

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No.196 of 1999 alongwith RFA Nos.78, 82, 85 to 89, 91, 195, 211 to 218 of 1999, 6 to 10, 95, 104, 105, 106, 115, 116, 117 & 327 of 2000 AND Cross Objections No.139/2000, 190, 191, 186, 187, 188, 189, 198 of 1999, 20 of 2001, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 127, 93, 94, 126, 130, 129, 131, 339, 128 of 2000, 19 of 2001 and 328 of 2000.

**Judgment Reserved on: 28.08.2009
Date of decision: 30.11.2009**

Coram:

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹ Yes.

1. RFA No.196 of 1999 alongwith C.O.No.139 of 2000.

Ram Lal & Others	VersusAppellants
L.A.C. & Another	Respondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

2. RFA No.78 of 1999 alongwith C.O.No.190 of 1999.

Ram Lal & Others	VersusAppellants
L.A.C. & Another	Respondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?* **Yes.**

3. **RFA No.82 of 1999 alongwith C.O.No.191 of 1999.**

Babu Ram & AnotherAppellants
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

4. **RFA No.85 of 1999 alongwith C.O.No.186 of 1999.**

Dhani RamAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

5. **RFA No.86 of 1999 alongwith C.O.No.187 of 1999.**

GhamiraAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

6. **RFA No.87 of 1999 alongwith C.O.No.188 of 1999.**

GulabaAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

7. **RFA No.88 of 1999 alongwith C.O.No.189 of 1999.**

Bhim Lal & OthersAppellants
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

8. **RFA No.89 of 1999 alongwith C.O.No.198 of 1999.**

Ranjit SinghAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

9. **RFA No.91 of 1999.**

Rania & OthersAppellants
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

10. **RFA No.195 of 1999 alongwith C.O.No.20 of 2001.**

Ram Dass & OthersAppellants
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S.
Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

11. RFA No.211 of 1999 alongwith C.O.No.83 of 2000.

Garja**Appellant**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

12. RFA No.212 of 1999 alongwith C.O.No.84 of 2000.

Ram Dass**Appellants**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

13. RFA No.213 of 1999 alongwith C.O.No.85 of 2000.

Satya Devi & Others**Appellants**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

14. RFA No.214 of 1999 alongwith C.O.No.86 of 2000.

Chunka**Appellant**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

15. RFA No. 215 of 1999 alongwith C.O.No.87 of 2000.

Sunder Ram & Others**Appellants**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

16. RFA No.216 of 1999 alongwith C.O.No.88 of 2000.

Bohri & Others**Appellants**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

17. RFA No.217 of 1999 alongwith C.O.No.89 of 2000.

Dili**Appellant**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

18. RFA No.218 of 1999 alongwith C.O.No.90 of 2000

Vidya & Another**Appellants**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

19. RFA No.6 of 2000 alongwith C.O.No.91 of 2000.

Bali Ram & OthersAppellants
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

20. RFA No.7 of 2000 alongwith C.O.No.92 of 2000.

LakhuAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

21. RFA No.8 of 2000 alongwith C.O.No.127 of 2000.

Dandu RamAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

22. RFA No.9 of 2000 alongwith C.O.No.93 of 2000.

Munshi RamAppellant
Versus
L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

23. RFA No.10 of 2000 alongwith C.O.No.94 of 2000.

Lobhi**Appellant**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): M/s.Ramakant Sharma and T.S. Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

24. RFA No.95 of 2000 alongwith C.O.No.126 of 2000.

Kirlu**Appellant**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate

25. RFA No.104 of 2000 alongwith C.O.No.130 of 2000.

Sita**Appellant**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

26. RFA No.105 of 2000 alongwith C.O.No.129 of 2000.

Fulan Devi & Others**Appellants**
Versus
L.A.C. & Another**Respondents**

For the Appellant(s): Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General assisted by Mr.Ankush Dass Sood, Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

27. RFA No.106 of 2000 alongwith C.O.No.131 of 2000.

Bhandari RamAppellant
 Versus
 L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
 with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
 assisted by Mr.Ankush Dass Sood,
 Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

28. RFA No.115 of 2000 alongwith C.O.No.339 of 2000.

Babu RamAppellant
 Versus
 L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S.
 Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
 assisted by Mr.Ankush Dass Sood,
 Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

29. RFA No.116 of 2000 alongwith C.O.No.128 of 2000.

Budhi RamAppellant
 Versus
 L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S.
 Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
 assisted by Mr.Ankush Dass Sood,
 Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

30. RFA No.117 of 2000 alongwith C.O.No.19 of 2001.

Beli RamAppellant

Versus

L.A.C. & AnotherRespondents

For the Appellant(s): M/s.Ramakant Sharma and T.S.
Chauhan, Advocates.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

31. RFA No.327 of 2000 alongwith C.O.No.328 of 2000.

Krishan DassAppellant

Versus

L.A.C. & AnotherRespondents

For the Appellant(s): Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.

For Respondent No.1: Mr.R.K. Bawa, Advocate General
assisted by Mr.Ankush Dass Sood,
Additional Advocate General.

For Respondent No.2: Mr.K.D. Sood, Advocate.

Dev Darshan Sud, J.

All these appeals and Cross Objections are being disposed of by a common judgment as they relate to acquisition of land for the purposes of setting up a Cement Plant by Associated Cement Company (ACC) Limited, Barmana. Parties have agreed and consented that the

point of law being common in all these appeals and Cross Objections, the cases be taken up and decided together.

It is undisputed before me that Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued by the Himachal Pradesh Government on 7.10.1978 for acquisition of land in various villages in and around Barmana for public purpose which was described as mining of limestone, construction of a factory and residential complex by the Associated Cement Company Limited. This Notification was published in the Himachal Pradesh Rajpatra on 21.10.1978. The Land Acquisition Collector by his award granted compensation according to the classification of the land i.e. to say:-

(i)	Anderli Awal	Rs.7500/- per bigha.
(ii)	Anderli Doem.	Rs.6900/- per bigha.
(iii)	Bahrli Awal	Rs.6200/- per bigha.
(iv)	Bahrli Doem	Rs.3700/- per bigha.
(v)	Kharetar/Banjar etc. (un-cultivated)	Rs.1200/- per bigha

Being dis-satisfied by the award, the claimants-respondents petitioned the reference Court under Section 18 of the Act claiming just compensation pleading that the Collector had not properly appreciated the principle of law applicable for assessing just compensation in terms of Section 23(1-A) of the Act.

It is undisputed that prior to the present appeals being instituted, the Associated Cement Company

had petitioned this Court against the award made by learned District Judge, which appeals were allowed and the cases were remanded for decision afresh in accordance with law as directed.

Before referring to the submissions made by the learned counsel for the parties, the details of the acquired land may be considered which are tabulated here-in-below:-

Sr. No.	RFA/Cross Objection No.	Title	Land Ref. Number	Area (Bigha)	Classification	District Judge Award dated
1.	327/2000 CO. 328/2000	Krishan Dass Vs. LAC & Anr	18/87	12-08	1-00 Bigha Baharli Doem 11-02 Bigha Khadetar 0-06 Gair Mumkin Pathar	7.11.1998
2.	78/1999 CO. 190/1999	Jangi & Others (Now Ram Lal & Ors.) Vs. LAC & Anr	9/87	7-06	3-06. Bigha Baharli Abbal 4-00 Bigha Baharli Doem	6.3.1999
3.	82/1999 CO .191/1999	Govind Ram & Ors. (Babu Ram & Ors.) Vs LAC & Anr	13/87	5-03	5-00 Bigha Baharli Awal 0-03 Bigha Gair Mumkin Beer	6.3.1999
4.	85/1999 CO.186 /1999	Dhani Ram Vs. LAC & Anr	6/87	12.08	2-00 Bigha Baharli Awal 10.8 Banjar Kadim	6.3.1999
5.	86/1999 CO.187 /1999	Ghamira & Others Vs LAC & Anr	3/87	7-00	2-00 Bigha Baharli Awal 5-00 Bigha Banjar Kadim	6.3.1999
6.	87/1999 CO.188 /1999	Gulaba Vs LAC & Anr	8/87	6-17	3-12 Bigha Baharli Awal 3-05 Kharetar	6.3.1999
7.	88/1999 CO.189 /1999	Magni Ram (Now Bhim Lal & Ors.) Vs LAC & Anr	41/87	6.11	6-00 Bigha Baharli Awal 0-11 Bigha Gair Mumkin Pathar	6.3.1999
8.	89/1999 CO.198 /1999	Ranjit Singh. Vs	1/87	4-14	4-00 Bigha Baharli Awal	6.3.1999

		LAC & Anr.			0-14 Bigha Gair Mumkin.	
9.	91/1999	Nagru etc. (Now Rania & Others) Vs. LAC. & Anr	53/87	16-00	6.10 Bigha Baharli Awal 9.10 Bigha Gair Mumkin.	6.3.1999
10.	195/1999 CO.20 /2001	Mohan (Now)Ram Dass & Others) Vs. LAC & Anr.	27/87	9-00	8-15 Bigha Awal 0-05 Bigha Gair Mumkin Abadi.	6.3.1999
11.	104/1999 CO.130 /2000	Smt.Dev Jani & Ors. (Now Sita) Vs. LAC & Anr.	42/87	7-06	6-16 Baharli Doem 1-06 Gair Mumkin Pathar 0-04 Gair Mumkin Abadi	7.11.1998
12.	105/1999 CO.129 /2000	Phullan Devi & Ors. Vs. LAC & Anr.	44/87	6-03	5-00 Bigha Baharli Abbal 1-03 Bigha Gair Mumkin Pathar	7.11.1999
13.	106/1999 CO.131/2000	Chandu & Ors Vs. LAC & Anr.	2/87	9-02	8-04 Bigha Baharli Abbal 0-18 Bigha Gair Mumkin Khadetar	7.11.1998
14.	196/1999 CO.139/2000	Smt.Madi alias Devcki through LR's. Ram Lal and Others Vs. LAC & Anr.	4/87	9-18	8-09 Bigha Baharli Awal 0-19 Bigha Gair Mumkin Pathar/Beer	4.3.1999
15.	95/1999 CO.126/2000	Kirlu Vs. LAC & Anr.	45/87	8-16	8-00 Bigha Baharli Doem 0-16 Bigha Gair Mumkin Pathar	7.11.1998
16.	211/1999 CO.83/2000	Garja Vs. LAC & Anr.	23/87	5-10	5-00 Bigha Baharli Awal. 0-10 Bigha Gair Mumkin Beer.	6.3.1999
17.	212/1999 CO.84/2000	Ram Dass & Ors. Vs. LAC & Anr.	28/87	8-17	8-00 Bigha Baharli Abbal 0-17 Bigha Gair Mumkin Pathar.	6.3.1999
18.	213/1999 CO.85/2000	Smt.Satya Devi & Others Vs. ACC & Anr.	47/87	9-13	9-00 Bigha Baharli Awal 0-13 Bigha Gair Mumkin Pathar.	6.3.1999
19.	214/1999 CO.86/2000	Chunka Vs. LAC & Anr.	25/87	9-00	8-00 Bigha Baharli Awal. 0-05 Bigha Gair Mumkin Abadi. 0-15 Bigha Gair Mumkin Pathar.	6.3.1999
20.	215/1999 CO.87/2000	Ghanaya (Now Sunder Ram) Vs.	29/87	9-10	8-00 Bigha Baharli Awal 0-05 Bigha Gair Mumkin	6.3.1999

		LAC & Anr.			Abadi. 1-05 Bigha Gair Mumkin Pathar	
21.	216/1999 CO.88/2000	Smt.Bohri & Ors. Vs. LAC & Anr.	10/87	7-08	7-00 Bigha Baharli Awal 0-08 Bigha Gair Mumkin	6.3.1999
22.	217/1999 CO.89/2000	Smt.Dilli Vs. LAC & Anr.	43/87	5-05	5-00 Bigha Baharli Awal 0-05 Bigha Gair Mumkin Pathar.	6.3.1999
23.	218/1999 CO90/2000	Smt.Vidya & Anr. Vs. LAC & Anr.	49/87	9-00	8-00 Bigha Baharli Awal 1-00 Bigha Gair Mumkin Pathar.	6.3.1999
24.	6/2000 CO.91/2000	Ghaniya (Now Bali Ram & Ors.) Vs. LAC & Anr.	55/87	8-12	8-05 Bigha Baharli Awal. 0-07 Bigha Gair Mumkin Beer.	6.3.1999
25.	7/2000 CO.92/2000	Lakhu Vs. LAC & Anr.	24/87	10-00	9-00 Bigha Baharli Awal. 1-0 Bigha Gair Mumkin Pathar.	6.3.1999
26.	8/2000 CO.127/2000	Dandu Ram Vs. LAC & Anr.	26/87	6-03	5-05Bigha Baharli Awal 0-05 Bigha Gair Mumkin Abadi. 0-13 Bigha Gair Mumkin Pathar.	6.3.1999
27.	9/2000 CO.93/2000	Munshi Ram Vs. LAC & Anr.	51/87	4-13	4-10 Bigha Baharli Awal 0-03 Bigha Gair Mumkin Pathar.	6.3.1999
28	10/2000 CO.94/2000	Labhi Vs. LAC & Anr.	20/87	9-16	8-15 Bigha Baharli Awal 0-05 Bigha Gair Mumkin Abadi. 0-16 Bigha Gair Mumkin Pathar	6.3.1999
29.	115/2000 CO.339/2000	Babu Ram Vs. LAC & Anr.	16/87	9-11	9-00 Bigha Bharli Doem 0-11 Bigha Gair Mumkin.	6.3.1999
30.	116/2000 CO.128/2000	Budhi Ram Vs. LAC & Anr.	50/87	7-00	6-10 Bigha Baharli Awal. 0-10 Bigha Gair Mumkin Beer.	6.3.1999
31.	117/2000 CO.19/2001	Beli Ram Vs. LAC	31/87	10-00	8-10 Bigha Baharli Awal 1-00 Bigha Gair Mumkin Pathar. 0-10 Bigha Beer.	6.3.1999

Cross Objections have been preferred by respondent No.2-Company in each of the appeals. The claimants have prayed that the value of the land was not less than Rs.40,000/- per bigha. Learned counsel appearing for the petitioner submit that since the purpose of the acquisition was for mining, the nature of the land did not make any difference and that it had to be assessed at a flat rate.

Learned counsel for the respondent submits that the amount which has been awarded is high and is not justified by the material/evidence on the record. He submits that the award of the Collector determines the true value of the land. It is urged by him that the acquisition was of a large chunk of land by a common Notification and sale instances brought on record by the respondents being for a small pieces of land, could not be used as exemplars for determining just compensation.

It is undisputed before me that the Notification under Section 4 of the Act provided for acquisition of the land in various villages for a common purpose i.e. mining and construction of a factory and residential colony in Gagal by the Associated Cement Company. The Collector has taken note of this fact and also that the National Highway-21 runs through this land.

Adverting to the evidence on record what requires to be considered is the testimony of State

Geologist Shri Subhash Sharma Son of Shri Siri Ram Sharma, RW-1, who appeared as a witness for the State. He has testified on oath that he was working as State Geologist with the State of Himachal Pradesh since October, 1971 to August, 1995. In 1974, Shri Karlelkar of Associated Cement Company, filed an application in his office requesting for permission for survey and prospecting limestone etc. to determine the grade of the stone for its suitability for use and manufacture of Cement etc. The survey was to be conducted by the officials of respondent No.2 in and around Gagaldhar and Bilaspur. In 1975 recommendation was made by the Department for according permission for prospecting of the area including the land of the claimants and drilling operations were carried out by the respondents to ascertain the quality of the rock, the land and its suitability for being used in cement manufacturing and establishing manufacturing facilities. This permission was granted by the State. Having found the area suitable and the material fit for manufacture of Cement, respondent No.2 applied to the Union of India for an Industrial Licence and other necessary permissions. During the interregnum the entire site was surveyed and inspected in detail. The Central Government granted the necessary licence and permission(s) to the Associated Cement Company in the year 1976. He states that once prospecting activities had been undertaken by the Company and acquisition recommended by the State

Government, the residents of the village(s) became aware about the commercial potentiality of the land. Consequently, it was quite possible that the prices of the land had been inflated by them.

His evidence has been referred to in some detail as it establishes that the area selected was suitable for the purposes of mining limestone of high quality, setting up a factory and housing colony in the area and a conscientious decision was taken to acquire the land. In other words, the classification and nature of the land had lost importance. It was the ultimate use of the land which had to be considered. The respondent had chosen the site, requested for permission for survey/prospecting, testing the minerals, rocks etc. and only thereafter sought permission from the Union Government for setting up a factory. The claimants led evidence to establish the value of the land on the basis of its classification irrespective of the use to which it may have been put and to demonstrate that this value was not inflated because of the fact that the land was to be used for commercial purposes.

The petitioners have appeared as witnesses in each case instituted by them and have also brought on record sale instances to establish the value of the land which according to them was the basis for award of just compensation.

The learned Reference Court while disposing of the petitions, has relied upon the other awards made by

the reference Court(s) for the land situated in the adjoining/contiguous villages. The Court has not considered/accepted some of the sale deeds produced on the record on the ground that they relate to small pieces of land and cannot be used for determining the compensation of large tract of land. The Court also observes that some of the sale deeds may not represent bonafide transaction(s), that is to say, the value of the land has been inflated/increased solely for the purpose of increasing the value of the land and does not represent the true value/worth of the land sold.

I have heard learned counsel appearing for the parties and considered the record.

Notification under Section 4 of the Act, dated 7th October, 1978, was for a large chunk of land measuring 1934 bighas. The appellants claimed minimum of Rs.30,000/- or higher per bigha as the true value of the land, whereas the respondents contend that there is no evidence on the record to justify this submission and that the sale transactions being relied upon cannot be relied upon as they relate to small parcels of land.

The Collector has abstracted the Notification under Section 4 of the Act:-

"The Himachal Pradesh Government issued notification bearing No.Ind-F.10-278(AI) dated 7th October, 1978 under section 4 of the Land Acquisition Act, 1894 (hereinafter called the Act) for the acquisition

of land in various villages including village Baloh for public purpose namely for the mining, construction of factory and colony by the Associated Cement Companies Limited, Gagal at their expenses. The notification was published in H.P. Raj Patra vide No.IND-F.10-2/78(IA)dated 21st October, 1978. Subsequently some khasra numbers were denotified from acquisition by the Government under section 48(1) vide No. IND-F.10.2/78(IA) dated the 3rd August, 1981 and consequently land comprised in khasra number 106/78, 81, 84, 96/78, 97/78, 104/78, 103/78/1/2, 116/112/78/2/1, 82, 83, 80, 80/1, 79, 79/1, 107/78, 108/78, kita 16 measuring 85-3 bighas situated in village Baloh, Tehsil and District Bilaspur is left for acquisition. This area is being acquired for public purpose by the Government on the request of the Associated Cement Companies, Limited at their expenses for mining purposes."

(Emphasis supplied)

This conclusively establishes the fact that the land is required for a commercial purpose. No other evidence was required to prove that minerals/limestone were required to be extracted from the land for being used in the manufacture of cement.

The evidence of RW-1, State Geologist, proves that the area/land was selected only when it is found fit for mining of stones and setting up of a factory after a comprehensive survey and analysis, deep contemplation and testing and was a conscious decision taken by the respondent to acquire the land. In other words, the utility of the land was tested and determined before its acquisition.

Learned counsel appearing for the appellant relies upon the decision of the Supreme Court in the ***Land Acquisition Officer Revenue Divisional Officer, Chittor vs. L.Kamamma (Smt.) Dead by LRs and others, 1998 (2) SCC 385***, holding that once the area was found fit for being developed as an urban settlement award of compensation on the basis of classification was not justified. Reliance is also placed on the decision made in ***Ravinder Narain and Another vs. Union of India, (2003) 4 SCC 481***, holding:-

"6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in *The Collector of Lakhimpur v. Bhutan Chandra Dutta (AIR 1971 SC 2015)*, *Prithvi Raj Taneja (dead) by Lrs. v. The State of Madhya Pradesh and anr. (AIR 1977 SC 1560)* and *Smt. Kausalya Devi bogra and Ors. etc. v. Land*

Acquisition officer. Aurangabad and Anr. (AIR 1984 SC 892).

7. *It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."*

The principles for determining compensation are by now well settled. Comprehensive discussion of the law and principles applicable are laid down and enumerated by the Supreme Court in ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and another, (1988)3 SCC 751***, where the Court has detailed the entire factors requiring consideration. It was also laid down by the Court that the factors enumerated would vary in each case depending on the facts proved.

In these appeals, what needs to be considered is the fact that the land has been acquired only after a comprehensive survey and a conscientious decision taken thereafter, after determining the suitability of the land for the commercial purpose contemplated. In other

words, it was only after a thorough technical evaluation that the land was selected assessing the suitability of the lime stone and other minerals to be extracted for the purposes of manufacture of cement and a factory set up for this purpose, which would bring with it housing colonies, office etc. The evidence of Shri Subhash Sharma, RW-1 along with the Notification under Section 4 of the Act and the award of the Collector on the record establishes that it is the potentiality of the land which is to be considered and not the agricultural quality for two reasons; (a) the land has been chosen after careful survey establishing that the raw material to be used in the cement factory and the land suitable in all respects for construction of factory and offices etc. and (b) National Highway No.21 passes through the middle of the factory set up by the respondent as admitted by RW-1 Shri Subhash Sharma.

Counsel appearing for the parties have placed reliance on various decisions of the Supreme Court in support of their respective contentions. Learned counsel for the appellants submits that uniform rate for assessment of the value of the land should be resorted to. He relies on judgment of this Court in ***Smt. Gulabi and etc. vs. State of H.P. AIR 1998 HP 9***, where the land was acquired for the purposes of construction of National Highway No.21 and this Court awarded a flat rate irrespective of the classification of the land. To similar effect is the judgment in ***H.P Housing Board vs.***

Ram Lal and Others, 2003(3) Shim.L.C. 64, where a large chunk of land measuring 24847.2 square meters was acquired for the purpose of construction of a Housing Board Colony.

In **Atma singh (Dead) through L.Rs. and Others vs. State of Haryana and Another, (2008)2 SCC 568**, 89 acres and 3 marlas of land was acquired for construction of a cooperative sugar mill. The High Court in appeal deducted 33% of the assessed value because the exemplars of sale relied upon were of small pieces of land. Being dis-satisfied, the land owners preferred an appeal before the Supreme Court which ruled:-

"4. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. See *Thakur kanta Prasad v. State of Bihar*, AIR 1976 SC 2219; *Prithvi Raj taneja v. State of M. P.* , AIR 1977 SC 1560; *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1988 SC 943 and *Periyar v. State of Kerala*, AIR 1990 SC 2192."

5. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential,

commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development have to be taken into consideration. See collector Raigarh v. Hari Singh Thakur, AIR 1979 SC 472, raghubans Narain v. State of U. P. , AIR 1969 SC 465 and administrator General, W. B. v. Collector Varanasi, AIR 1988 SC 943. It has been held in Kaushalya Devi v. L. A.O. Aurangabad, AIR 1984 SC 892 and Suresh Kumar v. T. I. Trust, AIR 1980 SC 1222 that failing to consider potential value of the acquired land is an error of principle."

The Court concluded:-

"15. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would

produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-product in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by-product begasse is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving

substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration".

(Emphasis supplied)

In considering the potentiality of the land and determining its value the Supreme Court in **Union of India and Others vs. Ajit Singh AIR 1997 SC 2669**, held:-

"5. The High Court in the judgment has noted that the lands are situated in the developed area and are very near to the developed localities belonging to the private parties and Government. Therefore, it possesses the potential value for use for building purposes. ...
... Accordingly, it has determined the compensation @ Rs. 28,387.00 per

bigha... .. We think that the determination of the market value on the basis of the above consideration is not vitiated by any error of principle".

(Emphasis supplied)

Learned Senior counsel also submits that no deduction could be made from the value determined as the land is proved to be possessed of all the advantages of being put to commercial use and in fact was acquired only after such suitability was scientifically determined and does not require any developmental expenses. Appellants also rely on the decision in ***Bhagwathula Samanna and Others vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, AIR 1992 SC 2298.*** It is the submission of the learned Senior counsel that mining activity would not require development of the land but would only require extraction of the raw material.

Learned counsel Shri K.D. Sood appearing for the respondents submits that the acquisition is for a large tract of land and the exemplars brought on record cannot hardly be treated as being relevant for determining just compensation.

Relying upon ***Chimanlal Hargovinddas'*** case learned counsel submits that the compensation awarded by the Collector is in accordance with the material/evidence placed on the record. The compensation

determined by the learned reference Court is not supported by the evidence on record and the learned Court has relied upon wrong principle for determining the just compensation as legislated in Section 23(1-A) of the Act. He submits that one person from the family of each of the land holders whose land has been acquired has been granted employment. In these circumstances, the learned Reference Court was in error in redetrmining the compensation awarded.

There is no evidence on the record to show that the provision for employment was a part of the compensation package. There is nothing to show that it was an agreement inter-partes that instead of monetary compensation employment would be provided to those whose lands had been acquired. On the other objection of the learned counsel that the exemplars on record are for small tracts of land, I have already held that the land is to be valued on the basis of its potentiality.

The method adopted by the learned Reference Court for awarding compensation on the basis of the quality of the land cannot be accepted. I hold that the land is meant for commercial exploitation and acquired after a conscious decision having been taken by the ACC for setting up a cement plant, factory, offices, etc. The evidence of RW-1 when considered in its entirety as also the Notification(s) issued under the Act and facts noticed by the Collector are clear and unequivocal on the point. There were three stages in the acquisition

process; first when the Company requested for permission for prospecting in the area and thereafter permission of the State Government sought for and was granted. The second stage was the actual prospecting and testing of the material to determine its suitability for the purposes of being used for Cement Manufacturing etc. Third, after such successful testing, the Company applied to the Central Government for licence(s) and permissions etc. Considering all these aspects in their totality, compensation cannot be determined on the basis of the agricultural quality of the land but has to be adjudicated on the basis of its potentiality.

This exercise having not been undertaken and wrong principles of law applied by the learned District Judge, this Court is left with no other option but to set aside the judgment in appeal and remand the case to the learned District Judge, Bilaspur, for decision afresh in accordance with law. While ordering this remand, I am conscious to the fact that the parties have already suffered one remand which was also on the basis of wrong consideration of the principles of law applicable for determination of the value of the land by the Reference Court. It is with reluctance that I am constrained to remand the cases. However, the interest of both the parties would be safeguarded if time bound directions are issued to the learned Reference Court to decide the cases within a time bound frame. These appeals and cross objections are accordingly disposed of. A

direction is issued to the learned District Judge to re-admit the references on the record of the Court and to dispose them of in accordance with law. The Court shall of-course act with due expedition and shall dispose of the cases not later than **30th April, 2010**. This direction is issued keeping in view the fact that the reference petitions date back to the year 1987. Needless to add that no undue adjournment(s) shall be granted to any party. There shall be no order as to costs. A direction is issued to the Registry that the entire record of the proceedings be sent back to the Court of learned District Judge forthwith.

Parties shall appear before him on **11th December, 2009**, where-after the cases will be taken up for further proceedings.

November 30, 2009.
(aks)

(Dev Darshan Sud)
Judge.