution which right can be taken away only by the Parliament. The settled law is that to invoke *certiorari* jurisdiction the petitioner should be an aggrieved person.

22. The words "person aggrieved" denote a person whose interest would be prejudiced. In J*Attorney General of Gambia v. N'Jie,* [9] it has been observed as follows :-

> "The words 'person aggrieved' are of wide import and should not be subjected to

a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests."

23. Therefore, judged by the test laid down by their Lordships in J. M. Desai's case (supra) (sic) (it must be?) held that the Town Improvement Trust is an "aggrieved person' and has locus standi. If there is no other remedy the party has the right to approach this Court for prerogative writ under Article 226 of the Constitution. That is the residuary remedy for every injustice, unless it is taken away by a specific constitutional provision.

24. The learned counsel for the respondent placed reliance on *S. Chandrojirao v. State of M. P.,*[10] Division Bench to which I was a party. In that case it was held that a new plea cannot be allowed to be raised in an appeal when it will require fresh enquiry on a question of fact. In my opinion, that case has no application here.

25. Reliance was then placed on *Municipal Council Pipariya v. State of M. P.,* [11] In that case the Municipal Council, Pipariya, sought for quashing a notification, under Section 6 of the Land Acquisition Act. It was held by the Division Bench that the petitioner could not be allowed to challenge the validity of the notification at that distance of time, to wit, 14 years after the notification. In paragraph 4 of that decision it was held, after referring to Sections 18 and 50 of the Land Acquisition Act, that so far as a local authority or a company is concerned, the award made by the Land Acquisition Officer is final. The Division Bench relied on two decisions - *Municipal Corporation of Pabna v. Jogendra Narain,* [12] and *Nagpur Corporation v. Narendra Kumar,* [13]

26. I have carefully perused both these decisions. In the Calcutta case, an appeal was preferred in proceedings under the Land Acquisition Act, 1894. All that was held was that a company or a local authority has no power to ask for a reference under Section 18 of the Act, neither does the Act give it the right of appeal. It was, therefore, held that the appeal of the Corporation could not be allowed. It was not a case under Article 226 of the Constitution. So also in the Bombay case, it was an application for revision under Section 18 (3) of the Land Acquisition Act, preferred by the Corporation of the City of Nagpur. The learned single Judge dismissed that revision holding that Section

52 (2) of the Land Acquisition Act in terms controls Section 18 and takes away from the local authority the right to demand a reference under Section 18. That was also not a case under Article 226 of the Constitution. It is true that although the Division Bench in Municipal Council Pipariya's case (supra) relied on these two decisions which hold nothing about the right of the Corporation to invoke writ jurisdiction under Article 226 of the Constitution, yet there are some wide observations by the Division Bench. With utmost respect, those observations must be held to be not laying down good law, in view of their Lordships' decision in J. M. Desai's case, (supra).

27. I am clearly of the view that on the high authority of the Supreme Court, it will have to be determined in every individual case whether a corporation or local authority has *locus standi* or not, for a petition under Article 226 of the Constitution. To repeat the words of their Lordships :

> "Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him." (Underlined by me)

28. In the present case, it will be for the Town Improvement Trust to pay the amount of compensation assessed by the Land Acquisition Officer. The liability is exclusively of the Town Improvement Trust. No one else will be required to pay that amount of compensation. In my opinion, it will be extremely hard and unjust if the Town Improvement Trust cannot be permitted to say that one lac rupees for 2 acres of land is unconscionably excessive, arbitrary and neck- breaking. When the Town Improvement Trust acquires land for housing schemes and allots plots out of that land, fixing the rate of price to be charged from the allottees necessarily depends on the estimated amount of compensation which will be appropriated. If the Corporation wants to urge that formerly the amount of compensation, which was required to be paid was 50 paise or one rupee per square yard, it cannot be denied that opportunity, inasmuch as it is not possible now to retrace the steps and give up the land.

29. On the merits, the petitioner, at the outset, referred to paragraph 32 of the award, where it is observed as follows :-

> "Kewal Kramank 1 wa 4 par ankit bikree madon dwara bikrit Bhumi tatha sampadit bhumi ki sthiti men samata hai atah in do bikri madon ko hi sampadit bhumi ke bazar mulya nirdharan hetu Adhar manana upyukta pratit hota hai"

(when rendered into English);

> "Only the lands sold under the sale-deeds at serial Nos. 1 and 4 are similarly situated as the lands acquired. Therefore, the assessment of the market value of the acquired land on the basis of these two sale deeds alone appears to be proper."

The Land Acquisition Officer then worked out an average and assessed the value of the land at Rs. 1.50 per sq. ft. and after deducting paise 0.50 per sq. ft. as the costs of development, he awarded compensation at the rate of rupee one per sq. ft. One of the two sale-deeds is in respect of the land situated in Ghadve-ki-Goth and the other in Mahurkar's Bada, Naya Bazar. The petitioner's contention is that the sale deed of the land situated at Gadve-ki-Goth cannot serve as the standard for assessing the market value of the land at Jinsi Nala. The two localities are far away from each other. So also, the other sale-deed is in respect of land situated at Mahurkar's Bada, Naya Bazar, which is also very far away from the land in Jinsi Nala. The respondent did not produce any evidence of sale or market value of land in the vicinity of the land acquired; for instance, in Patankar Bazar or Phalke Bazar, which are adjacent to Jinsi Nala.

30. Learned counsel for the petitioner has also laid stress on the fact that the land acquired is situated about 855 feet away from the main road, whereas the land comprised in the two sale-deeds is hardly 150 feet away from the main road. The Land Acquisition Officer overlooked these considerations, which were very significant.

31. Then, again, learned counsel for the petitioner urged that the land acquired was uneven and undeveloped, whereas the sale-deed in respect of the land situated at Gadve-ki-Goth, shows that it had been developed and there was abadi around it so that the land could be used immediately for construction of house. Likewise, the land comprised in Annexure-D is situated in Mahurkar's Bada, which is in Naya Bazar, one of the most prominent and flourishing localities of Gwalior. The distance of the plot from the main road is hardly 150 feet.

32. Furthermore, on one side of the land in question, there was a Nala, to be developed. The land was uneven, about 2 feet below the level, and used for agricultural purposes only. Therefore, the assessment of the market value of the land on the basis of those lands, which comprised in two sale deeds (in Mahurkar's Bada and Gadve-ki-Goth) was not in accordance with law; and the award of the Land Acquisition Officer is palpably erroneous and contrary to law.

33. Jugul Kishore Saran, who was examined and cross-examined before the Land Acquisition Officer, stated that the land was acquired for a housing scheme. At that time, he was on deputation with the Town Improvement Trust. The land was uneven. The land in front of the Pratap School was about 2 feet lower in level and was adjacent to a Nala. He stated that in the year 1956-57 that land near this Nala was sold at the rate between 0-6-0 to 0-8-0 annas per sq. yard so that when he prepared the scheme, he had assessed it at the rate of 0-8-0 annas per sq. yard. That was in the year 1956-57. Those were the rates prevalent for the Gwalior State Improvement Trust and also for the Gwalior Municipality. He had prepared the entire scheme. The value of trees, well and compound wall was separately assessed. The record was before him at the time of his deposition, before the Land Acquisition Officer. He further stated that the land in Mahurkar's Bada, Naya Bazar, Lashkar was much better located and is only 150 to 200 feet from the main road. The land in Ghadve-ki-Goth was much better. That land had been acquired in the year 1930-31 and then developed.

34. The burden, to prove market value of the land under acquisition was on respondent No. 1. It was for him to establish with a certain amount of definiteness that his claim was wholly or partly reasonable when judged according to legal standards. This burden was not discharged by respondent No. 1.

35. For the foregoing reasons the award must be quashed. However, respondent No. 1 must be awarded compensation for his lands. And, compensation must be awarded according to the market value of the land. Now, the peculiar circumstances of the present case are that the land was acquired 19 years ago, that there is no evidence of private sale in that locality. However, fortunately, the petitioner has placed on record a detailed tabular statement (Annexure-F) showing the price fetched by it on sale of plots by public auction and also the cost incurred in developing the land (Annex. E).

36. Some reference was made before us to the standards for determining compensation

under Section 45 of the Gwalior State Town Improvement Act; prescribed rates were between 0-6-0 to 2-0-0 per sq. yard. It is clear that those rates could not be the basis for awarding compensation inasmuch as the present acquisition is not under the Gwalior State Town Improvement Act, 1937, but under the Indian Land Acquisition Act, 1894.

37. One of the surest standards for determining the market value of a thing is to sell it by public auction and, in the absence of any other cogent evidence which can assist the Court in determining the market value, it should serve as the only standard.

38. The Town Improvement Trust after obtaining possession of the acquired land, developed it and broke it into small plots, which plots were then put to public auction in order to get the highest price. They were accordingly sold to different purchasers who had bid at the public auction. The list of purchasers is Annexure-F. The total price fetched was 55,048.09 P. The details of the expenditure incurred on the development of the land are contained in the statement Annexure-E, total of which is shown as Rs. 19,035.88 P. Subtracting the latter from the former, the net amount received by the Town Improvement Trust as the value of the land acquired, is arrived at Rupees 36,002.21 P.

39. I, however, notice that per Annexure-F, the Improvement Trust sold six plots to the President, Pratap Education Society, Lashkar at the "fixed rate being an Educational Institution." All these six plots (Nos. 1, 2, 15, 16, 17 and 18) were sold at the "fixed rate" of Rupees 6.87 per sq. yard. And, all the other 13 plots (Nos. 3 to 14 and 19) were sold by public auction at different rates, the total of which comes to Rs. 172.61, i.e., the average rate comes to Rs. 13.28 per sq. yard. Subtracting Rs. 6.87 the difference comes to Rs. 6.41 per sq. yard. The total area of the aforesaid plots is 1709.27 sq. yards. When this is multiplied by 6.41, the difference comes to Rs. 10,900 odd. The Town Improvement Trust may have had a special consideration for the educational institution; but while assessing compensation, the petitioner can be awarded this difference of Rs. 10,900 in addition to the above net proceeds Rs. 36,002.21.

40. The conclusions I have reached may now be summed up thus :-

(1) Section 50 of the Land Acquisition Act is not unconstitutional.

(2) The petitioner has *locus standi* and the remedy under Article 226 of the Constitution is available to him. This Court has jurisdiction to quash the award which is illegal and erroneous on the face of it and in disregard to the settled principles for determining compensation.

(3) As the award is based on irrelevant evidence which could not be the basis for determining the compensation, it must be quashed.

(4) The respondent No. 1 did not discharge his burden. There is no evidence of any private sale of land in that locality at the relevant time. The acquisition took place 19 years ago. The land when acquired was uneven and undeveloped. It was developed by the Improvement Trust and divided into plots which were sold by public auction and the purchasers have constructed houses on those plots. Having regard to these peculiar circumstances, it will be unjust and unnecessary to remit the case to the Land Acquisition Officer. In my opinion it will be quite reasonable and just to award the owner (respondent No. 1), as compensation the entire net amount (sale proceeds minus cost of development) received by the Town Improvement Trust together with the difference between the price calculated at the average rate fetched by auction and the price received at the fixed rate, for which plots were sold to the educational institution.

41. This petition is, therefore, allowed. The award of the Land Acquisition Officer is quashed. The net proceeds fetched by the Town Improvement Trust on sale of the plots, that is Rupees 46,902.21 shall be paid to respondent No. 1 as compensation. Parties shall bear their own costs.

42. ORDER (Per Shiv Dayal, C. J. and Sharma, J.) :- We have differed on the following questions :-

(1) Whether, on the facts and in the circumstances of this case, the Town Improvement Trust, Gwalior, has *locus standi* to challenge, by a petition under Article 226 of the Constitution, the award made by the Land Acquisition Officer, under the Land Acquisition Act?

(2) Whether the award of the Land Acquisition Officer must be quashed and the net proceeds fetched by the Town Improvement Trust on sale of the plots, that is Rs. 46,902.21 shall be paid to respondent No. 1 as compensation?

43. The papers shall be placed before the Chief Justice for nominating the third Judge

to decide the above two questions.
OPINION

Bhachawat, J.

44. This matter has come up before this Bench, having been referred to under Chapter II, Rule 11 of the High Court Rules on account of difference of opinion between Hon. the Chief Justice Shiv Dayal and Hon'ble Sharma, J.

45. The points on which they have differed and referred to this Bench are these :

> 1. Whether, on the facts and in the circumstances of this case, the Town Improvement Trust, Gwalior has *locus standi* to challenge, by a petition under Article 226 of the Constitution, the award made by the Land Acquisition Officer, under the Land Acquisition Act?
> 2.Whether the award of the Land Acquisition Officer must be quashed and the net proceeds fetched by the Town Improvement Trust on sale of the plots, that is, Rs. 46,902.21 shall be paid to respondent No. 1 as compensation?

46. The reference has arisen in the following manner : At the behest of the Town Improvement Trust, Gwalior (hereinafter, for short, referred to as the petitioner), the Madhya Pradesh Government initiated proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as the Act) for the acquisition of an open piece of land situated in the city of Gwalior near Jinsi Nala, known as Garud Saheb Ka Bada, for the petitioner, for its housing development scheme approved by the Government and acquired it. This land is hereinafter referred to as the land in question.

47. A notification under sub section (1) of Section 4 of the Act was published in the M. P. Government gazette dated 26-4-1957. A notification under Section 6 of the Act was published in the M. P. Government Gazette dated 17-5-1957. A notification dated 5-10-1957 was issued by the Collector, Gwalior under Section 9 of the Act and possession of the land in question was obtained by him and delivered to the petitioner on 29-11-1957.

48. In response to the notification under Section 9 of the Act, Sri Shahaji Rao Angre, respondent No. 1 herein, had preferred a claim for compensation of Rs. 1,81,473.45

before the Land Acquisition Officer, Gwalior (Collector, Gwalior) respondent No. 2 herein (hereinafter referred to as respondent No. 2) and respondent No. 2 vide his award dated 27-4-1970, awarded Rs. 1,22,284.10 resting the determination of the compensation amount on two sale-deeds (1) dated 14-11-1957, which was marked as Ex. P/1 by respondent No. 2 in the proceedings before him, copy whereof is annexed to the petition and marked as Annexure-'C', and sale-deed dated 30-6-1956 which was marked as Ex. P/2 by respondent No. 2 in the proceedings before him, copy whereof is annexed to the petition and marked as Annexure-'D'.

49. Being aggrieved by the award of respondent No. 2, the petitioner filed the present petition under Article 226 of the Constitution of India seeking an appropriate writ for quashing the impugned award and for declaration that as Section 50 of the Act which deprives the petitioner of a remedy of asking for a reference under Section 18 of the Act and also of appeal under Section 54 of the Act is *ultra vires* and unconstitutional being discriminatory. The grounds urged inter alia, for quashing the impugned award, by the petitioner are that respondent No. 2 acted in contravention of the provisions of Section 23 of the Act in determining the amount of compensation inasmuch as it based it on the two fore-referred sale-deeds which relate to lands which are not in proximity as to time, situation, nature and character of the land is question; that the compensation should have been determined on the basis of the market price of the land in question as the date of the publication of notification under Section 4 of the Act as provided under Section 23 as amended by the State of Madhya Pradesh on the basis of its value according to its disposition on the date of publication of notification under Section 6 of the Act.

50. Respondent No. 1 while controverting the allegations in the petition, inter alia, contended that the question of the market price of the land is a disputed question of fact which cannot be gone into in writ proceedings; the petitioner is bound by the impugned award and has no *locus standi* to challenge it.

51. The learned Judges constituting the Bench have differed in their decision on the points quoted hereinabove. Hence the reference to this Bench.

52. Now, I proceed to deal with the fore-referred questions ad seriatim and record my opinion.

53. The question No. 1 deals with the *locus standi* of the petitioner to file the writ petition to challenge the impugned award by respondent No. 2. The contention of the learned counsel for the petitioner was that the land in question was acquired for the petitioner; the petitioner has to pay the amount of compensation awarded under the impugned award and, thus, it is a 'person aggrieved', and therefore competent to file the writ petition because it is not competent to ask for a reference against the impugned award under Section 18 of the Act and there is no other remedy available to it. He argued that the impugned award is in violation of the statutory provisions of the Act and there is nothing in the Act which either expressly or impliedly bars the remedy of writ, the petitioner has the *locus standi* to file the present petition.

54. The argument in counter of the learned counsel for respondent No. 1 was two-fold. One, the petitioner does not fall within the ken of the expression 'person interested' as defined in Section 3 (b) of the Act and the extent of participation by the petitioner in the land acquisition proceeding being defined and limited by sub section (2) of Section 50, the petitioner has no *locus standi* to challenge the impugned award. Second, as the petitioner is admittedly not a company and it is also not a local authority, it is not competent to participate in the land acquisition proceedings even to the limited extent provided under sub section (2) of Section 50 of the Act and, therefore, also the petitioner has no locus standi.

55. Plethora of authorities have been cited at the Bar on the question as to who can be called a 'person aggrieved' so as to have a *locus standi* to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India. I do not propose to catalogue all those authorities and shall refer only to those which are material and relevant for the decision of the point in hand.

56. A question about *locus standi* had arisen before the SC in *J. M. Desai v. Roshan Kumar,* [14] wherein on a conspectus of various English decisions and decisions of Supreme Court, it has been held as to who is a person aggrieved and who has a *locus standi* to file a writ petition under Article 226 of the Constitution of India. Both the learned counsel have placed reliance on this decision. The relevant observations of their Lordships are as under (at p. 581). –

> "12. ****** This takes us to the further question : Who is an 'aggrieved person'? And what are the qualifications requisite for such a status? The

expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression 'aggrieved person'. However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary *locus standi* or 'standing' to invoke *certiorari* jurisdiction. ** ** **

36. It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; '(iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly, stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be 'persons aggrieved.'

38. To distinguish such applicants from 'strangers', among them, some broad

tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are : Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury in the sense, that the interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused, him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of what right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words 'person aggrieved' is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

57. I shall now proceed to consider the case in hand so as to examine whether, applying the test laid down in the fore-quoted decision of their Lordships of the Supreme Court, the petitioner is the person aggrieved so as to have a *locus standi* to file the present writ.

58. The land in question formed part of the quondam State of Gwalior wherein the Town Improvement Act, Gwalior State, Samvat 1974 was in force (hereinafter referred to as the Gwalior Act). On the formation of the erstwhile State of Madhya Bharat the quondam State of Gwalior merged in it. The Gwalior Act was repealed and replaced by the M. B. Town Improvement Act, 1956 (hereinafter for short, referred to as the M. B. Act). The M. B. Act was repealed and replaced by the M. P. Town Improvement Trust Act, 1960 (hereinafter referred to as the M. P. Act), vide its Section 2, which deals with repeal and savings, all acts done under the repealed Act were saved; deemed to have been done under it; and all pending matters were to be decided under the repealed Act as if it was not repealed. This position is undisputed.

59. Thus, when the proceedings for the acquisition of the land in question were initiated and it was acquired, the M. B. Act was in force and it was during the pendency of the proceedings, for determining of the compensation, before respondent No. 2 that the M. P. Act came into force. It would, therefore, be relevant to refer to the object and certain provisions of the M. B. Act. The object of the M. B. Act was "an Act to provide for the making and execution of town improvement schemes in Madhya Bharat". Section 22 of this Act provided, inter alia, "a town improvement scheme" may make provision for all or any of the following matters :

> "(a) The acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of a scheme and the sale, lease or exchange or any property comprised in the scheme."

60. Section 23 of the M. B. Act classified the various schemes to be undertaken by the Improvement Trust and one of them, classified as clause (g) in that section was "a housing accommodation scheme" and Section 55 provides; "the trust may with the previous sanction of the Government acquire land under the provisions of the Land Acquisition Act as modified by the provisions of this Act for carrying out any of the purposes of this Act". (Emphasis supplied by me).
60A. It is undisputed that the land in question has been acquired by the Government and possession delivered to the petitioner at the behest of and for the petitioner for housing development scheme, i.e., the scheme falling in clause (g) of Section 23 of the M. B. Act quoted hereinabove.

61. The upshot of this discussion is that under Section 55, the petitioner had the right to obtain the land in question for carrying out its scheme and it was to be acquired by the Government for it in accordance with the provisions of the Act, i.e., the Land Acquisition Act and, therefore, the corresponding liability of the petitioner was to pay that amount of compensation which was to be determined according to the provisions contained in Section 23 of the Act. To express it differently, the petitioner cannot be made to pay compensation for the land in question in excess of what is required to be paid in accordance with the provisions of Section 23 of the Act.

62. It would be of significant relevance here to state that in the instant case, undisputedly the position is that the possession of the land in question was already delivered to the petitioner far back on 29-11-1957 which was divided into and sold in

distinct plots to various persons by the petitioner.

63. Had the position not been as stated in paragraph 20 (paragraph 62 in this report-Ed.) hereinabove and assuming that there is no remedy available to the petitioner to challenge the award, there was either of the two courses left open to the petitioner on finding that the compensation awarded by respondent No. 2 is excessive and not in Section 23 of the Act (sic). One was not to make the payment of the compensation awarded and not to obtain the land in question; thus making the acquisition proceedings abortive and also suffering the non-fulfillment of its scheme or (2) to obtain the land in question on paying the excess amount of compensation in excess of what it was bound to pay and suffer loss of its funds. On adopting either of the courses, the petitioner would have suffered violation of its legal rights. The exercise of the first alternative would have resulted in depriving the petitioner of carrying out its statutory function of carrying out the schemes for improvement of the town. The exercise of the second alternative would have prejudicially affected its funds inasmuch as it would have been required to pay more than what it was legally liable to pay.

64. In the facts of the instant case, the first alternative is not available to the petitioner. The only alternative available - if it is assumed that there is no remedy open to the petitioner - is to pay an amount of compensation which is not in accordance with Section 23 of the Act and is excessive and, thus, to suffer loss of its funds.

65. In the light of the aforesaid discussion contained in paragraphs 15 to 22, (paragraphs 58 to 64 in this report - Ed.) it can well be said that assuming that the situation was not as stated in paragraph 20 (paragraph 62 in this report - Ed.) hereinabove and the petitioner was in a position to exercise either of the two alternatives then on the exercise of the first alternative, its legal right to acquire the land against a price to be determined as per the statutory norms and to carry out its statutory function would have been infringed. In the event of the exercise of the second alternative, i. e., of making a payment of amount in excess of the amount, which it was liable to pay under the statute, i. e., the Act, its funds would have suffered. In other words, it would have suffered a legal wrong or injury prejudicially affecting its funds.

66. In the facts as they are in the instant case, it exercised the second alternative, it

suffered a legal wrong or injury resulting in affectations of its funds.

67. In this view of the matter, it can well be said that the petitioner completely stands the test laid down in paragraph 38 of the decision of their Lordships of the SC in *J. M. Desai v. Roshan Kumar (AIR 1976 SC 578)* (supra) and is, thus a 'person aggrieved'. The aforesaid discussion is only for the limited question of *locus standi* based on the premises - without going into the merits of the allegation of the contention that the amount of compensation awarded is allegedly in violation of the provisions contained in Section 23 of the Act.

68. I shall now presently discuss the various decisions on which the learned counsel for respondent No. 1 placed much reliance and strenuously argued that the content and intent of the Act (i.e., the Land Acquisition Act) is that a local authority or company for whose benefit a land is acquired is not entitled to be impleaded as party to the proceedings under the Act; challenge an award made there under even by way of writ and, therefore, the petitioner has no *locus standi* to file the present writ.

Bhawanjibhai v. State of Madhya Pradesh [15] Interlocutory order, decided on 19-8-1974 (by a Division Bench of this Court) :

In this case, in an appeal by the claimant against the award of District Court on reference under Section 18 of the Act, an application was filed by the Vidisha Education Society for whose benefit the land was acquired that the appeal was incompetent as the Society was not joined a party. This Court, on considering the provision of Sections 3 (b), 18, 20 and 50 (2) of the Act, repelled the objection. The relevant observations are as under;

> "12.In the light of the aforesaid provisions of the Land Acquisition Act and the decisions referred to above, the Society cannot contend that these two appeals are liable to be dismissed on the ground raised in the aforesaid two applications. However, in the light of the provisions of sub-section (2) of Section 50 of the Act, we permit the society to be heard in these appeals not as necessary party but because of the provisions contained in sub-section (2) of Section 50."

This case cannot be pressed into service as the question in hand was not involved in that case. The only question was whether it was necessary to implead the Society for

whose benefit the land was acquired as a party to the appeal relating to award of compensation. *Municipal Council, Pipariya v. State of M. P.,* [16] The Municipal Council for whose benefit the proceedings for the acquisition of the land were initiated under the Act, filed a writ seeking the relief of quashing the notice under Section 6 of the Act and also for seeking a direction, against the Land Acquisition Officer, commanding him to make a reference, under Section 18 of the Act, as was demanded by the Municipal Council. The Division Bench dismissed the petition, holding that the validity of the notice could not be challenged 14 years after the issuance of the notice, and on the question of reference relying on the provisions of sub section (2) of Section 50, it was held that in view of the specific bar of reference on the request of a local authority or company, no direction for making a reference can be given. In this decision it was observed :

> "That the applicant was not entitled to demand a reference under Section 18 and has really no *locus standi* to question the amount of compensation awarded to the respondent No. 3 is clear from Section 50 of the Act. Sub-section (2) of Section 50 gives to the local authority or company only the right to appear in any proceeding before the Collector of a Court and adduce evidence for the purpose of determining the amount of compensation. The proviso to that sub-section says that no local authority or company shall be entitled to demand a reference under Section 18. It follows, therefore, that so far as a local authority or a company is concerned the award made by the Land Acquisition Officer is final. (See *Municipal Corporation of Pabna v. Jogendra Narain)* [17] and *Nagpur Corporation v. Narendrakumar* [18]

69. The predominant question in this case was regarding the right of the local authority to ask for a reference under Section 18 of the Act and from no part of the discussion in the judgment, it appears that at any stage the question of *locus standi* for filing the writ under Article 226 by a local authority on the ground that the compensation has been determined in violation of the principles laid down under Section 23 of the Act. In view of this, the observation regarding the *locus standi* contained in paragraph 4 of the judgment reproduced herein-above cannot be understood to mean that the Division Bench intended to extend the net of this observation so as even to include the proceedings under Article 226.

Himalayan Tile and Marble (Pvt.) Ltd. v. Francis V. Countinho, [19] In this case, the appellant Company (which was respondent No. 3 in the petition out of which this appeal had arisen) for whose benefit the land was acquired, had filed the appeal

against the decision of the single Judge whereby the petition of the persons challenging the proceedings for the acquisition of their land as also the award was allowed. In this appeal, an objection regarding the *locus standi* of the appellant Company to file the appeal was raised. This objection was allowed, holding, on the strength of provisions contained in Section 3 (b), Sections 50 and 54 of the Act that the appellant, as it did not fall within the ken of the definition of 'person interested', had no right to intermeddle with the proceedings for determination of the amount of compensation except to the extent of appearing and adducing evidence and had, therefore, no right; to ask for reference; for being impleaded as a party in the proceeding; and to appeal against the award of compensation and as a consequence of these limitations on the right of a local authority or a company under the special law, it cannot have a *locus standi* to challenge the award by proceedings under Article 226 of the Constitution; more so, when the appellant being a party in the petition did not contest the proceedings and remained ex parte. The relevant observations of this case are reproduced herein-below (at p. 343) :

> "9. *** we are inclined to hold that there is much substance in the objection which is entitled to succeed and it is clear upon the authorities that the party for whom acquisition is being undertaken has no *locus standi* whatever except as provided in Section 50, sub-section (2) to intermeddle with the acquisition proceedings or to claim to set aside the award under Section 18. Therefore, such a party would not be entitled to challenge the same proceedings indirectly in a writ petition.

** ** **

> 13.If then such is the position of the party for whom acquisition proceedings are undertaken, under the terms of the Special Law dealing with acquisitions a question arises, can the selfsame party be permitted to challenge or meet the challenge to an award in the proceedings taken under our constitutional powers but virtually challenging the acquisition proceedings and the award? We think that we would be doing violence to the provisions of the Land Acquisition Act if we were to permit the self-same party to challenge an award, in the proceedings under Article 226 of the Constitution, which would virtually amount to challenging the acquisition proceedings and the award, for though no doubt these proceedings taken under our constitutional powers are independent

proceedings, nonetheless it is an accepted principle that such proceedings must be determined in accordance with the law and especially so is the case where there is a special Act making special provisions upon a special subject such as land acquisition.

** ** **

20. We may also say that there are other strong reasons why the 3rd respondent would have no right to file and pursue the present appeal. As we have already said they took no part in the writ petition at all. They were made a party though they were not a necessary party probably because they were given the right to adduce evidence and assist the Government under Section 50 (2). Thus they certainly had an opportunity to contest these proceedings but they did not do so and remained ex parte.

The real party and upon the authorities the only party who is interested in the land acquisition proceedings namely the Government does not choose to file an appeal. In fact counsel on their behalf categorically stated before us that they did not wish to urge anything in appeal and would abide by the orders of the Court. That was their attitude also before the learned single Judge, and for a very good reason. They had realised that the acquisition and the award must be set aside having regard to the second Arora case. The petitioners in the petition were substantially challenging the notices and the notifications under Section 4, Section 6 and Section 12 of the Act. None of these notices were served upon the 3rd respondents nor were they at all connected with them. In the petition itself no relief has been asked for against the 3rd respondents. Whatever reliefs have been asked for are against the 1st and the 2nd respondents. We cannot, therefore, understand how under these circumstances the 3rd respondents can claim that they have a right of appeal. They are taking advantage of the fact that they have been made a party to the petition, to prefer this appeal. Under the circumstances, we hold that the appellants have no right of appeal and no *locus standi* to prefer the appeal."

70. It is clear from the aforesaid observations that the predominant reason that prevailed with the Judges in the aforesaid decision was that the Act is a special Act wherein the extent of participation by a local authority for a company has been defined in Section 50 of the Act according to which as it is not entitled to be impleaded as a party, it cannot be permitted to challenge the proceedings and the award. Here, it would be pertinent to quote with advantage the following observations from the

decision in ***J****. M. Desai v. Roshan Kumar (AIR 1976 SC 578)* (supra) :

> "33. This Court has laid down in a number of decisions that in order to have the *locus standi* to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right is the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a *locus standi* in the matter - (See *State of Orissa v. Madan Gopal, [20] Calcutta Gas Co. v. State of West Bengal, [21] Rani Umeshwari Suthoo v. Member, Board of Revenue, Orissa, [22] Gadda Venkateshwara Rao v. Govt. of Andhra Pradesh, [23] State of Orissa v. Rajasaheb Chandanmall, [24] Dr. Satyanarayana Sinha v. M/s. S. Lal and Co. (P) Ltd.* [25]
>
> 34. The expression 'ordinarily' indicates that this is not a cast iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it." (Underlining mine).

From the aforesaid observations, it is evident that even a person who was not a party before the authority is competent to file a writ provided it has a substantial and genuine interest in the subject-matter. According to Section 50 of the Act, the petitioner is not a complete stranger, it has to bear the legal burden of the compensation for acquisition. It would also be of significant relevance to point out that when their Lordships of the Bombay High Court have observed that the proceedings taken under constitutional powers are independent proceedings, I must say with due respect, I am unable to persuade myself to subscribe to the view that the limitations regarding the participation in the proceedings under the Act can be superimposed to the proceedings for invoking the extraordinary jurisdiction of this Court under the Constitution. It is trite law that Article 226 of the Constitution confers jurisdiction on the High Court to issue writs to keep all tribunals, including, in inappropriate cases, the Government within its bounds. It would also be significant relevance to state here

that when the Act was enacted, Constitution was not in force. Hence, it is difficult to comprehend that the content and intent of the Act was to deprive the local authority of the extraordinary remedy under Article 226 also. 70A. The definitions of the words given in Section 3 of the Act are prefaced by the expression " in this Act, unless there is something repugnant in the subject or context" indicates that *prima facie* that definition governs wherever that words are used in the body of the Statute and that too subject to the qualification that there is nothing repugnant in the subject or context. Further, the expression 'person interested' defined in Section 3 (b) of the Act having been declared to include such person, it has to be construed as comprehending the persons declared by the definition in addition to persons signifiable by its nature and import. In other words, the interpretation of the expression 'person interested' in the Act is not the whole of the meaning of the words 'persons interested'. In view of this, the definition of 'person interested' given in the Act cannot be interpreted to exclude petitioner who also has to bear the burden of the compensation. Support for this view can be drawn from a decision of their Lordships of the SC in *Punjabi University v. A. S. Ganesh* [26] In this case, the land was acquired for the Punjabi University and an appeal, against the enhanced compensation by the Court on reference under Section 18, was filed by the Punjabi University and the State Government of Punjab. The appeal was filed beyond time and a prayer for condonation of delay in filing the appeal was made on the ground that the Registrar of the University had committed a *bona fide* mistake in calculating the period. The prayer for condonation was opposed on the ground that the mistake in calculation of the period by the Registrar of the University could not be a ground for condonation of delay as the University had no right to file the appeal. Primarily, the State Government has the right to file the appeal. The High Court accepted the objection and refused to condone the delay. The SC in special appeal condoned the delay holding as under (at 1975)
:

> "It may be noted that the party which was essentially interested in filing the appeal was the Punjabi University. It had to pay the compensation for the lands acquired. Therefore, there was nothing surprising if the Government had left the matters in the hands of the Punjabi University. The Punjab Government was only fighting the case for the benefit of Punjabi University.
> ** ** **
> 5.It was urged on behalf of the respondent that the Punjab Government cannot take advantage of the mistake committed by Mr. Atma Ram.
> It has not given any explanation of its own for not filing the appeal within time.

> This contention does not appeal to us. As mentioned earlier, Punjab Government had evidently left the matters in the hands of the PunjabiUniversity which was the party really interested. It depended entirely on the Punjabi University. We see no reason why that course should be found to be improper." (Emphasis mine).

71. The learned counsel for respondent No. 1 relying on the following observations of the decision of the High Court of Andhra Pradesh in *Andhra Pradesh Agricultural University v. B. Gangaram,*: [27]

> "6. Sri P. Babulu Reddy, learned counsel for the Agricultural University, relied on the decision of the SC in *Punjabi University v. A. S. Ganesh,* [28] That was a case in which an appeal was filed against an award of the Court jointly by the Punjab Government and the Punjabi University. There was some delay in filing the appeal. The delay was sought to be explained on the ground that there was some miscalculation by the Registrar of the Punjabi University. The Punjab High Court held that right to file the appeal was primarily that of the Punjab Government and since the miscalculation was by the Registrar of the University there was no sufficient reason for condoning the delay in filing the appeal. The SC observed that since the land was acquired for the benefit of the Punjabi University and since it was the University that was nothing surprising if the Government had left the matters in the hands of the Registrar of the University. The miscalculation made by the Registrar was, therefore, sufficient ground to condone the delay. I do not see how this case would possibly help Mr. P. Babulu Reddy. The learned Judges were merely considering the question whether there was sufficient reasons to condone the delay in the filing of the appeal by the Punjab Government. To the extent that it goes the decision is against Mr. Babulu Reddy. The SC did not say that the Punjabi University had the right to appeal and, therefore, the miscalculation made by the Registrar was sufficient reason to condone the delay. What they said was that the Punjab Government was justified in placing the matter in the hands of the Registrar of the Punjabi University and in that view, there was sufficient reason to condone the delay."

Contended that the decision of the SC in *Punjabi University v. A. S. Ganesh* (supra) is distinguishable. The distinction made by the High Court of Andhra Pradesh is of no consequence for the present case. The Andhra Pradesh High Court was essentially

considering the question of right of appeal by the local authority or a Company and it did not consider the important observation : "The party which was essentially interested in filing the appeal was the Punjabi University. It had to pay the compensation for the land acquired" of the SC which has a material bearing on the decision of the point in controversy in the instant case. The ratio of the SC decision is that the party for whose benefit the land is acquired and which has to bear the burden of compensation is a party interested.

72. It is undisputable that the local authority, for whose benefit the land is acquired has no right to ask for a reference under Section 18 against the award given by the Collector and there is no other remedy provided in the Act for the local authority to prevent a tribunal or an authority under the Act from exceeding bounds of statute or to get redress against its acts done in violation of or exceeding the bounds of the statute. As already discussed hereinabove, the petitioner had a legal right to obtain the land by acquisition under the Act against payment of a price determinable according to the provisions contained in Section 23 of the Act. If the view canvassed by the learned counsel for respondent No. 1 that the petitioner has no right to challenge the award is accepted, it would mean that though the petitioner has a legal right, it has no remedy and it has to suffer a legal wrong or an injury. At this stage, one has to recall to memory the well known maxim ubi remedium ibi jus, i.e. whenever there is a right, there should also be an action for its enforcement. It, therefore, can never be thought of that even when an award is in violation of the statutory provision, it cannot be challenged.

73. Apart from the discussion made hereinabove, distinguishing the authorities referred to in paragraphs 26 and 27 (paragraphs 68 and 69 in this report - Ed.) relied upon by the learned counsel for respondent No. 1, those authorities, with utmost respect, I may say, do not hold the field on the question of *locus standi* in view of the decision of their Lordships of the SC in *J. M. Desai v. Roshankumar (AIR 1976 SC 578)* (supra).

74. Now turning to the second aspect of the argument of the learned counsel for the respondent on the question of *locus standi* which was that the petitioner is neither a local authority nor a company and as such, it has not even a right to participate in the proceeding even to the extent provided in sub section (2) of Section 50 of the Act. It would suffice to say that without going into the question whether the petitioner is a

local authority or not, for the reasons already stated hereinabove in detail in the foregoing paragraphs of my opinion, when it has been found that the petitioner is a person aggrieved, it has a *locus standi* irrespective of the fact whether it is or is not a local authority. Further on the perusal of the respective orders of both the Hon'ble Judges, it appears that the case was argued on the premises that the petitioner is a body covered under Section 50 of the Act.

75. Now, I turn to the question whether in the instant case, there is a violation of the statutory requirements under Sections 23 and 24 of the Act regarding the determination of amount of compensation. This part of discussion is relevant answer to question No. 1 as well as to question No. 2.

76. Section 15 of the Act enjoins upon the Collector Land Acquisition Officer to be guided by the provisions contained in Sections 23 and 24 of the Act in determining the amount of compensation. Sections 23 and 24 lay down the principle as to how the compensation has to be determined. The principle for determining the market price has been discussed and interpreted in various decisions of their Lordships of the Supreme Court. It is not necessary to catalogue all those authorities. I would prefer to refer to two of the authorities of the SC (i) *State of Gujarat v. Vakhatsinghji* [29] (ii) *Tribeni Devi v. Collector, Ranchi*[30] The principles laid down in these two decisions are summed in the respective head notes which are reproduced hereinbelow :
AIR 1968 SC 1481 (at pp. 1487-1488) :

> "In the case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantages. Where there are no sales of comparable lands, the value must be found in some other way. One method is to take the annual income which the owner is expected to obtain from the land and to capitalize it by a number of years purchase. The capitalized value is then taken as the market value which a willing vendor might reasonably expect to obtain from a willing buyer. In some special cases awards have been given on the reinstatement value which is assessed according to the cost of acquiring an equally convenient land or premises. This method should not be adopted where the market value deduced from the income derived from the lands would fairly compensate the owner and in no case can reinstatement value be given unless reinstatement in some other place is *bona fide* intended."

AIR 1972 SC 1417 :

"The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard, the land acquired has therefore, to be valued not only with reference to its condition at the time of the declaration under Section 4 of the Act but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighboring lands of similar nature are fetching can be taken into account by capitalizing the rent which according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method. The methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under Section 4 (1) are : (i) opinion of experts, (ii) the price paid within a reasonable time in *bona fide* transaction of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonably correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. AIR 1959 SC 429, Followed.

Held on facts that the High Court was not justified in adopting the registered sale-deed of a land which is further away not only from the land acquired but from the town. Held further that High Court was not justified in giving 10% towards potential value because that element was inherent in the fixation of the

> market value of the land and could not be assessed separately. It was also held that the High Court was not justified in disallowing 5% as compensation for severance merely because there was an entrance to the land. When a portion of the land is acquired and a large portion left out there would be a diminution in the value of the land that is left out for which some compensation has to be allowed. 1966 BLJR 834, Reversed on facts."

It may be mentioned here that the learned counsel for the petitioner conceded that the amended provision of Section 23 of the Act as amended by the State of Madhya Pradesh does not apply to the instant case. In the instant case, respondent No. 2 has rested his determination of compensation on Annexures-'C and 'D' (Exs. P/1 and P/2) treating them to be the land adjacent to the land in question and having same advantages. To quote :

> "Kewal Kramank Do aur Char par ankit bikri patro dwara vikrit Bhumi tatha sampadit Bhumi ki sthiti me samanata hai. Atah in Do Bikri Patro ko is sampadit Bhumi ke Bajar Mulya Nirdharan hetu adhar manana pratit hota hai.....
> ..... Uper diya nirnaya ke anusar in prakaron me nirdharan hetu Ex P1 wa P2 Bikri Patroko hi adhar mana ja sakta hai."

But, as would be apparent from the discussion contained in the opinion recorded by the Hon'ble the Chief Justice especially paragraphs 16 to 21 (paragraphs 28 to 33 in this report - Ed.) of his opinion, which is duly supported by the material on record, the lands covered in these two sale- deeds, namely (Annexures-'C' and 'D' Exs. P/1 and P/2) are not only adjacent to the land in question, but are also not comparable with regard to the advantages. This being the situation, it can unhesitatingly be said that respondent No. 2 has acted in violation of the provisions contained in Sections 23 and 24 of the Act in giving the impugned award. It is true that in a writ jurisdiction, this Court does not interfere in a finding of fact recorded by a Tribunal. But, law is trite on the point that if a finding of fact is based on no evidence, that would be regaderd as an error of law which can be corrected by a writ of certiorari. If any case law is needed on this question, reference can be made to *State of Orissa v. Murlidhar* [31] *Syed Yakoob v. Radhakrishnan* [32] and *Tribhuban Parkash v. Union of India* [33]

77. The cumulative effect of the foregoing discussion is that the petitioner has a *locus*

standi to file the present writ petition challenging the impugned award (Annexure-'B').

78. I would now revert to the consideration of question No. 2.

79. The question No. 2, for convenience has to be split in two parts as below : (a) whether the award of the Land Acquisition Officer must be quashed, and (b) whether net proceeds fetched by the Town Improvement Trust on sale of the plots i.e. Rs. 46,902.21 shall be paid to respondent No. 1 as compensation. I would proceed to discuss these two parts ad seriatim.

80. The answer to the first part need not detain me much as in the light of the discussion while considering question No. 1, the considered answer is that the impugned award (Annexure-'B') by the Land Acquisition Officer should be quashed. I now revert to the consideration of the second part. The answer to this part involves the power of this Court in its writ jurisdiction to quash the award of respondent No. 2 and to substitute it by its award. In the light of the view that I am taking, it is not necessary to go into this question of the competency of this Court.

81. Under Section 18 of the Act, the claimant whose land is acquired, if he feels that the amount awarded is inadequate, has a right not to accept it and demand a reference to Court for enhancement. The claimant, has a further right of appeal to this Court if he is aggrieved by the award of the Court also. In case this Court, while quashing the award of respondent No. 2, substitutes its own, a very anomalous situation would arise. The question would be whether after the award by this Court, though in its writ jurisdiction, a reference would lay. This apart, at any rate, even assuming that the award of this Court in these proceedings would not bar the right of reference, still the referee Court which is certainly subordinate to this Court would be in an embarrassing position, in view of the substitution of the award by this Court, and the possibility of its not giving its independent judgment cannot be eradicated. This would result in great injustice to respondent No. 1. In this view of the matter, this Court cannot, while quashing the award by respondent No. 2, substitute its own award and the matter should be remitted back to respondent No. 2 to redetermine the amount of compensation from the material on record bearing in mind the principles laid down by their Lordships of the SC referred to hereinabove, for determining the market value under Section 23 of the Act. It may be that the price obtained by the petitioner at an auction sale of the plots of lands in question, may be a good means of ascertaining

what the thing is worth, viz., its fair market price, because auction is a proceeding at which people are invited to compete for the purchase of a property by successive offers; but this is a matter for respondent No. 2 to consider and arrive at his own independent judgment.

82. In the result, my answers to the questions referred to me are as under :-

> Question : Whether, on the facts and in the circumstances of this case, the Town Improvement Trust, Gwalior has *locus standi* to challenge, by a petition under Article 226 of the Constitution, the award made by the Land Acquisition Officer under the Land Acquisition Act?
>
> Answer : In the facts and circumstances of this case, the Town Improvement Trust, Gwalior has the *locus standi* to challenge, by a petition under Article 226 of the Constitution, the award made by the Land Acquisition Officer, under the Land Acquisition Act.
>
> Question : Whether the award of the Land Acquisition Officer must be quashed and the net proceeds fetched by the Town Improvement Trust on sale of the plots, that is, Rs. 46,902.21 shall be paid to respondent No. 1 as compensation?
>
> Answer : The award dated 27-4-1970 of the Land Acquisition Officer must be quashed; the award of Rs. 46,902.21 should not be substituted in its place by this Court, but the matter should be remitted to the Land Acquisition Officer for redetermining the amount of compensation from the material already on record in the light of the observations made in this opinion.

83. In the result, the case be returned back to the referring Division Bench with my aforesaid opinion for its final decision according to clause 26 of the Letters Patent.

84. Final Order (Per Shiv Dayal C.J. and Sharma, J.) :- In accordance with the opinion of the third Judge, the petition is allowed. The award dated April 27, 1970, of the Land Acquisition Officer is quashed. The matter shall be remitted to the Land Acquisition Officer for redetermining the amount of compensation on the material already on record, in the light of the observation made in the opinion of the third Judge. Parties shall bear their own costs. The amount of security shall be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. 1975 MP LJ 822
2. (AIR 1968 SC 1481)
3. AIR 1955 Pat 63
4. 1965 MPLJ 961
5. (1909) 13 Cal WN 116
6. 1974 MPLJ (SN) 106
7. AIR 1971 Bom 341
8. AIR 1976 SC 578
9. (1961) 2 All England Reporter 504 (511)
10. 1975 MPLJ 822
11. 1965 MPLJ 961
12. (1909) 13 Cal WN 116
13. AIR 1959 Bom 297
14. AIR 1976 SC 578
15. (First Appeal No. 94 of 1967)
16. 1965 MPLJ 961.
17. ((1909) 13 Cal WN 116
18. 1957 Nag LJ 547
19. AIR 1971 Bom 341
20. 1952 SCR 28
21. (1962) Supp 3 SCR 1
22. (1967) 1 SCR 413,
23. AIR 1966 SC 828
24. AIR 1972 SC 2112
25. AIR 1973 SC 2720
26. (AIR 1972 SC 1973)
27. AIR 1974 And Pra299 (at p. 302)
28. AIR 1972 SC 1973
29. (AIR 1968 SC 1481)
30. (AIR 1972 SC 1417)
31. (AIR 1963 SC 404)
32. (AIR 1964 SC 477)
33. (AIR 1970 SC 540)