IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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W.A.Nos.259, 260 of 2015, 12, 13, 14, 15, 16, 17, 22, 25, 123 AND 135 of 2016

WRIT APPEAL No. 259 OF 2015:

D. Mahesh Kumar.

.... Appellant

v.

State of Telangana, Department of Revenue, Rep, by its Principal Secretary, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 16.11.2016.

SUBMITTED FOR APPROVAL:

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? --

2. Whether the copies of judgment may be marked to Law Reports/Journals -Yes -

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes -

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**

AND

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ W.A.Nos.259, 260 of 2015, 12, 13, 14, 15, 16, 17, 22, 25, 123 AND 135 of 2016

% Dated 16-11-2016

D. Mahesh Kumar

.... Appellant

v.

$ State of Telangana, Department of Revenue, Rep, by its Principal Secretary, Hyderabad and others.

.... Respondents

!Counsel for Appellants: Sri P.V.A.Padmanabham, Learned Counsel for the appellants in W.A. Nos.259 and 260 of 2015 (petitioners in the Writ Petitions).

Sri K. Vivek Reddy, Learned Special Counsel appeared on behalf of the appellants in W.A. Nos.12 to 17, 22, 25, 123 and 135 of 2016 (respondents in Writ Petitions).

^ Counsel for respondents: Sri R. Raghunandan and Sri S. Niranjan Reddy, Learned Senior Counsel, Sri Vedula Srinivas, Sri C. Damodar Rao, Sri Anand Kumar Kapoor, Smt. J. Vijaya Lakshmi, and Sri B. Mayur Reddy, Learned Counsel appeared on behalf of the respondents (petitioners in Writ Petitions)

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> HEAD NOTE:

? Citations:

1) AIR 1951 SC 280
2) 2007 (6) Mh.L.J 608
3) [2007] 44 APSTJ 50
4) 1998 (3) ALT 96 = [1998] 111 STC 711 (AP) [FB]
5) [1994] 93 STC 406 (SC)
6) (2013) 57 VST 55 (AP) = 2011 Law Suit (AP) 1158
7) (2013) 1 SCC 524
8) (2003) 4 SCC 739
9) (1976) 2 SCC 521

10) (2005) 8 SCC 394
11) AIR 2010 SC 3745
12) (2012) 2 SCC 407
13) 1914 AC 808
14) AIR 1991 SC 1260
15) AIR 1992 SC 1555
16) 1983 (1) All ER 765
17) AIR 1991 SC 1233
18) (1980) 1 SCC 52
19) (2001 (6) ALD 582 (FB)
20) (2004 (6) ALD 31 (SC) : (2003) 8 SCC 319
21) (2010) 13 SCC 98 : (2010) 4 SCC (Civ) 774
22) (1996) 7 SCC 269
23) (1997) 4 SCC 199
24) (1988) 3 SCC 751
25) (2011) 9 SCC 325
26) (2005) 12 SCC 59
27) (2009) 16 SCC 1
28) AIR 1966 SC 1593
29) (1991) 2 All ER 726
30) (2004) 7 SCC 288
31) AIR 1961 SC 1500
32) (1989) 1 SCC 113
33) (1996) 11 SCC 213
34) AIR 1963 SC 1604
35) (1975) 2 SCC 779
36) (2003) 7 SCC 280
37) (2005) 7 SCC 431
38) (2003) 6 SCC 186
39) 1992 supp(1) SCC 471
40) (1979) 2 SCC 572
41) (2006) 2 SCC 416
42) (2010) 3 SCC 545
43) (1990) 2 SCC 231
44) (1976) 1 SCC 925
45) Moore's Indian Appeals, Vol. 5, page 234 at 250
46) AIR 1961 SC 652
47) (1869) LR 4 Exch 126
48) (1975) 1 All ER 810
49) (1976) 2 All ER 721
50) (2002) 1 SCC 367
51) (2013) 11 SCC 451 : AIR 2013 SC 30
52) (2014) 3 SCC 92
53) (2001) 4 SCC 534
54) (2013) 3 SCC 117
55) AIR 1966 SC 237
56) (1886) 31 Ch. D. 607
57) (1979) 2 SCC 529 = AIR 1979 SC 798
58) (1985) 4 SCC 404
59) (1969) 3 SCC 471 = AIR 1970 SC 951
60) (1999) 4 SCC 306 = AIR 1999 SC 1455 at 1459
61) AIR 1965 SC 1763
62) 1957 ALT 34 (SN)
63) 2015 (6) ADJ 762
64) 2014 (4) AWC 3978
65) (2005) 7 SCC 440
66) (1995) Supp. 4 SCC 702
67) (1996) 6 SCC 665
68) (Common judgment in W.A.Nos.97 and 98 of 2009 dated 07.008.2009 (Madras C)
69) (2008) 2 PUNLR 662
70) (1977) 4 SCC 193
71) AIR 1964 SC 1742
72) (1899)2 QB 158
73) 2003 (2) SCC 455
74) (2004)7 SCC 591

75) (2007) 2 SCC 230
76) AIR 2003 SC 2434
77) (2007) 5 SCC 447
78) AIR 1962 SC 256
79) LR (1891) AC 107
80) 2002) 1 SCC 633
81) (2006) 12 SCC 607
82) (1964) 2 All ER 627
83) (1963) 1 SCR 1)
84) (2007) 2 SCC 230
85) (1973) 1 SCC 216
86) 1958 SCR 360
87) (1976) 1 SCC 77
88) (2002) 4 SCC 539
89) AIR 1957 SC 832
90) (2004) 9 SCC 686
91) (2004) 11 SCC 625
92) (1983) 2 SCC 235
93) AIR 2004 SC 4219
94) (1973) 2 SCC 372
95) (1876) 7 AC 743
96) (1955) AC 696 (HL)
97) (1976) 3 ALL ER 611
98) (1834) 1 Ad & EI 136
99) (1836) 2 M&W 195
100) (1973) 2 ALL ER 204
101) (1974) 2 ALL ER 73
102) (2002) 3 SCC 722
103) 6 H.L.Ca' 61
104) (1988) 3 SCC 609
105) (2004) 6 SCC 672 : 2004 SCC (Cri) 1815
106) AIR 1987 SC 2310
107) (1975) 1 ALL ER 16
108) (1985) 1 SCC 218
109) (2008) 2 SCC 595
110) (2008) 5 SCC 554
111) (1995) 3 SCC 330
112) AIR 1967 Calcutta 105
113) 1989(1) ALT 459
114) 1968 B.L.J.R 562
115) ILR 1996 Kar 951
116) (2001) 4 SCC 175
117) (2012) 6 SCC 384
118) AIR 1963 SC 395
119) (2006) 8 SCC 279
120) AIR 1966 SC 1313
121) (2003) 5 SCC 413
122) (2010) 9 SCC 157
123) ILR 1951 Madras 815
124) 1992 Supl (1) SCC 471
125) (2004) 12 SCC 306
126) (1996) 5 SCC 400
127) (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673
128) (1957) 1 AER 49
129) (2003) 1 ALD 585
130) 2012 (2) ALD 700
131) (2010) 1 ALD 85
132) (2003) 5 SCC 83
133) 32 Indian Appeals 93
134) AIR 2016 SC 4275
135) (2014) 3 SCC 183
136) (1980) 2 SCC 1
137) (2015) 10 SCC 241
138) 1984 Supp. SCC 196
139) (2005) 9 SCC 129

140) AIR 1964 SC 207
141) (2005) 2 SCC 145
142) AIR 1952 SC 369
143) AIR 1957 SC 657
144) AIR 1997 SC 1390
145) (1995) Supp. (3) SCC 382
146) (2015) 4 SCC 325
147) [2015] 3 SCC 353
148) (2015) 4 SCC 347
149) JT 2015 (9) SC 357 = (2015) Law Suit (SC) page 1040
150) (2014) 6 SCC 586
151) (2014) 6 SCC 564
152) AIR 1959 SC 713
153) (1955) 2 SCR 483
154) AIR 1961 SC 1596
155) AIR 1966 SC 12
156) 1909 AC 57 = 78 LJKB 124
157) (1985) 1 SCC 591
158) (1880) 5 QB 170
159) AIR 1966 SC 459
160) AIR 1944 PC 71
161) AIR 1967 SC 565
162) AIR 1968 SC 59
163) AIR 1965 SC 1296
164) AIR 1961 1040
165) (1991) 3 SCC 239
166) 1909 AC 253
167) 1940 AC 206
168) (1977) 2 SCC 548
169) (Judgment in Writ Appeal No.2041 of 2015 dated 14.10.2015)
170) (Judgment in WA No.1298 of 2014 dated 23.09.2014)
171) (Judgment in WP(C) No.32151 of 2013 dated 21.01.2015)
172) (Judgment in WP No.1923 of 2014 dated 22.06.2015)
173) (Judgment in CWP No.19150 of 2015 dated 11.09.2015)
174) (Judgment in WA No.175 of 2015 dated 05.01.2016)
175) (Judgment in WP (C) No.2294 of 2014 and C.M. No.4815 of 2014 dated 12.09.2014)
176) (Judgment of Karnataka High Court in W.A.No.100864 – 866 of 2014 dated 23.3.2015)
177) (Judgment in WP (C) No.8596 of 2014 dated 21.05.2015)
178) (2016) 6 SCC 387
179) 2014 ACJ 1172
180) 1988 (1) KLT 902
181) (1974) 2 SCC 70
182) (1975) 2 SCC 810
183) (1968) 3 WLR 714
184) (2002) 6 SCC 269
185) (1988) 4 SCC 644
186) 1959 Supp (2) SCR 875: AIR 1959 SC 1012
187) (2005) 7 SCC 627
188) (2007) 6 SCC 81
189) (2007) 8 SCC 705
190) (1839) 4 Myl. & Cr.116
191) ILR 44 Cal 328
192) (1992) 4 SCC 272
193) (1996) 5 SCC 1
194) (2003) 5 SCC 622
195) (2003) 7 SCC 336
196) (2003) 2 SCC 111
197) AIR 1954 SC 496 (AIR at pp. 498-99
198) (1973) 4 SCC 169
199) (1973) 4 SCC 200
200) (1976) 3 SCC 800
201) J.T. 2001 (3) SC 256
202) (2006) 7 SCC 714

203) 1958 SCR 1102 : AIR 1958 SC 341
204) (1957) SCR 51
205) (1976) 1 SCC 128
206) (1973) 3 SCC 17
207) (1984) 1 SCC 329
208) (1977) 3 SCC 99
209) (1973) 4 SCC 194
210) (1994) 5 SCC 593
211) 1940 FCR 110 = AIR 1941 FC 61
212) AIR 1966 SC 1423
213) (1985) 1 SCC 270
214) (2005) 2 SCC 59
215) AIR 1960 Allahabad 136
216) 1887 (14) LR – I.A.30 PC
217) (1928) LR 56 IA 93
218) AIR 1929 PC 38 at p.45
219) (1919) A.C. 533
220) (1988) 2 SCC 293
221) AIR 1962 SC 159
222) 1987 Supp SCC 350
223) (1991) 1 SCC 86
224) (1981) 4 SCC 173
225) AIR 1954 SC 493
226) (2016) 3 SCC 183
227) AIR 1987 SC 2117

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.A.Nos.259, 260 of 2015, 12, 13, 14, 15, 16, 17, 22, 25, 123 AND 135 of 2016

COMMON JUDGMENT: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Writ Appeal Nos. 12, 13, 14, 15, 16, 17 and 25 of 2016 have been filed by the Special Deputy Collector cum Land Acquisition Officer, and the Hyderabad Metro Rail Limited, aggrieved by the Common order passed by Justice S.V. Bhatt on 02.03.2015. W.A. Nos. 22, 123 and 135 of 2016, W.A. No.259 and 260 of 2015, and cross objections in W.A. No. 22 of 2016 are preferred against the common order passed by Justice P. Naveen Rao on 20.02.2015. Parties shall, hereinafter, be referred to as they were arrayed in the Writ Petitions against which these appeals have been preferred under Clause 15 of the Letters Patent.

Facts, to the limited extent necessary, are that land acquisition proceedings were initiated in the subject areas i.e., Nampally, Begumpet and Secunderabad under the Land Acquisition Act, 1894 ("1894 Act"). The section 4(1) Notification was issued on 25.04.2013, the Section 5(a) enquiry was held on 27.04.2013, and the Section 6 declaration was issued on 09.07.2013. Notice of the award enquiry was issued on 24.07.2013. The respondents claim that the award enquiry was held, the Government granted approval, under Section 11 of the Land Acquisition Act, 1894 (the "1894 Act" for short) on 19.12.2013, and the award was pronounced on 23.12.2013, and it

is only thereafter that the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act") came into force on 01.01.2014. It is, however, not in dispute that the notice of the award, under Section 12(2) of the 1894 Act, was communicated to all the petitioners only after 01.01.2014, to some on 08.01.2014, to some others a few months after 01.01.2014, and to a few others more than a year or a year and a half after the 2013 Act came into force.

It is only after receipt of the notices, under Section 12(2) of the 1894 Act, did those, whose lands were subjected to acquisition, invoke the jurisdiction of this Court under Article 226 of the Constitution contending that: (a) they were entitled to compensation under the 2013 Act in view of Section 24(1)(a) thereof; (b) alternatively, they were entitled to compensation under the 2013 Act in view of the proviso to Section 24(2); and (c) the award was ante-dated and was made not on 23.12.2013, but on or around the date when the Section 12(2) notices were issued to them.

In his common order dated 02.03.2015, Justice S.V. Bhatt held that the awards, made prior to the commencement of the 2013 Act and communicated after the 2013 Act came into force on 01.01.2014, would be governed by Section 24(1)(a) of the 2013 Act; and the award is ante-dated. In his order dated 20.02.2015, Justice P. Naveen Rao held that the awards were made, under Section 11 of the 1894 Act, prior to the commencement of the 2013 Act, but were communicated after the commencement of the 2013 Act on 01.01.2014; these awards are, therefore, governed by the provisions of the 1894 Act; and, consequently, the land owners are

not entitled for compensation under the 2013 Act. The Learned Judge further held that, if a majority of the land owners have not been paid compensation before 01.01.2014, they would then be entitled to be paid higher compensation under the proviso to Section 24(2) of the 2013 Act. After examining the records, Justice P. Naveen Rao held that the award was not ante-dated. The finding of Justice P. Naveen Rao, in his common order dated 20.02.2015, that the award is not ante-dated does not appear to have been challenged in any of the Writ Appeals, and the challenge thereto, by the petitioners, is limited to his conclusion that, since the award was made under Section 11 of the 1894 Act prior to 01.01.2014, the petitioners were not entitled for higher compensation under the 2013 Act. The Special Deputy Collector, and Land Acquisition Officer, and Hyderabad Metro Rail, have challenged the conclusion of Justice P. Naveen Rao, in his common order dated 20.02.2015, that, if a majority of the land owners have not been paid compensation before 01.01.2014, they would, in view of the proviso to Section 24(2), be entitled for higher compensation as determined under the 2013 Act.

Elaborate oral and written submissions have been made both on behalf of the petitioners and the respondents. Sri R. Raghunandan and Sri S. Niranjan Reddy, Learned Senior Counsel, Sri Vedula Srinivas, Sri C. Damodar Rao, Sri Anand Kumar Kapoor, Smt. J. Vijaya Lakshmi, Sri P.V.A. Padmanabham and Sri B. Mayur Reddy, Learned Counsel appeared on behalf of the petitioners and Sri K. Vivek Reddy, Learned Special Counsel appeared on behalf of the respondents.

It is convenient to examine the rival submissions under three different heads, namely (1) whether the award is ante-dated; (2) when can an award be said to have been made under Section 11 of the 1894 Act; and (3) the scope of the proviso below Section 24(2) of the 2013 Act. The rival contentions, urged by Learned Counsel on either side, shall be examined under different sub-heads in each of the aforesaid three parts.

I. IS THE AWARD ANTE-DATED:

It is contended, on behalf of the petitioners, that making of an award is a pure question of fact; to deny the petitioners the benefits of the 2013 Act, it must be proved that the award dated 23.12.2013 was actually passed before the 2013 Act came into force; the award is ante-dated, and has not been made prior to 31.12.2013; though the notice under Section 12(2) refers to the date on which the award was passed as 23.12.2013, it was not made prior to 31.12.2013, and was ante-dated, since the Section 12(2) notice contained revised extents and corresponding payments as per the Road Development Plan ("RDP" for short) communicated by the requisitioning authority vide letter dated 14.05.2014; the Section 12(2) notice was neither accompanied by a copy of the award, nor were its contents made known to the petitioners; the extent of land, and the compensation amount, for which the award was passed, as indicated in the notice under Section 12(2), are different from those mentioned in the Section 4(1) notification or the so called awards produced before the Court; the notice under Section 12(2) is a statutory prescription, and is the only communication made to the claimants of the award; while the said notice no doubt refers to the date of the award as 23.12.2013, the

extents or the corresponding compensation offered/referred to therein are as per the recommendation made by the requisitioning authority subsequent to 01.01.2014; neither is any reason/ explanation forthcoming from the pleadings regarding the variance in the figures mentioned in the Section 12(2) notice or the alleged award dated 23.12.2013, nor is the State disowning its notice under Section 12(2); and, in the absence of pleadings or a proper explanation by the LAO in his affidavit, the records produced before the Court should be disbelieved regarding the date when the award was actually made, or whether the complete records have been produced.

There is no plea on ante-dating in Writ Petition No. 21621 of 2014 (against which W.A.No.16 of 2016 has been preferred) and W.P. No.39180 of 2014 (against which W.A. No. 25 of 2016 has been preferred). The petitioners therein have not even stated that the award is ante-dated and, as a result, the respondent did not have the opportunity to contend otherwise. In a few of the other Writ Petitions, there is a bald plea of the award being ante-dated. As such a plea is, in effect, a plea of fraud, it must be established by providing necessary particulars in the pleadings, and a mere allegation of fraud will not suffice. (**Bishundeo Narain v. Seogeni Rai**[1]). Neither have the petitioners pleaded as to how the award is ante-dated nor have they placed any material to prove it. It is difficult, therefore, to accept their contention that the award is ante-dated, more so in the absence of any material being placed

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[1] AIR 1951 SC 280

before the Court to establish their claim. (**Bhalchandra v. Special Land Acquisition Officer**[2]).

The finding recorded in the order of Justice P. Naveen Rao, rejecting the plea of ante-dating, has attained finality. The Learned Judge, in his order in WP No. 23476 of 2015 and batch dated 20.02.2015, examined the contention on ante-dating and, after perusing the records, rejected the said contention. In the said order, the Learned Judge recorded the petitioner-land owners contention on ante-dating, the State's contention on ante-dating, and his having perused the records. It is only thereafter has the Learned Judge held that, with reference to date of passing of the award, the records were called; on 26.09.2014 records were produced; and, after perusing the records, he found that the award was passed on 23.12.2013.

While the aforesaid order of Justice P. Naveen Rao has been challenged by the petitioners-appellants in WA No. 259 of 2014, WA No. 260 of 2015, and cross-objections in WA No. 22 of 2016, they do not appear to have assailed the correctness of the findings of the learned Judge on ante-dating. The finding recorded by the Learned Judge, on the question of ante-dating, can be said to have attained finality.

It is no doubt true that the notice under Section 12(2) of the 1894 Act, intimating the land owners that an award was passed on 23.12.2013, was served on them only after the 2013 Act came into force on 01.01.2014, and in some cases more than a year thereafter. It is also true that delay in serving the order may legitimize the presumption that the order was not passed on the

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[2] 2007 (6) Mh.L.J 608

date on which it is purported to have been passed, (**Vamshi Art Printers Pvt. Ltd., Hyderabad v. Commercial Tax Officer, Basheerbagh Circle, Hyderabad**[3]; **Ushodaya Enterprises Limited v. Commissioner of Commercial Taxes, A.P., Hyderabad**[4]; **State of Andhra Pradesh v. M. Ramakishtaiah & Co., Khetmal**[5]; **Santhosh Builders v. Deputy Commissioner of Commercial Taxes**[6]), and where the order is communicated, much beyond the period prescribed for exercising a statutory power, and there is no explanation from the authority why it was so delayed, it is legitimate to presume that the order was not made on the date it was purported to have been made, and could have been made only after expiry of the prescribed period. (**M. Ramakishtaiah & Co.,**[5]; **Santhosh Builders**[6]). As the respondents have sought to explain the reasons for the delay in serving the Section 12(2) notice, and have placed the records before us to substantiate their claim that the award was actually passed on 23.12.2013 and was not ante-dated, it is necessary to examine whether the records show that the award was passed on 23.12.2013, before the 2014 Act came into force on 01.01.2014.

The original records relating to acquisition of lands, of the petitioner in W.P.No.1467 of 2014 (1st respondent in W.A.No.15 of 2016) discloses that a notice in Form VI, under Section 9(1) and 10 of the 1894 Act, was issued on 24.07.2013 requesting all persons interested in the land to appear before the Special Grade Deputy Collector & Land Acquisition Officer, Metro Rail Project, GHMC on

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[3] [2007] 44 APSTJ 50
[4] 1998 (3) ALT 96 = [1998] 111 STC 711 (AP) [FB]
[5] [1994] 93 STC 406 (SC)
[6] (2013) 57 VST 55 (AP) = 2011 Law Suit (AP) 1158

08.08.2013 at 3.00 p.m, and file their claims of interest and documents in support of such claims. A similar notice in Form VII dated 24.07.2013, under Section 9(3) and 10 of the 1894 Act, was also issued. The record also contains the acknowledgment of the persons interested, including the petitioner, of receipt of the Form VII notice on 01.08.2013.

By their letter dated 07.08.2013, the petitioner informed the LAO that his uncle was suffering from severe back and joint pains, and was undergoing treatment; he had to sit and arrange all the relevant documents because the premises of their lodge was in existence since the 1950s; a few major documents were kept with the financial institutions, and a few others were with their cousins; the documents had to be collected from them; and this was because initially it was a joint family property, and was later divided pursuant to the mutual understanding among their family members. The petitioner sought extension of four weeks, on medical grounds, to submit all the relevant documents.

The B-file contains the endorsement dated 07.08.2013 recording that, in response to the Form-VII notice, a representation of Sri Devidas R. Bollanki had appeared, and had filed a petition seeking four weeks time for production of documents, and the correct measurements. Again, by letter dated 12.09.2013, the petitioner informed the LAO that his father had to undergo a knee replacement operation; he was admitted in Hyderabad Nursing Home on 30.08.2013, and was discharged on 02.09.2013; he was strictly advised bed rest as the knee replacement had to get in order; and some more time be granted to submit all the relevant records. A final notice dated 08.10.2013 was issued to the

petitioner which was received by them on 11.10.2013. In reply thereto, the petitioner informed the LAO, by his letter dated 15.10.2013, that infection had developed in the operated area of his father's leg, and he was re-operated on 04.10.2013; he was discharged on 09.10.2013, and was advised strict bed rest; and twenty days time be granted to submit all relevant documents.

Thereafter a final notice in Form VII was issued on 06.11.2013, a copy of which the petitioner received on 07.11.2013. By his letter dated 12.11.2013, the petitioner informed the LAO that their property documents were in a bank; they had approached the bank to give them the documents, to present it in the office of the Special Deputy Collector; the bank had sought one week's time to arrange for the same; and one week's time be granted for production of the documents. Yet another notice dated 22.11.2013 was issued to the petitioner, which was received by him on 27.11.2013. While enclosing certain documents, the petitioner informed the LAO, by his letter dated 27.11.2013, that their reply was confined to Section 9(3) and 10 of the 1894 Act, and an appropriate notice should be issued to them for a regular hearing under Section 11 of the 1894 Act.

In the meanwhile, the LAO informed the Executive Engineer, GHMC, by his letter dated 30.04.2013, that sixteen properties were notified under the Land Acquisition Act for widening the road from Ravindra Bharathi Junction to M.J. Market Junction; and the separate structural value proposals for these premises be sent immediately for taking further action. Again, by letter dated 05.09.2013, the LAO requested the Executive Engineer, GHMC to send separate structural value proposals for the sixteen properties

notified in the acquisition for widening of the road from Ravindra Bharathi Junction to M.J. Market Junction.

The Joint Sub-Registrar, Hyderabad informed the LAO, by his letter dated 26.09.2013, that the market value of the land was Rs.52,000/- per square yard as per the market value guidelines, and these properties were not registered as sale deeds during the financial years 2010-13. By his letter dated 27.11.2013, the Executive Engineer, GHMC informed the LAO that he had verified the plans, and had prepared the structural valuation statement of the properties as per ground conditions; and the vetted structural valuation, of the properties effected in the Hyderabad Metro Rail alignment from Ravindra Bharathi Junction to M.J. Market Junction for Hyderabad Metro Rail works situated at Nampally, were as stated therein. A preliminary valuation statement, in respect of these sixteen properties, was prepared on 30.11.2013 by the LAO. This statement contains details of the extent of the land sought to be acquired in square yards, the land value at Rs.52,000/- per square yard, the 30% solatium, the structural valuation, and the total compensation payable. The total compensation payable for these sixteen properties, as determined in the preliminary valuation statement, was Rs.11.48,54,682/-.

On a note submitted to him for approval of the preliminary valuation statement, proposing the land value to be fixed at Rs.52,000/- per square yard, the Joint Collector endorsed on 03.12.2013 that he would conduct an inspection on 04.12.2013 at 4.00 p.m. Thereafter, on 04.12.2013, the Joint Collector endorsed that he had inspected the land along with the LAO, and the rate proposed was acceptable. The LAO informed the Joint Collector,

by his endorsement dated 16.12.2013, that the award enquiry had been completed, the preliminary valuation statement was approved by the Joint Collector, and a draft award was being submitted for his approval. The file, containing the draft award, was received by the peshi of the Joint Collector on 18.12.2013. The Joint Collector endorsed on the file on 19.12.2013. The note file contains the endorsement of the LAO dated 23.12.2013, that the award was pronounced today (i.e., on 23.12.2013). As the award was approved by the Joint Collector on behalf of the Government on 19.12.2013, and was pronounced thereafter by the LAO on 23.12.2013, the award, under Section 11 of the 1894 Act, must be held to have been made either on 19.12.2013 or on 23.12.2013.

While the Section 12(2) notices were no doubt served on the land owners long after the 2013 Act came into force on 01.01.2014, the fact that the award was passed on 23.12.2013 was in the public domain by 25.01.2014. One Sri Aneeketh Sanghi requested the LAO, vide letter dated 29.11.2013, to furnish certain information under the Right to Information Act, 2005. The information sought for by him related to the widening of the 120 feet road from M.J. Market to Ravindra Bharathi. The documents sought for by the applicant were (i) photostat copies of all the papers given by the GHMC and the District Collector, Hyderabad to the LAO i.e. all the papers contained in the file; (ii) all the maps given by the GHMC and the District Collector, Hyderabad; and (iii) list of properties affected in the above said road widening, all details of affected properties, and the list of requisitions sent by GHMC, HMRL and the District Collector, Hyderabad. By his endorsement dated 23.12.2013, the LAO informed Sri Aneeketh

Sanghi that the required information contained approximately 2000 papers and Rs.4,000/- was required to be paid in order to provide the information. By his letter dated 26.12.2013, Sri Aneeketh Sanghi forwarded a bankers cheque dated 26.12.2013 for Rs.4,000/-. Thereafter, by endorsement dated 25.01.2014, the LAO furnished photostat copies of the documents sought for by the applicant, under the Right to Information Act, 2005, pertaining to the widening of the 120 feet road from M.J. Market to Ravindra Bharathi i.e. in four file Nos.C/206/2013, B/517/2010, C1/687/2013 and C/362/2013.

It is stated by Sri K. Vivek Reddy, Learned Special Counsel, that the note file in C/362/2013 contained the endorsement of the LAO that the award was pronounced on 23.12.2013; and, in response to the said application, a copy of the award, approved by the District Collector on 19.12.2013, was communicated on 25.01.2014. If that be so, the possibility of ante-dating the award could have arisen only between 1st and 25th January, 2014 which Sri K. Vivek Reddy, Learned Special Counsel, would explain to be the period taken by the LAO to process the cheque submitted by the RTI applicant, and the RTI request.

Other events which dispel any doubt regarding the award having been ante-dated are that the LAO while making the award is required, among others, to calculate the additional market value to be awarded to each land owner as per Section 23(1A) of the 1894 Act. In the present case, the LAO has calculated the said amounts till 30.11.2013 i.e., the date on which he made his draft award. As the market value of the properties was calculated as on 30.11.2013 itself, this also lends support to the submission of Sri

K. Vivek Reddy, Learned Special Counsel, that the Award was made prior to 01.01.2014 when the 2013 Act came into force. The minutes of the meeting between GHMC and Hyderabad Metro Rail Limited held on 20.03.2014 records the State Government having accorded its approval on 19.12.2013, and reads thus:-

"LA proceedings for which awards have already been approved by the Joint Collector, Hyderabad District on 19.12.2013, may accordingly be finalized for the affected properties between Ravindra Bharathi and MJ Market in Nampally area Metro Rail corridor – 1";

These minutes were filed by the petitioner in W.P. No.1467 of 2015 (1st respondent in W.A.No.15 of 2016), and he has not alleged that these documents were fabricated. The material placed on record would show that the land owners were given several opportunities to produce documents to establish their claim of ownership, and for fixation of compensation for the lands under acquisition. The note file placed before us shows that the draft award dated 16.12.2013 was sent by the LAO to the Government (Joint Collector), the file containing the draft award was received in the office of the Joint Collector on 18.12.2013, prior approval was granted by the Government (endorsement of the Joint Collector on the file) on 19.12.2013, and on the file being placed before him thereafter, the LAO pronounce the award on 23.12.2013. The requirement of Section 11 and its proviso of passing a draft award and obtaining prior approval of the Government, and of Section 12(1) of the 1894 Act of award being filed in the office of the LAO, have been fulfilled.

The allegation of the award having been ante-dated is, in effect, a contention that the officials involved in such acts had exercised their powers with malicious intent. The legal meaning of

'malice' is 'ill will or spite towards a party and any indirect or improper motive in taking an action'. This is sometimes described as 'malice in fact'. 'Legal malice' or 'malice in law' means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others.' (**Words and Phrases Legally Defined, 3rd Edn., London, Butterworths, 1989; Ratnagiri Gas and Power (P) Ltd. v. RDS Projects Ltd.,**[7]; **State of A.P. v. Goverdhanlal Pitti**[8]). Malafide exercise of power means exercise of statutory power for 'purposes foreign to those for which it is in law intended'. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order, for an unauthorised purpose, constitutes malice in law. (**ADM, Jabalpur v. Shivakant Shukla**[9]; **Union of India v. V. Ramakrishnan**[10]**; Kalabharati Advertising v. Hemant Vimalnath Narichania**[11]; **Ratnagiri Gas and Power (P) Ltd.**[7]; **Ravi Yashwant Bhoir v. Collector**[12]). There is a broad distinction 'between "malice in fact" and "malice in law". The person, who inflicts a wrong or an injury upon any person in contravention of the law, is taken to know the law and may be guilty of "malice in law", although, as far as his state of mind is concerned, he acted ignorantly, and in that sense

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[7] (2013) 1 SCC 524
[8] (2003) 4 SCC 739
[9] (1976) 2 SCC 521
[10] (2005) 8 SCC 394
[11] AIR 2010 SC 3745
[12] (2012) 2 SCC 407

innocently. “Malice in fact” means an actual malicious intention on the part of the person who has done the wrongful act. (**Shearer v. Shields**[13]; **Shivakant Shukla**[9]; **Ratnagiri Gas and Power (P) Ltd.**[7]).

In order to accept the submission, urged on behalf of the petitioners, that the award is antedated, it must necessarily be held that both the Land Acquisition Officer and the Joint Collector who are functioning from two separate offices had colluded with each other, and had acted with a malafide intention, of ante dating the award, actually passed after the 2013 Act came into force on 01.01.2014, to an anterior date in December, 2013 before the 2013 Act came into force, only to deprive the petitioners of their entitlement for compensation under the 2013 Act. Such serious allegations of malafides could have been examined only if both the LAO and the Joint Collector had been arrayed as respondent co-nominee, (**State of Bihar v. P.P. Sastry**[14]), as no enquiry can be caused into, or a finding recorded on, these allegations of collusion and fraud behind their back.

The difference between the extent of land acquired as reflected in the award, and the extent of land reflected in the Section 12(2) notice, is explained by the respondents stating that, after making the award under Section 11, the road width in the Nampally stretch was revised; in accordance with the said revision, the extent of acquisition changed in respect of some of the petitioners; pursuant thereto, the LAO reduced the said extents in the Section 12(2) notice; this resulted in a discrepancy between the

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[13] 1914 AC 808
[14] AIR 1991 SC 1260

original extents in the award, and the notices issued under Section 12(2); if the award had been made only before issuance of the Section 12(2) notice, the extents in the Section 12(2) notice would have been reflected in the award; the award, which was approved by the Government on 19.12.2013, includes the actual extent prior to reduction of the road width; and, if there was no discrepancy, that would have necessitated a stronger inference that the award is ante-dated.

The claim of the award having been antedated is an allegation of fraud, and such allegations are easier made than established. Fraud in public law is not the same as fraud in private law. (**Shrisht Dhawan v. M/s. Shaw Brothers**[15]; **Khawaja Khawaja v. Secretary of State for Home Deptt.,**[16]). Fraud, in relation to a statute, is a colourable transaction to evade the provisions of a statute. 'If a statute has been passed for some particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. (**Craies on Statute Law, 7th Edition, p. 79**; **Shrisht Dhawan**[15]; **Pankaj Bhargava v. Mohinder Nath**[17]). Fraud on statute is abuse of power or malafide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of a statute by adopting subterfuge, or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud, in public law or administrative law, arises from a deception

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[15] AIR 1992 SC 1555
[16] 1983 (1) All ER 765
[17] AIR 1991 SC 1233

committed by disclosure of incorrect facts knowingly and deliberately. (**Shrisht Dhawan**[15]).

Fraud is essentially a question of fact, the burden to prove which is upon him who alleges it. (**Shrisht Dhawan**[15]; **S.B. Noronah v. Prem Kumari Khanna**[18]). Fraud can either be proved by established facts or an inference can be drawn from admitted and/or undisputed facts. (**A.P. Scheduled Tribes Employees Association v. Aditya Pratap Bhanj Dev**[19]; **Bigelow on Fraudulent Conveyances**; **Ram Chandra Singh v. Savithri Devi**[20]). In the light of the aforesaid facts, which is disclosed from the records placed for our perusal, we must express our inability to agree with the conclusion of the Learned Single Judge that the award is antedated. It does appear, as is contended before us by Sri K. Vevek Reddy, Learned Special Counsel, that the B file was not examined by the Learned Single Judge. The contention urged on behalf of the petitioners, that the award is ante dated, therefore, necessitates rejection.

(i). WAS AN AWARD ENQUIRY HELD?

It is submitted, on behalf of the petitioners, that the scheme of Section 9 of the 1894 Act provides for a notice before an award enquiry, and Section 11 contemplates making of an award; Section 11 requires an enquiry to be conducted before an award is made; no award enquiry was conducted by the LAO before passing the award dated 23.12.2013; the file noting clearly indicates that no award enquiry was conducted as ordained under Section 11 of the 1894 Act; the Government has taken self contradictory stands on

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[18] (1980) 1 SCC 52
[19] (2001 (6) ALD 582 (FB)
[20] (2004 (6) ALD 31 (SC) : (2003) 8 SCC 319

the issue of award enquiry; on the one hand they contend that an award enquiry was conducted, the claimants had participated, and they had sought time; on other hand they contend that no illegality or prejudice is caused even if no enquiry is conducted under Section 11; the LAO issued notices, under Sections 9(3) and 10 of the 1894 Act, granting the petitioners time to submit documents/title deeds, and the same was extended from time to time; the claimants submitted their documents/claims before the alleged award dated 23.12.2013 was passed; a specific request was made by the claimants that an opportunity, to participate in the award enquiry, be given; while Section 11 contemplates making of an award, Section 9 only provides for a notice before an award enquiry; Section 11 of the 1894 Act ordains an enquiry, and casts a duty on the LAO to conduct an enquiry into the specific issues pursuant to the notice under Section 9(3); in the absence of an award enquiry under Section 11, it would be impermissible to determine the amount of compensation, the extent, and the claimants eligibility; the so called award dated 23.12.2013 was passed without conducting an award enquiry; it is hence null and void, and is non est in the eye of law; the record shows that no award enquiry was conducted; in the absence of an award enquiry under Section 11, it cannot be said that an award is made for the purpose of Section 24 of the 2013 Act; the provisions of an expropriatory statute should be interpreted/followed strictly; the Land Acquisition Officer's powers are circumscribed by the statutory frame work; "the powers given to him to do a particular thing must be done in that way or not at all; other methods of performance are necessarily forbidden; deprivation of land, by a

process not authorized by law, would offend Article 300-A of the Constitution of India; making of an award under Section 11 postulates an award enquiry; Making of an award is the sine qua non for the land acquisition proceedings even while invoking the urgency clause under Section 17(2) of the 1894 Act; the language of Section 11 of the Act is for ***an enquiry and then an Award***"; the language employed in Section 11 makes it clear that an enquiry is mandatory; the act of enquiring into the objections would cover hearing of the case i.e, recording of evidence and admitting documents; and it does not include rendering a finding.

The petitioners have not asserted, in any of the Writ Petitions, that an award enquiry was not held. In none of the Writ Petitions, have they sought a mandamus for an award enquiry to be held. It does appear that the findings recorded in some of the orders under appeal, that there was no award enquiry, was recorded without giving the State an opportunity to establish that the LAO had enquired into the claims before passing the award. The B file produced before us shows that the LAO had enquired into the compensation to be fixed, for the land and the structures, before an award was passed by him. The petitioners were not only put on notice several times and granted several adjournments, but were also given, and availed, the opportunity of a personal hearing. They also filed their claim statements. It is the petitioners who sought repeated adjournments to file their title document which request the LAO acceded to. It is only after the documents were verified, and after the value of the land in the area and the structural valuation of the subject properties were ascertained

from the Sub-Registrar and the GHMC respectively, was an award made by the LAO.

It is settled law that failure to issue the notice under Section 9(3) would not adversely affect the subsequent proceedings including the award and title of the Government in the acquired land. (**May George v. Tahsildar**[21]). Any irregularity in service of notice under Sections 9 and 10 is curable, and does not invalidate the award under Section 11 of the Act, as an award is only in the nature of an offer made on behalf of the State (**State of T.N. v. Mahalakshmi Ammal**[22]; **Nasik Municipal Corpn. v. Harbanslal Laikwant Rajpal**[23]; **May George**[21]), and the land owner can challenge the said award on that ground before the Court to which a reference is made under Section 18 of the 1894 Act. (**May George**[21]; **Nasik Municipality**[23] and **Mahalakshmi Ammal**[22]). Making of an award, under Section 11 of the 1894 Act, is an administrative act. The award enquiry before the Collector, under Sections 9 and 11, is neither a quasi-judicial nor a judicial proceedings. There is neither any adjudication when an award is made nor is it a decision under Section 11. Determination of compensation is binding only on the Government, and not on the land owners. (**Chimanlal Hargovinddas v. Spl LAO**[24]; **Ambya Kalya Mhatre v. State of Maharashtra**[25]; and **Ranvir Singh v. Union of India**[26]). Section 11 of the 1894 Act does not contemplate a hearing on the objections. The contention that no

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[21] (2010) 13 SCC 98 : (2010) 4 SCC (Civ) 774
[22] (1996) 7 SCC 269
[23] (1997) 4 SCC 199
[24] (1988) 3 SCC 751
[25] (2011) 9 SCC 325
[26] (2005) 12 SCC 59

opportunity of a personal hearing was given to the petitioners under Section 11 of the 1894 Act, even after a request was made by them, is not tenable as the 1894 Act does not contemplate a further opportunity of hearing to be given to the land owners under Section 11 of the 1894 Act apart from an opportunity of submitting their statement of claim, and their objections if any, to the notice under Section 9(3) of the 1894 Act. Apart from Section 9(1) & (3), no further notice need be given under Section 11 of the 1894 Act. In the present case, several notices were given to the petitioners under Section 9(3), and they appeared before the LAO and filed their claim statements.

There is no dispute that the making of an award is the sine quanon for acquisition of land for, under Section 16 of the 1894 Act, possession of the land can be taken only after the Collector makes an award under Section 11, and it is only thereafter does the land vest absolutely in the Government free from all encumbrances. Section 17(1) which confers power on the Collector, in the case of urgency, to take possession of the land does not discharge him of his obligation to pass an award thereafter. It is also true that passing of an award under Section 11 must be preceded by a notice under Sections 9(1) and (3), and an enquiry being caused by the Collector into the objections which any person interested in the land has stated, pursuant to the notice under Section 9, on the following aspects, (i) the measurements made under Section 8, (ii) the value of the land on the date of publication of the Section 4(1) notification, and (iii) the respective interest of persons claiming compensation.

Section 9, in effect, requires the Collector to issue two notices - one in the locality of acquisition and other to occupants or people interested in the lands to be acquired. Section 11 involves an enquiry by the LAO into the objections made by the interested persons regarding the proceedings under Sections 8 and 9, and making an award to the persons claiming compensation as to the value of land as on the date of notification under Section 4. The enquiry involves hearing of parties who appear in response to the notices, investigating their claims, considering the objections, and taking in all the information necessary for ascertaining the actual value of the land. Section 11 makes it obligatory for the Collector to safeguard the interests of all persons interested, even though they might not have appeared before him. In awarding compensation the LAO should look into the estimated value of land and give due consideration to the other factors specified therein. (**Steel Authority of India v. SUTNI Sangam**[27]).

As noted hereinabove, the petitioners were put on notice under Section 9 of the 1894 Act, and were called upon to submit their objections. Section 11 does not provide for common enquiry being held for all the land owners put together, and does not disable the LAO from conducting an enquiry separately, for each of the land owners, in making an award regarding (i) the true area of the land, (ii) the compensation to be allowed for the land, and (iii) apportionment of the compensation among all persons interested in the land, of whose claims he has information whether or not they have appeared before him. It is not even the case of the respondents that no award need be passed under Section 11. The

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[27] (2009) 16 SCC 1

dispute is regarding the nature of the enquiry under Section 11, and whether it is akin to an enquiry in a quasi judicial or a judicial proceeding. While Section 11 obligates the Collector to enquire into the objections, the provision does not mandate a personal hearing being afforded to the objector. In any event, as is evident from the record placed for our perusal, a personal hearing was afforded to the petitioner. Section 11 requires the LAO to make an award regarding the compensation which, in his opinion, should be allowed for the land. The formation of opinion is that of the LAO, and there must be material before him in forming such an opinion. We must however express our inability to agree with the submission, urged on behalf of the petitioners, that an enquiry into the objections under Section 11 would require an elaborate hearing of the case, recording of evidence, and rendering a finding thereupon akin to quasi judicial proceedings. While any document submitted by the persons interested, on the three aspects aforementioned, must necessarily be taken into consideration by the LAO, the enquiry under Section 11 of the 1894 Act cannot be equated to a quasi-judicial hearing as the award, made after such an enquiry, is only in the nature of an offer which, though binding on the Government, does not bind the land owners, and they are entitled to seek higher compensation on a reference being made to the Court at their request under Section 18 of the 1894 Act.

It is no doubt true that the petitioner had informed the LAO that the reply submitted by them was only to the Section 9 notices, and not under Section 11; and they should be afforded another opportunity under Section 11 of the Act. From the record it is evident that the LAO had obtained information regarding the

market value of the land from the sub-registrar's office, and the structural value of the buildings from the Executive Engineer, GHMC. The opinion formed by the LAO, on the compensation to be allowed for the land, was based on the material before him i.e information obtained by him both with regards the market value of the land, and the structural value of the buildings under acquisition.

The 1894 Act does not contemplate two separate enquiries, one under Section 9 and another under Section 11 thereof. The enquiry under Section 11 is to the objections stated by the land-owners to the notices issued under Section 9 of the Act. As noted hereinabove, the record discloses numerous opportunities having been given to the land owners to put forth their objections, and to provide information regarding their claim of title to the property under acquisition, and the compensation which they claim for the land and buildings being acquired. The mere fact the LAO did not accede to the petitioners request, in their letter dated 27.11.2013 that they be given a notice for a regular hearing under Section 11, would not vitiate the award as the notices issued under Section 9(1) and (3) and Section 10(1) of the 1894 Act is to give an opportunity to the land owner to submit their objections. As the award is in the nature of an offer, it is always open to the land owners to seek a reference under Section 18, and put forth their claim for higher compensation before the Civil Court. We find no merit in the submission that failure to give the petitioner an additional opportunity of hearing under Section 11, notwithstanding several notices being issued to them under

Section 9(1) and (3) and their being afforded a personal hearing thereafter, would vitiate the award.

This issue can be examined from another angle. Unlike Section 11, Section 5A of the 1894 Act specifically stipulates an opportunity of a personal hearing to be provided. The petitioner's contention, if accepted, would require proceedings under Sections 5A and 11 to be similarly placed, though the language of Section 9 is not the same as used in Section 5A wherein the words used are ***"shall give the objector an opportunity of being heard in person"***. This opportunity of a personal hearing, being provided under Section 5-A of the 1894 Act, is to ensure that the person interested can object to the land acquisition proceedings itself. Section 9(2), in using the words ***"persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier that fifteen days after the date of publication of the notice), to state the nature of their respective interests in the land, the amount and particulars of their respective interests in the land, and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8"***; shows that the opportunity provided to the land owner is only to file their claim statements and objections, if any, to the measurements of the properties made under Section 8 of the 1894 Act. Unlike Section 5-A, Section 11 does not obligate the person interested being afforded a personal hearing. We may not be understood to have held that a personal hearing should not be afforded, even when it is sought for by the person interested. All that we have held is that there is no obligation cast on the LAO, by Section 11 of the 1894 Act, to inform the person interested that he would be given a personal

hearing; and failure to afford a personal hearing would not vitiate the award passed thereafter. As the proceedings before the LAO are administrative in character, and are not quasi-judicial in nature, the petitioners cannot be heard to contend that the rules of natural justice are violated on their claims not being adjudicated.

It is no doubt true that, after the award was made on 23.12.2013, the revised road development plan came into effect by virtue of which certain extents, in the properties under acquisition, was reduced in some cases, and increased in some others. This variation is restricted only to the properties acquired in Nampally area for which an award was made on 23.12.2013. The land owners, affected thereby, are the respondents in W.A. Nos. 12, 13, 14, 15, 17, 25, 123, 135 and 22 of 2016. The Section 12(2) notices, issued to the land owners, reflect the exact area as per the award wherever there was an increase in the extents. However, wherever there was a reduction in the extents required by the respondents, the Section 12(2) notices reflect the reduced extents as against the original extents as per the award dated 23.12.2013. As the respondents now intend, after an award has been passed, not to acquire the remaining extents, they can only resort to Section 48 of the 1894 Act which allows the Government to withdraw from the acquisition of any land of which possession has not been taken. The effect of Section 48 of the 1894 Act is to withdraw the acquisition proceedings, including the notification under Section 4 with which it is started, either partially or completely. **(State of MP v. Vishnu Prasad Sharma**[28]). As the powers under Section 48 of the 1894 Act has not been invoked in

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[28] AIR 1966 SC 1593

the present case, the respondents must either pay compensation for the land acquired in terms of the award, or exercise their power under Section 48 of the 1894 Act to withdraw acquisition proceedings for the differential extent (i.e the difference in the extent of the land as reflected in the award on the one hand, and the Section 12(2) notices on the other. We, however, see no reason to hold that the respondents have ante-dated the awards passed after 01.01.2014, as if they were passed in December, 2013, only to deny the petitioners the benefit of higher compensation under the 2013 Act.

II. WHEN IS AN AWARD, UNDER SECTION 11 OF THE 1894 ACT, MADE?

(i) IS SECTION 24 A TRANSITORY PROVISION?

It is contended, on behalf of the petitioners, that Section 24 of the 2013 Act is in the nature of a transitory provision which deals with matters which are pending at the commencement of the 2013 Act; it should be given full weight and importance; the legislature (Parliament) was aware, when the 2013 Act was enacted, that there were some awards which were made ie they were communicated, and some awards were not made i.e they were not communicated, and were still in the making; therefore Parliament made a provision (Section 24) in the 2013 Act to deal with awards which were made, and which were not made under Section 11 of the 1894 Act; and the Legislature (Parliament) enacted a special provision in Section 24 of the 2013 Act to give full effect to the transitory provision.

While it is not possible to give a definitive description of what constitutes a transitional provision (**Britnell v. Secretary of State**

for Social Security[29]), its function is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force. (**Britnell**[29]; **Thornton on Legislative Drafting (3rd Edn, 1987) p.319**). A transitional provision enacts how the statute will operate on the facts and circumstances existing on the date it comes into force and, therefore, the construction of such a provision must depend upon its own terms. (**Milkfood Ltd. v. GMC Ice Cream (P) Ltd.,**[30]; **G.P. Singh: Principles of Statutory Interpretation, 8th Edn., p. 188)**. One feature of a transitional provision is that its operation is expected to be temporary, in that it becomes spent when all the past circumstances, with which it is designed to deal, have been dealt with, while the primary legislation continues to deal indefinitely with the new circumstances which arise after its passage. (**Britnell**[29]).

Section 24 of the 2013 Act is a transitory provision, and prescribes modalities for smooth transition of land acquisition proceedings from the 1894 Act to the 2013 Act. Section 24(1) stipulates that, notwithstanding anything contained in the 2013 Act, in the case of land acquisition proceedings initiated under the 1894 Act (a) where no award under Section 11 of the 1894 Act has been made, then, all provisions of the 2013 Act relating to the determination of compensation shall apply, or (b) where an award under Section 11 of the 1894 Act has been made, then such proceedings shall continue under the provisions of the 1894 Act as if the 1894 Act has not been repealed. The operation of Section 24

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[29] (1991) 2 All ER 726
[30] (2004) 7 SCC 288

of the 2013 Act is transitory, in that it makes the provisions of the 2013 Act inapplicable to awards made on or before 31.12.2013. Section 24(2) provides for deemed lapsing of awards made prior to 01.01.2009 in certain circumstances. It is evident that when all the past circumstances, referred to in Section 24, have been dealt with, the 1894 Act would no longer be applicable, and it is the 2013 Act which would thereafter deal with the new circumstances which may arise in respect of awards made on or after 01.01.2013.

(ii) CAN THE LAW DECLARED BY THE SUPREME COURT IN *RAJA HARISHCHANDRA RAJ SINGH v. THE DEPUTY LAND ACQUISITION OFFICER (AIR 1961 SC 1500)*, BE APPLIED IN INTERPRETING SECTION 24(1)(b) OF THE 2013 ACT?

It is submitted on behalf of the petitioners that, in **Raja Harishchandra Raj Singh v. The Deputy Land Acquisition Officer**[31]), the Supreme Court examined the nature of an award independent of the Land Acquisition Act, and held that an award is in the nature of a contractual offer and, unless such an offer is communicated to the affected person, the offer cannot be deemed to have been made; and the Supreme Court, in **Kaliyappan v. State of Kerala**[32]), has confined its interpretation only to Section 11-A of the 1894 Act, and did not extend it to any other provision.

Section 18 of the 1894 Act relates to reference to Court and, under sub-section (1) thereof, any person interested, who has not accepted the award, may, by written application to the Collector, require that the matter be referred for the determination of the Court, on the allegations mentioned thereunder. Under proviso (b) thereto, every such application shall be made within six weeks of

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[31] AIR 1961 SC 1500
[32] (1989) 1 SCC 113

the receipt of notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. The proviso to Section 18(2) of the 1894 Act prescribes the limitation within which the application for reference under sub-section (1) of Section 18 is required to be made, and failure thereof puts an end to the right of the claimant to seek a reference under Section 18. (**Poshetty v. State of A.P.**[33]).

In **Raja Harishchandra Raj Singh**[31]), an award was made, signed and filed by the Collector in his office on March 25, 1951. No notice of this award was, however, given to the appellant (the landowner) as required by Section 12(2), and it was only on January 13, 1953 that he received information about the making of the said award. The appellant then filed an application on February 24, 1953, under Section 18 of the 1894 Act, requesting that the matter be referred for the determination of the Court. The Collector rejected the application on the ground that it was made beyond time under the proviso to Section 18. On the question, whether the application under Section 18 of the 1894 Act was within time or not, the Allahabad High Court held, on a literal construction of the proviso to Section 18, that a Section 18 application, made beyond six months from the date of the award, could not be entertained.

In appeal, the Supreme Court held that the effect of this construction was that, if a person did not know about the making of the award and was himself not to blame for not knowing about the award, his right to make an application under Section 18 could

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[33] (1996) 11 SCC 213

still be rendered ineffective; if it was reasonably possible to construe the said provision so as to avoid such a consequence, it would be legitimate for the Court to do so; the question which arose was to what was the meaning of the expression ***"the day of the Collector's award"***; the legal character of the award made by the Collector is his decision in respect of the amount of compensation which should be paid to the person interested in the property acquired; in law the award is an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition; if the owner did not accept the offer, Section 18 gave him the statutory right of having the question determined by the Court, and it was the amount of compensation which the Court determined that would bind both the owner and the Collector; it was because of this nature of the award that it could be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance; the making of the award must therefore involve communication of the offer to the party concerned; that was the normal requirement under the contract law; its applicability, to cases of award made under the Act, could not be reasonably excluded; thus considered, the date of the award could not be determined solely with reference to the time when the award was signed by the Collector or delivered by him in his office; it would be unreasonable to construe the words ***"from the date of the Collector's award"*** in a literal or mechanical way; the Legislature recognised that the making of the award under Section 11, followed by its filing under Section 12(1), would not meet the requirements of justice before bringing the award into force; it thought that the

communication of the award to the party concerned was also necessary; it is because communication of the order is regarded by the Legislature as necessary that Section 12(2) has imposed an obligation on the Collector; if the proviso to Section 18 is read in the light of this statutory requirement, it shows that the literal and mechanical construction of the said clause would be wholly inappropriate; it would be a curious result that the failure of the Collector to discharge his obligation under Section 12(2) should directly tend to make ineffective the right of the party to make an application under Section 18; this result could not have been intended by the legislature; and where the rights of a person are affected by any order, and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

Following **Raja Harishchandra Raj Singh**[31], the Supreme Court, in **State of Punjab v. Qaisar Jehan Begum**[34], observed that the party affected by the award must know it, actually or constructively; the period of six months, under the second part of clause (b) of the proviso to Section 18, will run from the date of that knowledge; and having regard to the scheme of the Act, knowledge of the award must mean knowledge of the essential contents of the award.

Reliance was placed on **Raja Harishchandra Raj Singh**[31] to contend before the Supreme Court, in **Kaliyappan**[32], that the words ***"the collector shall make an award"*** in Section 11-A of the 1894

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[34] AIR 1963 SC 1604

Act must also be understood as the date on which the award is communicated, and the Supreme Court held that, in **Raja Harishchandra Raj Singh**[31], the interpretation of Section 18 of the Act was based on the principle that, if a person is given a right to resort to a remedy to get rid of an adverse order within the prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order, or had an opportunity of knowing the order; he must, therefore, be presumed to have knowledge of the order; since the process of service of notice, issued under Section 12(2), would take some time, the Supreme Court was of the view that it would lead to injustice if the period of limitation, prescribed by Section 18 of the Act, was computed from the date on which the award was actually made; the distinction between the meaning given by Court in **Raja Harishchandra Raj Singh**[31] to the words ***"date of the award"***, and the interpretation to be placed on the words ***"the Collector shall make an award"*** or ***"the award shall be made"*** in Section 11-A of the Act, had to be maintained because the object of, and the reason for, prescribing the period of limitation under Section 11-A of the Act was different from the object of, and the reason for, prescribing the period of limitation under Section 18 of the Act; the consequences that would flow, from the violation of the rule of limitation in the two cases, were also different; in the former the period of limitation is prescribed for preventing official delay in making the award and the consequent adverse effect on the person or persons interested in the land, but in the latter the period of limitation is prescribed, for providing a remedy to the persons whose lands are acquired, to seek a reference to the Civil Court for the determination of proper

and just compensation; secondly, while in the former, violation of the rule of limitation would result in the acquisition proceeding becoming ineffective, in the latter such a violation will not have any effect on the validity of the acquisition proceeding; thirdly, while in the former, the prescribed period of limitation represents the outer limit within which an award can be made, the latter is concerned with the point of time, to make an application under Section 18 of the Act, begins to run against the person interested in the land; the provisions of Section 11-A have to be construed bearing in mind these points of difference; and the meaning to be assigned to the words in a statute depends upon the context in which they are found, and the purpose behind them.

The judgment of the Supreme Court, in **Raja Harishchandra Raj Singh**[31], was confined to the interpretation of a limitation provision under Section 18 of the 1894 Act. But for the extended meaning placed on the provision by the Supreme Court, the remedy of a reference under Section 18 would have been rendered futile and illusory. **Raja Harishchandra Raj Singh**[31] did not relate to the ***"making of the Award"***, much less ***"making of the award under Section 11"***. The meaning of the words "***making of an Award under Section 11***" did not even fall for consideration therein. In **Raja Harishchandra Raj Singh**[31], the Section 12(2) notice was not even served. The Supreme Court, in **Madan Lal v. State of UP**[35]; **State of AP v. Marri Venkaiah**[36]; **Parsottambhai Maganbhai Patel v. State of Gujarat**[37]; **D. Saibaba v. Bar Council of India**[38]; **CCE v.**

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[35] (1975) 2 SCC 779
[36] (2003) 7 SCC 280
[37] (2005) 7 SCC 431
[38] (2003) 6 SCC 186

MM Rubber & Co[39]; and **Mohd. Hasnuddin v. State of Maharashtra**[40], has understood **Raja Harishchandra Raj Singh**[31] only in the limited context of an extension of the period of limitation to make the remedy of seeking a reference effective, and not in the context of invalidating the acquisition proceedings.

(iii) JUDGMENTS OF THE SUPREME COURT IN *BAILAMMA* AND IN *BHAGAVANDAS*:

It is submitted on behalf of the petitioners that **Bailamma v. Poornaprajna House building Coop Society**[41], was a case which arose in the context of Section 11A of the 1894 Act; and in **Bhagavandas v. State of U.P.**[42], the Supreme Court held that making of an award is when the concerned person receives notice of such an award and the award, being an offer made by the Collector on behalf of the Government, can affect the rights of persons only when it is communicated to them.

In **Bailamma**[41], the Supreme Court held that Section 11 of the 1894 Act required the Collector to make an enquiry into the objections, if any, made by the persons interested pursuant to the notices given under Sections 8 and 9 of the Act as to the value of the land on the date of publication of the notification under Section 4; he is also required to make an enquiry into the respective interest of the persons claiming compensation; after considering the objections raised by the persons interested, he is required to make an award under his hand which should contain his findings on matters enumerated in items (i), (ii) and (iii) of sub-section (1) of Section 11; the proviso to Section 11 mandates the Collector not

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[39] 1992 supp(1) SCC 471
[40] (1979) 2 SCC 572
[41] (2006) 2 SCC 416
[42] (2010) 3 SCC 545

to make an award without previous approval of the appropriate Government; the Collector is required to hear the persons interested, and enquire into the objections, if any, raised by them on the points which he is required to determine; it is possible that he may hear the objections on several dates having regard to the number of objectors, and the nature of the dispute that may arise; it is only thereafter must he make up his mind and prepare his award; thereafter, he is required to send his award to the Government for approval; after the award is approved, and if there is no alteration in the award, the Collector is required to notify the parties concerned about the award; after the award is approved, it becomes an offer to be made to the persons interested, and this can be done by either giving notice to the persons interested of the date on which he may orally pronounce the award, or by giving written notice of the award to the persons interested; the award which has already been signed by the Collector becomes an award as soon as it is approved by the Government without any alteration; at best the appellants can contend that it becomes an award when notice is given to the parties interested; there is no necessity for the Collector to sign the award again nor does Section 11 require that, for the purpose of pronouncing the award, notice should be given by the Collector to the persons interested; Section 11 requires notice to be given for the purpose of hearing objections; after the objections are heard, the Collector must apply his mind to all the relevant facts and circumstances, and prepare an award; he is, thereafter, required to send it to the Government for approval; and once it is shown that the award was made and signed, and was approved by the Government, an award is validly made.

The law declared by the Supreme Court, in **Bailamma**[41], is that an award, which has already been signed by the Collector, becomes an award as soon as it is approved by the Government without any alteration. In the present case, the Government has not altered the award made by the LAO and, consequently, the award must be held to have been made when it was approved by the Government on 19.12.2013 or, thereafter, when the award was pronounced by the LAO on 23.12.2013.

Reliance placed by the petitioners on **Bhagavandas**[42] is misplaced. In **Bhagwan Das**[42], the Supreme Court held that, unless the procedure under the 1894 Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300A of the Constitution of India; and to avoid such consequences the words ***"date of the Collector's award"***, occurring in proviso (b) to Section 18, should be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award. The scope of proviso (b) to Section 18 of the 1894 Act fell for consideration in **Bhagavandas**[42], and not the words ***"making of an award under Section 11"*** of the 1894 Act.

(iv) CAN THE JUDGMENT OF THE SUPREME COURT IN *KALIYAPPAN*[32], INTERPRETING SECTION 11-A OF THE 1894 ACT, BE APPLIED IN INTERPRETING SECTION 24(1)(b) OF THE 2013 ACT?

It is submitted, on behalf of the petitioners, that the word used in Section 11-A of the 1894 Act is ***make***, while the word used in Section 24(1)(b) of the 2013 Act is ***made***; there is a wide difference between these two words; while interpreting the phrase ***"make an award"*** in Section 11-A of the 1894 Act the Supreme Court,

in **Kaliyappan**[32], held that ***"to make an award"*** in this Section meant ***'sign the award'***; the interpretation placed in **Kaliyappan**[32] on the word "***make***" would not enure to the benefit of the State, as the word used by the legislature in Section 24(1)(b) is "***made***"; the ordinary meaning of the word ***'made'*** is "***given***"; if the phrase ***"where an award under said Section 11 has been made"***, in Section 24(1)(b) of the 2013 Act, is interpreted by substituting the word "***offer***" to "***award***", and "***given***" to "***made***", then the said phrase would be ***"where an offer under Section 11 has been given"***, and the said phrase makes perfect sense of the words deployed by the Legislature as a criteria for grant of relief to the subjects of the land acquisition proceedings pending on the date of commencement of the 2013 Act; the words ***"has been"*** are used before the word "***made***" in Section 24(1) of the 2013 Act; when ***"has been"*** is used before a word, it implies that the act is ***already done or prior to or anterior*** to the said word; the inescapable meaning of the words ***"has been made"*** means ***'already made'***; the phrase ***"where an award under Section 11 has been made"*** means ***"where an offer under Section 11 is already made"*** or ***"where an offer under Section 11 is already given"*** or ***"where an offer under Section 11 is made"*** or ***"where an offer under Section 11 is given"***; the phrase ***"has been made"*** is conspicuously absent in Section 11-A of the 1894 Act; the legislature has not used the word ***"make an award"*** in Section 24(1)(b) of the 2013 Act; the contention of the State that the word "***make***" means "***sign***" is untenable; if the phrase, ***"where an award under said Section 11 has been made"***, in Section 24(1)(b) of the 2013 Act, were to be read as ***"where an award under said Section 11 is signed",*** it leads nowhere; similarly, if it were to be read as ***"where an offer under said Section 11 is signed"***, it still makes no sense; the phrase ***"has***

been made", if read as ***"is signed"***, also does not make any sense in the text or context; if the word "***award***", which is in the nature of an offer, is read in that context, it makes complete sense as it would mean and read as ***"where an offer under the said Section 11 has been made"***, or even if it is read as ***"where an offer under the said Section 11 has been given"*** or ***"where an offer under said Section 11 is already made"***, or ***"where an offer under said Section 11 is already given"***.

As the words ***"make an award"*** have been interpreted in **Kaliappan**[32], it is necessary to note the observations made by the Supreme Court therein. In **Kaliyappan**[32], the petitioner before the High Court, relying upon **Raja Harish Chandra Raj Singh**[31], contended that the notice of the award was served on him on 30.09.1986; it must therefore be held that the award was actually made on 30.09.1986; more than two years had elapsed from 24-9-1984, from the date on which the Land Acquisition (Amendment) Act, 1984 came into force, by the time the notice of award was served on him; and the acquisition proceeding should therefore be declared as having lapsed by virtue of the proviso to Section 11-A of the Act.

In this context, the Supreme Court held that the crucial words required to be interpreted were ***"the Collector shall make an award"*** in Section 11-A, and the words ***"the award shall be made"*** in the proviso to Section 11-A; the words ***"to make an award"*** in Section 11-A meant ***"sign the award"***; that was the ordinary meaning to be ascribed to the words ***"to make an award"***; an extended or a different meaning assigned to the words ***"the date of the award"***, in **Raja Harishchandra Raj Singh**[31], could not be applied to Section 11-A since such an extended or different meaning was neither

warranted by equity nor did it advance the object of the statute; there was no analogy between Section 11-A and Section 18 of the 1894 Act in so far as this question was concerned; if the date of communication of the notice of the award, to the person interested in the land, is treated as the date of making the award then the maximum period prescribed under Section 11-A of the Act, for making the award, would get reduced by the period required for serving the notice of the award on the owner of the land; such a maximum period may vary from one case to another; even in the same land acquisition case, if a notice of the award is to be served on two or more persons interested in the land, the maximum period for making the award may vary from person to person interested in the property depending upon the date of service of the notice of the award on each one of them; if the person interested in the land is interested in defeating the land acquisition proceeding, it is likely that it may not be possible to serve him with the notice of the award within the prescribed time; if he avoids service of the said notice, until the period of two years is over, the proceedings for acquisition would lapse, thus affecting seriously the public interest; and it would also lead to absurd and inconvenient results since the acquisition proceeding may be valid against some persons, and may become invalid in the case of some others. In **Kaliyappan**[32], the Supreme Court has categorically held that the words ***"collector shall make an award"*** is the date on which the award is actually made i.e signed, and not the date on which the notice of the award is communicated to the land owner.

Section 11 of the 1894 Act relates to enquiry and award by the Collector and, under sub-section (1) thereof, 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 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4 sub-section (1), and into the respective interest of the persons claiming the compensation, and shall make an award under his hand of: (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) 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. Under the first proviso thereto, no award shall be made by the Collector, under this sub-section, without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf.

Section 11-A of the 1894 Act, inserted by Act 68 of 1984 with effect from 24.09.1984, related to the period within which an award shall be made and read thus:

> (1) The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:
>
> Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.
>
> Explanation: In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

The words ***"an award under Section 11 has been made"*** in Section 24(1)(b) of the 2013 Act must be given the same meaning as ***"make an award under Section 11"***, used in Section 11-A of 1894 Act. The distinction sought to be made between "***make***" and "***made***" does not merit acceptance. Section 24(1) of the 2013 Act, a transitory provision, classifies awards on the basis of the date on which it was made in relation to the date on which the 2013 Act came into force. For awards made prior to the 2013 Act coming into force, compensation is to be determined in terms of the provisions of the 1894 Act and, for awards made thereafter, compensation is required to be determined in accordance with the conditions prescribed under the 2013 Act. As Section 24(1)(b) refers to awards already made, prior to the 2013 Act coming into force on 01.01.2014, the word "***make***" is used in the past tense as "***made***". On the other hand, the first limb of Section 11-A(1) of the 1894 Act referred to a future event, and stipulated the period within which an award should be made from the date of publication of the declaration under Section 6 of the 1894 Act. It, therefore, used the word ***"make an award under Section 11"*** in the first limb of Section 11-A, while the second limb of the very same provision uses the words ***"if no award is made within that period"*** as they are used in the past tense.

As it intended to extend the benefits of the 2013 Act only where no award under Section 11 was made, Parliament must be presumed to be aware of the interpretation put on Section 11 of the 1894 Act by Courts, when it referred to Section 11 of the 1894 Act in Section 24 of the 2013 Act. If words of legal import have been judicially construed to have a certain meaning, and have

been adopted by the legislature in that sense, the rule of construction of statutes will require that the words in the statute should be construed according to the sense in which they had been so previously used. (**Keshavji Ravji & Co. v. CIT**[43]; **Workmen v. National & Grindlays Bank Ltd.,**[44]; **H.H. Ruckmaboye v. Lulloobhoy Mottichund**[45]). When words acquire a particular meaning or sense because of their authoritative construction by superior courts, they are presumed to have been used in the same sense when used in a subsequent legislation in the same or similar context. **(Keshavji Ravji & Co.**[43]). When words and phrases, previously interpreted by the Courts, are used by the Legislature in a later enactment replacing the previous statute, there is a presumption that the Legislature intended to convey by their use the same meaning which the Courts had already given to them. **(Diamond Sugar Mills v. State of U.P.**[46]).

If Parliament really intended to extend the benefits of the 2013 Act even where an award is made under Section 11, but has not been communicated under Section 12(2), it would have so stipulated. It would then have used the phrase the ***"date of the award"***, used in Section 18 of the 1894 Act which may have implied communication of the Award in the light of the interpretation placed thereupon in **Raja Harischandra Raj Singh**[31]. However, it consciously used the phrase ***"award under Section 11 of the said Land Acquisition Act has been made"*** in Section 24(1)(b) of the 2013 Act which makes it clear that Parliament intended to extend the

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[43] (1990) 2 SCC 231
[44] (1976) 1 SCC 925
[45] Moore's Indian Appeals, Vol. 5, page 234 at 250
[46] AIR 1961 SC 652

benefits of the 2013 Act only when the physical act of making an award, under Section 11 of the 1894 Act, did not take place prior to 01.01.2014.

Where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning. **(Courtauld v. Legh**[47]; **Black-Clawson International Ltd. v. Papierwerke Waldhof Aschaffenburg Ag**[48]; **Farrell v. Alexander**[49]). The same word or expression, used in different parts of the same Section or Statute, is presumed to have been used in the same sense throughout. Ordinarily, a word or expression used at several places in one enactment should be assigned the same meaning so as to avoid ***"a head-on clash"*** between the two meanings assigned to the same word or expression occurring at two places in the same enactment. (**Central Bank of India v. Ravindra**[50]; **Principles of Statutory Interpretation, Justice G.P. Singh, 7th Edition 1999)**. A more correct statement of the rule is ***"where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning"***. (**Ravindra**[50]; **Farrell**[49]). Sections 11 and 11-A use the same words ***"make an Award"***. The phrase ***"make an Award under Section 11"***, used in Section 11-A of the 1894 Act, has been interpreted by the Supreme Court, in **Kaliyappan**[32] and **Bailamma**[41], to mean receipt of government approval, and not communication of the award under Section 12(2). The same words ***"make an Award under Section 11"***, used in Section 24(1)(b) of the 2013

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[47] (1869) LR 4 Exch 126
[48] (1975) 1 All ER 810
[49] (1976) 2 All ER 721
[50] (2002) 1 SCC 367

Act, should carry the same meaning as in Section 11-A of the 1894 Act.

The petitioners ask of this Court to read Section 11 after substituting certain words therein. Courts cannot re-write, recast or reframe legislation as it has no power to legislate. (**Rohitash Kumar v. Om Prakash Sharma**[51]; **Hardeep Singh v. State of Punjab**[52]). The petitioners also want this Court to ignore the words ***"under Section 11"*** while reading the words ***"make an award"*** in Section 24(1)(b) of the 2013 Act. Efforts should be made to give meaning to each and every word used by the legislature, and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplussage, if they can have a proper application in circumstances conceivable within the contemplation of the Statute. (**Gurudevdatta v. State**[53]; **Justice Chandrashekaraiah v. Janejere**[54]). Any interpretation which leads to addition/deletion of words in a statute should not be adopted. Accepting the submission, urged on behalf of the petitioners, that to make an award is to make an offer which takes effect only when it is communicated, would require the words ***"and communicated under Section 12(2)"*** to be added to Section 24(1)(b) of the 2013 Act which is impermissible.

(v) SHOULD THE LAW DECLARED IN *RAJA HARISCHANDRA RAJ SINGH*[31] BE PREFERRED TO *KALIYAPPAN*[32] IN INTERPRETING SECTION 24(1)(b) OF THE 2013 ACT?

It is urged, on behalf of the petitioners, that there are two streams of judicial precedents, the first emanates from Section 18

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[51] (2013) 11 SCC 451 : AIR 2013 SC 30
[52] (2014) 3 SCC 92
[53] (2001) 4 SCC 534
[54] (2013) 3 SCC 117

(**Raja Harishchandra Raj Singh**[31], **Qaisar Jehan Begum**[34] and **Dr. G.H. Grant v. State of Bihar**[55]), and the second from Section 11-A (**Kaliyappan**[32] and **Bailamma**[41]); the interpretation placed by the Supreme Court, on Section 18 of the 1894 Act, should be applied to Section 24(1) of the 2013 Act, as both lead to continuation of proceedings; Section 11-A of the 1894 Act speaks of extinguishing an award, and is a limitation Section; Section 24(1)(b) speaks of continuation of an award, and not of extinguishing it; in this context, an award made under Section 18 is much closer to Section 24(1)(b), since the award is not extinguished both under Sections 18 and 24(1)(b), but continues; both Sections 24(1)(b) and 18 provide for circumstances in which there is enhancement of compensation; both Sections 18 and 24(1)(b) are similar, as they detail the consequences of an award not being made within a certain period or before a particular date; the same interpretation, as in **Raja Harischandra Raj Singh**[31], should be applied to Section 24(1)(b) also; and, in **Ms. Qaisar Jehan Begum**[34] and **G.H. Grant**[55], **Raja Harischandra Raj Singh**[31] has been quoted with approval, and it was held that making of an award is in the nature of an offer, and should be communicated to the person concerned, for him to be affected thereby.

While Section 11-A is no doubt a limitation provision, the meaning of the words in a limitation provision cannot be different from the meaning of same phrase in a substantive provision. The meaning of ***"making of an Award"*** under Section 11 and 11-A cannot be different. As the words ***"make an award under Section 11"*** has been interpreted in **Kaliyappan**[32] to mean the physical act of making an

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[55] AIR 1966 SC 237

award, and not its communication, the words ***"make an Award"*** in Section 11 cannot have a different result. Just like Section 18 would lead to continuation of proceedings if the application for reference is made within the limitation period, Section 11-A would have also led to continuation of proceedings if the award was made within the two year period. As Parliament is presumed to be aware of the judicial interpretation placed earlier on a provision, when it enacts a new law, the very fact that Section 24(1)(b) of the 2013 Act uses the words ***"where an Award under the said Section 11 has been made"***, and not the words the ***"date of the Award"*** as used in Section 18 of the 1894 Act, demonstrates the intention of Parliament not to apply the interpretation placed on the proviso to Section 18 of the 1894 Act, by **Raja Harishchandra Raj Singh**[31], in construing Section 24(1)(b) of the 2013 Act.

(vi) IS THE AWARD, REFERRED TO IN SECTION 24(1)(b) OF THE 2013 ACT, MADE ONLY WHEN IT IS COMMUNICATED TO THE LAND OWNERS?

It is submitted, on behalf of the petitioners, that the term "***award***", in Section 24(1)(b) of the 2013 Act, can only mean an award which has been communicated to the land owner, and not an award which is merely signed by the LAO; the subject awards were neither communicated to the petitioners nor was a copy thereof served on them; the notices, under Section 12(2) of the 1894 Act, were served on the petitioners long after the 2013 Act came into force, informing them that awards were passed on different dates in December, 2013; the Section 12(2) notices were not accompanied with a copy of the award said to have been passed by the LAO; Section 24(1)(a) of the 2013 Act would,

therefore, apply in determining the compensation payable to the claimants; as an award is an 'offer', making of the award must involve its communication; two aspects, which have been consistently held by Courts, in respect of land acquisition proceedings, are that the award, under Section 11 of the 1894 Act, is in the nature of an offer, and secondly, the proceedings under Section 11 are not judicial proceedings, but are administrative in nature; the word 'award', a word of legal import which has already been subjected to interpretation, must be construed in the manner in which it is legally understood; no award can be said to have been made till the notice under Section 12(2) of the Act is communicated; no award was, therefore, made by the LAO, under Section 11 of the 1894 Act, before its repeal by Section 114 of the 2013 Act; the award signed by the LAO may bind the State, but not the land owners; an offer, which is uncommunicated, is never recognized in law as an offer; signing an award, in this context, means nothing; the legislature cannot be ascribed with devising or deploying phrases which do not convey its intention or manifestly presents no intention; passing an award is different from making an award; while "***passing***" may take place when the award is signed by the LAO, "***making***" can only happen when the award is communicated to the affected party; what is prescribed under Section 24(1)(b) is ***"where an award under Section 11 has been made"***, which means ***"where an offer under Section 11 has been made"***; and the said phrase makes the intention of the legislature clear that it is only if the award ("an offer") has been made prior to 01-01-2014, would the proceedings, initiated earlier under the 1894 Act,

continue under the 1894 Act notwithstanding the 2013 Act having come into force.

The 2013 Act came into force with effect from 01.01.2014 after the awards, in the present cases, were passed under Section 11 of the 1894 Act, on different dates in December, 2013. While the awards were communicated to the petitioners on different dates, long after commencement of the 2013 Act on 01.01.2014, the question which necessitates examination is whether an award, under Section 11 of the 1894 Act, is made only when it is communicated under Section 12(2), or it is either signed by the LAO or receives government approval? Can the phrase ***"where an Award under the said Section 11 has been made"***, used in Section 24(1)(b) of the 2013 Act, be severed and emphasis placed only on the words ***"making of Award"***, ignoring the remaining words ***"under Section 11"*** used therein?

If a subsequent Act brings into itself by reference some of the clauses of a former Act, its legal effect is to write those Sections into the new Act just as if they had been actually written in it with the pen or printed in it and, the moment one has those clauses in the later Act, there would be no occasion to refer to the former Act at all. (**In Re. Wood's Estate**[56]; **Mahindra & Mahindra Ltd. v. Union of India**[57]; **Onkarlal Nandlal v. State of Rajasthan**[58]). The effect, of bringing into an Act the provisions of an earlier Act, is to introduce the incorporated Sections of the earlier Act into the subsequent Act as if those provisions have been enacted in it for

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[56] (1886) 31 Ch. D. 607
[57] (1979) 2 SCC 529 = AIR 1979 SC 798
[58] (1985) 4 SCC 404

the first time. **Ram Kirpal Bhagat v. State of Bihar**[59]). Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act, or certain of its provisions, are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been 'bodily transposed into it'. (**Surana Steels (P) Ltd. v. CIT**[60]; **Justice G.P. Singh states in Principles of Statutory Interpretation (7th Edn., 1999).**

Legislation by incorporation is a common device employed by the legislature, where, for convenience of drafting, it incorporates provisions from an existing statute by reference to that statute, instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the incorporated provision becomes an integral part of the statute in which it is transposed and, thereafter, there is no need to refer to the statute from which the incorporation is made. (**Mahindra & Mahindra Ltd.**[57]).

When a single Section of an Act of Parliament is introduced into another Act, it must be read in the sense it bore in the original Act from which it was taken, and that, consequently, it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the Section meant, though those other Sections are not incorporated in the new Act. (**Surana Steels (P) Ltd.**[60]). Even though only particular Sections of an earlier Act are incorporated

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[59] (1969) 3 SCC 471 = AIR 1970 SC 951
[60] (1999) 4 SCC 306 = AIR 1999 SC 1455 at 1459

into the later, in construing the incorporated Sections it may, at times, be necessary and permissible to refer to other parts of the earlier statute which are not incorporated. (**Surana Steels (P) Ltd.**[60]). When a statute makes a reference to a provision in another legislation, it incorporates the interpretation and meaning ascribed to the said provision in the referred law into the adopted law. The words ***"an award made under Section 11"***, in Section 24(1)(b) of the 2013 Act, is legislation by reference. The interpretation, placed on the words ***"make an Award under Section 11"*** while construing Section 11-A of the 1894 Act, should be applied in construing the words ***"an award is made under Section 11"*** in Section 24(1)(b) of the 2013 Act.

It is no doubt true that an award made by the Collector is an offer made to the person interested in the land notified for acquisition. The latter may accept the offer, but is not bound to do so. He may ask for a reference to the Court for adjudication of his claim for adequate compensation. It was also open to the Government, even after the award was made but before possession was taken, to withdraw from acquisition of any land in the exercise of its powers under Section 48 of the 1894 Act. It was not the award of the Collector which was the source of the right to compensation. The award quantified the offer of the appropriate Government, which was made because the Government had taken, or intended to take over, the land of the owner under the authority conferred by the 1894 Act. The right of the owner over the land was extinguished when the Government took possession of the land after an award of compensation was made under the 1894

Act. (**G.H. Grant**[55]; **Sarju Prashad Saha v. State of Uttar Pradesh**[61]).

In characterising an award as an offer the Supreme Court, in **Raja Harischandra Raj Singh**[31], was only describing the nature of an award. That would not justify extending the full private law notion of an offer to the statutory proceedings under the 1894 Act. Section 4 of the Contract Act enables an offer to be withdrawn before it is accepted. However, under Section 12(1) of the 1894 Act, an award once made becomes final, and binding on the Government, the moment it is filed in the Collector's office after approval by the Government, even before it is communicated to the land owners under Section 12(2) thereof. The award binds the land owners if they choose not to seek a reference under Section 18, within the stipulated time, after receipt of the notice under Section 12(2) of the 1894 Act. Irrespective of whether or not it is accepted by the land owner the award, on its being approved by the Government, binds the Government. On the award attaining finality, it cannot be withdrawn by the Government thereafter except in accordance with the statutory procedure prescribed under Section 48 of the 1894 Act. Even otherwise, Section 11 represents the physical act of signing the letter of offer, and Section 12 relates to the communication of such an offer. Since Section 24(1)(b) relates only to the physical act of signing the letter of offer under Section 11, and not its communication under Section 12, making of the award under Section 11 can only mean the physical act of making the award preceding its communication under Section 12(2) of the 1894 Act.

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[61] AIR 1965 SC 1763

It is no doubt true that in **Patri Srinivasa Rao v. State of Andhra**[62], it was held that an award is not made until it is announced or communicated to the person interested; and to hold that an award is made soon as it is signed by the Collector, would, in many cases, result in grave hardship. The aforesaid judgment is no longer good law in view of the subsequent judgments of the Supreme Court in **Kaliyappan**[32] and **Bailamma**[41]. In **Ishwar Chand Sharma v. State of U.P.**[63], the award was made on 30.12.2013 i.e., one day prior to the commencement of the 2013 Act. The Allahabad High Court held that, from a simple reading of Section 24 of the 2013 Act, it was apparent that, if the award has not been made upto the date of the enforcement of the 2013 Act i.e from 1.1.2014, the compensation had to be determined in accordance with the provisions of the 2013 Act; in case the award had already been made before 1.1.2014 i.e. the date of commencement of the 2013 Act, the proceedings for acquisition shall not be deemed to have lapsed under the 1894 Act as per Section 24(1)(b) of the 2013 Act meaning thereby that the proceedings, subsequent to the award, would continue under the 1894 Act; the award was made prior to the commencement of the 2013 Act and was, therefore, governed by the 1894 Act irrespective of the date of its communication. (**Ramanand Sharma v. State of UP**[64]). The contention, urged on behalf of the petitioners, that making of an award under Section 11 of the 1894 Act is its communication to the land owners, (which is only by way of a

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[62] 1957 ALT 34 (SN)
[63] 2015 (6) ADJ 762
[64] 2014 (4) AWC 3978

notice under Section 12(2) of the 1894 Act), does not merit acceptance.

(vii) IS IT NECESSARY TO READ SECTIONS 11, 12 AND 18 OF THE 1894 ACT TOGETHER TO UNDERSTAND THE TRUE IMPORT OF SECTION 24(1) OF THE 2013 ACT?

It is contended, on behalf of the petitioners, that Section 24(1)(b) of the 2013 Act, Sections 11 and 12 of the 1894 Act form an amalgam; unless these three Sections are read together, the true import of the term ***"award made under Section 11"***, in Section 24(1)(b) of the 2013 Act, cannot be understood; if these Sections are read together, it would be clear that making of an award is in the nature of a contractual offer, and the land owner can be affected by its consequences only when the offer is communicated to him; if, as is contended on behalf of the State, making of an award occurs when the award is signed under Section 11, then, even before such an award is communicated to him, the land owner will be the recipient of the consequences of such an award; the award is final only when the Collector gives immediate notice under Section 12(2) of the 1894 Act to the persons interested; for the award to receive finality, the award should necessarily be communicated to the person; and the land owner cannot be the recipient of the consequences of an award unless it is communicated to him.

The making of an award under Section 11 is a step prior to, and is distinct from, its communication under Section 12(2). As Section 24(1)(b) of the 2013 Act explicitly refers to the making of an Award under Section 11, it is evident that Parliament intended to confer the benefits of the 2013 Act only if an award was not made, under Section 11 of the 1894 Act, before the 2013 Act came into

force on 01.01.2014. Section 24(1)(b) refers to the physical act of making an Award under Section 11 of the 1894 Act. The petitioners contention that making of an award under Section 11, includes its communication under Section 12(2) of the 1894 Act, not only falls foul of the overall scheme of the 1894 Act (which makes a clear distinction between making of an award under Section 11, and communication of the award under Section 12(2)), but would also result in changing the criterion fixed by Parliament under Section 24 of the 2013 Act. If Parliament had intended to extend the benefits of the 2013 Act, to an uncommunicated award under the 1894 Act, it would have referred to Section 12(2), and not to Section 11 of the 1894 Act, in Section 24(1)(b) of the 2013 Act. Section 24(1)(b) categorically states that, if an award under Section 11 has been made, the 1894 Act will apply ***"as if the said Act has not been repealed"***. Irrespective of the date of communication of the award, the 1894 Act will continue to apply if the award was made, under Section 11 of the 1894 Act, before 01.01.2014.

Section 12(1) marks the distinction between making of an Award under Section 11 and its communication under Section 12(2), and shows that the act of making an award under Section 11 does not include its communication. As filing of an award under Section 12(1) would only arise after an award is made under Section 11, it is evident that it is only an award, which has already come into existence, that can be filed in the Collector's office under Section 12(1) of the 1894 Act, and it is only thereafter that the award, so filed, which is communicated under Section 12(2) of the 1894 Act to the land owners.

It is only after the Award made under Section 11, is filed in the Collector's office under Section 12(1), does it attain finality in far as the State is concerned. The words ***"such Award"***, in Section 12(1), refers to an award made under Section 11. It shows that an award, made under Section 11, has come into existence even before it is filed under Section 12(1). As it is only after the award is filed under Section 12(1), is it communicated under Section 12(2), it is evident that making of an award under Section 11 does not include communication under Section 12(2). Similarly the words ***"his award"*** in Section 12(2) shows that the award under Section 11 has already come into existence prior to its communication under Section 12(2). The making of an award under Section 11 of the 1894 Act does not therefore include its communication under Section 12(2). (**Bailamma**[41]; **Kaliappan**[32]; **Mahadeo Bajirao Patil v. State of Maharashtra**[65]; **Sharadchandra Ganesh Muley v. State of Maharashtra**[66]; and **J.K. Industries v. C.I.F.B.**[67]). The date of knowledge of the award is relevant mainly for the purpose of limitation under Section 18 of the 1894 Act. (**Divya J. Dolia v. Government**[68]; **Murti Devi v. The State of Haryana**[69]). As they are different provisions, with distinct consequences, we see no merit in the submission that Sections 11, 12 and 18 of the 1894 Act should be read together to understanding the scope of Section 24(1)(b) of the 2013 Act.

(viii) SHOULD A LIBERAL INTERPRETATION BE GIVEN TO SECTION 24(1)(b), INSTEAD OF A LITERAL CONSTRUCTION?

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[65] (2005) 7 SCC 440
[66] (1995) Supp. 4 SCC 702
[67] (1996) 6 SCC 665
[68] (Common judgment in W.A.Nos.97 and 98 of 2009 dated 07.008.2009 (Madras HC)
[69] (2008) 2 PUNLR 662

It is contended, on behalf of the petitioners, that the 2013 Act is a beneficial legislation made by Parliament with an intention to remedy the mischief under the 1894 Act; Section 24 provides for payment of compensation under the new regime in all cases/contingencies except in cases falling under Section 24(2); the literal rule/plain meaning rule, as advanced by the State, would impede the very object of the repealed Act; the literal rule is not an exception to the **HEYDON'S** rule; keeping in view the avowed object of the 2013 Act, the golden rule should be applied in interpreting the provisions of Section 24 thereof, departing from the normal meaning of the words to avoid absurdity; applying the **HEYDON'S** rule, the provisions of the said Act should be construed and interpreted to suppress the mischief and advance the remedy; in **Kaliyappan**[32] the Supreme Court, while interpreting Section 11 of the 1894 Act, applied the literal rule, and not the contextual rule, of interpretation in holding that ***"making of the award"*** is ***'signing of Award'***; on this ground, the Court distinguished **Raja Harischandra Raj Singh**[31]; this interpretation should be limited only to Section 11A, and not extended to any of the other Sections of the 1894 Act; the State's reliance on **Kaliyappan**[32], that making of award is signing of the award, is misplaced; a beneficial interpretation should be adopted, in construing expropriative legislation, to ensure that the maximum benefits of such legislation are enjoyed by the affected persons; the intention of the Legislature (Parliament) is to give the benefit of the 2013 Act to all affected persons/interested persons i.e. the petitioners herein; interpretation of Section 24(1)(b) of the 2013 Act should be in favour of land-owners to give them the benefit of the 2013 Act as

they are losing their lands; no court should make a fortress out of a dictionary; as long as it does not do violence to the Statute, the beneficial interpretation of a statutory provision may be adopted; and a strict interpretation/construction of land acquisition enactments is always against the State, and not against the subject.

The language employed in Section 24(1)(b) of the 2013 Act does not suffer from any ambiguity. Where the language of an enactment is plain and clear upon its face, and is susceptible to only one meaning, then, ordinarily, that meaning should be given by the Court. In such a case the task of interpretation can hardly be said to arise. (**Union of India v. Sankalchand Himatlal Sheth**[70]). The duty of the Court is to give effect to the intention of the legislature, as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. (**Banarsi Debi v. I.T. Officer**[71]; **Attorney-General v. Carlton Bank**[72]). The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. (**Unique Butyle Tube Industries Pvt. Ltd., v. Uttar Pradesh Financial Corporation**[73]). The legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature. (**ITC Ltd. v. Commissioner of Central**

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[70] (1977) 4 SCC 193
[71] AIR 1964 SC 1742
[72] (1899)2 QB 158
[73] 2003 (2) SCC 455

Excise, New Delhi[74]). As the statute is an edict of the legislature, the language employed therein is the determinative factor of legislative intent. (**Raghunath Rai Bareja v. Punjab National Bank**[75]; **Shiv Shakti Coop. Housing Society v. Swaraj Developers**[76]).

A provision must be construed according to the natural meaning of the language used. The Court, in interpreting a Statute, must therefore proceed without seeking to add words which are not to be found in the Statute. (**Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO**[77]; **Union of India v. Mohindra Supply Co**[78]; **Bank of England v. Vagliano Bros**[79]; **CIT v. Anjum M.H. Ghawala**[80]; **J. Srinivasa Rao v. Govt. of A.P.**[81]). Statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances, (**Chertsey Urban District Council v Mixnam's Properties Ltd**[82]), and must be construed according to the rules of grammar. When the language is plain and unambiguous, and admits of only one meaning, no question of construction of a Statute arises, for the Act speaks for itself. The meaning must be collected from the expressed intention of the legislature. (**State of U.P. v. Dr Vijay Anand Maharaj**[83]). In construing a statutory provision, the first and foremost rule of construction is the literal construction. All

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[74] (2004)7 SCC 591
[75] (2007) 2 SCC 230
[76] AIR 2003 SC 2434
[77] (2007) 5 SCC 447
[78] AIR 1962 SC 256
[79] LR (1891) AC 107
[80] 2002) 1 SCC 633
[81] (2006) 12 SCC 607
[82](1964) 2 All ER 627
[83] (1963) 1 SCR 1)

that the court has to see, at the very outset, is what does that provision say. If the provision is unambiguous and if, from that provision, the legislative intent is clear, the Court need not call into aid other rules of construction of Statutes (**Raghunath Rai Bareja v. Punjab National Bank**[84]; **Hiralal Ratanlal v. STO**[85]), nor would it be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. (**Kanai Lal Sur v. Paramnidhi Sadhukhan**[86]), as it is well recognised that the language used speaks the mind and reveals the intention of the framers. **(C.I.T. v. T.V. Sundaram Iyengar (P) Ltd**[87]).

The language employed in a Statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake and to have intended to say what it has said. Assuming there is a defect in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result. (**Raghunath Rai Bareja**[84]; **Ombalika Das v. Hulisa Shaw**[88]; **CIT v. Sodra Devi**[89]; **Prakash Nath Khanna v. CIT**[90]; **Delhi Financial Corpn. v. Rajiv Anand**[91]). It would be impermissible to call in aid any external aid of construction to find out the hidden meaning. **(D.D. Joshi v. Union of India**[92]). The other rules of interpretation i.e.,

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[84] (2007) 2 SCC 230
[85] (1973) 1 SCC 216
[86] 1958 SCR 360
[87] (1976) 1 SCC 77
[88] (2002) 4 SCC 539
[89] AIR 1957 SC 832
[90] (2004) 9 SCC 686
[91] (2004) 11 SCC 625
[92] (1983) 2 SCC 235

the mischief rule (**Heydon's rule**), purposive interpretation, etc can only be resorted to when the plain words of a Statute are ambiguous or lead to no intelligible result or, if read literally, would nullify the very object of the Statute. Where the words of a Statute are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal rule. (**Swedish Match AB v. Securities and Exchange Board of India**[93]; **Raghunath Rai Bareja**[84]).

It is no doubt true that a fortress out not to be made of the dictionary as a Statute always has some purpose or object to accomplish, whose discovery is the surest guide to its meaning. (**Sankalchand Himatlal Sheth**[70]). While it is permissible to look into the object of the Legislation (**Inder Sain v. State of Punjab**[94]), if the provision is unambiguous and if, from that provision, the legislative intent is clear, we need not call into aid the other rule of construction of statutes. (**Hiralal Rattanlal**[85]). It is only where the words, according to their literal meaning, "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear". (**Sankalchand Himatlal Sheth**[70]; **River Wear Commissioners v. Willam Adamson**[95]).

It must be borne in mind that a provision is not ambiguous merely because it contains a word which, in different contexts, is

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[93] AIR 2004 SC 4219
[94] (1973) 2 SCC 372
[95] (1876) 7 AC 743

capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is ambiguous only if it contains a word or phrase which, in that particular context, is capable of having more than one meaning. (**Kirkness (Inspector of Taxes) v. John Hudson & Co., Ltd.**[96]). It is only when the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, would Courts prefer to adopt the latter construction. As Section 24(1)(b) of the 2013 Act, in our view, does not suffer from any ambiguity, there is no reason to resort to any secondary canon.

The petitioners seek application of the golden rule of interpretation of statutes. Parliament is, prima facie, to be credited with meaning what is said in an Act. 'The golden rule' of construction is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. (**Suthendran v. Immigration Appeal Tribunal**[97]; **Farrell**[49]; **R v Inhabitants of Banbury**[98]). Of course, Parliament is to be credited with good sense, so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further'. (**Suthendran**[97]; **Becke v Smith**[99]; **R v Inhabitants of Banbury**[98]; **Tzu-Tsai Cheng v. Governor of**

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[96] (1955) AC 696 (HL)
[97] (1976) 3 ALL ER 611
[98] (1834) 1 Ad & EI 136
[99] (1836) 2 M&W 195

Pentonville Prison[100]; **Applin v. Race Relations Board**[101]; **Harbhajan Singh v. Press Council of India**[102]; **Justice G.P. Singh — Principles of Statutory Interpretation (8th Edn., 2001).**

A departure from the golden rule is permissible if it can be shown that the legal context in which the words are used, or the object of the statute in which they occur, require a different meaning. (**Justice G.P. Singh — Principles of Statutory Interpretation (8th Edn., 2001); Harbhajan Singh**[102]). If reading statutory words in its primary and natural sense, would lead to some repugnance or inconsistency with the rest of the instrument, the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency. (**Grey v. Pearson**[103]; **Kehar Singh v. State (Delhi Admn.)**[104]; **Maulavi Hussein Haji Abraham Umarji v. State of Gujarat**[105]). An 'ordinary meaning', or a 'grammatical meaning', does not imply that the Judge attributes a meaning to the words of a statute independent of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens to rely on ordinary meanings, unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens, and to greater transparency in its own decisions, both of

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[100] (1973) 2 ALL ER 204
[101] (1974) 2 ALL ER 73
[102] (2002) 3 SCC 722
[103] 6 H.L.Ca' 61
[104] (1988) 3 SCC 609
[105] (2004) 6 SCC 672 : 2004 SCC (Cri) 1815

which are important values in a democratic society." (**Cross in Statutory Interpretation (3rd Edn., 1995; Harbhajan Singh**[102]). In determining the meaning of any word or phrase in a statute, the following tests can be applied (i) ask for the natural or ordinary meaning of that word or phrase in its context in the statute, and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a statutory provision cannot be assigned a meaning which it cannot reasonably bear and, if more than one meanings are capable, you can choose one but beyond that you must not go. (**Cross in Statutory Interpretation (3rd Edn., 1995**; **Harbhajan Singh**[102]).

The **Heyden's** rule, or the mischief rule, can be applied where a statutory provision suffers from some ambiguity necessitating adoption of a rule other than the literal rule or the plain meaning rule of construction of statutes. Rules of interpretation are not rules of law. They are mere aids to construction, and constitute some broad pointers. It is the task of the Court to decide which one, in the light to all relevant circumstances, ought to prevail. (**Keshavji Ravji & Co.**[43]). In each case we must look at all relevant circumstances and decide, as a matter of judgment, what weight to attach to any particular 'rule'. (**Utkal Contractors and Joinery (P) Ltd. v. State of Orissa**[106]; **Keshavji Ravji & Co.**[43]; **Maunsell v. Olins**[107]). As we are satisfied

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[106] AIR 1987 SC 2310
[107] (1975) 1 ALL ER 16

that Section 24(1)(b) does not suffer from ambiguity, it is wholly unnecessary for us to apply any other rule of construction.

It is no doubt true that the Land Acquisition Act is an expropriatory legislation, and must be strictly construed against the State and in favour of the subject. It is also a beneficial legislation which should be given liberal construction to implement the legislative intent. Section 24 of the 2013 Act has a scheme of its own, and there is no warrant for the Court to travel beyond the scheme and extend the scope of the provision. (**Regional Director, ESI Corpn. v. Ramanuja Match Industries**[108]; **Deddappa v. Branch Manager**[109]). It is only in a case where there exists a grey area, and the Court feels difficulty in interpreting or in construing and applying the statute, that the doctrine of beneficient construction can be taken recourse to. Even in cases where such a principle is resorted to, the Statute cannot be interpreted in a manner which would take it beyond its object and purport. (**Usha Breco Mazdoor Sangh v. Management of Usha Breco Limited**[110]). As Section 24(1)(b) is unambiguous and clear, and we find no difficulty in construing the said provision, the rule of beneficial or liberal construction need not be resorted to.

(ix) SHOULD A CONTEXTUAL INTERPRETATION BE PLACED ON SECTION 24(1)(b) IN PREFERENCE TO ITS LITERAL CONSTRUCTION?

It is submitted, on behalf of the petitioners, that the expression, ***"award made under Section 11"***, in Section 24(1)(b), should be given a contextual interpretation, and not a literal construction, since the person to whom an award is not communicated would be

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[108] (1985) 1 SCC 218
[109] (2008) 2 SCC 595
[110] (2008) 5 SCC 554

the recipient of its consequences (i.e., he would receive compensation under the 1894 Act) even though the award is communicated to him only in 2014, after the 2013 Act came into force.

In **Raja Harishchandra Raj Singh**[31] a literal interpretation of proviso (b) to Section 18 of the 1894 Act was found to result in absurdity for, by the failure of the Collector to inform them that an award was passed, the right of the land owners to seek a reference, under Section 18 of the 1894 Act, was being denied. It is in such circumstances that the Supreme Court gave a contextual interpretation to proviso (b) to Section 18 of the 1894 Act, and held that "the date of the Collector's award" must mean the date on which the Collector's award is communicated to the land owners as, otherwise, the remedy available to the land owners, to seek a reference to the Civil Court for enhancement of compensation, would have been rendered illusory.

The Statement of objections and reasons of the 2013 Act shows that "the benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken". It is evident therefore that the object of the 2013 Act was to confer the benefits, stipulated in the said Act, only where an Award was not made. In enacting Section 24 of the 2013 Act, Parliament has prescribed a cut-off date, for application of the provisions of the 2013 Act and for extension of the benefits provided therein, to be the date of making the award under Section 11 of the 1894 Act. The consequence, of not making an award before 01.01.2014, is stipulated in Section 24(1)(a), and the

consequence, of an award being made on or before 31.12.2013, is stipulated in Section 24(1)(b) thereof. If an award, under Section 11 of the 1894 Act, is made on or before 31.12.2013, the provisions of the 1894 Act would then continue to apply. It is only if no such award is made before the said date, would the provisions of the 2013 Act apply in relation to determination of compensation.

Section 24(1)(b) of the 2013 Act stipulates the consequences of not making an award, under Section 11 of the 1894 Act, to be the continued application of the 1894 Act as if it has not been repealed. Even then, the land owners would be entitled to seek a reference under Section 18 of the 1894 Act, and the time stipulated, for seeking a reference under proviso (b) to Section 18, would begin to run only from the date on which the land owner receives a notice, under Section 12(2) of the 1894 Act, that an award has been made under Section 11 of the said Act. The land owner would also be entitled to seek enhancement of compensation, in the reference before the Civil Court, and thereafter by way of an appeal to this Court under Section 54 of the 1894 Act. In enacting Section 24(1), Parliament intended only to prescribe a cut-off date for application of the provisions of the 2013 Act, and an artificial construction should not be placed on the said provision.

x). WOULD FAILURE TO GIVE NOTICE UNDER SECTION 12(2), IMMEDIATELY AFTER AN AWARD IS PASSED, VITIATE THE AWARD PASSED EARLIER?

It is submitted on behalf of the petitioners that, in the present case, the notice under Section 12(2) was served on the petitioner after repeal of the 1894 Act, and after the 2013 Act came

into force on 01.01.2014; as Section 12(2) of the 1894 Act qualifies, the requirement of issuing a notice, with the word "***immediate***", it should be immediately served; every word, used by the Legislature (Parliament) in a statute, must be given effect to; the word ***'immediate'*** means ***'forthwith'*** which is stronger than the phrase ***'within a reasonable time'***; in the present case, notice was given in some cases on 08.01.2014, in some others a few months later, and in a few others after more than a year; and the expression ***'within a reasonable time'*** cannot be stretched that far.

The Collector is required to issue notice of his award to such of the persons interested who were either not present personally, or were present through representatives when the Collector made his award. Section 12(2) requires him to give immediate notice of the award to such interested persons, and not simply the communication of the award. The service of notice is a ministerial act, and the 1894 Act does not intend that a copy of the award be supplied. When a notice under Section 12(2) of the Act is received, the land owner or the person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek a reference or not. (**Bhagwan Das**[42]).

The Section 12(2) notice is only an intimation of making the award, requiring the owner or person interested to receive the compensation awarded under Section 11. On receipt of the notice, if the person interested receives compensation without protest, no reference need be made. When he receives compensation under protest, as contemplated under Section 31 of the Act, the need to make the application for reference under Section 18(1) would arise. At that juncture, it is open to the person interested either to make

an inspection of the award which is conclusive between him and the Collector by operation of Section 12(1), or seek a certified copy of the award from the Collector and its contents. He can, then, put forth his objections to the determination, inter alia, of compensation for the land. The limitation to seek a reference begins to operate from the moment the notice under Section 12(2) is received. (**State of Punjab. v. Satinder Bir Singh**[111]; **Poshetty**[33]).

It is not in dispute that the award, made under Section 11 of the 1894 Act, was communicated only after commencement of the 2013 Act. The respondents claim that the reasons for the delay in communication is only because of (a) change in the extents pursuant to the revised road development plan; (b) legal vacuum as to which Rules are applicable to awards made prior to the 2013 Act, since the accompanying rules were not in existence; and (c) lack of staff, during the months of March to May, 2014, due to assembly and Parliament elections.

It is wholly unnecessary for us to examine whether the aforesaid factors justified the delay in issuing the notice under Section 12(2), as failure to issue the notice, under Section 12 (2) of the 1894 Act, does not vitiate the award. The notice under Section 12 (2), unlike a notice under Section 9 of the 1894 Act, is not a notice intended to invite objections to an act which has not yet been done or completed. The notice under Section 12 (2) is only a notice ex-post facto, and a notice of a fait accompli. It is a notice of an award already made. (**Kamala Kunwar v. Lakshan Goala**[112]).

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[111] (1995) 3 SCC 330
[112] AIR 1967 Calcutta 105

In examining the question whether or not Section 12(2) of the 1894 Act is mandatory in character, it must be borne in mind that, in order to declare a provision mandatory, the test to be applied is whether its non-compliance would render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature, and not upon the language on which the intent is clothed. The issue must be examined having regard to the context, subject-matter and object of the statutory provision in question. The Court may find out the consequence which would flow from construing it one way or the other, whether the statute provides for a contingency of the non-compliance with the provision, and whether the non-compliance is visited by a penalty, or a serious consequence would flow therefrom, and whether a particular interpretation would defeat or frustrate the legislation. If the provision is mandatory, the act done in breach thereof will be invalid. (**May George**[21]).

The 1894 Act does not provide for any consequence of the Section 12(2) notice not being given to the person interested, much less does it provide either for the award being invalidated or the entire proceedings being vitiated thereby. It does not visit non-compliance with Section 12(2) with any penalty. On the contrary, the Legislature has provided alternative remedies enabling the interested person to seek a reference, by providing two different periods of limitation. Non-issue of a notice, within the meaning of Section 12(2) of the Act, does not invalidate the award. (**Kesav Bhupal v. Government of Andhra Pradesh**[113]; **Dr. J. Dubey v.**

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[113] 1989(1) ALT 459

State of Bihar[114]; **Special Land Acquisition Officer: v. Fakirappa Yallappa Pujari**[115]). In **Raja Harishchandra Raj Singh**[31], the Section 12(2) notice was not even served, let alone being sered belatedly.

The notice under Section 12(2) of the 1894 Act is mandatory to the extent its non-compliance would disable the land owner from seeking a reference under Section 18 of the 1894 Act. While the word 'immediate', used in Section 12(2), no doubt requires the Collector to immediately send the notice of the award to the land owner, his failure to do so would only entitle the land owner to claim that the period of limitation, prescribed under proviso (b) to Section 18 for seeking a reference, should be computed only from the date on which the Section 12(2) notice was received by him. No other serious consequence would flow from non-compliance or belated compliance of Section 12(2), much less would it invalidate the award made earlier under Section 11 of the 1894 Act.

An award, valid on the date it was made under Section 11 of the 1894 Act, would not be rendered invalid by the subsequent failure to comply with the requirement of Section 12(2) of the 1894 Act in issuing a notice immediately. The reduction of extents, in the notice issued under Section 12(2), would also not effect the validity of the award made, under Section 11 of the 1894 Act, earlier on 23.12.2013. Even if the notice, issued subsequent to the making of the said award, contains different extents, such a notice, being contrary to the award, can only be held to be defective, and would not vitiate the award made earlier. The reduced extents,

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[114] 1968 B.L.J.R 562
[115] ILR 1996 Kar 951

reflected in the Section 12(2) notice, may enable the petitioners to claim that the respondents should invoke Section 48 of the 1894 Act for partial withdrawal from the land acquisition i.e., for the difference between the extent of land reflected in the award on the one hand, and the extent reflected in the Section 12(2) notice on the other.

(xi) CAN THE ADMINISTRATIVE LAW PRINCIPLES, OF AN ORDER NOT HAVING EFFECT TILL IT IS COMMUNICATED, BE APPLIED TO SECTION 24(1)(b) OF THE 2013 ACT?

It is contended, on behalf of the petitioners, that the offer should be communicated to the concerned person, and only then will the owner be affected by its consequences; this principle is applicable in all aspects of law whether it is with regard to an arbitral award as held by the Supreme Court in **East India Hotels v. ADA**[116], or in administrative law wherein it has been held that an administrative order, unless it is communicated, has no effect and cannot affect the rights of such a person; the Supreme Court has held, in **Bipromasz Bipron Trading Sa v. Bharat Electronics Ltd**[117], that the consequences of an order are two fold; for the concerned official, an order is made when it is signed and sent by him; and, for the person affected thereby, the order is made only when it is communicated to him.

It is no doubt true that an official order must be communicated to the person who would be affected by that order, before the State and that person can be bound by that order. For, until then, it would be open to the Government to consider the matter over and over again, and till its communication the order

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[116] (2001) 4 SCC 175
[117] (2012) 6 SCC 384

cannot be regarded as anything more than provisional in character. (**Bachhittar Singh v. State of Punjab**[118]; **Bipromasz Bipron Trading Sa**[117]). If the order is not communicated, to the person concerned, theoretically it is possible that, unlike in the case of a judicial order pronounced in court, the authority may change its mind and decide to modify its order. (**Bipromasz Bipron Trading Sa**[117]; **BSNL v. Subash Chandra Kanchan**[119]; **State of Punjab v. Amar Singh Harika**[120]). An order, which is not communicated to the party concerned, does not create any legal right which can be enforced through a Court of law, as it does not become effective till it is communicated. (**Bipromasz Bipron Trading Sa**[117]; **Laxminarayan R. Bhattad v. State of Maharashtra**[121]; **Greater Mohali Area Development Authority v. Manju Jain**[122]).

It is also true that, in order for him to seek his remedies thereagainst, a party, affected by the order or decision, should be made aware that such an order was passed. For seeking the remedy, the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing that the order was passed and its contents. The knowledge of the party affected by such a decision, either actual or constructive, is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. The application of this

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[118] AIR 1963 SC 395
[119] (2006) 8 SCC 279
[120] AIR 1966 SC 1313
[121] (2003) 5 SCC 413
[122] (2010) 9 SCC 157

rule, so far as the aggrieved party is concerned, is not dependent on the provisions of the particular statute, but it is so under the general law. (**Muthia Chettiar v. CIT**[123]; **Bipromasz Bipron Trading SA**[117]; **Collector of Central Excise, Madras v. M/s M.M. Rubber & Co., Tamil Nadu**[124]).

If the intention or design of the statutory provision is to protect the interest of the person adversely affected, by providing a remedy against the order or decision, the period of limitation prescribed for invoking such a remedy should be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order, the date of exercise of that power is the relevant date for determining limitation. This distinction is founded on the principle that the Government is bound by the proceedings of its officers, but persons affected thereby are not bound by the decision. (**Bipromasz Bipron Trading SA**[117]). The question, which necessitates examination, is whether these principles can be applied either to Section 24(1)(b) of the 2013 Act or Section 11 of the 1894 Act?

The award, made under Section 11 of the 1894 Act, is required to be communicated and, until it is so communicated, the rights of the land owner will not be adversely affected. After an award is so made, all the rights conferred on the land owners under the 1894 Act would continue to be available on the award being communicated to him. As a literal construction thereof does not result in absurdity, Section 24(1)(b) of the 2013 Act must be

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[123] ILR 1951 Madras 815
[124] 1992 Supl (1) SCC 471

interpreted on its own terms, and the issue of communication of an award has no relevance to its interpretation. The contention that the award can be changed any time before it is communicated is untenable, since the land acquisition officer becomes functus officio once the award is made under Section 11 and, thereafter, the award can only be corrected for arithmetical or clerical errors under Section 13A or land acquisition proceedings withdrawn under Section 48. On an award being made by the Collector under Section 11 of the Act, the proceedings before him stand terminated immediately thereafter. (**Orissa Industrial v. Supai Munda**[125]). The judgments, in **Bipromasz Bipron Trading SA**[117]; **East India Hotels**[116] and **Secretary to Government of Karnataka v. V. Harishbabu**[126] relied on behalf of the petitioners, all of which relate to proceedings under the Arbitration and Conciliation Act, 1996, are in the administrative law realm, and are of no assistance in interpreting the provisions of the 1894 Act which makes a distinction between making of an award under Section 11 and its communication under Section 12(2) of the 1894 Act.

If, as is contended on behalf of the petitioners, making of an award under Section 11 is incomplete till it is communicated under Section 12(2), it may well result in adverse consequences for the land owners themselves. Both under the 1894 Act and the 2013 Act, the Collector is obligated to tender payment of compensation on the making of an award. (Section 31 of 1894 Act and Section 77 of 2013 Act). The land owner can collect compensation, from the land acquisition officer, the moment the

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[125] (2004) 12 SCC 306
[126] (1996) 5 SCC 400

award is made under Section 11, and even before notice is served under Section 12(2) of the Act. If the contention, urged on behalf of the petitioners, is accepted, the land owner cannot collect compensation till the award is communicated under Section 12(2). Likewise if the Collector is of the view that there is a genuine dispute regarding title, in relation to the award, he is required to immediately deposit the money in the Court (Section 31(2) of the 1894 Act and Section 77(2) of the 2013 Act). Once the amount is deposited in the Court, the party is entitled for interest and can request the Court to deposit the money in Government or other approved securities (Section 33 of the 1894 Act and Section 79 of the 2013 Act). However, if the petitioners' contention that the award is made only when it is communicated is accepted, the Collector would not be required to deposit the money in the Court till the award is communicated to the land owner under Section 12(2), and this would result in loss of interest in the interregnum.

A statute should be read as a whole and in its context. In understanding the meaning of the provision, the Court must take into consideration not only the other provisions of the statute, the existing state of the law, and the mischief which the Court can, by those and other legitimate means, discern that the statute was intended to remedy. (**Delhi Airtech Services (P) Ltd. v. State of U.P.,**[127]; **Attorney General v. HRH Prince Ernest Augustus of Hanover**[128]). In interpreting the words ***"make an award"*** in Section 11 of the 1894 Act, the provisions of the Land Acquisition Act, 1894 must be read in their entirety. A holistic approach is

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[127] (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673
[128] (1957) 1 AER 49

required to be made for the purpose of interpretation of the provisions of the 1894 Act. (**SAIL**[27]) which stipulates a detailed and comprehensive procedure in the matter of acquisition of lands and payment of compensation therefor. (**Nellur Thimma Reddy v. Special Deputy Collector (LA), Telugu Ganga Project**[129]).

Let us, therefore, briefly note the relevant provisions of the 1894 Act. After the declaration under Section 6, the 1894 Act the Collector is required to take orders from the appropriate Government, whether State or Central, for acquisition of land in terms of Section 7. A process of demarcation takes place under Section 8, the object of which is to facilitate measurement, preparation of the acquisition plan, and also to let private persons know what land is being taken. (**SAIL**[27]). Section 9 requires the Collector to issue two notices, one in the locality of the acquisition, and the other to the occupants or the people interested in the lands to be acquired. The final stage of the proceedings, before the Collector, involves an enquiry by him into the objections of the interested persons regarding the proceedings under Sections 8 and 9, and making an award to persons claiming compensation as to the value of the land as on the date of the notification issued under Section 4. The enquiry involves hearing of the parties who appear in response to the notices, investigating their claims, considering the objections, and taking all the information necessary for ascertaining the value of the land. Such an enquiry can be adjourned from time to time as the Collector thinks fit. **(SAIL**[27]).

Even if individual notices have not been issued under Sections 9(3) and 10, any person interested is entitled to file his

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[129] (2003) 1 ALD 585

objections pursuant to the general notice issued under Sections 9(1) and 10 of the Act. Any person who has not participated in the award enquiry, and has allowed the award to be passed, cannot approach the land acquisition officer as he becomes functus officio after passing the award, and cannot meddle with the award except to the extent of correction of clerical or arithmetical errors within the time stipulated under Section 13-A of the Act. (**Revappa v. Government of Andhra Pradesh**[130]; **G. Muneswaran v. Chief Commissioner of Land Administration, Hyderabad**[131]).

Section 11 of the 1894 Act requires the Collector to enquire into the objections of the person interested, determine the measurements of the land, ascertain its value, and the respective interests of person claiming compensation, and then make an award of the area under acquisition, the compensation to be paid, and apportionment of the compensation. Section 11 makes it obligatory for the Collector to safeguard the interests of all persons interested. In awarding compensation, the Land Acquisition officer should look into the estimated value of the land, and give due consideration to the other factors specified therein. (**SAIL**[27]). The satisfaction as to the compensation payable should be based on the opinion of the Collector, and not that of any other person. **(Vijayadevi Navalkishore Bhartia v. Land Acquisition Officer**[132]). Under the proviso to Section 11(1), the proposed award made by the Collector must have the approval of the appropriate Government or such officer as the appropriate Government may authorise in that behalf. The word "approval",

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[130] 2012 (2) ALD 700
[131] (2010) 1 ALD 85
[132] (2003) 5 SCC 83

found in the proviso to Section 11(1) of the Act, is only an administrative power which limits the jurisdiction of the authority to apply its mind to see whether the proposed award is acceptable to the Government or not. (**Vijayadevi Navalkishore Bhartia**[132]).

Once the formalities of notifications being issued under Sections 4(1) and 6, and the enquiry of claims for compensation under Sections 9, 10 and 11 are completed, the Land Acquisition Officer is vested with the power to pass an Award for payment of compensation for the acquired land as well as the structures thereon. (**Nellur Thimma Reddy**[129]). The Collector may, in his discretion and at the inquiry, invite the criticism of the owner on any information he had in his hands if he thought that, in the circumstances, this would advance his knowledge. (**Ezra v. Secretary of State for India in Council**[133]). On the day so fixed the Collector, after an inquiry as contemplated under Section 11, should make an award which must contain the necessary ingredients mentioned in Section 11. (**Delhi Development Authority v. Sukhbir Singh**[134]). The award may be made at a time when the enquiry is conducted or soon thereafter, or it can be postponed to a later date. (**Kesav Bhupal**[113]). The proceedings, resulting in an "***award***", are administrative and not judicial in character. The fact, however, remains that the "award" is a decision (binding on the Collector as to what sum shall be tendered to the owner of the lands) and, if a judicial ascertainment of the value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court. (**Ezra**[133]). The

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[133] 32 Indian Appeals 93
[134] AIR 2016 SC 4275

1894 Act does not vest any power in the Land Acquisition Officer to review his award or to reopen it. (**Nellur Thimma Reddy**[129]).

Section 12 of the 1894 Act stipulates when an award of the Collector is to be final. Section 12(1) postulates that the award, made under Section 11, shall be filed in the Collector's Office, and the same shall be final and conclusive evidence as between the Collector and the persons interested, (whether or not they have respectively appeared before the Collector), of the true area of the land acquired, the value of the land acquired and the apportionment of the compensation among the persons interested. (**Poshetty**[33]). Section 12(1) speaks of a situation where the award shall be final as between the Collector and the persons interested whether they have appeared before the Collector or not. (**Kesav Bhupal**[113]).

Section 12(2) of the 1894 Act requires the Collector to give immediate notice of his award to such of the persons who are interested, as are not present personally or by their representatives when the award is made. Section 12(2), when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of the compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. The Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award. When the award is accepted, whether under protest or otherwise, it is the duty of the Collector to make payment, as soon as possible, after making the award. It is only in a situation where the persons

interested refuse consent to receive the monies payable, or there be no person competent to alienate the land, or if there be any dispute as to the title to receive compensation or its apportionment, is the Collector required to deposit the amount of compensation in the reference court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. Section 34 of the Act makes it clear that, where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable at 9 per cent per annum for one year and at 15 per cent per annum thereafter. This is because the person, whose lands are acquired, is divested of both possession and title to his property without compensation having been paid or deposited. (**Sukhbir Singh**[134]).

The compensation payable to the owner of the land under the award is the minimum and, under no circumstances, can a Civil Court or a superior authority reduce it. (**Nellur Thimma Reddy**[129]). A notice of the award can be issued, under Section 12(2) of the Act, to persons interested after money is received by the Land Acquisition Collector, and the said Collector shall not take possession of the land unless and until the compensation amount is received by him. Actual payment must be made latest within a period of 60 days as persons, whose property is expropriated, need to be paid immediately so as to rehabilitate themselves. The amount usually offered, by way of an award of a Land Acquisition Collector under the 1894 Act, is way below the real market value, which is only awarded and paid years later when the reference proceedings culminate in the judgments of the

High Courts and of the Supreme Court. (**Pune Municipal Corpn. v. Harakchand Misirimal Solanki**[135]).

It is only on an award being made under Section 11 would the question of the Collector giving notice thereof, under Section 12(2) of the 1894 Act, arise. The finality to the award under Section 12(1) is except as provided from Section 13 of the 1894 Act onwards. Therefore, when a person interested seeks a reference under Section 18, the award of the Collector does not attain finality in so far as he is concerned. However, in view of Section 12(1) of the 1894 Act, the award made under Section 11 attains finality in so far as Collector (Government) is concerned. It is only after the award is approved by the Government, and is filed under Section 12(1), does it attain finality. It is only thereafter is the award required to be communicated under Section 12(2) of the 1894 Act. The making of the award by the Land Acquisition Officer, under his signature and seal, is conclusive evidence, under Section 12(1) of the Act, of making of the award. The mere fact that a copy of the award is received by the land owner subsequently does not mean that the award was made on that later date. (**Sharadchandra Ganesh Muley**[66]). Making of an award under Section 11 of the 1894 Act is anterior to, and would not bring within its ambit the requirement of, communicating the award to the persons interested. Even if the Section 9 notice has not been served upon him, the person interested can still claim compensation, and seek a reference under Section 18 of the Act. (**May George**[21]).

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[135] (2014) 3 SCC 183

Compensation under the 1894 Act is determined only by making an award under Section 11 thereof. Upon acquisition of his lands under the Land Acquisition Act, the claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification, and it is this right which is quantified by the Collector under Section 11, and by the Civil Court under Section 26 of the Land Acquisition Act. Under Section 11 the Collector, after holding the necessary inquiry, determines the quantum of compensation by fixing the market value of the land. In doing so he is guided by the provisions contained in Section 23 and 24 of the 1894 Act. The right of the claimant to litigate the correctness of the award is only because his right to compensation is not fully redeemed, but remains alive which he prosecutes in the Civil Court. The Collector's award is, under Section 12(1), declared to be, except as otherwise provided, final and conclusive evidence as between him and the persons interested. Even so, the Collector's award under Section 11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired (**Mrs. Khorshed Shapoor Chenai v. Assistant Controller of Estate Duty, A.P.**[136]).

Unless an award is made under Section 11 of the 1894 Act, there is no "determination of compensation" and, consequently, Section 24(1)(a), which requires compensation to be determined in accordance with the 2013 Act, would apply. On the other hand, on an award being made under Section 11, compensation is finally determined, atleast in so far as the State is concerned, and,

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[136] (1980) 2 SCC 1

consequently, Section 24(1)(a) would not apply. It is Section 24(1)(b) which would be attracted, and the land-owners would only be entitled for the compensation determined under the 1894 Act. Compensation was determined, in the present case, when the award was made, after receiving government approval, on 23.12.2013. As compensation was determined under the 1894 Act, before the 2013 Act came into force on 01.01.2014, the question of re-determining compensation under the 2013 Act would not arise.

(xii). NON-OBSTANTE CLAUSE IN SECTION 24(1) AND THE PROVISION FOR REPEAL UNDER SECTION 114 OF THE 2013 ACT : ITS EFFECT:

It is contended, on behalf of the petitioners, that Section 24(1) of the 2013 Act, which starts with a non-obstante clause, requires Section 24 to be interpreted purposively to achieve its object; when a non-obstante clause is used in a provision, the Court must ascertain the intention of legislature by considering the entire statute and, thereafter, interpret the said provision; the Court should not merely interpret the clause; a Strict/Literal interpretation of the words in Section 24(1)(b) in isolation, as suggested/contended by the State, would lead to absurdity as it would defy common sense, and defeat the very object of the 2013 Act; and Section 114 of the 2013 Act expressly repeals the 1894 Act, and gives overriding effect to the other provisions of the Act over the application of Section 6 of the General Clause Act, 1897.

Section 24(1) of the 2013 Act commences with the words ***"notwithstanding anything contained in this Act"***, which is a non-obstante clause. A ***"non obstante clause"*** is a legislative device which is usually employed to give overriding effect to certain provisions over

some contrary provisions that may be found in the same enactment, that is to say, to avoid the operation and effect of all contrary provisions. (**Laxmi Devi v. State of Bihar**[137]; **Union of India v. G.M. Kokil**[138]). It is equivalent to saying that, inspite of the laws mentioned in the non-obstante clause, the provision following it will have full operation, or the laws embraced in the non-obstance clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs. (**State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh**[139]; **South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum**[140]). Normally the use of a non-obstante clause by the legislature in a statutory provision, is equivalent to saying that no other provision of the Act shall be an impediment to the measure. Use of such an expression is another way of saying that the provision, in which the non-obstante clause occurs, would wholly prevail over the other provisions of the Act. Non-obstante clauses are to be regarded as clauses which remove all obstructions which might arise out of any of the other provisions of the Act in the way of the operation of the principal enacting provision to which the non-obstante clause is attached. (**Bihar Rajya M.S.E.K.K., Mahasangam**[139]; **Iridium India Telecom Ltd. v. Motorola Inc**[141]). While interpreting a provision containing a non-obstante clause, it should first be ascertained what the enacting part of the Section provides, on a fair construction of the words used according to their natural and ordinary meaning, and

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[137] (2015) 10 SCC 241
[138] 1984 Supp. SCC 196
[139] (2005) 9 SCC 129
[140] AIR 1964 SC 207
[141] (2005) 2 SCC 145

the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in any other law which is inconsistent with the Section containing the non-obstante clause. (**Aswini Kumar v. Arabinda Bose**[142]; **A.V.Fernandez v. State of Kerala**[143]). The effect of the non-obstante clause in Section 24(1) is that the provisions of Section 24(1) would prevail not withstanding anything contrary thereto in any of the provisions of the 2013 Act. It is wholly unnecessary for us to dwell on this aspect any further, as the petitioners have not been able to show which other provision of the 2013 Act is contrary to Section 24(1) thereof.

Section 114 of the 2013 Act relates to repeal and savings and, by sub-section (1) thereof, the 1894 Act was repealed. Section 114(2) stipulates that, save as otherwise provided under the 2013 Act, the repeal of the 1894 Act shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regards the effect of repeals. Section 6 of the General Clauses Act, 1897 stipulates that, where a Central Act repeals an earlier enactment, then, unless a different intention appears, the repeal shall not, among others, revive anything not in force or existing at the time at which the repeal takes effect, or affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right or privilege acquired or accrued under the repealed enactment, or affect any legal proceeding or remedy in respect of any such right or privilege, and any legal proceeding or remedy

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[142] AIR 1952 SC 369
[143] AIR 1957 SC 657

may be instituted, continued or enforced as if the repealing Act had not been passed. It is only because a different intention is expressed by the legislature in Section 24(1) of the 2013 Act, would the land acquisition proceedings initiated under the 1894 Act, and the preliminary notification issued under Section 4(1) thereof, continue to remain in force despite repeal of the 1894 Act by Section 114 of the 2013 Act.

While the date, in relation to which the compensation payable is required to be determined, remains to be the date on which a preliminary notification under Section 4(1) of the 1894 Act was issued, clauses (a) and (b) of Section 24(1) of the 2013 Act provide two different modes for determination of compensation. In terms of clause (a) of Section 24(1) where no award under Section 11 of the 1894 Act has been made, before the 2013 Act came into force on 01.01.2014, compensation is required to be determined in accordance with the provisions of the 2013 Act. Under clause (b) of Section 24(1) when an award is made under Section 11 of the 1894 Act, before the 2013 Act came into force on 01.01.2014, proceedings under the 1894 Act would continue as if the 1894 Act has not been repealed and, consequently, the land owners would only be entitled for the compensation determined under the 1894 Act with reference to the date of the preliminary notification issued under Section 4(1) thereof. No absurdity results on a literal interpretation of the words in clauses (a) and (b) of Section 24(1). Prescribing the date of making the award, as the cut off date for application of the 2013 Act, neither defies common sense nor does it result in absurdity. We see no reason to dwell any further on this aspect, as the constitutional validity of clause (a) and (b) of

Section 24(1) of the 2013 Act have not been put in issue in any of the Writ Petitions against which the present appeals are preferred.

(xiii). FULL FAITH AND CREDIT PRINCIPLE:

It is submitted, on behalf of the petitioners, that the full faith and credit principle should be applied in the present case; notice of the award under Section 12(2) should be immediately communicated; if there is delay of an inordinate nature, the Government cannot take advantage of such a delay, and grant compensation to the concerned land owners under the 1894 Act, and not under the 2013 Act; although it is stated on record that the award has been signed on 23-12-2013, communication thereof occurred several months thereafter; there has been a deliberate violation of the principle of full faith and credit, and of Section 12(2) of the 1894 Act which is a statutory obligation cast on the State; even a notice of the bare essentials of the award, i.e the extent of the land, compensation to be given etc were not communicated to the concerned land owner before 31-12-2013, and was only communicated after a lapse of several months thereafter; and hence the said land owners are entitled to be paid compensation under the 2013 Act.

The doctrine of ***"full faith and credit"*** applies to acts done by public officers who are required to faithfully discharge their duties to elongate public purpose. (**Delhi Airtech Services (P) Ltd.**[127]; **Ambya Kalya Mhatre**[25]; **State of Bihar v. Subhash Singh**[144]; **Centre for Public Interest Litigation v. Union of India**[145]). Every officer in the hierarchy of the State, by virtue of his being a

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[144] AIR 1997 SC 1390
[145] (1995) Supp. (3) SCC 382

"public officer" or a "public servant", is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with rigour in the larger public interest and for proper governance. (**Delhi Airtech Services (P) Ltd.**[127]). While the Collector is obligated to issue a notice under Section 12(2) of the 1894 Act immediately after the award is filed in his office under Section 12(1), his failure to do so may render him accountable for his inaction or belated action, if he is not able to satisfactorily explain why he failed to do so, but that would not invalidate the award made earlier under Section 11 of the 1894 Act.

An award is made under Section 11 of the 1894 Act on the date on which it either receives prior approval of the Government or when it is pronounced thereafter by the LAO, and not later on the date when the land-owner is intimated, by way of a notice under Section 12(2) of the1894 Act, that an award has been passed. In the present batch of cases, the award was passed under Section 11 of the 1894 Act either when the Government accorded prior approval on 19.12.2013 or the LAO pronounced the award on 23.12.2013, both of which are prior to 01.01.2014, when the 2013 Act came into force.

III. PROVISO BELOW SECTION 24(2): ITS SCOPE:

(i) SECTION 24(2): ITS SCOPE:

Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the respondents, would submit that to understand the scope of the proviso, it is necessary to consider the scope of Section 24(2); the said Section applies to awards made five years or

more prior to 01.01.2014 when the 2013 Act came into force, and provides for deemed lapsing; and, as a proviso is an exception to the main provision, the proviso is an exception to deemed lapsing under Section 24(2), and provides for continuance of acquisition proceedings on fulfilment of certain conditions.

Before examining the scope of Section 24(2) it is useful to refer to the judgments cited by Learned Counsel on either side in this regard. In **Pune Municipal Corpn.**[135], it was held that deposit of the compensation amount in the Government treasury was of no avail, and could not be held to be equivalent to compensation paid to the landowners/persons interested; and the subject land acquisition proceedings, wherein the award was more than five years prior to the commencement of the 2013 Act, shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

Following **Pune Municipal Corpn.**[135] the Supreme Court, in **Velaxan Kumar v. Union of India**[146], held that neither had compensation been paid by the respondents to the appellant for the acquisition, even though more than five years had elapsed from the date of award when the 2013 Act came into force w.e.f. 1-1-2014, nor had physical possession of the land, belonging to the appellant, been taken by the respondents; and, therefore, the acquisition proceedings, in respect of the appellant's land, had lapsed in terms of Section 24(2) of the 2013 Act.

In **Sree Balaji Nagar Residential Association v. State of Tamil Nadu**[147] the Supreme Court held that though there was lack of clarity on the issue, whether compensation has been paid for a

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[146] (2015) 4 SCC 325
[147] [2015] 3 SCC 353

majority of land holdings under acquisition or not, there was no dispute that physical possession of the lands, belonging to the appellants, had not been taken by the State or any other authority on its behalf, and more than five years had elapsed, since the making of the award, when the 2013 Act came into force; the conditions mentioned in Section 24(2) of the 2013 Act were satisfied; the land acquisition proceedings must be deemed to have lapsed; and the State Government was free, if it so chose, to initiate land acquisition proceedings afresh in accordance with the provisions of the 2013 Act.

In **Ram Kishan v. State of Haryana**[148], the advisory sought to clarify that the 2013 Act shall apply only if the situation of pendency continued unchanged for a period that equals to or exceeds five years. The Supreme Court clarified that, since this legislation had been passed with the objective of benefiting land-losers, the interpretation, consistent with that objective, was that the advisory would apply only to cases where awards were passed, under Section 11 of the 1894 Act, 5 years or more prior to 1-1-2014 as specified in Section 24(2) of the 2013 Act.

In **Working Friends Cooperative House Building Society Ltd. v. State of Punjab**[149]), the Supreme Court held that the appellant had an accrued right recognized by Section 24(2) of the Act; the Ordinance, which purported to take away such an accrued right, would hae to be treated as prospective. In **Ishwar Chand Sharma**[63], the Allahabad High Court held that Section 24(2) had no application in cases where proceedings had been initiated

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[148] (2015) 4 SCC 347
[149] JT 2015 (9) SC 357 = (2015) Law Suit (SC) page 1040

under the 1894 Act, and the award had been made either within a period of five years from the date of commencement of the 2013 Act, or where the award is still to be made on the date of commencement of the 2013 Act.

Section 24(2) of the 2013 Act stipulates that, in case of awards made before 01.01.2009, if either physical possession has not been taken or compensation has not been paid before 01.01.2014, then the land acquisition proceedings shall be deemed to have lapsed. Given the fact that the State has been prompt in acquiring land for public purposes, but tardy in tendering or paying compensation, the 2013 Act came in as a beneficial legislation to the aid, in particular, of poor farmers whose lands had been acquired under the 1894 Act but compensation had not been tendered or paid as required under the said Act. With this object in mind, Section 24(2) of the 2013 Act was enacted. (**Sukhbir Singh**[134]). Section 24(2), which starts with a non-obstante clause and would prevail notwithstanding anything contained in Section 24(1), is in the nature of an exception to Section 24(1), more particularly to Section 24(1)(b) as Section 24(2) like 24(1)(b) also applies only to awards made before the 2013 Act came into force with effect from 01.01.2014.

While Section 24(1)(b) applies to all awards made under Section 11 of the 1894 Act before 01.01.2014, Section 24(2) is an exception thereto, and relates to those awards made not only before 01.01.2014, but also five years or more prior to 01.01.2014 i.e prior to 01.01.2009. The necessary ingredients of Section 24(2) are (a) it begins with a non-obstante clause keeping sub-section (1) out of harms way; (b) for it to apply, land acquisition

proceedings should have been initiated under the 1894 Act; (c) an award under Section 11 of the 1894 Act should also have been made 5 years or more prior to the commencement of the 2013 Act; (d) physical possession of the land if not taken, or compensation if not paid, are fatal to the land acquisition proceeding that had been initiated under the 1894 Act; (e) the fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again. (**Sukhbir Singh**[134]).

In view of Section 24(2) of the 2013 Act, if physical possession of the land has not been taken by the acquiring authority though the award is passed and, if the compensation has not been paid to the landowners or has not been deposited before the appropriate forum, the proceedings initiated under the 1894 Act is deemed to have lapsed. (**Bharat Kumar v. State of Haryana**[150]). The period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the landlosers. (**Sree Balaji Nagar Residential Assn.**[147]; **Pune Municipal Corpn.**[135]; **Union of India v. Shiv Raj**[151]).

Section 24(2) is attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken, or because compensation has not been paid, within the said period of five years. (**Sukhbir Singh**[134]).

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[150] (2014) 6 SCC 586
[151] (2014) 6 SCC 564

The word 'or' in Section 24(2) cannot be read as 'and' for two reasons. The plain natural meaning of Section 24(2) does not lead to any absurdity for the language, advisedly used by the Legislature, to be replaced. Secondly, the object of the Act, and Section 24 in particular, is that, in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property, and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition. (**Sukhbir Singh**[134]). The expression used in Section 24(2), namely, ***"deemed to have lapsed"*** is of significance, and differs from the expression "***lapsed***" as used in Section 11-A of the 1894 Act. A deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical consequence of such putative state of affairs. Even if it were to be presumed that, post vesting, acquisition proceedings cannot be said to lapse, yet effect should be given to the deeming fiction contained in Section 24(2). In fact, Section 24(2) uses the expression ***"deemed to have lapsed"*** because the Legislature was cognizant of the fact that, in cases where compensation has not been paid though physical possession of the land has been handed over to the State, vesting has taken place, after which land acquisition proceedings can be said to have ended. (**Sukhbir Singh**[134]).

The picture that emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made, and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of the land and payment of compensation. What the legislature is, in effect, telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of the award. Not having done so, even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. (**Sukhbir Singh**[134]).

The consequence of such deemed lapsing is that the entire land acquisition proceedings, commencing with a preliminary notification being issued under Section 4(1) of the 1894 Act, would lapse and the Government, if it still intends to acquire the land, would then be required to initiate the entire land acquisition proceedings afresh in accordance with the provisions of the 2013 Act. The effect of deemed lapsing is that the land would revert back to the land owner, and the State would then have to commence with the preparation of a social impact assessment study under Section 4 of the 2013 Act and, only after complying with the requirements of Chapters II and III thereof, can it even issue a preliminary notification under Section 11(1) of the 2013 Act.

(ii) FUNCTIONS OF A PROVISO:

K. Vivek Reddy, Learned Special Counsel appearing on behalf of the respondents, would submit that the normal function

of a proviso is to carve out an exception from the enacting clause; the proviso to Section 24(2) is, therefore, an exception to deemed lapsing as provided in the enacting clause i.e Section 24(2); the proviso has been added to save the acquisition from lapsing as would have, otherwise, followed under Section 24(2); the proviso should be considered in relation to, and cannot enlarge the scope of the enacting clause; and a proviso cannot be interpreted in such a manner as to make it inconsistent with the enacting clause.

The proviso below Section 24(2) stipulates that where an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries in the notification for acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. Before considering the scope of the proviso below Section 24(2), it is necessary to examine the functions of a proviso, the purpose for which it is inserted to a statutory provision, and the field it embraces.

It is no doubt true, as submitted by Sri K. Vivek Reddy, that a qualifying or an excepting proviso only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (**The Commissioner of Income-tax, Mysore Travanecore-Cochin and Coorg, Bangalore v. The Indo Mercantile Bank Ltd.**[152]; **Ram Narain Sons Ltd. v. Assistant Commissioner of**

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[152] AIR 1959 SC 713

Sales Tax[153]). The effect of an excepting or qualifying proviso is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which, but for the proviso, would be within it. Such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. (**Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha**[154]; **Kedarnath Jute Mfg. Co. Ltd. v. CTO**[155]; **Craies on Statute Law, 5th Edn., pp. 201-202)**. Such a proviso is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. (**Local Government Board v. South Stoneham Union**[156]; **S. Sundaram Pillai v. V.R. Pattabiraman**[157]). The natural presumption is that, but for the proviso, the enacting part of the Section would have included the subject-matter of the proviso. (**Bhojraj Kuverji Oil Mills and Ginning Factory**[154]; **Mullins v. Treasurer of Surrey**[158]; **S. Sundaram Pillai**[157]; **Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai**[159]; **Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality**[160]; **Indo Mercantile Bank Ltd.**[152]; **Craies in his book Statute Law (7th Edn.).** Such a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the

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[153] (1955) 2 SCR 483
[154] AIR 1961 SC 1596
[155] AIR 1966 SC 12
[156] 1909 AC 57 = 78 LJKB 124
[157] (1985) 1 SCC 591
[158] (1880) 5 QB 170
[159] AIR 1966 SC 459
[160] AIR 1944 PC 71

legislature desires should be excluded. (**STO, Circle-I, Jabalpur v. Hanuman Prasad**[161]; **S. Sundaram Pillai**[157]).

On the other hand, provisos are often added not as exceptions or qualifications to the main enactment, but as savings clauses, in which case they will not be construed as controlled by the Section. **(Bhojraj Kuverji Oil Mills and Ginning Factory**[154]; **S. Sundaram Pillai**[157]). A proviso may also be embedded in the main provision by which it becomes an integral part of it so as to amount to a substantive provision, (**S. Sundaram Pillai**[157]) and, in exceptional cases, a proviso may be a substantive provision itself. (**Commissioner of Commercial Taxes v. R.S. Jhaver**[162]; **Odgers in Construction of Deeds and Statutes (5th Edn.; Hiralal Rattanlal**[85]; **State of Rajasthan v. Leela Jain**[163]; **S. Sundaram Pillai**[157]).

Sometimes, despite the fact that a provision is called a proviso, it is really a separate provision and the so-called proviso may have substantially altered the main section, (**Hiralal Rattanlal**[85]; **CIT v. Bipinchandra Maganlal & Co. Ltd., Bombay**[164]), adding to and not merely excepting something out of or qualifying what goes before it. (**U.P. State Road Transport Corpn. v. Mohd. Ismail**[165]; **Rhondda Urban District Council v. Taff Vale Railway Co.**[166]; **Jennings v. Kelly**[167]; **S. Sundaram Pillai**[157]).

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[161] AIR 1967 SC 565
[162] AIR 1968 SC 59
[163] AIR 1965 SC 1296
[164] AIR 1961 1040
[165] (1991) 3 SCC 239
[166] 1909 AC 253
[167] 1940 AC 206

As the dispute revolves around whether the proviso below Section 24(2) is merely an exception to Section 24(2), or whether Section 24(2) and the proviso below are two exceptions to Section 24(1) of the 2013 Act, it is necessary to note, in brief, the purpose which a proviso serves, and the function it discharges. A proviso may serve four different purposes (1) qualifying or excepting certain provisions from the main enactment; (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable; (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision. (**S. Sundaram Pillai**[157]). Where the proviso is directly repugnant to a Section, the proviso shall stand and be held to be a repeal of the Section as the proviso speaks the latter intention of the makers. Where the Section is doubtful, a proviso may be used as a guide to its interpretation: but, when it is clear, a proviso cannot imply the existence of words of which there is no trace in the Section. The proviso is subordinate to the main Section. A proviso does not enlarge an enactment except for compelling reasons. Sometimes an unnecessary proviso is inserted by way of abundant caution. A proviso may sometimes contain a substantive provision. (**Sarathi in Interpretation of Statutes; S. Sundaram Pillai**[157]).

A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without

attributing to it that effect. (**Craies on Statute Law, 5th Edn., pp. 201-202; Rhondda Urban District Council**[166]; **Bhoijraj Kuverji Oil Mills & Ginning Factory**[154]). There is no rule that the proviso must always be restricted to the ambit of the main enactment. (**Dattatraya Govind Mahajan v. State of Maharashtra**[168]; **Ishverlal Thakorelal Almaula**[159]). The words of a proviso are not to be taken "absolutely in their strict literal sense," but a proviso is "of necessity" limited in its operation to the ambit of the Section which it qualifies and, so far as that Section itself is concerned, the proviso again receives a restricted construction. (**Maxwell on Interpretation of Statutes, 12th Edn.,; M.M. Jeevan v. State of Kerala**[169]). Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum i.e., by way of addition to the main provision or dealing with a subject which is foreign to the main provision. **(J.K. Industries Ltd.**[67]; **Indo Mercantile Bank Ltd.**[152]). Bearing these principles in mind let us now examine the rival contentions on the scope of the proviso below Section 24(2) of the 2013 Act.

(iii) IS THE PROVISO BELOW SECTION 24(2) ONLY A PROVISO THERETO?

Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the respondents, would submit that the proviso below Section 24(2) should be read as a proviso to Section 24(2), and not as a proviso to Section 24(1)(b); it is only in case of awards made five years or more prior to the coming into force of the 2013 Act, wherein possession has been taken but a majority of the land owners have not been paid compensation, would the proviso

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[168] (1977) 2 SCC 548

[169] (Judgment in Writ Appeal No.2041 of 2015 dated 14.10.2015)

require all the land owners to be paid compensation under the 2013 Act; and as the awards, in the present cases, were passed only in December, 2013 less than a month prior to the coming into force of the 2013 Act, neither Section 24(2) nor its proviso have any application. On the other hand it is contended, on behalf of the petitioners, that the proviso below Section 24(2) is not restricted to Section 24(2) alone; both Section 24(2) and the proviso thereunder are exceptions to Section 24(1); both of them deal with separate situations and provide for different contingencies; and the proviso below Section 24(2) would apply to awards made within 5 years prior to the 2013 Act coming into force on 01.01.2014 i.e., awards made after 01.01.2009 but before 31.12.2013.

It is necessary, at the outset, to refer to the judgments relied upon by Learned Counsel on either side, wherein the scope of the proviso to Section 24(2) was examined. In **P. Radhakrishnan v. State of Kerala**[170]), the Division bench of the Kerala High Court held that as the award was dated 06.08.2010, and was made within five years prior to the date of commencement of the 2013 Act, Section 24(2) was not applicable; and reliance placed on the proviso thereto was misplaced as a proviso to the Section cannot go beyond the scope of the substantive Section of which it is only a proviso. In **M.M. Nazar v. State of Kerala**[171] a Single Judge of the Kerala High Court held that, as the award was not made five years prior to the commencement of the 2013 Act, the proviso to Section 24(2) did not apply; and the petitioners had to be rest content with the compensation under the 1894 Act.

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[170] (Judgment in WA No.1298 of 2014 dated 23.09.2014)
[171] (Judgment in WP(C) No.32151 of 2013 dated 21.01.2015)

In **Shrikant Shankar Rao Daulatkar v. State of Maharashtra**[172]) the Bombay High Court (Nagpur Bench) held that the proviso, appended to Section 24(2) of the 2013 Act, would come into play only if the award was made five years or more prior to the commencement of the 2013 Act; if an award is made just a day before the commencement of the 2013 Act, or a fortnight before its commencement, there would be no occasion for the State Government to deposit the amount of compensation in the account of the beneficiaries; after making the award under Section 11 of the 1894 Act, the Collector is required under Section 31 to tender payment of the awarded compensation to the persons entitled to receive it; if they do not consent to receive it, the Collector is required to deposit the compensation in the Court; Section 24(2) carves out an exception to Section 24(1)(b) of the 2013 Act; and, as the proviso is applicable to Section 24(2), the condition precedent, for seeking compensation under the 2013 Act, would be the making of the award five years or more prior to the commencement of the 2013 Act.

In **M.M. Jeevan**[171] the Division bench of the Kerala High Court held that the proviso cannot dangle in the air without reference to Section 24(2) of the Act, and cannot operate independently; the award under Section 11 of the Land Acquisition Act, 1894 should have been passed five years or more before 01.01.2014 for the proviso to apply; the words 'where an award has been made', occurring in the proviso, has to be understood as where an award has been made five years or more prior to the commencement of the Act; this is the intent and purpose of the

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[172] (Judgment in WP No.1923 of 2014 dated 22.06.2015)

proviso when read in conjunction with Section 24 (2) of the Act, even if the effect is to carve out an exception in law; in normal circumstances when compensation has not been deposited in respect of a majority of land holdings, the acquisition is deemed to have lapsed as per Section 24(2), but the proviso provides that, even in those cases, compensation is to be paid in accordance with the 2013 Act; an exception has been carved out in the proviso where the acquisition is not to lapse; accepting the contention that the proviso covers all cases of awards made prior to the enforcement of the 2013 Act, would require the proviso to have been appended to Section 24(1)(b); the proviso does not militate against the conditions mentioned in Section 24(2); rather it intends that, inspite of the conditions under Section 24(2) being satisfied, acquisition in such cases shall not lapse, and compensation be determined according to the 2013 Act; the proviso has been added to save the acquisition from lapsing, as would otherwise have followed under Section 24(2); the intent of the proviso is to give benefit to all land holders, including the minority land holders who have received compensation under the 1894 Act; the proviso is a proviso to Section 24(2), and not to Section 24(1) which is reinforced from the subsequent legislative exercise pertaining to the 2013 Act; the President of India promulgated two Ordinances, i.e., Ordinance Nos. 9 of 2014 and 5 of 2015; by the Ordinances, one more proviso has been added in sub -section 24(2); and, in the Ordinance, the existing proviso has been referred to as a proviso to Section 24(2), and one more proviso has been added, which makes it clear that the proviso under consideration is a proviso to Section 24(2), and not to Section 24(1).

In **M/s. N.C.J. Estate Solutions Pvt. Ltd v. State of Haryana**[173], the Division bench of the Punjab and Haryana High Court held that the proviso was a proviso to Section 24(2) alone; it operated in a different field and dealt with a different situation; if the amount of compensation has not been paid to the land owners or deposited with the reference Court, as contemplated under Section 24(2), the proviso will become operative; the Court cannot substitute the proviso to another sub-section, as the sub-section starting with a non-obstante clause contains such a proviso; and, by interpretation, a proviso cannot be lifted and incorporated to any other sub-section.

In **M/s. Athena Demwe Power Limited v. Sh. Laideo Tayan**[174], the Division bench of the Gauhati High Court held that, where an award has been made five years or more prior to the coming into force of 2013 Act and the lands of the land owners were taken possession of, but compensation for a majority of the land holdings have not been deposited in the account of the land owners, such landowners shall be entitled to compensation in accordance with the provisions of the 2013 Act; however the land owners, for whom an award is made within five years of the coming into force of the 2013 Act, cannot take advantage of the proviso to Section 24(2) of the 2013 Act as there was no delay in making the award for them; to hold otherwise would amount to conferring upon them unjust enrichment; neither Section 24(2) nor the proviso to Section 24(2) of the 2013 Act can be held applicable to them; and the proviso will operate in a field only when an award

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[173] (Judgment in CWP No.19150 of 2015 dated 11.09.2015)
[174] (Judgment in WA No.175 of 2015 dated 05.01.2016)

has been made under Section 24(2) of the 1894 Act and possession of the land was taken, but majority of the land owners are not paid their compensation five years or more before the coming into force of the 2013 Act.

On the other hand, in **Sree Balaji Nagar Residential Association**[147], the Supreme Court held that the proviso, prima facie, appeared to be for the benefit of all the landholders in a case where the award is subsisting, because the proceedings have not lapsed and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries; and, when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms.

Following the judgment of the Supreme Court in **Sree Balaji Nagar Residential Association**[147], a Division Bench of the Delhi High Court, in **Surender Singh v. UOI**[175], held that if the proviso, after Section 24(2) of the 2013 Act, were to be construed as a saving clause, the proviso would save the position existing on the commencement of the 2013 Act, implying thereby that, if a majority of the landholders had received compensation, the 1894 Act would apply and, if not, then all would be entitled to compensation under the 2013 Act; and such an argument had to be stated to be rejected as it ran contrary to the clear provisions of deemed lapsing contained in Section 24(2) of the 2013 Act.

In **Mahadevappa v. Chief Secretary Govt. of Karnataka**[176] the Division Bench of the Karnataka High Court held that the

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[175] (Judgment in WP (C) No.2294 of 2014 and C.M. No.4815 of 2014 dated 12.09.2014)
[176] (Judgment of Karnataka High Court in W.A.No.100864 – 866 of 2014 dated 23.3.2015)

proviso to Section 24(2) of the 2013 Act is an exception to what has been stated in Section 24(1)(b) of the Act; if, in respect of persons in whose favour awards have been passed prior to the commencement of the 2013 Act, no amount has been deposited, then, as per the proviso to Section 24, compensation has to be paid as per the 2013 Act; and the requirement of the proviso is that, in order to be governed by the provisions of the 1894 Act, atleast in a majority of cases, where awards have been passed, compensation amount ought to have been deposited in the account of the land owners.

In **Tarunpal Singh v. Lt. Governor, Delhi**[177] the Division bench of the Delhi High Court held that, once the conditions of Section 24(2) are met, the acquisition itself lapses, and no occasion would arise for invoking the first proviso which is set out after Section 24(2); the first proviso entails a situation where the acquisition is saved, but the compensation is awarded under the 2013 Act; the proviso cannot blow life into the acquisition which has lapsed under Section 24(2); the first proviso, which has been placed after Section 24(2), is not really a proviso to Section 24(2), but is a proviso to Section 24(1) (b); the said first proviso and Section 24(1) (b) can easily be read together; the proviso is a provision for the benefit of the landowners as even in case of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act; and, while the said first proviso can harmoniously exist when read as a

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[177] (Judgment in WP (C) No.8596 of 2014 dated 21.05.2015)

proviso to Section 24(1) (b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act.

While the law declared by the Supreme Court, in **Sree Balaji Nagar Residential Association**[147], that the proviso prima facie appeared to be for the benefit of all the land holders in a case when the award is subsisting because the proceedings have not lapsed and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, is a precedent binding on this under Article 141 of the Constitution of India, while the High Court judgments relied upon on behalf of the respondents has only persuasive value, Sri K. Vivek Reddy, Learned Special Counsel, would submit that the opinion expressed by the Supreme Court, in **Sree Balaji Nagar Residential Association**[147] is only a prima facie view and not a declaration of law under Article 141, and a subsequent bench of the Supreme Court in **Yogesh Neema v. State of M.P**[178] has differed therefrom, and has referred the matter to a larger bench.

An order of reference is not a decision, nor has it any binding force. It is only a tentative opinion expressed by the Court making the reference as to the correctness of the former decision. (**Kurivilla v. Jijo Joseph**[179]; **Kannappan v. R.T.O., Ernakulam**[180]). While the order of reference in **Yogesh Neema**[178] is merely a tentative opinion, is not a declaration of law under Article 141, and till a larger bench of the Supreme Court overrules the law declared in **Sree Balaji Nagar Residential Association**[147], the law declared therein would be binding on this Court, Sri Anand

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[178] (2016) 6 SCC 387
[179] 2014 ACJ 1172
[180] 1988 (1) KLT 902

Kumar Kapoor, Learned Counsel appearing on behalf of the petitioners would point out, rightly so, that the questions referred to a larger bench have no relation to the questions which arise for consideration herein and, therefore, the law declared by the Supreme Court in **Sree Balaji Nagar Residential Association**[147] would continue to constitute a binding precedent.

In **Sree Balaji Nagar Residential Association**[147], the Supreme Court had also held that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a Court of law or for any reason; and such casus omissus cannot be supplied by the Court. In **Yogesh Neema**[178] the Supreme Court held that, in so far as the decision of the co-ordinate bench in **Sree Balaji Nagar Residential Association**[147] was concerned, having read and considered paras 11 and 12 thereof, it was their considered view that the legal effect of the absence of any specific exclusion of the period covered by an interim order in Section 24(2) of the 2013 Act required serious reconsideration having regard to the fact that it was an established principle of law that the act of the Court cannot be understood to cause prejudice to any of the contesting parties in a litigation which is expressed in the maxim "actus curiae neminem gravabit"; and the following two questions should receive the attention and consideration of a larger bench of the Supreme Court:-

(i) Whether the conscious omission referred to in para 11 of the judgment in Sree Balaji Nagar Residential Assn.3 makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act?

(ii) Whether the principle of "actus curiae neminem gravabit", namely, act of the court should not prejudice any party would be applicable in the present case to exclude the period covered by an interim order for the purpose of

determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?

Neither of the above referred questions have any bearing on the dispute in the present batch of cases. It is evident, therefore, that the declaration of law in **Sree Balaji Nagar Residential Association**[147], as referred to earlier, has not even been doubted in **Yogesh Neema**[178].

We would have refrained from examining the other contentions urged by Sri K. Vivek Reddy, Learned Special Counsel, under this head, but for his submission that the observations of the Supreme Court, in **Sree Balaji Nagar Residential Association**[147], is only a prima facie view, and is not a conclusive opinion constituting a declaration of law under Article 141 of the Constitution. While we have our reservation regarding this submission, and are of the view that the observations in **Sree Balaji Nagar Residential Association**[147] bind us, we are satisfied that, even otherwise, the *prima facie* view in **Sree Balaji Nagar Residential Association**[147] merits acceptance. We shall therefore, examine the other contentions, urged on behalf of the respondents, in this regard.

Section 24(1) begins with a non-obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. Section 24(2) also begins with a non-obstante clause. This provision has overriding effect over Section 24(1) of the Act, (**Pune Municipal Corporation**[135]), and is a beneficial provision. **(Bharat Kumar**[150]). Section 24(1) covers situations where (a) either no award has been made under the 1894 Act in which case the more beneficial provisions of the

2013 Act, relating to determination of compensation, shall apply, or (b) where an award has been made under Section 11 of the 1894 Act, in which case the land acquisition proceedings shall continue under the provisions of the 1894 Act as if the said Act had not been repealed. (**Sukhbir Singh**[134]).

As shall be detailed hereinafter, Section 24 of the 2013 Act constitutes one comprehensive provision providing distinct consequences for each situation with reference to the date on which the award is passed. While Section 24(1)(a) provides for the consequence of an award not having been passed before 01.01.2014, Section 24(1)(b) provides for the consequence of an award being passed before 01.01.2014 when the 2013 Act came into force. Exceptions are carved out even among the awards passed before 01.01.2014 and which would, otherwise, have been covered by Section 24(1)(b) of the 2013 Act. These awards are classified under two categories, the first are those awards passed five years or more prior to 01.01.2014 and are governed by the conditions stipulated in Section 24(2), and the second category consists of those awards which were passed within the five year period prior to 01.01.2014 when the 2013 Act came into force, the consequence of which is provided for in the proviso below Section 24(2) of the 2013 Act.

The test, prescribed under Section 24(1) of the 2013 Act, is whether or not an award, under Section 11 of the 1894 Act, has been made prior to 01-01-2014. Its consequences are (i) under Clause (a) thereof, payment of the higher compensation as prescribed under the 2013 Act in case no award is made prior to 01.01.2014, or (ii) under Clause (b) thereof, for payment of

compensation under the 1894 Act in cases where an award is made prior to 01.01.2014. Awards passed prior to 01.01.2009 would, under Section 24(2), require land acquisition proceedings to be deemed to have lapsed where either possession of the land has not been taken or compensation has not been paid to the beneficiaries before 01.01.2014. If land acquisition proceedings lapse then, as per Section 24(2) of the 2013 Act, the appropriate Government, if it so chooses, must initiate proceedings for land acquisition afresh in accordance with the provisions of the 2013 Act. Like clauses (a) & (b) of Section 24(1) which do not provide for lapsing of the proceedings initiated under the 1894 Act, the proviso below Section 24(2) also does not provide for lapsing, and only requires the higher compensation, prescribed under the 2013 Act, to be paid in case the compensation prescribed under the 1894 Act, in respect of a majority of land holdings, has not been paid before 01.01.2014, even if an award has been made prior thereto.

There is a clear distinction between the scope of Section 24(2) and the proviso below, and both deal with different situations and provide for distinct consequences. The proviso cannot be restricted to Section 24(2) as contended by Sri K. Vivek Reddy, Learned Special Counsel. While the protection of Section 24(2) is available to a land owner when one of the twin conditions, of possession not having been taken or compensation not having been paid pursuant to an award made more than five years prior to the 2013 Act coming into force, is satisfied, the benefit under the proviso is available only when a majority of land holdings have not been paid compensation, in terms of the award passed during the period between 01.01.2009 and 31.12.2013.

There is a demonstrable distinction between the wordings in Section 24(2) and the proviso below. If both Sections 24(2), and the proviso below it, are understood as applicable to awards made before 01.01.2014, and as exceptions to Section 24(1)(b) which requires compensation for awards made before 01.01.2014 to be paid in accordance with the provisions of the 1894 Act, the distinction between Section 24(2), and the proviso below, would be evident. While Section 24(2) would apply to land acquisition proceedings where an award has been made under Section 11 of the 1894 Act, five years or more prior to the commencement of the 2013 Act, it is only for awards made within the five year period prior to 01.01.2014 (i.e. between 01.01.2009 and 31.12.2013) would the proviso apply. Similarly while Section 24(2) would apply to cases where, despite an award being passed before 01.01.2009, physical possession of the land has not been taken, possession of the land being taken has no bearing on the application of the proviso. Likewise, while Section 24(2) would apply to awards made before 01.01.2009 and where compensation has not been paid, the proviso would apply only where compensation in respect of a majority of landholdings has not been paid pursuant to the awards made between 01.01.2009 and 31.12.2013. While Section 24(2) creates a legal fiction and requires land acquisition proceedings to be deemed to have lapsed, the proviso does not provide for deemed lapsing but only confers a right on the landowners, whose lands are sought to be acquired pursuant to the notification issued under Section 4(1) of the 1894 Act, to claim the benefit of the higher compensation prescribed in the 2013 Act.

(iv) IS THE TIME LIMIT SPECIFIED IN SECTION 24(2) APPLICABLE TO THE PROVISO ALSO?

Sri K. Vivek Reddy, Learned Special Counsel appearing on behalf of the respondents, would submit that the enacting clause is Section 24(2) which is applicable only with respect to awards made five years prior to the commencement of the 2013 Act; consequently, the proviso appended to Section 24(2) would apply only if the awards were made five years prior to the commencement of the 2013 Act; the time limit in the enacting clause automatically becomes a part of the proviso; and the contention that, unlike the enacting clause in Section 24(2), the proviso does not contain the five year period and, therefore, the proviso will apply even to awards made immediately prior to the commencement of the 2013 Act, is untenable as the time period provided for in the enacting clause automatically becomes part of the time limit in the proviso.

The proviso placed below Section 24(2) of the 2013 Act must be read along with Section 24 in its entirety, as Section 24(2) itself commences with the phrase "***Notwithstanding anything contained in sub-section (1)***". The words "***said***" in Section 24(2) could have been used only with reference to Section 24(1)(b) as both the provisions use the same words ***"where an award under the said Section 11 has been made"***, unlike Section 24(1)(a) which uses the words ***"where no award under Section 11 has been made"***. While Section 24(2) is an exception to Section 24(1)(b), the proviso below it is yet another exception thereto, and, if an award is made after 01.01.2009 but prior to 01-01-2014 and, if compensation in respect of a majority of land holdings is not paid before the date of commencement of the 2013

Act (01-01-2014), then all those land owners, specified in the notification issued under Section 4 of the 1894 Act, shall be entitled for higher compensation in accordance with the provisions of the 2013 Act.

The proviso below Section 24(2) does not whittle down the scope of Section 24(2). (**Sree Balaji Nagar Residential Association**[147]; **Pune Municipal Corpn.**[135]). While Section 24(2) uses the words ***"where an award under the said Section 11 has been made five years or more prior to the commencement of this Act"***, the proviso uses the words ***"where an award has been made"***. The difference in the expressions is significant. As the legislature has used two different expressions, it must have intended to provide for a different situation, and there is no reason why the time line used in Section 24(2) should be extended to the proviso also, as a plain reading of the proviso does not result in absurdity. The proviso is not limited in its application to Section 24(2) alone, but must be read along with Section 24 in its entirety. When so read, the time limit specified in Section 24(2) would have no application to the proviso thereunder. On the other hand the proviso, unlike Section 24(2) which relates to awards made before 01.01.2009, would apply only to awards made on or after 01.01.2009 but before 01.01.2014.

(v) DOES THE PHRASE *"DEPOSIT IN BANK ACCOUNT"* IN THE PROVISO MEAN THAT IT IS A PROVISO ONLY TO SECTION 24(2):

Sri K. Vivek Reddy, Learned Special Counsel, would submit that the phrase ***"deposit in bank account"*** shows that the proviso is only appropriate in the context of Section 24(2), and not Section 24(1)(b); the proviso to Section 24(2), when read along with Section

24(2), would give the benefit of compensation under the 2013 Act only when there is a default on the part of the State in not depositing compensation in the bank account of a majority of land holdings, even after five years (or more) after passing of the award; if the respondents' contention is accepted, the 2013 Act would be made applicable to awards made under the 1894 Act, even though the LAO would not even have had knowledge of the bank account of the beneficiary, let alone deposit in the bank account; the bank account details are not given during the award enquiry because only the title is decided during the award enquiry; after an award is passed and the title is ascertained, the land owner intimates the correct name and the bank account number; and to illustrate, if the award is passed on 15th December, 2013, the LAO should not only have tendered compensation but also ought to have deposited the money in the bank account of the beneficiaries by 31.12.2013.

The words used in Section 24(2) of the 2013 Act is ***"compensation has not been paid"***, while under the proviso it is ***"compensation in respect of a majority of land holdings has not been deposited in the account"***. On the meaning of the expression ***"compensation has not been paid"*** in Section 24(2) of the 2013 Act, and its effect, the Supreme Court, in **Pune Municipal Corpn.**[135], held that it was not appropriate to give a literal construction to the expression "***paid***" used in this sub-section; if a literal construction were to be given, it would then amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation; for the purposes of Section 24(2), the

compensation shall be regarded as "***paid***", if compensation has been offered to the person interested, and such compensation has been deposited in the Court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act.

No statutory provision has been brought to our notice which disables the LAO from ascertaining the bank a/c particulars of the land owners during the award enquiry, and to wait till the award is passed, as, under Section 31 of the 1894 Act, he is obligated to make payment of compensation soon after an award is passed. The mere fact that Section 34 provides for interest on belated payment of the compensation awarded, where possession is taken, does not mean that the LAO has to wait till the award is passed to find out the bank particulars for payment of compensation to the landowners. While Section 23 (1-A) of the 1894 Act requires interest be paid for the period commencing from the date of publication of the Section 4(1) notification till the date of the award or the date of taking of possession whichever is earlier, Section 34 thereof requires interest to be paid after possession is taken, and until payment of compensation. Where awards are passed after 01.01.2009 but possession is not taken even by 31.12.2013, the construction placed on the proviso, on behalf of the State, would leave the landowners remediless. As an award has already been passed, the land owners cannot even alienate these properties and must rest content with retaining possession. They would also not be entitled for interest on the compensation determined under the award, for the period between the date of the award and the date on which possession is taken from them by the Government.

On the other hand, if the proviso is read in the manner suggested herein above, failure to pay compensation to all, or a majority of, the land owners, for awards made during the period from 01.01.2009 till 31.12.2013 would entitle them to claim higher compensation under the 2013 Act. The illustration of an award being passed on 15.12.2013 leaving hardly any time for payment of compensation before 01.01.2014, ignores the plight of those land owners against whom awards are passed after 01.01.2009 but no compensation has been paid even for five years thereafter till 01.01.2014 when the 2013 Act came into force. Reading Section 24 as a whole would provide for all contingencies, including in respect of those whose lands are acquired during the five year period from 01.01.2009 to 31.12.2013.

By way of a legal fiction, the land acquisition proceedings, initiated under the 1894 Act, lapses where either of the twin contingencies prescribed under Section 24(2) are attracted, and the property reverts back to the landholder immediately thereafter. As compensation, under the Land Acquisition Act, is paid to the land owner because his title over the land is being divested by the State, the question of payment of compensation to the land owner, after the property has reverted back to him on the land acquisition proceedings having lapsed, would not arise. Such a construction of the proviso would result in absurdity. A literal construction, on the other hand, makes it clear that the proviso is an additional exception, apart from Section 24(2), to Section 24(1)(b) dealing with the aspect of compensation if compensation is not paid to a majority of the landholdings in case of awards passed under the 1894 Act prior to 01.01.2014.

If both Section 24(2), and the proviso below it, are read as two exceptions to awards made before 01.01.2014, and which would otherwise fall within the ambit of Section 24(1)(b) of the 2013 Act, then the consequences would be as under: (a) the entire land acquisition proceedings, in cases where awards are made five years prior to 01.01.2014 (i.e. awards made before 01.01.2009) would lapse if either (i) possession of the acquired land has not been taken, or (ii) compensation has not been paid to any of the land owners before 01.01.2014 (when the 2013 Act came into force). In such cases, the entire land acquisition proceedings would lapse and, if the State still wants to acquire these lands, it would then have to initiate land acquisition proceedings afresh under the 2013 Act; (b) awards made during the five year period between 01.01.2009 and 31.12.2013 would not lapse and, if compensation in respect of a majority of landholdings has not been paid to the beneficiaries specified in the notification issued under Section 4(1) of the 1894 Act before 01.01.2014, then all land owners, under the said notification, will be entitled for higher compensation under the 2013 Act; (c) in respect of awards made during the five year period between 01.01.2009 and 31.12.2013, and where compensation in respect of a majority of landholdings has been paid to the land owners before 01.01.2014, the other beneficiaries (minority of land owners who have not received compensation under the 1894 Act till 31.12.2013) would, in terms of Section 24(1)(b) of the 2013 Act, be entitled only to be paid the compensation prescribed under the 1894 Act.

The activist, though inarticulate, major premise of statutory construction is that the rule or law must run close to the rule of

life and the Court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. (**State of Punjab v. Amar Singh**[181]). Courts, faced with special case situations, have "creatively" to interpret legislation, as they are "finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing". (**State of Haryana v. Sampuran Singh**[182]; **Corocraft Ltd. v. Pan American Airways Inc.**[183]). The 1894 Act, a colonial legislation, has given way to the 2013 Act which provides a just and fair compensation to the affected families whose lands are acquired or are proposed to be acquired or are affected by such acquisition. That construction should be preferred which would protect the constitutional right to property under Article 300-A, and would benefit the land owner who is deprived of his land by the State in the exercise of its power of eminent domain, rather than a construction which would deny a citizen of his entitlement to a just and fair compensation. The expressions used in a statute should, ordinarily, be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the legislature. Even if two interpretations are feasible, the Court will prefer that which advances the remedy and suppresses the mischief as the

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[181] (1974) 2 SCC 70
[182] (1975) 2 SCC 810
[183] (1968) 3 WLR 714

legislature envisioned. (**Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy.,**[184]).

(vi) IS THE PROVISO AN ANTI-LAPSING PROVISION?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that reading the proviso appended to Section 24(2), as a proviso to Section 24(1)(b), would change it from an anti-lapsing to a pro-lapsing provision; there is a fundamental difference between Section 24(1) and Section 24(2); while Section 24(1) leads to continuation of statutory proceedings, Section 24(2) leads to deemed lapsing of awards made under Section 11; there is no lapsing of awards in Section 24(1); if the proviso under Section 24(2) is read as a proviso to Section 24(1)(b), it would lead to lapsing of the award made under Section 11; it would extend lapsing to Section 24(1); this is because the compensation, determined under the award made under Section 11, has to be re-determined; it would render the approval given by the Government, for awards made under the 1894 Act, invalid; an award which was valid under the 1894 Act would now become invalid, and a new award has to be passed after obtaining government approval; if Parliament had intended the awards to lapse, it would have stated so expressly; and there cannot be lapsing by implication.

The contention that the proviso is only a proviso to Section 24(2), and has no application to Section 24(1), overlooks the ***non obstante*** clause in Section 24(2). Such a construction would require this Court to accept that the benefit conferred by the legislature under the enacting clause, (which in the context means

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[184] (2002) 6 SCC 269

extinguishment of acquisition proceedings and resurrection of the right to property of the land owner without any cloud on his title), is intended by the legislature to be taken away by the proviso. Such a construction would fall foul of the settled legal principle that what the Legislature confers with one hand is not taken away by the other. Unless clearly indicated, a proviso would not take away substantive rights given by the Section or the Sub-Section. The Section should not be so construed as to defeat the right to property of the landlord unless the intention of the legislature is manifest. (**Madhu Gopal v. VI ADJ**[185]). Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take it away with another, (**Tahsildar Singh v. State of U.P.,**[186]) as it should not be lightly assumed that Parliament so intended. (**Ravindra**[50]; **Principles of Statutory Interpretation, Justice G.P. Singh, 7th Edition 1999**).

As held by the Supreme Court in **Sukhbir Singh**[134], by enacting Section 24(2), the Legislature is, in effect, telling the executive that they ought to have put their house in order and should have completed the acquisition proceedings within a reasonable time after pronouncement of the award; and not having done so, even after a leeway of five years was given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. Accepting the construction, placed on the proviso to Section 24(2) by Sri K. Vivek Reddy, Learned Special Counsel, would mean that, while expressing its

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[185] (1988) 4 SCC 644
[186] 1959 Supp (2) SCR 875: AIR 1959 SC 1012

intolerance for the failure of the Executive to take possession and pay compensation, and after punishing them by putting an end to the entire land acquisition proceedings, the Legislature has made a u-turn and has chosen to reward the Executive by reviving the land acquisition proceedings which, by a legal fiction, is deemed to have lapsed, and thereby call upon the Executive only to pay compensation under the 2013 Act even for awards made prior to 01.01.2009, that too in cases where compensation has not been paid to a majority of land owners for more than five years.

It would be wholly inappropriate for this Court to accept such a construction, and read it as only a proviso to Section 24(2), as its result is not only the implicit revival of acquisition proceedings which are deemed to have lapsed, but also in the State not being held accountable, and being let off scot free, for its failure to pay compensation to the land owners under the awards passed during the five year period between 01.01.2009 and 31.12.2013. It would also mean that the legislature has, after punishing the Executive under Section 24(2) for the inordinate delay in taking possession or in paying compensation for awards made before 01.01.2009, has made a flip-flop rewarding them with the revival of the lapsed land acquisition proceedings, under the proviso. It would also necessitate the conclusion that the legislature has chosen to ignore the rights of these land owners, against whom awards were passed during the five year period 01.01.2009 and 31.12.2013, to be paid compensation soon after the awards are passed, and to have intended that they should run from pillar to post even for payment of the meagre compensation prescribed under the 1894 Act.

The right to property is a constitutional right, (**Hindustan Petroleum Corpn. Ltd. v. Darius Shahpur Chennai**[187]; **Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli**[188]), and the Land Acquisition Act is an expropriatory legislation which should be strictly construed. (**Vishnu Prasad Sharma**[28]; **Hindustan Petroleum Corpn. Ltd.**[187]; **Delhi Airtech Services (P) Ltd.**[127]; **Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.,**[189]; **Pune Municipal Corpn.**[135]). The powers are so large—it may be necessary for the benefit of the public—but they are so large, and so injurious to the interests of individuals, that it is the duty of every Court to keep them most strictly within those powers, and if there be any reasonable doubt as to the extent of the powers of the Executive, they must go elsewhere and get enlarged powers; but they will get none from the Court by way of construction of the Act of Parliament. (**Delhi Airtech Services (P) Ltd.**[127]; **Cottenham, L.C. in Webb v. Manchester and Leeds Railway Co**[190]; **Secy. of State for India v. Birendra Kishore Manikya**[191]).

Like fiscal or penal statutes (**Aslam Babalal Desai v. State of Maharashtra**[192]; **Bijaya Kumar Agarwala v. State of Orissa**[193]), expropriatory statutes must also be strictly construed, (**DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana**[194]; **State of Maharashtra v. B.E. Billimoria**[195];

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[187] (2005) 7 SCC 627
[188] (2007) 6 SCC 81
[189] (2007) 8 SCC 705
[190] (1839) 4 Myl. & Cr.116
[191] ILR 44 Cal 328
[192] (1992) 4 SCC 272
[193] (1996) 5 SCC 1
[194] (2003) 5 SCC 622
[195] (2003) 7 SCC 336

Bhavnagar University v. Palitana Sugar Mill (P) Ltd.[196]), and if two possible and reasonable constructions can be put, the court must lean towards that construction which is in favour of the subject. (**Tolaram Relumal v. State of Bombay**[197]; **Collector of Estate Duty v. R. Kanakasabai**[198]; **CIT v. Naga Hills Tea Co. Ltd.,**[199]; **Diwan Bros. v. Central Bank of India**[200]; **Birla Cement Works v. Central Board of Direct Taxes**[201]; **Sneh Enterprises v. Commr. of Customs**[202]; **Central India Spg., Wvg. & Mfg. Co. Ltd. v. Municipal Committee**[203]; **Bijaya Kumar Agarwala**[193]).

Even if the construction placed on the proviso to Section 24(2), both on behalf of the land owners and the State, are held to be possible views, it is settled law that expropriatory laws, such as the Land Acquisition Act, should be strictly construed and the construction favourable to the land owners should be preferred to the one in favour of the State.

(vii) DOES GEOGRAPHICAL LOCATION OF THE PROVISO REQUIRE THE PROVISO TO BE CONSTRUED AS A PROVISO ONLY TO SECTION 24(2)?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that reading the proviso, appended to Section 24(2), as a proviso to Section 24(1)(b) would disregard the express parliamentary intent; the Legislature has specifically placed the proviso under, and as a continuation of Section 24(2); the purpose of a proviso is served under Section 24(2) as an exception from deemed lapsing; if

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196 (2003) 2 SCC 111
197 AIR 1954 SC 496 (AIR at pp. 498-99
198 (1973) 4 SCC 169
199 (1973) 4 SCC 200
200 (1976) 3 SCC 800
201 J.T. 2001 (3) SC 256
202 (2006) 7 SCC 714
203 1958 SCR 1102 : AIR 1958 SC 341

Parliament wanted to carve out an exception to Section 24(1)(b), it would have placed it under Section 24(1)(b), and not under Section 24(2); Section 24(1) carves out a neat bifurcation for the purpose of application of the 2013 Act; under Section 24(1) the determinative factor, for the application of the 2013 Act, is making of an award under Section 11; if the award is made under Section 11, the 1894 Act will apply, and conversely if the award is not made, the 2013 Act would apply; payment of compensation is foreign to determining the applicability of the 2013 Act; reading the proviso as a proviso to Section 24(1)(b) would introduce a new criteria for the applicability of the 2013 Act; if Parliament intended to stipulate non-payment of compensation as a criteria for application of the 2013 Act, it would have said so expressly in Section 24(1)(b), and not hide it as a proviso to Section 24(2); if Parliament wanted to make non-payment of compensation as a criteria, for application of the 2013 Act, it would have made no distinction between majority and minority land owners and would have extended the entitlement for all those who did not receive compensation and the distinction, between majority and minority land owners, is only appropriate when read along with Section 24(2) as it carves out an exception from deemed lapsing.

The key to the opening of every law is the reason and spirit of the law—it is the "animus imponentis", the intention of the lawmaker, expressed in the law itself, taken as a whole. To arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context. (**Delhi Airtech Services (P) Ltd.**[127]; **HRH Prince Ernest Augustus of Hanover**[128]). The words in a Statute cannot be read in isolation,

their colour and content are derived from their context and every word in a statute is to be examined in its context. (**Delhi Airtech Services (P) Ltd.**[127]; **Sankalchand Himatlal Sheth**[70]).

A Section or enactment must be construed as a whole, each portion throwing light if need be on the rest. The sound interpretation and meaning of the statute, on a view of the enacting clause, the non-obstante clause and the proviso, taken and construed together, should prevail. (**Tahsildar Singh**[186]; **J.K. Industries Ltd.**[67]; **Ramkishan Shrikishan Jhaver**[162]; **Maxwell's Interpretation of Statutes, 10th Edn.)**. A proviso must be considered in relation to the principal matter to which it stands as proviso, and should be construed harmoniously with the main enactment. (**Abdul Jabar Butt v. State of Jammu & Kashmir** [204]; **The Indo Mercantile Bank Ltd.**[152]). The golden rule is to read the whole Section, inclusive of the proviso, in such a manner that they mutually throw light on each other and result in a harmonious construction. (**Dwarka Prasad v. Dwarka Das Saraf**[205]; **S. Sundaram Pillai**[157]).

As a general rule in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. (**J.K. Industries Ltd.**[67]). A sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two. (**Tahsildar Singh**[186]; **Maxwell's Interpretation of Statutes, 10th Edn., at p. 162).** As noted hereinabove, both Sections 24(1) and (2) start with a non-obstante clause. While

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[204] (1957) SCR 51
[205] (1976) 1 SCC 128

Section 24(1) would prevail notwithstanding anything contained in any other provisions of the 2013 Act, the non-obstante clause in Section 24(2) would require Section 24(2) to be given effect notwithstanding anything contained in Section 24(1). There is an inextricable link between Sections 24(1) & (2) and the proviso, and both the sub-sections of Section 24 and the proviso below must be read together as a whole, to understand its true scope and purport.

The proviso, after Section 24(2), does not restrict the meaning of the words used in Section 24(2). (**Tarunpal Singh**[177]; **Surender Singh**[175]). As Sections 24(1) & (2) are clear and unambiguous, the proviso cannot be so read as to exclude by implication what clearly falls within its express terms. (**Sree Balaji Nagar Residential Assn.**[147]; **Bezwada Municipality**[160] and **Indo Mercantile Bank Ltd.**[152]).

The proviso below Section 24(2) should be given a purposive construction keeping in mind the intention of Parliament. The intention of Parliament is to extend the benefit of higher compensation prescribed under the 2013 Act in certain cases, over and above the compensation prescribed under the 1894 Act. Different situations, envisaged by Parliament, have been dealt with under different parts of Section 24 of the 2013 Act. Situations where an award has not been passed by 31.12.2013 are dealt with under Section 24(1)(a), and in such cases payment of higher compensation under the 2013 Act is stipulated. Cases where awards were passed five years prior to 01.01.2014 (i.e., before 01.01.2009), but either compensation was not paid or possession was not taken till the 2013 Act came into force on 01.01.2014, are dealt with under Section 24(2) of the Act and result in lapsing of

the entire land acquisition proceedings. A third situation is where the award is passed after 01.01.2009 and prior to 01.01.2014, but compensation to a majority of the beneficiaries has not been paid. Cases, falling under this category, are covered by the proviso below Section 24(2) of the 2013 Act. The restricted interpretation placed on the proviso by the State, confining it to Section 24(2) alone, ignores the legislative intent of providing a fair compensation to land owners, a majority of whom have not even been paid the meagre compensation prescribed under the 1894 Act, though acquisition proceedings have come to an end on awards being passed prior to the commencement of the 2013 Act on 01.01.2014.

The mere fact that the proviso is placed below Section 24(2) does not mean that the proviso is only an exception to Section 24(2), and to no other. If Parliament had intended the proviso to be an exception to deemed lapsing, it was wholly unnecessary for it in the first place to provide for deemed lapsing in Section 24(2) where compensation has not been paid, and then provide for the revival of the lapsed land acquisition proceedings under the proviso, if a majority of the land owners have not been paid compensation. A plain reading, and a literal construction, of Section 24(1) & (2) and the proviso together does not result in absurdity and, consequently, there is no justification to read it otherwise. As Parliament, by providing a non-obstante clause in Section 24(2) has intended that Section 24(1) & (2) and the proviso be read together as a whole, it was wholly unnecessary for it to place the proviso below Section 24(1)(b), and avoid placing it below Section 24(2). Compensation is payable on an award being passed and, where the award is not passed before 01.01.2014, the

consequence of Section 24(1)(a) is also for payment of higher compensation under the 2013 Act. The submission that payment of compensation is foreign to a determination of the applicability of the 2013 Act is, therefore, not tenable nor would reading the proviso as a second exception to Section 24(1)(b) apart from Section 24(2), introduce a new criteria for applicability of the 2013 Act.

In enacting Sections 24(1) & (2) and the proviso, Parliament intended to provide for four different situations – (1) under Section 24(1)(a), failure to pass an award before the 2013 Act came into force, results in payment of higher compensation, to all the land owners, under the 2013 Act; (2) under Section 24(2), where an award is passed five years prior to the commencement of the 2013 Act (i.e. prior to 01.01.2009) and if either (a) possession of the land has not been taken or (b) compensation has not been paid, then the entire land acquisition proceedings lapses, (3) under the proviso below Section 24(2), in cases where the award is passed between 01.01.2009 and 31.12.2013, and compensation is not paid to a majority of the land owners, then higher compensation under the 2013 Act is payable to all the land owners; and (4) where an award is made between 01.01.2009 and 31.12.2013, and a majority of the land owners have been paid compensation under the 1894 Act, then the remaining land owners (the minority) would be entitled only for payment of compensation under the 1894 Act. The distinction between a majority and a minority of the land owners is evident when Section 24 is read in its entirety, and in this context. The submission that the proviso should be read

along with Section 24(2) alone, as it carves out an exception to deemed lapsing, is therefore not tenable.

The contention, urged on behalf of the State, that the proviso is only a proviso to Section 24(2) and is inapplicable to Section 24(1) of the 2013 Act, is also untenable as reading a provision, including a proviso, omitting words or phrases or sentences is to negate the legislative edict of its efficacy, and is impermissible. Both Section 24(2), and the proviso below, are exceptions to Section 24(1)(b). If the proviso is so read then, even if the award has been made prior to 01-01-2014, the land owners (the petitioners herein) would be entitled to be paid the higher compensation prescribed under the 2013 Act as, admittedly, the compensation amount, payable under the 1894 Act, was not paid to any of the petitioners prior to 01.01.2014.

(viii) DOES THE PRESUMPTION AGAINST GEOGRAPHICAL MOVEMENT IN SOPHISTICATED LEGISLATION REQUIRE THE PROVISO TO BE READ ONLY AS A PROVISO TO SECTION 24(2)?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that there is a presumption against geographical movement in sophisticated legislation; if the legislation is enacted after extensive consideration and deliberation, "the proviso has to be taken as limited in its operation to the Section or the provision it qualifies"; as held in **CIT v. Vadilal Lallubhai**[206]; **Charanji Lal v. State of Punjab**[207], and **V. Tulasamma v. Sesha Reddy**[208], in construction of statutes, the Court can look into the draft bills and Standing Committee Reports; Section 24, in particular, has been drafted

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[206] (1973) 3 SCC 17
[207] (1984) 1 SCC 329
[208] (1977) 3 SCC 99

after extensive deliberation and consideration; the bill was introduced in Lok Sabha titled ***"Land Acquisition Rehabilitation and Re-Settlement Bill, 2011"***, wherein all the land acquisition proceedings would be deemed to have been lapsed, if the award is not made under Section 11; the bill was referred to the Standing Committee of Parliament which took note of various difficulties which would augur for infrastructure projects if lapsing were to happen and, accordingly, the Government was requested to re-examine the issue, and make appropriate amendments; on the basis of the Standing Committee Report, another amendment was moved in the Lok Sabha amending Section 24; another amendment was moved in the Lok Sabha to Section 24; after the Lok Sabha passed the bill, the matter was referred to the Rajya Sabha; the Rajya Sabha made a specific amendment to Section 24(1) and Section 24(2); thus, Section 24 has been the subject matter of extensive deliberation; if Parliament intended to give the benefit under the 2013 Act to all land owners, to whom compensation has not been deposited in their bank account, it would have stated so expressly in Section 24(1)(b); and there was no reason for Parliament to hide it as a proviso to a lapsing provision in Section 24(2).

Applying the five year limitation rule, as provided in Section 24(2) to the proviso, would not only cause great hardship to the land owners, but would also result in absurdity. Section 24(2) provides for extinguishment of proceedings if an award is made five years or more prior to 1-1-2014, and if compensation has not been paid and possession has not been taken within 5 years prior to 01.01.2014. Consequently the Government, if it wishes to acquire the said land, must start acquisition proceedings afresh. The

proviso, on the other hand, does not lead to extinguishment of land acquisition proceedings, and the acquisition proceedings continue under the 1894 Act. Where a common award is made prior to 1-1-2014, and if a majority of the land owners are not paid compensation prior to 1-1-2014, the proceedings do not lapse, but continue. However, all land holders under the common award are entitled to receive higher compensation under the 2013 Act. The conditions precedent for application of Section 24(2) of the 2013 Act, and the proviso below, are distinct and separate. The proviso below Section 24(2) is not a proviso to Section 24(2) of the 2013 Act alone. The three Supreme Court decisions, relied upon by the State, i.e **Ram Kishan**[148]; **Velaxan Kumar**[146]; and **Shiv Raj**[151], for the proposition that the proviso is a proviso only to Section 24(2) of the 2013 Act, is wholly misplaced since the said decisions relate to the interpretation of Section 24(2) of the 2013 Act, and not with the construction to be placed on the proviso below Section 24(2).

The contention that the proviso must be limited to Section 24(2), as Section 24 in its entirety is a case of precision drafting is not tenable. **Bennion on Statutory Interpretation** holds that "in the case of precision drafting, the proviso is to be taken as limited in its operation to the Section or the other provision it qualifies". Even if Section 24 is held to be a case of precision drafting, both Section 24(2), which starts with a non-obstante clause, and the proviso below can easily be read as qualifying and carving out exceptions to Section 24(1)(b). While Parliamentary debates and contents of the Bills introduced in Parliament have been relied upon in interpreting statutes and, in **V. Tulasamma**[208], the Supreme Court referred to the introduction of the Hindu

Succession Bill, 1954, and to the Parliamentary Debates when the Hindu Succession Bill, 1954 was referred to a Joint Committee by the Rajya Sabha, in interpreting Section 14(2) of the Hindu Succession Act, 1956, the legislative history of any enactment can, at best, be an external aid to the construction of statutes. Considerations stemming from legislative history must not be allowed to override the plain words of a statute (**CIT v. Madurai Mills Co. Ltd.,**[209]; **Maxwell on the Interpretation of Statutes, 12h Edn., P. 65**). As Section 24(1) & (2) and the proviso below are clear, and do not suffer from any ambiguity, we see no reason to resort to such external aids. As noted hereinabove, Parliament intended to provide different consequences, even among the awards passed under Section 11 of the 1894 Act before 01.01.2014. While deemed lapsing of acquisition proceedings is stipulated in respect of certain awards, the benefit of higher compensation under the 2013 Act has been extended in respect of some others, and the compensation payable under the 1894 Act is prescribed in respect of the remaining few. Parliament has not uniformly provided for payment of compensation, under the 2013 Act, for all awards made under Section 11 of the 1894 Act before the 2013 Act came into force on 01.01.2014.

(ix) IS THE CONSTRUCTION SOUGHT TO BE PLACED ON THE PROVISO BY THE PETITIONERS, MAKE SECTION 24(1)(b) RETROSPECTIVE?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that accepting the petitioners arguments would give retrospective effect to Section 24(1)(b); Section 24(1), as legislated by Parliament,

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[209] (1973) 4 SCC 194

mandates prospective application of the 2013 Act; the new compensation standards in the 2013 Act would apply only to awards made after commencement of the 2013 Act; it preserves the application of the 1894 Act for awards made prior to the commencement of the 2013 Act; if the petitioners contention is accepted, the new compensation standards in the 2013 Act would be made applicable even to awards made prior to the commencement of the 2013 Act; this would tantamount to retrospective application of the 2013 Act; in the present case the proviso to Section 24(2), when read along with Section 24(2), would make the proviso applicable only if compensation was not deposited in the bank account of a majority of the land owners even after five years of passing the award; however the proviso, when read along with Section 24(1)(b), increases the zone of retrospectivity to awards which were made even within the five year period prior to the commencement of the 2013 Act; it would make the 2013 Act applicable to awards passed just a couple of weeks before the commencement of the 2013 Act; and such a construction would give greater retrospective application to the proviso, and must therefore be eschewed.

Pending proceedings are unaffected by the changes in the law in so far as they relate to the determination of the substantive rights and, in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced. (**Halsbury's Laws of England, 4th Edn., Vol. 44, para 922**; **K.S. Paripoornan v. State of**

Kerala[210]). Courts have leaned strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so. (**K.S. Paripoornan**[210]; **United Provinces v. Atiqa Begum**[211]).

In the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. There are two recognised principles that (1) vested rights should not be presumed to be affected, and (2) the rights of the parties to an action should, ordinarily, be determined in accordance with the law as it stood at the date of the commencement of the action. The language used in an enactment may be sufficient to rebut the first presumption, but not the second. Where it is intended to make a new law applicable even to pending actions, it is common to find the legislature using a language expressly referring to pending actions. (**K.S. Paripoornan**[210]; **Atiqa Begum**[211]). In order that the provisions of a statute, dealing with substantive rights, may apply to pending proceedings, the law must speak in a language which, expressly, or by clear intendment, takes in even pending matters. (**Dayawati v. Inderjit**[212]; **Lakshmi Narayan Guin v. Niranjan Modak**[213]; **K.S. Paripoornan**[210]).

As noted hereinabove, the award made by the LAO, under Section 11 of the 1894 Act, is in the nature of an offer and, while the compensation prescribed in the award would bind the

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[210] (1994) 5 SCC 593
[211] 1940 FCR 110 = AIR 1941 FC 61
[212] AIR 1966 SC 1423
[213] (1985) 1 SCC 270

Government, it would not bind the land owner who is entitled to seek a reference under Section 18 thereof, and claim higher compensation in proceedings before the Civil Court. The award, which the LAO is required to pass under Section 11 of the 1894 Act, relates to (i) the true area of the land, (ii) the compensation which, in his opinion, should be allowed for the land; and (iii) the apportionment of the said compensation among all persons interested in the land.

The proviso to Section 24(2) merely requires re-determination of the compensation specified in the award made under Section 11; and, except for compensation being re-determined under the 2013 Act, the award made under Section 11 of the 1894 of the Act would remain valid in all other aspects. The contention that accepting the submission, urged on behalf of the petitioners, would give retrospective operation to Section 24(1)(b) is only to be noted to be rejected. Accepting the submission of Sri K. Vivek Reddy, Learned Special Counsel, that the proviso should be confined only to Section 24(2) would also yield a similar result, as it would also require the compensation, determined under the awards already made under Section 11 of the 1894 Act long prior to the coming into force of the 2013 Act on 01.01.2014, to be recomputed in terms of the 2013 Act in cases where compensation, in respect of a majority of the land holdings, has not been paid. The mere fact that the compensation, already determined under the award, is required to be re-determined under the 2013 Act would not mean that retrospective effect is being given to Section 24(1)(b). As noted hereinabove, Section 24 must be read as a whole each part thereof throwing light on the other, and, when so

read, the proviso cannot be understood as merely a proviso to Section 24(2). Both Section 24(2) and the proviso are two exceptions to Section 24(1)(b) and, in effect, penalise the Executive for not paying compensation soon after the award is made.

The contention that such a construction would result in an impossible situation whereby, even for awards made a day prior thereto on 30.12.2013, the State would be required to pay compensation on or before 31.12.2013, ignores the consequence of reading the proviso as a proviso to Section 24(2), which is that all those, against whom awards were passed during the five year period from 01.01.2009 to 31.12.2013, would be left dangling in thin air, and be forced to run from pillar to post for the meagre compensation payable to them under the awards made, during this period, under Section 11 of the 1894 Act.

(x) DOES THE COLON SEPARATING THEM ESTABLISH A NATURAL LINK BETWEEN SECTION 24(2) AND THE PROVISO JUSTIFYING IT BEING READ ONLY AS A PROVISO TO SECTION 24(2)?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that there is a natural link between the proviso and the enacting clause in Section 24(2); the award, referred to in the proviso, is an award made under Section 11 of the 1894 Act; the proviso and the enacting clause are linked by way of a Colon; a Colon is used to indicate a continuation; accepting the petitioners contention, that the proviso does not qualify Section 24(2), would render the colon redundant; in contrast, if the proviso to Section 24(2) is read along with Section 24(1)(b), the punctuation (full stop) at the end of Section 24(1)(b) would have to be eliminated, and be substituted with a colon; there is also a subject matter co-relation between the

enacting clause and the proviso in Section 24(2) as both speak about compensation; and the proviso carves out an exception to deemed lapsing in Section 24(2).

It is no doubt true that there is a "full stop" after Section 24(1)(b), whereas Section 24(2) and the proviso below are separated by a "colon". Would that necessitate the proviso being read as a proviso only to Section 24(2)? In this context it is useful to refer to the opinions expressed by different High Courts on the effect of the "colon" between Section 24(2) and its proviso. In **Tarunpal Singh**[177], the Delhi High Court held that, merely because there is a colon which separates the main part of Section 24(2) and the proviso, the proviso cannot be read as a part of Section 24(2). In **Surender Singh**[175], a Division bench of the Delhi High Court held that the argument that the proviso would have to be considered, even in cases which clearly fall within Section 24(2) of the 2013 Act, because there is a colon which separates the main part of Section 24(2) and the proviso, and the proviso should therefore be read as part of Section 24(2) and not as a proviso, is also not available to the respondents in view of the clear conclusion of law set out by the Supreme Court in **Sree Balaji Nagar Residential Association**[147].

On the effect of a "semi-colon" the Supreme Court, in **Jamshed N. Guzdar v. State of Maharashtra**[214], observed:-

"….After the words 'administration of justice' in Entry 3 there is a semicolon, and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter……"

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[214] (2005) 2 SCC 59

In **Oudh Sugar Mills Ltd, Hargaon v. State of U.P.**[215], the Allahabad High Court held that the proviso was not enacted by means of a sub-section to a Section, but as a part of the sub-section itself; after the main clause there is a colon, and thereafter the proviso finds its place; it is not possible to read the proviso detached from the main clause of the sub-section of the Section, because the proviso is not contained in a separate sub-section but forms part of the sub-section itself; after the sub-section there is no full stop, but only a colon; and, according to the ordinary rules of grammar, the whole of the sub-section, including the proviso, should be read together.

We see no reason to read the proviso below Section 24(1)(b) as a proviso only to Section 24(2) as the proviso, when read in context, would make it clear that it is another exception to Section 24(1)(b), apart from Section 24(2) of the 2013 Act. The mere fact that there is a "full stop" after Section 24(1)(b) does not result in its being delinked from Section 24(2) as the later begins with a non-obstante clause, and specifically provides for a situation notwithstanding anything contained in Section 24(1). There is also a subject matter correlation between both Section 24(1)(b) and Section 24(2), as the latter carves out an exception to the former.

If the rule regarding rejection of punctuation for the purposes of interpretation is to be regarded as of imperfect obligation, and punctuation is to be taken as contemporanea expositio, it will nevertheless have to be disregarded if it is contrary to the plain meaning of the statute. If punctuation is without sense or conflicts with the plain meaning of the words, the Court will not

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[215] AIR 1960 Allahabad 136

allow it to cause a meaning to be placed upon the words which they otherwise would not have. (**Aswini Kumar Ghose**[142]). It is an error to rely on punctuation in construing Acts of the Legislature. (**Aswini Kumar Ghose**[142]; **Maharani of Burdwan v. Murtunjoy Singh**[216]; **Pugh v. Ashutosh Sen**[217]. Punctuation is, after all, a minor element in the construction of a Statute, (**Aswini Kumar Ghose**[142]), and, while it may have its uses in some cases, it cannot certainly be regarded as a controlling element, and cannot be allowed to control the plain meaning of a text. (**Pope Appliance Corporation v. Spanish River Pulp & Paper Mills Ltd.**[218]; **Crawford Statutory-Construction, Page 343)**. The colon, if it may at all be looked at, must be disregarded as being contrary to this plain meaning of the statute. (**Aswini Kumar Ghose**[142]), i.e., Section 24 of the 2013 Act. We see no reason, therefore, to accept the submission that the proviso below Section 24(2) must be read as a proviso only to Section 24(2) merely because a colon separates them.

(xi) DO THE ORDINANCES SHOW THE PROVISO TO BE A PROVISO ONLY TO SECTION 24(2)?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that the Ordinance 9 of 2014 shows that the proviso below Section 24(2) was meant to be a proviso to Section 24(2); in the Ordinance, the existing proviso has been referred to as a proviso to Section 24(2) and one more proviso has been added to Section 24(2); this makes it evident that the proviso appended to Section 24(2) is only a proviso to Section 24(2), and not a proviso to Section 24(1)(b); an

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[216] 1887 (14) LR – I.A.30 PC
[217] (1928) LR 56 IA 93
[218] AIR 1929 PC 38 at p.45

Ordinance stands on the same footing as the law made by parliament; consequently, it is permissible to use the said Ordinance to interpret the 2013 Act; and the the Kerala High Court, in **M.M. Jeevan**[169], relied on the ordinance to hold that the proviso is a proviso to Section 24(2) and not to Section 24(1).

The President of India promulgated Ordinance Nos.9 of 2014 namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 whereby one more proviso was added in Section 24(2) as under:

> "6. In the principal Act, in section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely.-
>
> "Provided further than in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken out the compensation is lying deposited in a court or in any designated account maintained for this purpose, shall be excluded."

Section 6 of Ordinance No.9 of 2014, which was published in the Gazette of India dated 31.12.2014, refers to the location of the newly inserted proviso as after the proviso in Section 24(2). The proviso, inserted by Ordinance No. 9 of 2014, required computation of the period, referred to in Section 24(2), to exclude the period during which land acquisition proceedings were held up on account of any stay or injunction issued by a Court. The proviso inserted by Ordinance No. 9 of 2014 cannot be construed to mean that the proviso below Section 24(2) is confined only to Section 24(2). All that is stated by the Ordinance is that, in Section 24(2) after the proviso, the following proviso shall be inserted. What is referred to therein is the location of the proviso below Section 24(2) for the purpose of inserting an additional

proviso. While the newly inserted proviso, no doubt, refers to Section 24(2), the fact remains that the existing proviso does not. Insertion of another proviso, after the proviso located below Section 24(2), does not, by itself and without anything more, necessitate the proviso being confined only to Section 24(2) and to no other. In any event, Ordinance No.9 of 2014 was followed by Ordinance No.4 of 2015 notified in the Gazette on 03.05.2015, and thereafter by Ordinance No.5 of 2015 notified in the Gazette on 30.05.2015, all of which have since lapsed, and are no longer in force. We see no reason, therefore, to read the proviso inserted by Ordinance No.9 of 2014 as having explained the proviso below Section 24(2) to mean that the said proviso is confined only to Section 24(2), and none other.

(xii) CAN EXECUTIVE INSTRUCTIONS ISSUED BY VARIOUS STATES BE USED IN INTERPRETING THE PROVISO BELOW SECTION 24(2)?

Sri K. Vivek Reddy, Learned Special Counsel, would submit that, after commencement of the 2013 Act, various State Governments have issued executive instructions clarifying the applicability of the 2013 Act, and this shows that even the executive has understood the proviso to Section 24(2) to apply only if five years have elapsed after the award under Section 11 is made.

The understanding of the Executive regarding the interpretation of a statutory provision does not bind the Court. Contemporanea expositio est optima et fortissima in lege is a maxim meaning "Contemporaneous exposition is the best and strongest in the law." (**Black L. Dict.; Broom.**). Where the words of an instrument are ambiguous, the Court may call in aid acts

done under it as a clue to the intention. (**Watcham v. Attorney General of the East Africa Protectorate**[219]). Contemporanea expositio is a well settled principle or doctrine which applies only to the construction of ambiguous language in old statutes (**Baktawar Singh Bal Kishan v. Union of India**[220]), but not in interpreting Acts which are comparatively modern. (**Senior Electric Inspector v. Laxmi Narayan Chopra**[221]**; J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India**[222]). Even if persons who dealt with the statute understood its provisions in another sense, such mistaken construction of the statute does not bind the Court so as to prevent it from giving it its true construction. (**National & Grindlays Bank Ltd.**[44]; **Punjab Traders v. State of Punjab**[223]). The rule of construction, by reference to contemporanea exposition, must give way where the language of the Statute is plain and unambiguous. (**K.P. Varghese v. ITO**[224]).

It is not open to the Court to disregard the form and treat two laws, made by two different legislatures, as one law, and read them in conjunction. The sources of authority for the two statutes being different, (**State of M.P. v. G.C. Mandawar**[225]; **Yogendra Kumar Jaiswal v. State of Bihar**[226]; **Prabhakaran Nair v. State of T.N.**[227]), the legislation passed by one State Legislature cannot be equated with the legislation passed by another State Legislature. (**Yogendra Kumar Jaiswal**[226]). Just as laws made by

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[219] (1919) A.C. 533
[220] (1988) 2 SCC 293
[221] AIR 1962 SC 159
[222] 1987 Supp SCC 350
[223] (1991) 1 SCC 86
[224] (1981) 4 SCC 173
[225] AIR 1954 SC 493
[226] (2016) 3 SCC 183
[227] AIR 1987 SC 2117

one State legislature cannot be equated with legislation passed by another State Legislature, the understanding of the scope of the proviso below Section 24(2) by the Executive of other States would not require this Court to construe the Statute in tune with their understanding. We see no reason, therefore, to accept the submission of Sri K. Vivek Reddy, Learned Special Counsel, that the understanding of the Executive of other States, regarding the scope of the proviso to Section 24(2), should be accepted by this Court.

(xiii) IS THE PROVISO TO SECTION 24(2) AN INDEPENDENT PROVISION?

While it is contended, on behalf of the petitioners, that the proviso to Section 24(2) is a substantive provision creating an independent right in favour of the land owners, distinct from Section 24(2) of the 2013 Act, Sri K. Vivek Reddy, Learned Special Counsel, would submit that the proviso can be read as a substantial provision only in exceptional circumstances and, in the present case, there are no compelling reasons for the Court to embark on such a dangerous and extraordinary course of action. As we have held that Section 24(1) & (2), and the proviso below, must be read together, each clause throwing light on the other, it is wholly unnecessary for us to examine whether the proviso below Section 24(2) can also be construed as an independent substantive provision. This contention is left open for examination, if need be, in appropriate legal proceedings.

Section 24(1) & (2) and the proviso below must be read together as a whole and, when so read, it is evident that both

Section 24(2) and the proviso below are two distinct and separate exceptions to Section 24(1)(b) of the 2013 Act; and, consequently, the proviso below Section 24(2) cannot be treated as a proviso qualifying Section 24(2) of the 2013 Act. Consequently, as none of the petitioners herein have been paid compensation pursuant to the awards made under Section 11 of the 1894 Act on 23.12.2013, they are all entitled for being extended the benefit of higher compensation under the 2013 Act.

IV. CONCLUSION:

In conclusion, we hold that the awards, which are the subject matters of all these Writ Appeals have not been ante-dated, and were actually made under Section 11 of the 1894 Act in December, 2013, before the 2013 Act came into force on 01.01.2014. However as none of the petitioners have been paid compensation under the 1894 Act, pursuant to the awards passed under Section 11 of the 1894 Act, before the 2013 Act came into force on 01.01.2014, all of them are entitled for the higher compensation prescribed under the 2013 Act. It is made clear that this order shall not preclude the respondents, if they so choose, from exercising their powers under Section 48 of the 1894 Act to partially withdraw from the land acquisition proceedings for the differential extents of land between those reflected in the awards on the one hand, and the Section 12(2) notices on the other.

All the Writ Appeals are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, ACJ)

(M. SATYANARAYANA MURTHY, J)

Date: 16.11.2016

MRKR/CS

After the judgment was pronounced, learned counsel for petitioners stated that, in some of these cases, Hyderabad Metro Rail had taken possession of the land paying compensation under the 1894 Act; the order now passed by this Court requires them to pay higher compensation under the 2013 Act; and a time frame be fixed for Hyderabad Metro Rail to pay compensation in terms of the 2013 Act.

We consider it appropriate, therefore, to direct Hyderabad Metro Rail, through the Land Acquisition Officer, in cases possession of the lands under acquisition has already been taken, to pay the land owners higher compensation in terms of the 2013 Act at the earliest and, in any event, not later than four months from today.

(RAMESH RANGANATHAN, ACJ)

(M. SATYANARAYANA MURTHY, J)

Date: 16.11.2016

Note: L.R.Copy to be marked.
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