

GAHC040004652023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. IA(C)/58/2023

The Union of India and 3 Ors

.....Applicants

-Versus-

Dorjee Khandu Chukla and 7 Ors

.....Respondents

Linked case No. L.A.Appl./1/2022

The Union of India and 3 Ors

.....Appellants

-Versus-

Dorjee Khandu Chukla and 6 Ors

.....Respondents

Linked case No. IA(C)/237/2022

The Union of India and 3 Ors

.....Applicants

-Versus-

Dorjee Khandu Chukla and 6 Ors

.....*Respondents*
Linked case No. L.A.Appl./2/2022

The Union of India and 3 Ors

.....*Appellants*

-Versus-

Libo Ragmuk and 4 Ors

.....*Respondents*

Linked case No. IA(C)/239/2022

The Union of India and 3 Ors

.....*Applicants*

-Versus-

Libo Ragmuk and 4 Ors

.....*Respondents*

Linked case No. IA(C)/59/2023

The Union of India and 3 Ors

.....*Applicants*

-Versus-

Libo Ragmuk and 5 Ors

.....*Respondents*

Linked case No. L.A.Appl./3/2022

The Union of India and 3 Ors

.....*Appellants*

-Versus-

Thinley Sona and 4 Ors

.....*Respondents*

Linked case No. IA(C)/240/2022

The Union of India and 3 Ors

.....*Applicants*

-Versus-

Thinley Sona and 4 Ors

.....*Respondents*

Linked case No. IA(C)/60/2023

The Union of India and 3 Ors

.....*Applicants*

-Versus-

Thinley Sona and 5 Ors

Respondents

Linked case No. L.A.Appl./1/2023

Thinley Sona and 2 Ors

.....*Appellants*

-Versus-

The Collector cum Deputy Commissioner and 4 Ors

.....*Respondents*

Linked case No. L.A.Appl./2/2023

Libo Ragmuk and 2 Ors

.....**Appellants**

-Versus-

The Collector cum Deputy Commissioner and 4 Ors

.....**Respondents**

Linked case No. L.A.Appl./3/2023

Dorjee Khandu Chukla and 5 Ors.

.....**Appellants**

-Versus-

The Collector cum Deputy Commissioner and 4 Ors

.....**Respondents**

Advocates

For the Union of India	: Mr. Vikramjit Banerjee (ASGI), Mr. Y. Doloi, (Senior Government Panel Counsel)
For the respondents	: Mr. B. Pathak
Date of hearing	:06.06.2023
Date of judgment	:20.07.2023

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT AND ORDER(CAV)

Heard Mr. Vikramjit Banerjee, learned Additional Solicitor General of India assisted by Mr. Y. Doloi, learned Senior Government Panel Counsel also heard Mr. B. Pathak, learned counsel for the respondents in L.A.Appl./1/2022, 2/2022, & 3/2022 and for the appellants in L.A. Appl./1/2023, 2/2023, & 3/2023.

2. These appeals being analogous, I propose to dispose of the same by this common judgment and order.

3. The present appeals under section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 being L.A. Appl./1/2022, L.A.Appl./2/2022, L.A.Appl./3/2022 have been preferred by the Union of India against the judgment dated 12.09.2022 and order dated 13.09.2022 passed by the Reference authority cum District & Sessions Judge, Aalo in Reference case nos. 1, 2 and 3 of 2021 and Review petition No. 1, 2 and 3 of 2022 whereby the Reference authority has determined the market value of acquired land @ Rs. 353/- per sq. mtrs. enhancing from Rs. 125/- and 150/- as awarded by the Collector and the solatium, multiplication factor and interests were also added thereon.

4. The cross appeals being L.A. Appl./1/2023, L.A.Appl./2/2023, L.A.Appl./3/2023 have been preferred by the landowners, i.e., Shri Thinley Sona and Ors., Shri Libo Ragmuk and Ors. and Shri. Dorjee Khandu Chukla and Ors against the judgment dated 12.09.2022 of the Reference authority for enhancing the market value and also for a direction to the Collector to make determination of past occupation rent/charges till the date of acquisition notification and make payment of the same.

5. The Indian Army occupied stretches of land in Shi-Yomi District particularly at Mechuka, Segong, Tato, Yomi Circle, Arunachal Pradesh since the last several decades. The lands of the landowners were acquired

in compliance of the direction of the High Court dated 17.03.2020 and 19.03.2020 passed in WP(C)/25/2020, WP(C)/26/2020 and WP(C)/27/2020 whereby this Court had directed for payment of compensation to the landowners.

6. The L.A. Appeal No. 1, 2 and 3 of 2022 filed by the Union of India arises out of the judgement and order dated 12.09.2022 and 13.09.2022 in the Reference case nos. 1, 2 and 3 of 2021 on the ground that the Reference authority failed to appreciate the facts of the matter and the correct position of law holding the field. According to the appellant Union of India, the reference authority failed to address the argument of the learned counsel with regard to section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the 2013 Act) as the Reference authority has given no iota of reasoning for deviating from the express provisions of Section 40 of 2013 Act. The further case of the appellant is that the computation of enhanced amount of compensation awarded by the Reference authority as enhanced from Rs. 125 sq.mtrs. to Rs. 353 sq. mtrs. is entirely without basis, and is an arbitrary figure as no computation has been provided, which is in gross violation of Section 23 and Section 26 of the 2013 Act.

7. The appellant, *i.e.* the Union of India raises principally two issues namely: i) that the land was acquired under the Urgency Clause of Section 40 of 2013 Act for which no addition compensation could have been awarded, and ii) that valuation of the acquired land has been determined with arbitrary figure as no computation has been provided in gross

violation of Section 23 and Section 26 of the 2013 Act.

8. The appellant further contended that the lands of the landowners were acquired in compliance of the direction of this Hon'ble Court passed in WP(C)/25/2020, WP(C)/26/2020 and WP(C)/27/2020 vide Order dated 17.03.2020 and 19.03.2020 under section 40 of the 2013 Act. Formal land acquisition proceeding were initiated following due sanction by the Hon'ble President of India whereby, Section 11 and Section 19 Notifications were published and the final award was passed respectively with regard to each such land and in each such Notifications as well as in the final award Section 40 has been invoked, making explicit reference to the requirement of the land on an urgent basis, for the Defense of India and public security purposes. The sanctions were accorded on 27.10.2020, 28.10.2020 & 01.02.2021, Section 11 Notifications were issued on 21.01.2021, 21.01.2021 & 10.03.2021 Section 19 Notifications were also issued on 18.06.2021, 18.06.2021 & 22.06.2021 and the final awards were issued on 12.07.2021, 12.07.2021 & 26.08.2021.

9. Mr. V. Banerjee, learned ASGI, while referring to Section 40 of the 2013 Act submits that the sanction of the Hon'ble President of India specifically accorded approval for invocation for the urgency clause under Section 40 of 2013 Act. The Presidential sanction also invoked Section 40(5) of the 2013 Act to specify that no additional compensation would be paid to the landowners since the same is required for sovereignty and integrity of India, security and strategic interest of the State or relation with Foreign States. Thus, in terms of the requirement of Section 40, the amount of 80% was paid by the Collector to the landowners immediately

and the rest 20% was also paid following the final award, thus 100% of the compensation as computed along with the solatium, multiplication factor and interest at the rate of 12% was paid to the landowners in terms of the sanctioned amount and the final awards. He further submits that Section 11 preliminary notifications as well as Section 19 final notifications, and the final award under Section 37 read with Section 23, exempted the application of the provisions of Chapter II and III as well as Section 15 to Section 18 of the 2013 Act. Both these notifications clarified that no additional compensation would be paid in terms of the proviso to Section 40(5) and he submits that neither the sanction nor any of the notification, under Section 11 and Section 19 were ever challenged by the landowners.

10. Mr. Banerjee, learned ASGI, while referring to proviso to Section 40(5) of 2013 Act submits that it is apparent from a holistic reading of the entire scheme of Section 40 that no additional compensation was meant to be paid in case of invocation of the urgency clause. In the case of **Indore Development Authority** reported in (2020) 8SCC 129, it provides that there are two cases of urgency. One, wherein general urgency like calamities is provided and the second category whereby, sovereignty and integrity of India, the security and strategic interest of the State or relations with foreign States are under consideration. Thus, proviso to Section 40(5) of 2013 Act lays down the conditionality of no additional compensation specifically for the second category, *i.e.* the urgencies effecting sovereignty and integrity of India, security and strategic interest of the State. These two kinds of urgency principle has been clarified by

the Hon'ble Supreme Court in the case of **Indore Development Authority Vs. Manoharlal** (supra) whereby the Hon'ble Apex Court has clarified the position of Section 40 of 2013 Act.

11. Mr. Banerjee, learned ASGI submits that the Land Acquisition Act, 1894 (hereinafter the 1894 Act) envisaged an urgency clause in the form of section 17, however, unlike Section 40 of the 2013 Act, Section 17 of the 1894 Act did not provide for a special provision with respect to sovereignty, integrity and security interests. Thus, section 40(5) proviso is a unique provision in those terms, an exception within an exception. He further submits that the Land Acquisition Acts, be it of 1894 or 2013, are complete codes in themselves, consciously drafted by the Legislature, with elaborate debates having taken place on each provision.

12. Mr. Banerjee, learned ASGI placed reliance on the judgment of the Hon'ble Supreme court in the case of **Delhi Development Authority v. Mahender Singh** reported in (2009) 5 SCC 339 and submits that Article 300 (A) of the Constitution of India provides that no person shall be deprived of his property save by authority of law. Thus, duly recognizing that Right to Property is merely a constitutional right and not a fundamental right. The law by virtue of which the land has been acquired in the instant case is the 2013 Act, duly passed by the Parliament and the validity of which has been upheld by the Hon'ble Supreme Court in the case of **Indore Development Authority** (supra). He has also further relied on the judgment of the Hon'ble Supreme Court in the case of **Rajiv Sareen V. State of Uttar Pradesh** reported in (2011) 8 SCC 708, **Jilubhai Nanbhai Khachar V. State of Gujarat** reported in 1995 Supp (1) SCC 596. He submits that the

compensation in the present cases had been accepted in full and it is not the case of the landowners that the compensation is illusory in any form. Moreover, a reference to the WP(C)/25, 26 and 27(AP) of 2020 filed by the landowners before the Hon'ble High Court, would reveal that it was primarily the prayer of the landowners to acquire the land in terms of the urgency clause as prescribed under section 40, they were aware of the market value, and prompted the Union of India to acquire the land as such in terms of that value, which the Union of India had complied with following the directions of the Hon'ble High Court. In this context, he has referred to the pleadings of the petitioners at Para 10, 21 and the interim prayer portion of the above referred writ petitions of the landowners and submits that the pleadings of the landowners in the above writ petitions shows that petitioners were aware of the market value of the land, and were clear that the acquisition would take place in terms of this market value. It is apparent from the pleadings that the landowners were aware and wanted the acquisition to take place in terms of section 40 specifically section 40(5). The issue of Proviso to section 40 was clearly known to them. Their misunderstanding in terms of market value, coupled with the Hon'ble High Court's order in the writ petition would render the conclusion that this attempt at enhancement is merely an afterthought, which they came up with to bypass the technicalities in the matter. Further the requirement of invocation of section 21 and subsequent provisions, as mentioned by the landowners would not have been possible, as, in terms of their own admission and pleadings in the writ petition, the land was already in possession when the acquisition proceedings started and there was no requirement for fulfilling the requirement of section 21 and the

other provisions referred therein.

13. Mr. Banerjee, learned ASGI on the second issue about the valuation of the acquired land submits that the payment for land was thus made in terms of the classification under the State Notification of 2012, under category (Serial No.) 9. The payment in terms of the sanction as well as the award included every considerable factor including Payment at Circle Rate, Solatium @ 100% Annual Interest @ 12%, and Multiplicaiton Factor, as well Contingency charge @ 1 %, Establishment Charge @ 1% and an Additional Compensation @ 12% in terms of Sec. 30(3) of 2013 Act. Thereby, every contingency was envisaged and taken account of, and was provided for in the sanction as well as the award. He further submits that landowners have never challenged the sanction and the breakup therein at any point of time before any forum.

14. Mr. Banerjee while referring to the Explanation 4 to section 26 of the 2013 Act submits that this explanation provides sufficient discretion to the Collector to discount values which are not indicative of the actual market price. The land in the impugned zone is occupied by the Defence, and as such, in the absence of the Stamp Duty being paid, due to this being 'non-cadastral' land, since there are no registered sale deed in the area, therefore, the only indicator that the collector had was of the 2012 State notification, which he duly used and awarded the compensation. He has referred to the proviso under section 26(3) of the 2013 Act and submits that since the Collector cum DC could not determine the market value in terms of Sub-section 1 and Sub-section 2 of Sec 26 of the 2013 Act, therefore, he had to place reliance upon section 26(3) and relied

upon the floor pricing specified by the State Government vide the 2012 notification and made his recommendation, and award in terms of the 2012 notification at the relevant point of time. Since their specific prayer was to acquire the land in terms of the market value, which in the absence of any rates specified under the Indian Stamps Act, 1899 fell under the category of 'non-cadastral' land, thus, the only reference available to the Collector was in terms of the State Notification of 2012 which was in vogue at the time of the acquisition.

15. He further submits that section 26(3) of the 2013 Act specified that where market value under sub-section (1) and (2) cannot be determined for reasons specified therein, then in those cases the State Government concerned shall specify the floor price or minimum price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in immediate adjoining areas. He further submits that the Reference authority while awarding a multiplication factor of 2 on no basis. Therefore, he submits that the Reference authority erred in law while awarding a multiplication factor of 2 on no basis whatsoever. The multiplication factor specified under section 26(2) is not applicable on the market value arrived under Section 26(3). The multiplication factor under section 26(2) is only applicable on the market value arrived at by the Collector under Section 26(1). As Arunachal Pradesh is a non-cadastral state where no registered sale deeds/agreements are available, the State Government has notified the land rates for different categories in different districts for acquisition of land, i.e., for determination of land value under Section 26(3) of the 2013 Act, as section 26(1) and 26(2) cannot be

applied there. Accordingly, multiplication factor is not applicable for any land acquisition in Arunachal Pradesh.

16. Mr. Banerjee, learned ASGI submits that the Manual published by Government of Arunachal Pradesh also explained the above provisions and notified that " the Multiplication Factor for all land acquisition cases under this manual shall be one(1) in the State of Arunachal Pradesh when Government notified rates are used for land valuation under section 26(3) of the 2013 Act.

17. Mr. Banerjee, learned ASGI submits that the learned Reference authority solely based its findings upon the evidence given by PW-1 who is interested party, without any evidence or sale values but on mere presumption. The learned Reference authority erred by ignoring the evidence given by RW1, i.e., District Land and Revenue Settlement Officer, who is expert in these matters. He submits that the determination of category of land is a highly specialized exercise, and under the 2013 Act, the Collector has been rightly given the authority of determining the category of land. The Collector cum DC is the competent authority to decide the classification of land by doing the ground survey. Moreover, it is verified on behalf of requiring body by the DEO by doing the joint survey with the Collector cum DC, Land Management Department & concerned land owners. Accordingly, on the basis of joint survey, land classification was ascertained by the Collector cum DC, which was not objected to by the land owners until filing of the Reference Cases. As such, determination of land classification is outside the purview of the Reference authority. While issuing the award, the Collector cum DC had placed the land in

category of "Underdeveloped cultivable land with gentle slope and flat area with motorable Road" and fixed Rs. 125/- per sq.mtr. However, the Reference authority has arbitrarily changed the classification of land as "Cultivable land under Horticulture, Agriculture/Forest" and fixed the rate at Rs. 150/- per sq.mtrs and subsequently fixed the rate as Rs. 353/- per sq.mtrs applying compound escalation with 10% for 9 years, on his unsubstantiated presumption, without any technical basis of evidence. While the fact is that the acquired lands are underdeveloped, high terrain mountain lands very near to LAC, where no escalation of rates is practically possible over last decades. Fixing of classification of land is out of the purview of the learned Reference Court. However, the Reference Court has arbitrarily considered higher classification of the land without any basis for doing so and without giving any weightage to the fact that the same was fixed by the Collector cum DC after due physical verification of the land.

18. He submits that the first proviso to Section 26(1) of the 2013 Act clearly mentions that "provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11". At the time of Publication of Notification under Section 11 of 2013 Act the rates notified in 2012 were applicable, which had been rightly awarded by the Collector. The Reference Court can not violate the provisions of the Act, in absence of any sale deed or land value submitted by the land owners. The role of the learned Reference Court is limited to the provisions under Section 69 of the 2013 Act, however, in the instant case the learned Reference Court has stepped into the shoes of the

Collector cum DC which is not permissible within the legislative intention ascribed by the 2013 Act.

19. He further submits if the arguments of the petitioners are accepted concerning the provisions of Section 40(5) with regard to the additional compensation of 75%, it would mean an escalated compensation of (100% already paid + 75% as additional compensation + 100% of the amount the Reference Court has awarded). Since, Section 40 is silent with regard to the omission of the awarded amount from the market rate as awarded, any additional compensation would go against the objectives of the 2013 Act whereby landowners already paid the amount awarded in the final award, would further be able to claim the cumulative amount of 75% as additional compensation + the additional 100% amount awarded by the learned Reference Court, which will have serious financial repercussions on the Budget of the State Exchequer, and would effectively act as double compensation for a single acquisition thus, going against the principles of natural justice as well.

20. He finally submits that the Reference Court's reliance upon Section 72 and Section 80 of 2013 Act is misplaced since, Section 72 is only applicable in cases where excess compensation is awarded, however in this case the landowners are not entitled to any excess compensation as such in terms of the proviso to Section 40(5). Further, Section 80 would not be applicable in this particular case since the entire award amount was received by the landowners in two tranches to 80% + 20%, thus there is no question of award of interest on amount of compensation not paid or deposited. He further submits that this is not a scheduled area, thus

provisions of Section 41 are not application as such, and as attempted by the landowners. The landowners are Scheduled Tribes and it has duly been acknowledged, however, by the very specific wording of Section 41, acquisition of land in "Scheduled areas" has been referred to, as on date Arunachal Pradesh is not a scheduled area in any case.

21. Refuting the submissions of the learned ASGI, Mr. B. Pathak, learned counsel for the respondents in L.A. Appl./1/2022, L.A. Appl./2/2022 and L.A. Appl./3/2022 and for the appellants in L.A. Appl./1/2023, L.A. Appl./2/2023 and L.A. Appl./3/2023 has submitted that the Indian Army admittedly occupied huge tracts of land in Shi-Yomi district since the last several decades without following any procedure of law and although several moves were made to acquire the land, the same had not been concluded. Aggrieved by such illegal occupation of land de hors the law and without payment of any compensation, some of the landowners filed WP(C)/25/2021, WP(C)/26/2021 and WP(C)/27/2021 and the Hon'ble High Court, by its order dated 17.03.2020 and 19.03.2020 directed for payment of compensation to the landowners. The sanction for the land acquisition was thereafter granted by the Ministry of Defence and post sanction the notifications under Section 11 were published, Section 19 and the final award under the 2013 Act were issued and passed whereby the market value was determined as Rs. 125/- and 150/- by the Collector. Not satisfied with the awarded amount the landowners exercised their right under Section 64 of 2013 Act and the matter was heard by the Reference authority in the Reference Case Nos. 1, 2, 3 of 2021 and the parties were duly represented before the Reference Court and the landowners led

evidence before the authority to justify their claim for higher compensation. The Deputy Commissioner stated that the rates were fixed based on the 2012 Notification. The appellant, *i.e.* the Union of India did not adduce any evidence.

22. Mr. B. Pathak submits that the urgency clause is an aspect of land acquisition that existed in the earlier 1894 Act in Section 17 and the 2013 Act provides for the same in Section 40. When urgency clause is applied, not only hearing of objections under Section 5A (1894 Act) and Section 15 (2013 Act) is dispensed with, but other provisions like social impact assessment and rehabilitation under the 2013 Act can also be dispensed with and possession can be taken over before making any award on payment of 80% of estimated compensation.

23. While referring to Section 40(1) of 2013 Act, Mr. B. Pathak learned counsel submits that under Section 40(1) of 2013 Act the expression used "though no such award has been made" is same as Section 17(1) of the 1894 Act. The language of the statute does not exempt the necessity of passing an award but only permits taking possession of such award. It provides that such possession can be taken over only after 30 days from Section 21 notice. Section 21 notice gives a right to the land owners to represent before the Collector. The same should be followed by hearing of the landowners and thereafter inquiry under Section 23. It is only under Section 23 that the Collector exercises the determination under Section 26 of the market value of the land and finalizes the compensation amount payable under Section 27. Thus, Section 40(1) does not dispense with the requirement of making an award. Section 40(2) seeks to restrict the scope

of urgency by defining the purposes. The objects and reasons of 2013 Act clearly states that acquisition under urgency clause has also been limited for the purpose of national defence, security purposes and rehabilitation and resettlement needs in the event of emergencies or natural calamities only. The objects and reasons and the legislative history of the 2013 Act nowhere indicates that the Parliament wanted to restrict the right of seeking reference under the 2013 Act upon invocation of the urgency clause. Had that been done so the law would have specifically provided for the same. Section 40(3) requires payment of "estimated amount" which is identical to provisions of Section 17(3A) of the 1894 Act. The word "estimated" has been clearly interpreted by the Hon'ble Apex Court. In support of his submission, Mr. Pathak, learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of **Laxmi Devi Versus State of Bihar**, reported in (2015) 10 SCC 241. Section 40(4) provides that appropriate Government may direct that any or all provisions of Chapter II to Chapter IV shall not apply. In the instant cases, the appropriate Government had directed that Chapter II, Chapter III and Section 15, 16, 17 and 18 shall not apply. Hence, all other provisions relating to determination of the market value and making award thereof shall apply. The appropriate Government had consciously chosen not to omit any other provisions of the Act and such omission cannot be now brought into play by way of arguments in the appellate stage. Legislature has also consciously not omitted application of Chapter VII of the 2013 Act relating to reference to authority, hence there can be no bar to reference even if urgency clause is invoked. Curtailment of rights under a statute has to be in express terms and not by way of a far stretched interpretation. Law

requires that it is axiomatic that if a statute prescribes the manner in which an action is to be performed, it must be carried out strictly in consonance thereto or not at all. Under Section 17 of the 1894 Act, reference could take place and no such plea of bar on reference was ever raised. He relied on the following cases where acquisition involved urgency clause and the matter went to the reference court for enhancement of compensation:

i) **V. Hanumanta Reddy Versus LAO & Mandal R. Officer** reported in **(2003) 12SCC 642**.

ii) **Deputy Director Land Acquisition Versus Malla Atchinaidu & Others** reported in **(2006) 12SCC 87**.

iii) **Kiran Tandon Versus Allahabad Development Authority** reported in **(2004) 10SCC 745**.

24. Mr. B. Pathak, learned counsel further submits that Section 40(5) provides an additional amount of 75% over the amount determined under Section 27 therefore determination of market value is required even if urgency clause is invoked. The expression used is different from estimated amount as used in Section 40(3). The proviso to Section 40(5) only states that such additional compensation of 75% shall not be payable in certain cases. The said proviso cannot be interpreted and twisted to mean that no determination of the market value can be made by a reference authority. He submits that the sanction orders, Section 11 notifications and Section 19 declarations merely reiterates that such additional compensation will

not be paid. Such expression therefore cannot be stretched now to mean that there can be no reference to authority to seek enhancement of compensation. The 2013 Act being a more beneficial one seeks to give many such additional compensation like in Section 39 and Section 41, when applicable. Such additional compensation is calculated over the amount determined under Section 27. In the present case the landowners have never paid nor claimed that they are entitled to the additional compensation of 75% and hence the occasion to challenge the same has never arisen. The claim in the Reference Cases is not for additional compensation of 75% in terms of Section 40(5). The claim in the reference is that the market value was not properly assessed by the Collector as required under provisions of Section 26 by holding inquiry under Section 23 after the Section 21 notice and the same should be enhanced and statutory benefits of solatium, multiplication factor and interest should be paid on such enhanced market value. Provisions of Sections 23 and 26 were not exempted by exercise of powers under Section 40(4). Section 40(5) does not in any manner create any bar on the reference authority to adjudicate upon proper market value even when Section 40(5) is invoked. While referring to the cases of the Hon'ble Supreme Court in the case of **Casio India –versus- State of Haryana** reported in (2016) 6SCC 209 and **Durgabhai Deshmukh –versus- Vasu Sena** reported in (2019) 17SCC 157, the learned counsel submits that the proviso is part of Section 40(5) and the same carves out a class only to restrict additional compensation and the same cannot be read to mean anything more or less or imply that reference to authority cannot be made. He submits that the landowners could not lay hand on any case law on the

aspect of bar on reference in case urgency clause is applied. It appears that such plea is completely frivolous and hence they have been never raised before. In the present appeals, the same is taken only to divert away from the main issue in reference which is just and fair determination of market value of the acquired lands.

25. Mr. B. Pathak, learned counsel submits that the writ petitions being WP(C)/25/2021, WP(C)/26/2021 and WP(C)/27/2021 were filed by some of the landowners in exercise of rights under Section 300A against deprivation of property without the authority of law as their lands have been in admitted illegal possession of the Army since many decades ago as the State cannot hold and occupy private property without following the law and such act is deemed to be violative of the constitutional and human rights.

26. Mr. Pathak, learned counsel submits that the pleadings in the writ petitions had reference to Section 40(3) of 2013 Act and prayed for interim relief of payment of such 80% estimated amount. The landowners have never pleaded that such estimate is the final amount that they would accept. The landowners have never expressed any consent as to accepting the estimated amount as final. The landowners had also pleaded categorically about the official procedures that the Ministry of Defense follows referring to the 1992 policy and such taking of estimates, approval, sanction from Ministry of Defence are internal executive procedures that precedes the land acquisition. Land acquisition under the statute begins only when the notification under Section 4 (1894 Act) or Section 11 is published. As such, the determination of any value before the acquisition

actually starts may be only suggestive and does not become final and binding as an award nor does it extinguish the rights that are born after the acquisition proceedings. The determination of "estimate" does not have any prescribed statutory methodology. Whereas, an Awarded Market Value requires many steps to be followed as laid down in Section 21 to 30 of the 2013 Act and more particularly the provisions of Section 26 have to be taken into account as per proviso to Section 26(1), the market value is to be determined on date of notification under Section 11 (and not before as done in this case).

27. Mr. Pathak submits that the argument of the Union of India which has sought to project that since the landowners knew about the "estimate" during the time of filing of the writ petitions does not bar the landowners from exercising their statutory rights to claim proper compensation when such rights became available. The law contemplates remedies for fair determination of market value after the acquisition has commenced and remedy to the same is also provided for in form of Reference under Section 64 and Appeal to High Court under Section 74. In this case, the Sanction letter came on 01.02.2021, 28.10.2020 and 27.10.2020 after order of the writ court on 17.03.2020 and 19.03.2020 and on initiation of contempt proceedings thereafter. The writ petitioners could not have challenged such sanction which had not even come when the writ petitions were filed and such arguments of the Union of India is fallacious.

28. Mr. Pathak submits the invocation of urgency clause has not been dictated or forced to be inserted by the landowners as sought to be

projected by the Union of India in its arguments. The invocation of such powers cannot be based on the consideration of requirement or demand of private landowners, but the same has to be exercised as per actual requirements and which has been done by the President of India as reflected from the sanction letters. At the stage when the writ petition was filed, the adequacy of the "estimated" could not have been gone into as appropriate statutory remedy for the same exists once the acquisition commences. The land acquisition law is a self-contained code where all procedures and remedies are provided for. The question of challenging the Sanction, Notification and the Declaration did not arise as the law required determination of the market value and total compensation payable as per provisions of the 2013 Act and the landowners have only availed their statutory remedies. It is a trite proposition of law that when statutory remedies are available, a writ petition would not be maintainable, and hence the challenge to be made as sought to be projected by the Union of India is against the settled judicial notions. There would have been no logic in challenging the invocation of Section 40 in the present case. The purpose of acquisition for defence was already manifest as the land was in full occupation and use of the Army from decades and vital infrastructures have already been built therein.

29. Mr. Pathak submits that the mentioned in the Sanction, Notification and Declaration that no additional compensation would be required to be paid is part of Section 40(5) as urgency clause was invoked and the land owners had no objection to the same and they had never sought to claim the said additional 75% compensation. Hence, on that count, they had no

reason to challenge the sanction order, notification or the declaration and the arguments advanced in this regard by the Union of India are fallacious. The procedure of taking estimates for administrative approval of the acquisition from the Ministry is not a statutory provision but only part of internal policy matter of the Ministry and the Defence States Organization. The same cannot override the express statutory requirement. Para 15 of such policy clearly states that if the final compensation amount awarded exceeds the amount provided in the administrative sanction by more than 10%, the revised approval of the appropriate authority shall be secured, explaining in detail each factor contributing to the escalation before the compensation is deposited. It is therefore clear that the Ministry itself is aware in their policy that their administrative sanction is not the final awarded amount which may be awarded by the Collector under the law. When Section 11 notifications had indicated the rate to be Rs. 125/150, the landowners had no statutory option to represent against the same as the objections under Section 15 was dispensed with and they had to wait till such statutory option would come after Section 21.

30. Mr. Pathak submits that the landowners had filed a reply to the notice under Section 21 which was not considered by the Collector. In the said reply, the land owners had stated that it is prayed that market value and fair compensation for the aforesaid land may be determined as per provisions of the 2013 Act. It was further stated that the response is issued without prejudice to any legal right conferred upon by the law. It was obligatory upon the Collector to thereafter hold hearing under Section

23.

31. Mr. B. Pathak, learned counsel on the quantum of just and fair compensation submits that the landowners contended before the Reference Authority that they were never heard when the estimates were prepared and it remained an ex-parte determination which was much lower than the market value the land owners also demonstrated through cross examination that the claims under section 21 did not result in any further action or process of inquiry into the market value as required under Section 23 and Section 26 of the 2013 Act. The objection on maintainability raised by the Union of India before the Reference Court was not specific. However, the same was hinged on the aspect that while receiving 80% compensation under section 40(3), no specific protest was lodged and the same has been done only after receipt of the balance 20 % compensation. Hence, it was urged that provisions of section 40 would bar the reference in absence of protest while receiving 80 % compensation. The maintainability issue was adjudicated as the first issue of the Reference Court and it was held that the reference is maintainable as the land owners can sought for the award by making application in this regard and such application itself is good enough to register their objection.

32. Mr. Pathak, learned counsel submits that law requires determination of the market value of the land based on its potentiality and use. The land owners getting the market value as compensation and no technicalities should come in the way of the land owner getting such market value as compensation. When the land is being compulsorily taken away from such

a person, he is entitled to the highest value, which similar land in the locality is shown to have fetched.

33. Mr. Pathak, learned counsel submits that the land owners has submitted evidence of two sale deeds as document 11 and 12 in Reference case no. 1/2021 which establishes a higher rate. The Collector/Union of India have not challenged the validity of the same nor have put any question in this regard in the cross examination before the reference court. As such, the reliability of the said documents/sale deeds is not shaken and is to be reasonably considered to arrive at a market value. He submits that the market value in 2021 could not have been less than Rs. 728/- per sq.m. whereas the Reference Court has awarded only Rs. 353/- and the same need to be revised upwards to at least Rs. 550/- even going by the 2012 notification of rates.

34. Mr. Pathak, learned counsel submits that the case of the landowners is that even if the 2012 notification is followed, the maximum market value available is as high as Rs.600/- per sq.m. The land owners have been deprived of proper compensation by putting them in a lower category of land. It is submitted that proper categorization of the land has to be made in the context of its use on the date of acquisition.

35. Mr. Pathak, learned counsel submits that land owners have not negated or challenged the Government of Arunachal Pradesh notification of rates of 2012. However, the rates cannot be freezed in 2012 and escalation would accrue on the same to determine the value as on the date of Section 11 notifications which came in 2021. The landowners have

also led evidence that such escalation has been granted by the Ministry of Defence, Government of Arunachal Pradesh wherein annual escalation of 14 % is granted. He submits that the interest has been awarded by the Reference Authority under section 72 and 80. The identical provision in the 1894 Act was Section 28 and 34 where the Apex Court had time and again held that such benefits are statutory and are to be required to be added automatically on the enhanced market value as determined by the Reference Court.

36. Mr. Pathak, learned counsel submits that in view of the above submissions and the given facts and circumstance of the present case as well as the evidence on record and the law laid down by the Hon'ble Apex Court, the L.A. Appeal No. 1/2022, L.A. Appeal No. 2/2022 and L.A. Appeal No. 3/2022 is liable to be dismissed and the Union of India may be directed to make payment of the enhanced compensation with all statutory interest, multiplication factor and solatium as awarded and further prayed that the LA Appeal No. 1/2023, LA Appeal No. 2/2023 and LA Appeal No. 3/2023 may be allowed by suitably enhancing the market value and direct the Collector/ Deputy Commissioner, Shi Yomi to make determination of past occupation rent/changes till the date of acquisition notification and make payment of the same.

37. Mr. Pathak, learned counsel has relied on the following judgments of the Hon'ble Supreme Court:-

- (i) **Ajit Singh & Ors Vs. State of Punjab & Ors** reported in **(1999) 4 SCC 67**.

- (ii) **Chandra Bhan (Dead) & Ors Vs. Ghaziabad Development Authority & Ors** reported in **(2015) 15 SCC 343.**
- (iii) **S.K. Containers Private Limited & Anr Vs. Susmita Bhattacharya & Ors** reported **(2017) 14 SCC 326.**
- (iv) **Superintendent (Tech.1) Central Excise, IDD Jabalpur & Ors. Vs. Pratap Rai** reported in **(1978) 3 SCC 113.**
- (v) **Special Land Acquisition Officer & Anr Vs. Sidappa Omannu Tumari** reported in **(1995) Supp (2) SCC 168.**
- (vi) **P. Ram Reddy & Ors Vs. Land Acquisition Officer, Hyderabad Urban Development** reported in **(1995) 2 SCC 305.**
- (vii) **Udho Dass Vs. State of Haryana & Ors** reported in **(2010) 12 SCC 51.**
- (viii) **Ambya Kalya Mhtre & Ors. Vs. State of Maharashtra** reported in **(2011) 9 SCC 325.**
- (ix) **Mehrawal Khewaji Trust (Registered) Faridkot & Ors Vs. State of Pubjab & Ors** reported in **(2012) 5 SCC 432.**
- (x) **Land Acquisition Officer & Manda Vs. Narasaiah** reported in **(2001) 3 SCC 530.**
- (xi) **Atma Singh Vs. State of Haryana** reported in **(2008) 2 SCC 268.**
- (xii) **S. Shamkaraiah Vs. Land Acquisition Officer** reported in **(2022) SCC Online SC 1549.**
- (xiii) **General Manager, ONGC Vs. Ramesh Bhai Jivan Bhai Patel & Anr** reported in **(2008) 14 SCC 745.**

- (xiv) **Ranjit Singh & Ors Vs. Union Territory of Chandigarh** reported in **(1992) 4 SCC 659.**
- (xv) **Shree Vijay Cotton & Oil Mills Ltd Vs. State of Gujarat** reported in **(1991) 1 SCC 262.**
- (xvi) **Sunder Vs. Union of India** reported in **(2001) 7 SCC 211.**
- (xvii) **State of Punjab Vs. Amarjit Singh** reported in **(2011) 4 SCC 734.**
- (xviii) **R.L. Jain Vs. DDA & Ors.** reported in **(2004) 4 SCC 79.**
- (xix) **Chanabasappa Vs. Karnataka Neeravari Nigam Limited & Anr** reported in **(2020) 11 SCC 370.**

38. I have considered the rival submissions advanced by the learned Counsel for the parties and carefully examined the materials available on the record.

39. In the case of **Indore Development Authority Vs. Manoharlal** (supra) the Hon'ble Apex Court has clarified the position of Section 24 of 2013 Act.

40. The Hon'ble Supreme Court in the case of **Ajit Singh & Ors Vs. State of Punjab & Ors** reported in (1999) 4 SCC 67 held that *inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants.*

41. In the case of **Chandra Bhan (Dead) & Ors Vs. Ghaziabad Development Authority & Ors** reported in (2015) 15 SCC 343 the Hon'ble Supreme Court held that, *the principal contention urged by learned counsel for the GDA was that since the compensation was accepted by the claimants without any protest, the reference was not maintainable. In our opinion, this contention is without any substance for several reasons. In Ajit Singh and others v. State of Punjab and others it was held that since the appellants therein had filed an application for reference under Section 18 of the Act, it manifested their intention. Consequently, the protest against the award of the Collector was implied notwithstanding the acceptance of compensation.*

42. In the case of **S.K. Containers Private Limited & Anr Vs. Susmita Bhattacharya & Ors** reported (2017) 14 SCC 326 the Hon'ble Supreme Court held that *once an application under Section 18 of the Act is filed, the presumption under law is that the owner or the person interested in the land has certain objections with regard to (i) measurement of the land, (ii) amount of compensation, (iii) persons to whom it is payable and (iv) apportionment of the compensation.*

43. In the case of **Superintendent (Tech.1) Central Excise, IDD Jabalpur & Ors. Vs. Pratap Rai** reported in (1978) 3 SCC 113 the Hon'ble Supreme Court held that *...the term 'without prejudice' has been defined in Black's Law Dictionary as follows : Where an offer or admission is made 'without prejudice', or a motion is denied or a bill in equity dismissed 'without prejudice', it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided. See.. also, Dismissal*

without Prejudice.....7) In short, therefore, the implication of the term 'without, prejudice' means (1) that the cause or the matter has not been decided on merits, (2) that fresh proceedings according to law were not barred.

44. In the case of **Special Land Acquisition Officer & Anr Vs. Sidappa Omannan Tumari** reported in (1995) Supp (2) SCC 168 the Hon'ble Supreme Court held that *the position of a claimant in a reference before the Court, is considered to be that of the plaintiff in a suit requiring him to discharge the initial burden of proving that the amount of compensation determined in the award under section 11 was inadequate, the same having not been determined on the basis of relevant material and by application of correct principles of valuation, either with reference to the contents of the award itself or with reference to other evidence adduced before the Court. Therefore, if the initial burden of proving the amount of compensation allowed in the award of the Collector was inadequate, is not discharged, the award of the Collector which is made final and conclusive evidence under section 12, as regards matters contained therein Will stand unaffected. But if the claimant succeeds in proving that the amount determined under the award of the Collector was inadequate, the burden of proving the correctness of the award shifts on to the Collector who has to adduce sufficient evidence in that behalf to sustain such award.*

45. In the case of **P. Ram Reddy & Ors Vs. Land Acquisition Officer, Hyderabad Urban Development** reported in (1995) 2 SCC 305 the Hon'ble Supreme Court held that *building potentiality of acquired land Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under section 23(1) of the LA Act.*

The market value of such land must relate to the last of the dates of publication of Notification or giving of public notice of substance of such Notification according to section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under section 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future....9) An acquired land could be regarded as that which has a building potentiality, if such land although was used on the relevant date envisaged under section 4(1) of the LA Act for agricultural or horticultural or other like purposes or was on that date even barren or waste, had the possibility of being used immediately or in the near future as land for putting up residential, commercial, industrial or other buildings.

46. In the case of **Udho Dass Vs. State of Haryana & Ors** reported in (2010) 12 SCC 51 the Hon'ble Supreme Court held that *it is open to a landowner claimant to contend that the potential can be examined first at the time of the Section 18 Reference, the first Appeal in the High Court or in the Supreme Court in appeal as well. We must also highlight that Collectors, as agents of the State Government, are extraordinarily chary in awarding compensation and the land owners have to fight for decades before they are able to get their due. The 12% per annum increase which Courts have often found to be adequate in compensation matters hardly does justice to those land owners whose land have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often upto 100% a year for land which has the potential of being urbanized and commercialized such as in the present case. Be that as it*

may, we must assume that the landowners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place.

47. In the case of **Ambya Kalya Mhtre & Ors. Vs. State of Maharashtra** reported in (2011) 9 SCC 325 the Hon'ble Supreme Court held that *the Collector making the offer of compensation on behalf of the state is expected to be fair and reasonable. He is required to offer compensation based on the market value. Unfortunately Collectors invariably offer an amount far less than the real market value, by erring on the safer side, thereby driving the land owner first to seek a reference and prove the market value before the reference court and then approach the High Court and many a time this Court, if he does not get adequate compensation. In most land acquisitions, the land acquired is the only source of his livelihood of the land owner. If the compensation as offered by the Collector is very low, he cannot buy any alternative land. By the time he fights and gets the full market value, most of the amount would have been spent in litigation and living expenses and the price of lands would have appreciated enormously, making it impossible to buy an alternative land. As a result, the land owner seldom has a chance of acquiring a similar land or an equal area of similar land. It would be adding insult to injury, if the land owner should be tied down to a lesser value claimed by him in the reference application, even though he was not required by law to mention the amount of compensation when seeking reference. The Act contemplates the land owner getting the market value as*

compensation and no technicalities should come in the way of the land owner getting such market value as compensation.

48. In the case of **Mehrawal Khewaji Trust (Registered) Faridkot & Ors Vs. State of Punjab & Ors** reported in (2012) 5 SCC 432 the Hon'ble Supreme Court held that *it is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. Based on the above principle, we fix the annual increase at 12% per annum and with that rate of increase, the market value of the appellants' land would come to Rs. 1,82,000 per acre as on the date of notification.*

49. In the case of **Land Acquisition Officer & Manda Vs. Narasaiah** reported in (2001) 3 SCC 530 the Hon'ble Supreme Court held that *the High Court cannot therefore be faulted for relying on the transactions recorded in Ex.A2 and A4 though no one was examined for proving such transactions. No evidence had been adduced by the state for creating any doubt regarding the bona fides or genuineness of the transactions mentioned therein.*

50. In the case of **Atma Singh Vs. State of Haryana** reported in (2008) 2 SCC 268 the Hon'ble Supreme Court held that *the reasons given for the principle that price fetched for small plots cannot form safe basis for*

valuation of large tracks of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward, depending upon the facts of each case, is made.

51. In the case of **S. Shamkaraiah Vs. Land Acquisition Officer** reported in (2022) SCC Online SC 1549 the Hon'ble Supreme Court held that *identical question came to be considered by this Court in the case of Nelson Fernandes (supra) and after taking into consideration the earlier decision of this Court in the case of Basavva vs. Spl. Land Acquisition Officer, (1996) 9 SCC 640, in which this Court has held that the purpose for which acquisition is made is also a relevant factor for determining the market value and the purpose for which the land is acquired must also be taken into consideration, thereafter in paragraph 29 it is observed and held as under:"... In this context, we may usefully refer the judgment of this Court in Viluben Jhalejar Contractor v. State of Gujarat [(2005) 4 SCC 789 : JT (2005) 4 SC 282] . This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges.*

52. In the case of **General Manager, ONGC Vs. Ramesh Bhai Jivan Bhai**

Patel & Anr reported in (2008) 14 SCC 745 the Hon'ble Supreme Court held that *the increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate.*

53. In the case of **Ranjit Singh & Ors Vs. Union Territory of Chandigarh** reported in (1992) 4 SCC 659 the Hon'ble Supreme Court held that *it is rightly pointed out on behalf of the appellants/claimants in CA No. 348 of 1981 relating to LPA No.162 of 1979 in the High Court that the market value of their lands acquired pursuant to the preliminary Notification published on 3.12.1975 could not have been freezed at the same market value fixed for similar lands acquired under a previous Notification published on 23.12.1974....*

54. In the case of **Shree Vijay Cotton & Oil Mills Ltd Vs. State of Gujarat** reported in (1991) 1 SCC 262 the Hon'ble Supreme Court held that *there is inherent evidence in the wording of Section 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards....*

55. In the case of **Sunder Vs. Union of India** reported in (2001) 7 SCC 211 the Hon'ble Supreme Court held that *thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded,*

whether it is as per the award initially passed by the Collector or by the Court later...

56. In the case of **State of Punjab Vs. Amarjit Singh** reported in (2011) 4 SCC 734 the Hon'ble Supreme Court held that *while market value and compensation are factors to be assessed and determined by the court, no such judicial exercise is involved in regard to additional amount payable under Section 23(1A) and solatium payable under Section 23(2) as they are statutory benefits payable automatically at the rates specified in those sub-sections, qua the market price. No reasons need be assigned for grant of additional amount or solatium.*

57. In the case of **R.L. Jain Vs. DDA & Ors.** reported in (2004) 4 SCC 79 the Hon'ble Supreme Court held that *in a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of [Section 48](#) of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.*

58. In the case of **Chanabasappa Vs. Karnataka Neeravari Nigam Limited & Anr** reported in (2020) 11 SCC 370 the Hon'ble Supreme Court held that *in these circumstances, we direct the Collector shall examine whether the area had come under submergence and shall determine the quantum of damages to be paid from 1991 till the date of notification under section 4. In case the area has come in submergence, then the appellant shall be entitled to the interest under Section 34 from the date of notification under Section 4 till award also.*

59. On careful consideration of the aforesaid decisions of the Hon'ble Supreme Court, relied on by the learned counsels for the parties, this Court is of the view that there would not be any quarrel to the proposition and decisions rendered in the aforesaid cases as the same are by and large consistent.

60. To determine the issue at hand, this Court would refer to the relevant provisions of Act of 2013, which are reproduced herein below:

“23. Enquiry and land acquisition award by Collector- *On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections(if any) which any person interested has stated pursuant to a notice given under section 21, to the measurements made under section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of-*

(a) the true area of the land;

(b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under section 31 and which in his opinion should be allowed for the land; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose

claims, he has information, whether or not they have respectively appeared before him.

26. Determination of market value of land by Collector- (1)

The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:-

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

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

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

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

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

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

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

(3) where the market value under sub-section (1) or sub-section (2)

cannot be determined for the reason that-

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

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

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

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

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

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

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

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

40. Special powers in case of urgency to acquire land in certain cases- *(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.*

(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) Before taking possession of any land under sub-section(1) or sub-section (2), the Collector shall tender payment of eighty per cent of the compensation for such land as estimated by him to the person interested entitled thereto.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1) of section 11.

(5) An additional compensation of seventy-five per cent, of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section:

Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interest of the State or relations with foreign States."

61. On bare reading of the aforesaid provisions, it is clear that the Collector shall adopt the criteria provided herein above in assessing and determining the market value of the land. The determination of market value shall be the date on which the notification has been issued under Section 11. The Notifications under Section 11 were issued on 10.03.2021, 21.01.2021 & 21.01.2021 respectively. One of the requirements is the average sale price for similar type of land situated in the nearest village and

nearest vicinity area. The Deputy Commissioner-cum-Collector appears to have not followed the provisions as required under Sections 23 & 26 of the Act of 2013. Of course, in the present case, it appears that no market value is specified in the Indian Stamp Act, 1899 for registration of sale deeds or agreement to sell at the time of assessment by the Collector. However, the criteria of average sale price for similar type of land situated in the nearest village and nearest vicinity area appears to have been not adhered to by the Collector. Section 40 (5) provides that an additional compensation of seventy-five per cent, of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section. Proviso provides that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interest of the State or relations with foreign States. Therefore, 75% additional compensation would not be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interest of the State or relations with foreign States and not the determination/enhancement of amount of compensation by the Reference authority or Collector in terms of the provisions of the 2013 Act.

62. It is noted that the Collector referred the matter under section 64 of the 2013 Act to the Reference authority. On the reference application filed by the land owners along with the statement of claim petition, the Reference Authority, i.e. District Judge, West Siang, Aalo, had framed 4 (four) numbers of issues, which are as follows:

- (i) Whether the present reference case is maintainable in law and

the fact?

- (ii) Whether the Collector, Shi Yomi, has awarded the compensation to the petitioners in compliance with the Act of 2013?
- (iii) Whether the acquisitioning authority has correctly assessed the market value of the acquisitioned land, if not what would be the correct amount of compensation?
- (iv) Whether the claimants/petitioners are entitled to statutory interest under Sections 72 & 80 of the Act of 2013?

63. The Reference Authority on consideration of issue No. 1 has held the reference cases to be maintainable. The Reference Authority, on the issue No. 2, held that the Collector, Shi Yomi, has awarded the compensation to the land owners without properly adhered to the provisions of Act of 2013. The issue No. 3 has also been held to be not correctly assessed by the Collector and the issue No. 4 has also been decided in affirmative. Accordingly, the Reference Authority has enhanced the rate of land from Rs. 125/- per Sq. Mtr. to Rs. 150/- per Sq. Mtr. It has also been held that since the value of the acquired land in the year 2021 was assessed as per the rate fixed in the year 2012, which held to be not in accordance with the provisions of Section 26 of the Act of 2013, the value of the acquired land has to be enhanced from 2012 to 2021 by applying the formula of cumulative escalation of market value with compound interest based with 10% increase per annum for 9 (nine) years with compound interest which has been fixed at Rs. 353/- per Sq. Mtr. The Reference Authority, relying on the Notification issued by the Ministry of Rural Development, Government

of India, dated 09.02.2016, and also as per the provisions of Sub-Section (2) of Section 26 *read with* Sl. No. 2 at first Column of the First Schedule of the Act of 2013, applied the multiplication factor of 2 (two). The Reference Authority has also awarded a solatium amount equivalent to 100% of the total compensation amount in terms of Section 30 of the 2013 Act. Further, as per Section 72, the Reference Authority directed for payment of interest as required under the provisions of Section 72 of the said Act. The Reference Authority has also directed for payment of interest as per Section 80 of the Act of 2013. Consequently, the Reference Authority directed the Deputy Commissioner-cum-Collector, Shi Yomi District, for taking necessary steps to reassess the value of the acquired land in terms of its order. By an order dated 13.09.2022, the Reference Authority has allowed the review petitions filed by the land owners, whereby, certain clerical errors were corrected at paragraph Nos. 31 & 33. With regards to paragraph No. 46 of its judgment, the Reference Authority has clarified that as the respondent No. 1, i.e. the Collector, had already assessed the acquired land and fixed the compensation amount @ Rs. 125/- per Sq. Mtr., which has been enhanced to Rs. 353/- per Sq. Mtr. by the Reference Authority, the respondent No. 1 has to calculate the total amount of acquired land at the enhanced rate along with the other awarded amount in the judgment and no any other reassessment is required except the calculation of awarded amount in the judgment and order dated 12.09.2022.

64. It transpires from the records that the land owners have exhibited as many as 30 documents in Reference Case No. 01/2021, 23 documents in Reference Case No. 02/2021 and 20 documents in Reference Case No.

03/2021 before the Reference Authority. The appellant herein, i.e. the Union of India, has not exhibited any document.

65. On examination of the materials available on record, it transpires that the land owners had led evidences. The land owners have deposed that they are entitled for enhance rate of compensation from Rs. 125/- per Sq. Mtr., as assessed by the Collector in terms of the provisions of the Act of 2013, and exhibited the documents, as mentioned hereinabove. It transpires that one Shri Takam Titus, RW-1, who is working as DLR&SO, claimed to have authorized by the Collector to depose before the Reference Authority, had deposed, after narrating the entire history of the matter, that the basis of assessment and fixing the rate at Rs. 125/- per Sq. Mtr. is as per the Notification of 2012 of the Government and since the land owners have already received the entire amount, they are not entitled to claim enhanced compensation and the Deputy Commissioner has awarded the entire compensation amount sanctioned by the Ministry of Defence with justified government rate to the land owners after following all the prescribed procedure of law under the Act of 2013. However, no document had been exhibited on behalf of the Collector. The RW 1 has stated in his cross-examination that no step was taken by the Collector, on the reply under Section 21 of the 2013 Act. It is evident from the cross-examination of the RW 1 that the land owners were never consulted while determining the compensation amount as can be seen from the deposition which says there are no any records available in the office whether the land affected individuals were consulted at the time of preparation of the estimates of compensation amount. Therefore, the

market value was determined behind the back of the landowners and were never given an opportunity to object to the same.

66. It is noted that when the sanction was accorded for the amount to be awarded, the acquired area has been classified as "Rural". The appellant (Union of India) has taken a plea that in case market value is determined under Section 26(3), multiplication factor under Section 26(2) is not required to be applied and the same is to be applied only in cases of determination under Section 26(1) which this Court is not able to accept as on a plain reading of Section 26(3) shows that the principles to be adopted for determination of market value under Section 26(3) is by adopting the said method under Section 26(1) for adjoining lands which can be valued as per Section 26(1). Therefore, a determination under Section 26(3) is also essentially a determination under Section 26(1), but by relying upon data of adjoining land. Section 26(1) clearly indicates of market value near or vicinity area and when the same is not available, the recourse of Section 26(3) is taken to determine the market value from data collected as per Section 26(1) from adjoining areas, which has not been done. The third proviso to Section 26(3), provides that before initiation of land acquisition proceedings, the Collector is required to revise and update the market value of the land on the basis of prevalent market rate in that area.

67. The Government of Arunachal Pradesh Notification dated 16/05/2012 which has been used to determine the market value by the Collector was issued even before the enactment of the 2013 Act, and rightly pointed out by the Mr. B. Pathak, learned Counsel, the same cannot be in any manner deemed to be a determination and notification under Section 26(3) of the 2013 Act which was not even in existence at the relevant time.

68. It is not disputed that Government of India is notified as the "appropriate government and the relevant central government circular in this issue would be the Government of India, Ministry of Rural Development vide Notification No. S.O.425(E) dated 09.02.2016 which has prescribed a uniform multiplication factor of 2(two) for all rural area. The Reference authority has therefore rightly relied on the said notification in awarding multiplication factor of 2.

69. It has been submitted by the learned Addl. SGI for Appellant that the Reference Authority has no power to classify land. In the opinion of this court classification of land is part of the exercise to determine its market value. Under Section 69(1) of the 2013 Act, in determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act. Therefore, in my view the Reference authority is empowered to exercise all powers under section 26 to 30 to determine market value.

70. The appellant Union of India has relied on the Arunachal Pradesh Land Acquisition Manual 2022 which came into being in 2022 whereas the present cases relates to acquisition Awards made on 12.07.2021 and 26.08.2021. Hence, the said Manual or its provisions cannot govern the land that has been already acquired before existence of the Manual. This Court takes note of the provision of Section 107 of the 2013 Act, which provides that the State Government may make provisions to give more beneficial compensation. The same is in form of a negative covenant providing that the State Government cannot make provisions for lesser

compensation but is enabled to give more than what the Central Act provides for.

71. Having considered above and on consideration of materials available on record, the issues boils down to be determined in the present case is as to whether in view of invocation of Urgency Clause under Section 40 of the Act of 2013, the land owners would be entitled to enhancement of the compensation amount as assessed by the Collector and whether the Reference Authority has correctly come to the findings as recorded in the impugned judgment and order in accordance with the provisions of law.

72. It is not disputed that the competent authority has invoked the Urgency Clause under Section 40 of the Act of 2013 in acquiring the land in the present case. It is also not disputed that the land owners have received the compensation amount as awarded by the Deputy Commissioner-cum-Collector, Shi Yomi, in 2 (two) installments firstly 80% of the assessed amount and finally 20% of the assessed amount. It is noted that before the Reference Authority, a sale deed was exhibited which the appellant has never disputed and contested. Therefore, the determination of market value of the land by the Collector appears to be not in accordance with the provisions of the Act of 2013. Consequently, in my view, the Reference Authority has rightly enhanced the rate from Rs. 125/- per Sq. Mtr. to Rs. 150/- per Sq. Mtr. and finally @ Rs. 353/- per Sq. Mtr. by calculating the cumulative escalation as required under the provisions of the Act of 2013.

73. The main contention raised by the appellants, Union of India, is with regard to the proviso to Clause 5 of Section 40 of the Act of 2013, whereby, it provides that no additional compensation would be required to

be paid in case the project is one that affects the sovereignty and integrity of India, security and strategic interest of the State or relation with Foreign States. There is a force in the submission of the learned Additional Solicitor General of India that proviso to Section 40(5) is a unique provision, an exception within an exception as it provides for special provision with regard to sovereignty and integrity of India, security and strategic interest. However, as noted above, the issue is if an Urgency Clause is invoked under Section 40 of the Act of 2013, whether the land owners have any right to claim for enhanced compensation if the Collector has not determined properly the market value and assessed accordingly as required under the law. In the present case, it is not the case of claiming for 75% additional compensation, as rightly contended by the learned counsel, Mr. B. Pathak. On bare reading of the proviso, it provides that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, security and strategic interest of the State or relation with Foreign States. Therefore, there would be no bar for the Reference authority to determine the compensation including classification of land based on the materials on record in terms of the provisions of 2013 Act.

74. This Court is in agreement with the learned counsel for the parties that the land is situated in the border area of the country and it has been acquired for the Defence purpose which is for the security and strategic interest of the State.

75. On a specific query made to the learned Senior counsel for the appellant that whether the contention of the appellant is for maintainability of a reference cases before the Reference Authority, the learned Additional

Solicitor General of India for the appellant has fairly contended that it is not about maintainability of reference as such, however, he submits that once Section 40(5) is invoked and on the application of proviso to the said provision, there could not have been any enhancement or additional compensation. In the present case, according to the learned Additional Solicitor General of India, the reference authority ought not to have enhanced the amount assessed by the Collector. Situated thus, on careful reading of the proviso to Section 40(5) of the Act of 2013, as noted hereinabove, it would be only applicable when an additional compensation is awarded. In the considered opinion of this Court, it cannot be termed as an additional compensation, but it is an enhancement of the compensation as the Collector has failed to act as per the provisions of Act of 2013. It be noted that in the notifications under section 19 of the 2013 Act, appropriate Government exempted only chapters II and III and section 15, 16, 17 and 18. Therefore, undoubtedly the provisions of Sections 11, 19, 23, 26, 30, 37 & 64 shall apply. Therefore, there would not be any bar for reference before the Reference authority and the Reference authority would have authority to determine the compensation in terms of the provisions of the 2013 Act even in case of urgency clause under section 40 is invoked. Accordingly, the issues are answered in affirmative. The present being the statutory appeal the interference of the Court is called for, only when the Court is of the view that the reference authority has committed error requiring interference.

76. In view of what have been discussed and concluded herein above, this Court finds no infirmity in the judgment and order dated 12.09.2022 and order dated 13.09.2022 passed by the Reference authority cum District

& Sessions Judge, Aalo in Reference case nos. 1, 2 and 3 of 2021 and Review petition No. 1, 2 and 3 of 2022.

77. Accordingly, the judgment dated 12.09.2022 and order dated 13.09.2022 passed by the Reference authority cum District & Sessions Judge, Aalo in Reference case nos. 1, 2 and 3 of 2021 and Review petition No. 1, 2 and 3 of 2022 are upheld.

78. In the result, the L.A. Appeal No. 01/2022, L.A. Appeal No. 02/2022 & L.A. Appeal No. 03/2022 of the Union of India are hereby dismissed. In view of above conclusion and upholding of the impugned judgment dated 12.09.2022 and order dated 13.09.2022, the L.A. Appeal No. 01/2023, L.A. Appeal No. 02/2023 & L.A. Appeal No. 03/2023 filed by the landowners are also hereby dismissed. The interlocutory applications are closed and disposed of. Transmit the records forthwith. No order as to costs.

JUDGE

Comparing Assistant