



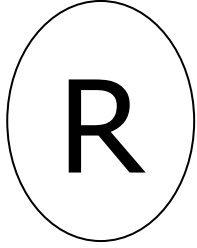
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8<sup>TH</sup> DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 19197 OF 2024 (T-IT)



**BETWEEN:**

SMT. C M UMA,  
W/O LATE CHIDANANDA,  
AGED ABOUT 60 YEARS,  
R/AT SIDDALINGESHWARA NILAYA,  
ADHARSHANAGARA, TUMKUR 572103.

...PETITIONER

(BY SRI. SRINIVASA MURTHY S R.,ADVOCATE)

**AND:**

THE CHIEF COMMISSIONER OF INCOME TAX,  
QUEENS ROAD, BENGALURU 560001.

...RESPONDENT

(BY SRI.SUSHAL TIWARI.,ADVOCATE AND  
SRI. E.I SANMATHI., ADVOCATE)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING ANNEXURE-C PASSED BY THE RESPONDENT FOR THE ASSESSMENT YEAR 2022-23 DTD 28.06.24 PASSED IN ORDER NO. DIN AND ORDER NO. ITBA/COM/F/17/2024-25/1066191693(1) PAN NO. AATPU 5290K AND ISSUE A WRIT OF MANDAMUS TO THE RESPONDENT, PERMITTING THE PETITIONER TO FILE INCOME TAX RETURNS BY CONDONING THE DELAY UNDER SECTION 119(2) (B) OF INCOME TAX ACT, BY SETTING ASIDE THE ANNEXURE-C.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

**ORAL ORDER**

This petition takes exception to the impugned order at Annexure-C passed by the respondent – Chief Commissioner of Income Tax, whereby the application filed by the petitioner under Section 119 (2)(b) of the Income Tax Act, 1961 (for short 'the I.T.Act') seeking condonation of delay to file income tax returns of her husband late Sri.T.S.Chidananda for the Assessment year 2022-23 was rejected by the respondent.

2. The brief facts giving rise to the present petition are as under:-

The petitioner is the wife of late Sri.T.S.Chidananda, who was an income tax assessee whose lands were acquired by the National Highway Authorities during the financial year 2021-22 and the said Chidananda was supposed to file his income tax returns for the assessment year 2022-23. The said Chidananda –assessee did not file his Income tax returns and expired on 14.08.2022. Subsequent to which, the petitioner submitted an application on 23.03.2023 under Section 119(2)(b) of the I.T Act seeking condonation of delay in filing the I.T returns for the assessment



year 2022-23 as the legal heir of her husband. Petitioner contended that her husband had received a sum of Rs.1,26,71,726/- from the SLAO – NHAI as compensation towards acquisition and a sum of Rs.12,67,173/- had been deducted by way of TDS towards income tax. It was contended that the said deduction was illegal and contrary to Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the RFCTLARR Act) and that the delay in filing the I.T Returns by her husband was due to bonafide reasons, unavoidable circumstances and sufficient cause and as such, her aforesaid application for condonation of delay deserves to be allowed and the I.T return deserves to be accepted from exempting payment of Income tax on the aforesaid compensation.

2.1 In the first instance, the respondent herein passed an order dated 16.01.2024 rejecting the application filed by the petitioner to approach this Court in W.P.No.3447/2024. By final order dated 12.03.2024, this Court set aside the said order dated 16.01.2024 passed by the respondent and remitted the matter back to the respondent for reconsideration afresh in accordance with law by holding as under:-



*In this petition, petitioner seeks quashing of the impugned order at Annexure-A dated 16.01.2024 passed by the 2<sup>nd</sup> respondent whereby the application filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961 was rejected.*

*2. Heard the learned counsel for the petitioner and the respondents.*

*3. A perusal of the material on record indicate that in relation to assessment year 2022-2023, the petitioner-assessee filed an application under Section 119(2)(b) of the Income Tax Act, seeking condonation of delay in filing the Income Tax Returns. According to the petitioner, due to her husband's ill health and on account of bona fide reasons, unavoidable circumstances and sufficient cause, it was not possible for the petitioner to file the Income Tax Returns within the prescribed period and as such it is the case of genuine hardship, the delay in filing the Income Tax Returns deserves to be condoned. It was also contended that by virtue of the provisions of The National Highways Act, 1956 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'RFCTLARR Act'), the petitioner would not be liable to pay income tax nor deduct TDS on the compensation amount awarded in favour of the petitioner. However, the said contention of the petitioner was rejected by the 2<sup>nd</sup> respondent by passing the impugned order, which is assailed in the present petition.*

*4. In support of this contention, learned counsel for the petitioner placed reliance upon the judgment of the*



**HON'BLE DIVISION BENCH OF THIS COURT IN THE CASE OF BANGALORE METRO RAIL CORPORATION LTD., VS. M/S.SRI.BALAJI CORPORATE SERVICES AND OTHERS in Writ Appeal No.890/2022 and connected matters dated 27.09.2023** in order to contend that the petitioner-assessee would neither be liable to pay income tax on the compensation amount nor be liable to deduct TDS on the compensation amount payable in favour of the assessee.

5. My attention is also invited to Section 105(3) of the RFCTLARR Act, 2013 r/w the Fourth Schedule to the said Act as well as the Notifications, Guidelines, Circulars, Orders etc., passed by the Central Government / Highway Authorities, including Gazette Notification dated 28.08.2015, which makes the said Act applicable to the National Highways Act which is notified as item No.7 in the Fourth Schedule. It is therefore contended, that the impugned order passed by the 2<sup>nd</sup> respondent deserves to be set aside and the application for condonation of delay filed by the petitioner deserves to be allowed by exempting the petitioner from payment of income tax and also from deduction of TDS.

6. Per contra, learned counsel for the respondents would support the impugned order and submit that there is no merit in the petition and the same is liable to be dismissed.

7. A perusal of the impugned order indicate that the various aforesaid contentions urged on behalf of the petitioner regarding condonation of delay and exemption from payment of income tax and from deduction of TDS have not been considered or appreciated by the 2<sup>nd</sup> respondent



while passing the impugned order, which deserves to be set aside and the matter remitted to 2<sup>nd</sup> respondent for reconsideration afresh in accordance with law.

8. In the result, I pass the following:

**ORDER**

(i) Petition is hereby **allowed**.

(ii) The impugned order at 'Annexure-A' is hereby set aside.

(iii) Matter is remitted back to the 2<sup>nd</sup> respondent for reconsideration afresh, in accordance with law, bearing in mind the observations made in this order and provisions of Section 105(3) of the RFCTLARR Act, 2013 r/w the Fourth Schedule of the said Act, as well as the judgment of the **HON'BLE DIVISION BENCH OF THIS COURT IN THE CASE OF BANGALORE METRO RAIL CORPORATION LTD., VS. M/S.SRI.BALAJI CORPORATE SERVICES AND OTHERS in Writ Appeal No.890/2022 and connected matters dated 27.09.2023**

(iv) All rival contentions are kept open and no opinion is expressed on the same.

(v) The petitioner undertakes to appear before the 2<sup>nd</sup> respondent on 03.04.2024 without awaiting further notice.

(vi) Liberty is reserved in favour of the petitioner to file additional pleadings, documents etc., before 2<sup>nd</sup> respondent who shall proceed further and provide sufficient and reasonable opportunity to the petitioner and conclude the proceedings within a period of three months from 03.04.2024.



2.2 As directed by this Court in the aforesaid order, the petitioner appeared before the respondent and put forth her claim and made submissions including filing written submissions as under:-

**BEFORE THE HONBLE CHIEF COMMISSIONER OF  
INCOMETAX**

**CCIT-01**

**CENTRAL REVENUE BUILDING, QUEENS ROAD,**

**BANGALORE, KARNATAKA-560001**

*Petitioner. 3/24 CM Uma (PAN: AATPUS290K) W/o Late Chidaanada A/o 73 Years, Resident of Siddalingeswara Nilaya, Adarsha Nagara, Tumkur-572103*

*Represented along with authorized representative Srinivasa Krishna, Auditor and tax consultant to assist CM Uma the petitioner.*

**FACTS OF THE PETITION**

*The petitioner has filed application under section 119 (2) (b) of income tax act 1961 to condone the delay in filing the return as legal heir of her late husband T.S. Chidananda 27.03.2023, the application was rejected and the rejection order was passed on 16.01.2024.*

*Against the above said order the petitioner filed the W.P 3447/2024, before the Hon'ble High court of Karnataka and that Writ petition was allowed 12.03.2024 by setting aside the order passed on 16.01.2024 and instructed appear before the*



*Hon'ble Presiding officer with the additional documents and pleadings.*

**SUBMISSION**

*1. The findings made in the order No. ITBA/COM/F/17/2023-24/1059768055 Saka (1) passed by the Hon'ble Chief commissioner of Income tax, CCIT-01 dated 16.01.2024 shall be read as part of this submission. (Annexure-01)*

*2. The applicability of RFCTLARR 2013 is clearly mentioned in the section 02 of the Act, "Section 2. Application of Act.-(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely- (a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or (b) for infrastructure projects, which includes the following, namely:- (i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels"*

*3. The act clearly mentioned that the above act is applicable to infrastructure projects. (Page No. 06 of the RFCTLARR ACT 2013)*





4. Notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012 is enclosed which approves the applicability of the above act for acquisition of land for construction of road and bridges.

5. 3. CBDT Circular No.36/2016, makes the clarification regarding the applicability of section 96 of RFCTLARR ACT 2013. "As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially. those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961"

6. While passing the order Hon'ble Presiding officer cited section 105 (3) for passing the order which states "105 (3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of



*compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute. the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. Hence it is concluded that the RFCTLARR Act, 2013 is not applicable to the compensation received under The National Highways Act, 1956 (48 of 1956) due to forth schedule of section 105(3) of RFCTLARR Act, 2013*

*7. But Section 105 (2) R/W Section 106 of the RFCTLARR Act, 2013the provides the power to Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule. The central government using the provisions of Section 105 (2) and section 106 of RFCTLARR Act, 2013 central government as amended the 105 (3) and removed the schedule four by passing the Ordinance on 03.04.2015 through Gazette Notification, which makes clear that the provisions of third schedule is applicable to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015. These amendments make it clear that the compensation received under The National Highways Act, 1956 (48 of 1956) which is mentioned in point 07 of the fourth schedule is also governed by RFCTLARR Act, 2013 with effect from 01.01.2015. (Annexure-02)*



8. Letter issued by the Ministry Road transport and Highways dated 29.04.2015 it mentioned that all the awards of compensation made on or after 01.01.2015 for acquisitions of lands under the national high way act of 1956, will be as per the first schedule of RFCTLARR Act, 2013. (Annexure-03)

9. Letter issued by the Ministry Road transport and Highways dated 28.12.2017 it is clearly mentioned the provisions of RFCTLARR Act, 2013 is applicable to N.H act of 1956 from 01.01.2015 (Annexure-04)

10. It is humbly submitted that my late husband received the award of compensation for National high way in the year 2021-22, hence the award compensation received by late Husband will be covered as per the first schedule of RFCTLARR Act, 2013

11. With out prejudices to the contention taken above it is clearly establishes that my husband had received the award of compensation as per the first schedule of RFCTLARR Act, 2013, hence I am eligible to get the benefit of section 96 of RFCTLARR Act, 2013.

12. There is a Regarding applicability of TDS under section 194LA on payments made to land losers under the "RFCTLARR Act, 2013", this aspect was Judged by the Hon'ble Andhra Pradesh High Court in Writ Petition Nos. 7874 of 2016 and batch in the case of C. Nanda Kumar v. UOI, [2017] 396 ITR 21 date of order 13th March 2017. Hon'ble High Court after due analysis of section 96 of the "RFCTLARR Act, 2013" and CBDT Circular No. 36 of 2016, dated 25/10/2016 held that provisions of section 194LA are



*not applicable to compensation received under the "RFCTLARR Act, 2013" hence I am eligible to claim refund of TDS made against ward of compensation received from National Highway-206.*

*Thus I humbly submit that please allow me to file return for the AY 2022-23 by condoning the delay and allow me to claim refund of TDS made for the compensation award received as per the first schedule of RFCTLARR Act, 2013.*

2.3 In pursuance of the same, the respondent proceeded to pass the impugned order rejecting the application filed by the petitioner under Section 119(2)(b) of the I.T Act. Aggrieved by the impugned order, petitioner is before this Court by way of the present petition.

3. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner submits that the impugned order is contrary to facts and law warranting interference in the present petition. In support of his contentions, learned counsel for the petitioner placed reliance upon the following decisions:-



***(i) National Highways Authority of India v. P Nagaraju @ Chheluvaiah Civil Appeal No. 4671 of 2022 dated 11/07/2022***

***(ii) M/s Vishwanathan M v. The Chief Commissioner of Income Tax and Others in W.P No. 3227 of 2020 dated 18/02/2020 (ker)***

***(iii) Raghavan Nair v. ACIT 89 taxmann.com 212 (ker).***

***(iv) Sharanappa v. Deputy Commissioner, Raichur (2023) 153 taxmann.com 685 (Karnataka) (31/05/2023) W.P No 201497 of 2023 (LA-RES)***

***(v) Meharwade Vishnu v. CIT (TDS) in WP No. 103375 of 2017 and connected matters dated 12/04/2023.***

***(vi) Vellara Francis Thomas v. Union of India (2024) 162 taxmann.com 68 (Karnataka) (27/02/2024).***

5. Per contra, learned counsel for the respondent-revenue would support the impugned order and submits that there is no merit in the petition and that the same is liable to be dismissed.

6. Based on the aforesaid pleadings, the following points arise for consideration in the present petition;

(i) Whether Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is applicable to compensation payable for land acquired under the National Highways Act, 1956?



(ii) Whether compensation payable for acquisition of land under the National Highways Act, 1956 is exempt from payment of income tax / TDS under the Income Tax Act, 1961?

(iii) Whether the respondent was justified in refusing to condone the delay in filing the Income Tax returns thereby rejecting the application filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961?

**Re-Point Nos.1 and 2:-**

7. Since both the points are interlinked, they are taken up together for consideration.

7.1 The core issue that arises for consideration in the present petition is, as to whether payment of income tax/TDS is applicable to compensation under the National Highways Act, 1956 (for short 'the N.H.Act') in view of Section 96 of the RFCTLARR Act.

7.2 Before advertng to the rival contentions, it would be profitable to extract and refer to the relevant provisions of the RFCTLARR Act as well as the N.H.Act; in this context, Sections 96, 105, 113 and Fourth Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, read as under:-



**96. Exemption from income-tax, stamp duty and fees.**—No income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

**105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.**—(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period



*of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.*

**113. Power to remove difficulties.**—(1) *If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:*

*Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.*

(2) *Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.*

#### THE FOURTH SCHEDULE

(See section 105)

#### **LIST OF ENACTMENTS REGULATING LAND ACQUISITION AND REHABILITATION AND RESETTLEMENT**





1. *The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).*
2. *The Atomic Energy Act, 1962 (33 of 1962).*
3. *The Damodar Valley Corporation Act, 1948 (14 of 1948).*
4. *The Indian Tramways Act, 1886 (11 of 1886)*
5. *The Land Acquisition (Mines) Act, 1885 (18 of 1885).*
6. *The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).*
- 7. The National Highways Act, 1956 (48 of 1956).**
8. *The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).*
9. *The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).*
10. *The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).*
11. *The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).*
12. *The Electricity Act, 2003 (36 of 2003).* 13. *The Railways Act, 1989 (24 of 1989).*

7.3 Section 3G of the National Highways Act, 1956, reads as under:-

**3G. Determination of amount payable as compensation.**—(1) *Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.*



*(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.*

*(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.*

*(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.*

*(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government—*

*(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.*

*(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—*



*(a) the market value of the land on the date of publication of the notification under section 3A;*

*(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*

*(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;*

*(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.*

7.4 The RFCTLARR Act came into force on 01.01.2014 and it is an undisputed fact and the matter of record that subject compensation amount was paid in favour of the petitioner's husband in the year 2021-22 after deducting income tax / TDS on the compensation amount.

7.5 Section 105(1) of the RFCTLARR Act provides that the provisions of the RFCTLARR Act shall not apply to the various enactments relating to land acquisition specified in the Fourth Schedule to the Act. In this context, a perusal of the Fourth Schedule will indicate that the National Highways Act, 1956, is enumerated at Sl.No.7 of the Fourth Schedule and consequently,



the RFCTLARR Act would not be applicable to the acquisition of land under the N.H.Act. However, Section 105(3) empowers the Central Government to issue a Notification in relation to applicability of the RFCTLARR Act to include the enactments enumerated in the Fourth Schedule; in fact, a careful reading of Section 105(3) will indicate that the object / intent of the said provision was to ensure that the inclusion / applicability of the RFCTLARR Act to acquisition of land under any one of the enactments in the Fourth Schedule including the N.H.Act was to ensure that there was no reduction of compensation payable in favour of the land losers nor dilute the provisions of the RFCTLARR Act in relation to depriving the benefits thereunder to the land losers and affected families.

7.6 On 31.12.2014, the Hon'ble President of India promulgated an Ordinance known as "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2014". Clause 10 of the said Ordinance substituted Section 105(3) as hereunder:-

*"10. In the principal Act, in Section 105—*

*(i) for sub-section (3), the following sub-section shall be substituted, namely—*



*‘(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1-1-2015;’*

*(ii) sub-section (4) shall be omitted.”*

7.7 Subsequently, on 03.04.2015, one more Ordinance known as “RFCTLARR (Amendment) Ordinance, 2015” was promulgated, in which, clause 12 substituted Section 105(3) as hereunder:-

**“12. In the principal Act, in Section 105—**

*(i) for sub-section (3), the following sub-section shall be substituted, namely—*

*‘(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1-1-2015;’*

*(ii) sub-section (4) shall be omitted.”*

7.8 Thereafter, the Hon’ble President promulgated one more Ordinance known as “RFCTLARR(Amendment) Second



Ordinance, 2015” dated 30.05.2015, in which, clause No.12 substituted Section 105(3) as under:-

*“12. In the principal Act, in Section 105—*

*(i) for sub-section (3), the following sub-section shall be substituted, namely—*

*‘(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1-1-2015;’*

*(ii) sub-section (4) shall be omitted.”*

7.9 Subsequent to promulgation of the aforesaid Three Ordinances, having regard to the fact that the Second Ordinance would also stand lapsed on 31.08.2015, thereby placing land losers at a disadvantageous position, resulting in denial of benefits of enhanced compensation etc., to the cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act, the Central Government invoked Section 113(1) of the RFCTLARR Act and issued a Notification dated 28.08.2015 *inter alia* stating that the provisions of the RFCTLARR Act shall apply in relation to compensation to all cases of land acquisition under the enactments specified in the Fourth Schedule to the



RFCTLARR Act including the N.H.Act. The said Notification dated 28.08.2015 is extracted hereunder –

*“MINISTRY OF RURAL DEVELOPMENT*

*ORDER*

*New Delhi, 28-8-2015*

*S.O. 2368(E).—Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as “the RFCTLARR Act”) came into effect from 1-1-2014;*

*And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;*

*And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31-12-2014, thereby, inter alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;*

*And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3-4-2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;*

*And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30-5-2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);*

*And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to*



*the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;*

*And whereas, as per the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the landowners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as extended to the landowners under the said Ordinance;*

*And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the RFCTLARR Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:*

*1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.*

*(2) It shall come into force with effect from the 1st day of September, 2015.*

**2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating**





**to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.**

[F. No. 13011/01/2014-LRD]

K.P. Krishnan, Addl. Secy.”

7.10 In pursuance of the aforesaid Ordinances, Notifications, Orders etc., the Ministry of Road Transport and Highways, Government of India, addressed a communication dated 28.12.2017 clarifying that in respect of awards passed and compensation paid under Section 3G of the N.H. Act after 31.12.2014, the compensation would be payable in accordance with the provisions of the RFCTLARR Act. The relevant portion of the communication dated 28.12.2017, reads as under –

**4.6 Date of determination of market value of land**

*(i) Another related but important question is regarding the date on which the market value of land is to be determined in cases where land acquisition proceedings had been initiated under the NH Act, 1956 and were at different stages as on 31.12.2014. While there is no ambiguity regarding land acquisition proceedings initiated on or after 01.01.2015, this question assumes significance in view of the financial implications in respect*



of cases where the process of acquisition was at different stages as on 01.01.2015,.

(ii) Section 26 of the RFCTLARR Act stipulates that "the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)". Same was the position under the 1894 Act. This is further fortified from the provisions contained in Section 69(2) of the RFCTLARR Act. As such, it is clarified that the relevant date of determination of market value of land is the date on which notification under Section 3 A of the National Highways Act, 1956 is published.

(iii) **By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act, 1956 with effect from 01.01.2015.** As such, the following is clarified:

(a) **All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.**

(b) **In cases, where the land acquisition process was initiated and award of compensation under Section 3G had also been announced before 01.01.2015 but the full amount of Award had not been deposited by the acquiring agency with the CALA,**



**the compensation amount would be liable to be determined in accordance with the First Schedule w.e.f. 01.01.2015;**

**(c) In cases, where the process of acquisition of land stood completed (i.e. Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the CALA, and compensation paid to the landowners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process would be deemed to have been completed and settled. Such cases would not be re-opened.**

7.11 The aforesaid facts and circumstances including the Ordinances, Notifications, Clarifications, Communications etc., of the Central Government itself, clearly establish that the provisions of the RFCTLARR Act are clearly applicable to acquisition of land and payment of compensation under Section 3G of the N.H.Act, which is one of the enactment at Sl.No.7 of the Fourth Schedule to the RFCTLARR Act. It follows therefrom as a natural corollary that acquisition of land, payment of compensation and all acts, deeds, things, matters etc., which are incidental, ancillary and connected to / in relation to payment of compensation would become applicable under the RFCTLARR Act; as a consequence of the same, Section 96 of the RFCTLARR Act, which provides for



exemption from payment of income tax / TDS would also be applicable to payment of compensation for acquisition of land under the N.H.Act, which is one of the enactments specified in the Fourth Schedule, to which, the RFCTLARR Act has been made applicable by virtue of the aforesaid Ordinances, Notifications, Orders, Communications etc., referred to supra.

7.12 Under these circumstances, I am of the considered opinion that the respondent clearly fell in error in coming to the conclusion that Section 96 of the RFCTLARR Act, which provides for exemption from payment of income tax was not applicable to the subject compensation paid to the husband of the petitioner for acquisition of his land under the N.H.Act.

7.13 It is well settled that insofar as payment of compensation is concerned under different enactments, the discrimination is impermissible and there has to be parity between land losers in relation to compensation payable to different land losers whose lands have been acquired under different enactments as held by the Apex Court in the case of ***Nagpur Improvement Trust&Anr. vs. Vittal Rao& others - (1973)1 SCC 500***, wherein the Constitution Bench held as under:-



*27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?*

*28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.*

*29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining*



*compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.*

**30.** *It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.*

**31.** *It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for clearing slums, another for acquiring lands for Government buildings; one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article*



*14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. The neighbour could sell his land and reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece meal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owners are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.*

7.14 The aforesaid judgment was followed by the Apex Court in the case of ***Union of India & Anr. vs. Tarsem Singh & others – (2019) 9 SCC 304***, in which the question with regard to applicability of the provisions of the said Act of 2013 relating to compensation to acquisition of land under the N.H. Act came up for consideration before the Apex Court and Apex court held as under:-

**27.** *A challenge made to the said Amendment Act on the ground that it is hit by Article 14 succeeded, the Court holding : (P. Vajravelu Mudaliar case [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] , SCR pp. 634-35 : AIR pp. 1027-28, para 20)*



*“20. Now what are the differences between persons owning lands in the Madras City or between the lands acquired which have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences based upon the said criteria have no relevance to the object of the amending Act. To illustrate : the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a university or for a network of hospitals under the provisions of the principal Act and also for a housing scheme under the amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the amending Act and the other for a hospital under the principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the principal Act and the other under the amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the amending Act. So too, for a public purpose any such land can be acquired under the principal Act. We, therefore, hold that discrimination is writ large on the amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the amending Act clearly infringes Article 14 of the Constitution and is void.”*

*(emphasis supplied)*





28. In Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , this Court referred to the Nagpur Improvement Trust Act, under which lands were to be acquired with reference to the Land Acquisition Act, as modified. We are concerned in this case with the modification that has to do with acquisition for the purposes of the Improvement Act, which did not provide for solatium of 15% that would have been obtained under the Land Acquisition Act. A seven-Judge Bench of this Court examined the matter in some detail, and followed P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] together with another judgment, Balammal v. State of Madras [Balammal v. State of Madras, (1969) 1 SCR 90 : AIR 1968 SC 1425] . The Court held : (Nagpur Improvement Trust case [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , SCC pp. 506-07, paras 27-30)

“27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?

28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words, can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a government building? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a government building at 70% of the market value? All three objects are public purposes and as far as the owner is



concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words, can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14."

(emphasis supplied)

29. Both, P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] and Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] clinch the issue in favour of the respondents, as has been correctly held by the Punjab and Haryana High Court in Golden Iron and Steel Forging [Golden Iron and Steel Forging v. Union of India, 2008 SCC OnLine P&H 498 : (2011) 4 RCR (Civil) 375] . First and foremost, it is important to note that, as has been seen hereinabove, the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved in the manner set out hereinabove. It will be noticed that the awarding of solatium and interest has nothing to do with achieving this object, as it is nobody's case that land acquisition for the



*purpose of National Highways slows down as a result of award of solatium and interest. Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act i.e. speedy acquisition of lands for the purpose of National Highways. On this ground alone, the Amendment Act falls foul of Article 14.*

*31. Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] has clearly held that ordinarily a classification based on public purpose is not permissible under Article 14 for the purpose of determining compensation. Also, in para 30, the seven-Judge Bench unequivocally states that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired, as, if the existence of these two Acts would enable the State to give one owner different treatment from another who is similarly situated, Article 14 would be infringed. In the facts of these cases, it is clear that from the point of view of the landowner it is immaterial that his land is acquired under the National Highways Act and not the Land Acquisition Act, as solatium cannot be denied on account of this fact alone.*

*45. Insofar as easementary rights under the Land Acquisition Act are concerned, three sections are relevant and need to be quoted:*

*“3. Definitions.—In this Act, unless there is something repugnant in the subject or context—*

*\*\*\**



(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

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**9. Notice to persons interested.**—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all 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 than fifteen days after the date of publication of the notice), and to state the nature 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. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).

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**31. Payment of compensation or deposit of same in Court.**—(1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section."

A reading of these sections shows that a person who is interested in an easement affecting land can claim compensation therefor under the aforesaid provisions of the Land Acquisition Act. Under both the Land Acquisition



*Act and the National Highways Act, such claims have to be proved in accordance with law, the difference being that under the Land Acquisition Act actuals are payable, whereas under the National Highways Act, a fixed amount of 10% of the amount determined by the competent authority is payable. It is, therefore, wholly incorrect to state that extra amounts are payable to the owner under the National Highways Act, which are not so payable under the Land Acquisition Act. Also, both Acts contemplate payment of compensation to persons whose easementary rights have been affected by the acquisition. In any event, this contention cannot possibly answer non-payment of solatium and interest under the National Highways Act, which has been dealt with in extenso in this judgment.*

*46. It is worthy of note that even in acquisitions that take place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. In fact, with effect from 1-1-2015, Amendment Ordinance 9 of 2014 was promulgated amending the 2013 Act. Section 10 of the said Amendment Ordinance states as follows:*

*“10. In the principal Act, in Section 105—*

*(i) for sub-section (3), the following sub-section shall be substituted, namely—*

*‘(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1-1-2015;’*

*(ii) sub-section (4) shall be omitted.”*



47. It is only when this Ordinance lapsed that the Notification dated 28-8-2015 was then made under Section 113 of the 2013 Act. This notification is important and states as follows:

“MINISTRY OF RURAL DEVELOPMENT  
ORDER

New Delhi, 28-8-2015

S.O. 2368(E).—Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as “the RFCTLARR Act”) came into effect from 1-1-2014;

And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31-12-2014, thereby, inter alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3-4-2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30-5-2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

And whereas, as per the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the landowners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth



*Schedule to the RFCTLARR Act as extended to the landowners under the said Ordinance;*

*And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the RFCTLARR Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:*

*1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.*

*(2) It shall come into force with effect from the 1st day of September, 2015.*

*2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.*

*[F. No. 13011/01/2014-LRD]*

*K.P. Krishnan, Addl. Secy."*

**48.** *It is thus clear that the Ordinance as well as the notification have applied the principle contained in Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to similarly placed landowners whose lands are acquired under the 13*



*enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] would apply to acquisitions which take place under the National Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore, require a re-look in the light of this development. [ The Defence of India Act, 1971, was a temporary statute which remained in force only during the period of operation of a proclamation of emergency and for a period of six months thereafter — vide Section 1(3) of the Act. As this Act has since expired, it is not included in the Fourth Schedule of the 2013 Act.] In any case, as has been pointed out hereinabove, Chajju Ram [Union of India v. Chajju Ram, (2003) 5 SCC 568] , has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court [Union of India v. Tarsem Singh, 2018 SCC OnLine P&H 6036]’ [Jang*





*Bahadur v. Union of India, 2018 SCC OnLine P&H 6034*] [*Union of India v. Abhinav Cotspin Ltd., 2016 SCC OnLine P&H 19319*] is correct, whereas the view of the Rajasthan High Court [*Banshilal Samariya v. Union of India, 2005 SCC OnLine Raj 572 : 2005-06 Supp RLW 559*] is not correct.

51. We were also referred to an order in *Sunita Mehra v. Union of India* [*Sunita Mehra v. Union of India, (2019) 17 SCC 672 : 2016 SCC OnLine SC 1128*], in which this Court held : (SCC paras 5-7)

“5. The only point agitated before us by the learned Solicitor General is that in para 23 of the impugned judgment [*RLF Industries Ltd. v. NHAI, 2011 SCC OnLine P&H 1687 : (2011) 1 ICC 854*] of the High Court, it has been held that landowners would “henceforth” be entitled to solatium and interest as envisaged by the provisions of Sections 23 and 28 of the Land Acquisition Act, 1894. In the ultimate paragraph of the impugned judgment it has, however, been mentioned that in respect of all acquisitions made under the National Highways Act, 1956, solatium and interest in terms similar to those contained in Sections 23(2) and 28 of the Land Acquisition Act, 1894 will have to be paid.

6. The learned Solicitor General has pointed out that there is an apparent inconsistency in the judgment, which needs to be clarified. It has also been submitted by the learned Solicitor General that the order of the High Court should be clarified to mean that the issue of grant of interest and solatium should not be allowed to be reopened without any restriction or reference to time. The learned Solicitor General has particularly submitted that to understand the order of the High Court in any other manner would not only seriously burden the public exchequer but would also amount to overlooking the delay that may have occurred on the part of the landowner(s) in approaching the Court and may open floodgates for en masse litigation on the issue.

7. We have considered the submissions advanced. In *Gurpreet Singh v. Union of India* [*Gurpreet Singh v. Union of India, (2006) 8 SCC 457*], this Court, though in a different context, had restricted the operation of the judgment of this Court in *Sunder v. Union of India* [*Sunder v. Union of India, (2001) 7 SCC 211*] and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also.



*Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in Golden Iron and Steel Forging v. Union of India [Golden Iron and Steel Forging v. Union of India, 2008 SCC OnLine P&H 498 : (2011) 4 RCR (Civil) 375] i.e. 28-3-2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 1-1-2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the 2013 Act."*

*52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and,*



therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed.

7.15 The aforesaid judgment in **Tarsem Singh's case** *supra* was followed by the Apex Court in the case of **National Highways Authorities of India vs. P.Nagaraju alias Cheluvaiah & Anr. - (2022) 15 SCC 1**, wherein it was held as under:-

24. On this aspect, it would be appropriate to take note of the decision rendered by this Court in *Union of India v. Tarsem Singh* [*Union of India v. Tarsem Singh*, (2019) 9 SCC 304 : (2019) 4 SCC (Civ) 364] relied on by both sides, wherein it has been held as hereunder : (SCC pp. 345-46, paras 51-52)

"51. We were also referred to an order in *Sunita Mehra v. Union of India* [*Sunita Mehra v. Union of India*, (2019) 17 SCC 672 : (2020) 3 SCC (Civ) 537], in which this Court held : (SCC p. 674, paras 5-7)

'5. The only point agitated before us by the learned Solicitor General is that in para 23 of the impugned judgment [*RLF Industries Ltd. v. NHAI*, 2011 SCC OnLine P&H 1687] of the High Court, it has been held that landowners would "henceforth" be entitled to solatium and interest as envisaged by the provisions of Sections 23 and 28 of the Land Acquisition Act, 1894. In the ultimate paragraph of the impugned judgment it has, however, been mentioned that in respect of all acquisitions made under the National Highways Act, 1956, solatium and interest in terms similar to those contained in Sections 23(2) and 28 of the Land Acquisition Act, 1894 will have to be paid.

6. The learned Solicitor General has pointed out that there is an apparent inconsistency in the judgment, which needs to be clarified. It has also been submitted by the learned Solicitor General that the order of the High Court should be clarified to mean that the issue of grant of interest and solatium should not be allowed to be reopened without any restriction or reference to time. The learned Solicitor General has particularly submitted that to understand the order of the High Court in any other manner would not only seriously burden the public exchequer but would also amount to overlooking the delay that may have occurred on



the part of the landowner(s) in approaching the Court and may open floodgates for en masse litigation on the issue.

7. We have considered the submissions advanced. In *Gurpreet Singh v. Union of India* [*Gurpreet Singh v. Union of India*, (2006) 8 SCC 457], this Court, though in a different context, had restricted the operation of the judgment of this Court in *Sunder v. Union of India* [*Sunder v. Union of India*, (2001) 7 SCC 211] and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in *Golden Iron & Steel Forging v. Union of India* [*Golden Iron & Steel Forging v. Union of India*, 2008 SCC OnLine P&H 498] i.e. 28-3-2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 1-1-2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the 2013 Act.'

52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments [*Union of India v. Tarsem Singh*, 2018 SCC OnLine P&H 6036] [*Jang Bahadur v. Union of India*, 2018 SCC OnLine P&H 6034] [*Union of India v. Abhinav Cotspin Ltd.*, 2016 SCC OnLine P&H 19319] should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed."

(emphasis supplied)



25. While arriving at the conclusion that the Notification bearing S.O. No. 2368(E) dated 28-8-2015 whereunder the provisions of the RFCTLARR Act, 2013 are made applicable, it is noted that the NH Act is also one of the enactments specified in the Fourth Schedule. The relevant portion of the Notification dated 28-8-2015 reads as hereunder:

“And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the RFCTLARR Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely—

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

[F. No. 13011/01/2014-LRD]

K.P. Krishnan, Addl. Secy.”



7.16 As held by the Apex Court in ***Tarsem Singh's case*** and ***Nagaraju's case supra***, the provisions of the RFCTLARR Act have been made applicable to acquisition under the N.H.Act, 1956. It is therefore clear that Section 96 of the RFCTLARR Act exempting levy / payment of income tax on compensation would also be applicable to acquisition of land and compensation paid / payable under the N.H.Act and consequently, the impugned order passed by the respondent deserves to be set aside on this ground also.

7.17 The Central Board of Direct Taxes (CBDT) issued a Circular bearing No.36/2016 dated 25.10.2016 clarifying that compensation received in respect of award or agreement which has been exempted from levy of income tax under Section 96 of the RFCTLARR Act shall also not be taxable under the provisions of the Income Tax Act, 1961, even if there is no specific provision for exemption for such compensation in the Income Tax Act, 1961. The said Circular reads as under:-

*Circular No.36/2016*

**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Direct Taxes**  
**ITA.II Division, North Block,**



*New Delhi, the 25\* of October, 2016*

***Sub : Taxability of the compensation received by the land owners for the land acquired under the Right of Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) Reg.***

*Under the existing provisions of the Income-tax Act, 1961 ('the Act') an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer. (including compulsory acquisition) of such agricultural land is not taxable. Finance (No.2) Act, 2004 inserted Sec.10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban-limit subject to fulfillment of certain conditions for specified urban land)*

2. *The RFCTLARR Act which came into effect from 1<sup>st</sup> January, 2014. in section 96, inter-alia provides that income-tax shall not be levied on any Award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of Income tax.*

3. *As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act the exemption provided under Sec.96 of the RFCTLARR Act is wider in scope than the tax exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide Sec.96 of RECTLARR Act shall also not be taxable under the provisions of Income Tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income Tax Act, 1961.*



4. The above may be brought to the notice of all concerned.
5. Hindi version of the Order shall follow.

Sd/-  
(Rohit Garg)

7.18 The said issue came up for consideration before this Court in the case of ***M/s.Sri. Balaji Corporation Solutions & others vs. Union of India and others – W.P.No.43206/2018 & connected matters dated 21.04.2022.*** In the said judgment, this Court framed the following points for consideration;

(i) *Whether the writ petitions are maintainable in view of the remedy of seeking enhancement of compensation before the reference court being available to the petitioners, who have already sought for such reference?*

(ii) *Whether the petitioners are entitled to compensation under the Land Acquisition Act, 1894 OR under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of their lands acquired pursuant to preliminary notification issued after 01.01.2014 under Section 28(1) of the Karnataka Industrial Areas Development Act, 1966?*

**(iii) Whether the compensation payable in favour of the petitioners is exempt from payment of tax deduction at source(TDS) and also from payment of income tax in view of Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section**





**194-LA of the Income Tax Act amended vide Finance  
Act 67 of 2017 w.e.f 01.04.2017 as well as the CBDT  
Circular dated 25.10.2016?**

7.19 Point No.3 formulated above dealt with exemption from payment of income tax / TDS in view of Section 96 of the RTCPLARR Act and Section 194-LA of I.T. Act (Amended w.e.f. 01.04.2017) as well as CBDT Circular dated 25.10.2016. The said issue was answered by holding that compensation would not be exigible to payment of income tax / TDS by holding as under:-

**“ Re. Point No.3:-**

*11. The next question that arises for consideration is, whether the compensation payable in favour of the petitioners is exempt from payment of tax deduction at source(TDS) and also from payment of income tax. In this context, it is relevant to extract Section 96 of the said Act of 2013, which reads as under:-*

*“96. Exemption from income-tax, stamp duty and fees.— No income tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.”*

*11.1 On 25.10.2016, the Central Board of Direct Taxes issued the following Circular clarifying and confirming that though there was no specific provision under the I.T.Act, Section 96 of the said Act of 2013 provides exemption from payment of taxes and deduction of TDS in*



respect of compensation paid under the said Act of 2013.  
The said CBDT Circular reads as under:-

Circular No.36/2016

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
ITA.II Division, North Block,  
New Delhi, the 25<sup>th</sup> of October, 2016**

**Sub : Taxability of the compensation received by the land owners for the land acquired under the Right of Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLAAR Act) Reg.**

Under the existing provisions of the Income-tax Act, 1961 ('the Act') an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer. (including compulsory acquisition) of such agricultural land is not taxable. Finance (No.2) Act, 2004 inserted Sec.10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban-limit subject to fulfillment of certain conditions for specified urban land)

2. The RFCTLARR Act which came into effect from 1<sup>st</sup> January, 2014. in section 96, inter-alia provides that income-tax shall not be levied on any Award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of Income tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act the exemption provided under Sec.96 of the RFCTLARR Act is wider in scope than the tax exemption provided under the existing provisions of Income-



tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide Sec.96 of RECTLARR Act shall also not be taxable under the provisions of Income Tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income Tax Act, 1961.

4. The above may be brought to the notice of all concerned.
5. Hindi version of the Order shall follow.

Sd/-  
(Rohit Garg)

11.2 Subsequently, Section 194-LA of the I.T. Act was amended vide Finance Act 67 of 2017 w.e.f 01.04.2017 by inserting a second proviso. After the amendment, the section reads as under:-

**"194LA.** Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed two lakh and fifty thousand rupees:

Provided further that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013). (emphasis added)

Explanation. — For the purposes of this Section, —



(i) "agricultural land" means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(ii) "immovable property" means any land (other than agricultural land) or any building or part of a building.

*It is profitable to extract Section 10(37) of the I.T.Act, which reads as follows:-*

**10. Income not included in total income:** In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where-

(i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding, the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1<sup>st</sup> day of April, 2004.

*Explanation – For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, Tribunal or other authority;*

*11.3 A conjoint reading and the cumulative effect of Section 96 of the said Act of 2013, the CBDT Circular dated 25.10.2016, Section 194-LA and Section 10(37) of the I.T.Act make it abundantly clear that compensation payable in respect of the awards passed subsequent to 01.01.2014*



*when the said Act of 2013 came into force would be exempt from payment of income tax as well from deduction of tax deduction at source(TDS). In the instant case, the subject lands were acquired pursuant to preliminary notifications issued under Section 28(1) of the KIAD Act subsequent to 01.01.2014 which were followed by the impugned awards as well as the impugned endorsements, official memorandums, communications, orders, actions, etc., also undisputedly issued after 01.01.2014.*

*11.4 Under these circumstances, having regard to Article 265 of the Constitution of India, I am of the considered opinion that compensation payable in favour of the petitioners, whose lands were notified for acquisition subsequent to 01.01.2014 would be exempt from payment of income tax as well as exempt from deduction of tax deduction at source(TDS) and the impugned endorsements, communications, orders, actions, etc., issued/passed by the revenue are illegal, arbitrary and without jurisdiction or authority of law and liable to be quashed.*

*11.5 Under similar circumstances in relation to lands acquired for Metro Railways, a Learned Single Judge of the Kerala High Court in the case of **Viswanathan M vs. The Chief Commissioner and others -2020 (2) KLJ 309** and a Division Bench of the Andhra Pradesh High Court in the case of **C.Nanda Kumar v. Union of India and others - 2017 SCC Online Hyd 55** have held that compensation payable to land losers would be exempt from payment of income tax.*



11.6 It is sought to be contended by the learned counsel for the revenue that Section 96 of the said Act of 2013, CBDT Circular dated 25.10.2016, Section 194-LA and Section 10(37) of the I.T. Act are applicable only to the lands acquired under the said Act of 2013 and not to the lands acquired under the KIAD Act. It is pointed out that Section 96 of the said Act of 2013 Act employs the language "award or agreement made under this Act" and not "award or agreement made as per this Act" and therefore, in view of the express language employed by the legislature, the benefit of exemption from payment of income tax or tax deduction at source (TDS) cannot be claimed by the petitioners. The said contentions urged by the revenue cannot be accepted for more than one reason:-

(i) Firstly, while dealing with **Point No.2** with regard to the question as to whether the compensation was payable to the petitioners under the said Act of 2013 or under the said Act of 1894, I have already come to the conclusion that the petitioners are entitled to compensation under the said Act of 2013.

(ii) Secondly, having regard to the aims and objects of the said Act of 2013 which is a beneficial piece of legislation, so long as compensation itself is made payable under the said Act of 2013, it makes no difference whether award or agreement is made "under the Act" or "as per the Act".

(iii) Thirdly, the material on record discloses that undisputedly, all awards made and compensation paid by the respondents in relation to KIADB acquisitions after



01.01.2014 are under the said Act of 2013 by granting/giving complete exemption from payment of income tax and from tax deduction at source(TDS) as can be seen from the awards vide Annexure-AL dated 14.06.2019 and Annexure-AN dated 30.01.2020 passed in **Jalaja's case and connected matters** (supra).

(iv) Fourthly, the KIAD Act does not have any specific provision enabling passing of an award and Section 30 (prior to amendment) envisaged passing of an award under the said Act of 1894; however, as held by me while answering question No.2, the said Act of 1894 was not applicable to awards and compensation in respect of KIAD acquisitions subsequent to 01.01.2014, to which the said Act of 2013 was applicable; it follows there from that awards and compensation cannot be passed and made under the said Act of 1894 in respect of KIAD acquisitions after 01.01.2014 and the same can be passed and made only under the said Act of 2013. Consequently, since all awards and compensation subsequent to 01.01.2014 would be under the said Act of 2013 which would be applicable to the same, the aforesaid provisions, viz., Section 96 of the said Act of 2013, the CBDT Circular dated 25.10.2016, Section 194-LA and Section 10(37) of the I.T.Act would also be applicable to all awards and compensation subsequent to 01.01.2014, all of which, would be entitled to the benefit of exemption from payment of income tax and from tax deduction at source(TDS).

(v) Lastly, I have already come to the conclusion that the impugned awards, endorsements, orders,



*communications, official memorandums, actions etc., of the respondents directing payment of income tax and tax deduction at source (TDS) on the subject compensation amounts are illegal, arbitrary and without jurisdiction or authority of law and that the same deserve to be quashed and the respondents are to be directed to pass fresh / modified awards and do all such necessary acts, deeds and things etc., in favour of the petitioners under the said Act of 2013. As noted supra, Karnataka Industrial Areas Development (Amendment) Act, 2022 (Karnataka Act No. 20 of 2022) amended Section 30 of the KIAD Act w.e.f 05.04.2022, whereby the provisions relating to compensation under the said Act of 2013 have been made applicable to KIAD acquisitions. Consequent upon the passing of the present order, the respondents would necessarily have to pass fresh/modified awards and do all such necessary acts, deeds and things etc., in favour of the petitioners under the said Act of 2013 which has been made applicable to KIADB acquisitions in view of the amendment to Section 30 of the KIAD Act w.e.f 05.04.2022.*

*11.7 Viewed from this angle also, though the question as to whether the said amendment to Section 30 is prospective or retrospective has not been gone into in the present order and the same is left open to be decided in an appropriate case, in the light of the undisputed fact that the respondents would necessarily have to pass fresh/modified awards and do all such necessary acts, deeds and things etc., in favour of the petitioners under the said Act of 2013, Section 96 of the said Act of 2013, CBDT Circular dated 25.10.2016, Section 194-LA and Section 10(37) of the*





*I.T.Act would become applicable to the petitioners who would be entitled to the benefit of exemption from payment of income tax and from tax deduction at source(TDS) in respect of the awards and compensation in their favour.*

11.8 In view of the aforesaid facts and circumstances, the contentions urged on behalf of the revenue cannot be accepted. I am therefore of the considered view that all awards and compensation payable / paid subsequent to 01.01.2014 when the said Act of 2013 came into force would be exempt from payment of income tax and also exempt from tax deduction at source (TDS) and the land losers would not be liable to pay income tax in respect of the said awards and compensation.

**Point No.3** is also answered in favour of the petitioners by holding that the impugned awards, endorsements, orders, communications, actions etc., of the respondents directing payment of income tax and tax deduction at source(TDS) on the subject compensation amounts are illegal, arbitrary and without jurisdiction or authority of law and that the same deserve to be quashed and the respondents are to be directed to pass fresh/modified awards and do all such necessary acts, deeds and things etc., in favour of the petitioners under the said Act of 2013 by exempting the petitioners from payment of income tax and tax deduction at source(TDS) on the compensation amounts paid/payable in their favour”.

7.20 The aforesaid view taken by this Court was confirmed by the Hon'ble Division Bench in **Bangalore Metro Rail**



**Corporation Ltd. v. Sri Balaji Corporate Services - ILR 2023**

**KAR 4947.** The Hon'ble Division Bench held as under :-

*38. As regards the relief sought for by the appellant for exemption of Tax and exemption of payment of deduction of tax at source, Section 96 of the Act, 2013 reads as under;*

**“96. Exemption from income tax, stamp duty and fee.** -No Income Tax or stamp duty can be levied on any award or agreement under Section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.”

*39. A Circular dated 25.10.2016 came to be issued by Central Board of Direct Taxes clarifying that the compensation received in respect of award or agreement which has been exempted from levy of income tax, under Section 96 of the Act, 2013 shall not be taxable under the provisions of Income Tax Act, 1961 even if there is no provision under the Income Tax Act. In the light of the above position, Learned Counsel for the appellant in W. A. No. 1047/2022 submitted that in view of subsequent amendment to the Income Tax Act, inserting Section 194-LA into Income Tax Act vide Finance Act, 2017 with effect from 01.04.2017 and by inserting second proviso after the amendment, a distinction has been made that the exemption from payment of income tax and from deduction of tax at source can be provided only in respect of acquisition made under Act, 2013 and not under KIADB Act, 1966. Therefore, he submits the benefit of exemption*



*cannot be extended. He also refers to provisions of Section 10(37) of the Income Tax Act, 1961.*

*40. As rightly taken note of by the Learned Single Judge that in the background of upholding the contention of the respondents/ writ petitioners of their entitlement of compensation under the provisions of Act, 2013, the entire benefit including the benefit under Section 96 of the said Act, 2013 has to be extended in its entirety. More so, as already noted even BMRCL, which is the appellant in the connected matter challenging the relief granted in favour of respondent/writ petitioners for determination of their claim for compensation under Act, 2013, itself has issued package compensation as per Annexure-H and General Compensation has been awarded as per Annexure-H 1 taking into consideration the provisions of Act, 2013. Therefore, contention of appellant cannot be accepted, to say that since the exemption of payment of Income Tax Act and deduction of income tax at source on the compensation payable against the acquisition of land only if it is made under Act, 2013 and not under KIADB Act, 1966.*

*41. Learned Single Judge in his discussion on point No. 3 has taken into consideration the provisions of law, the Circular and also the exemption granted from payment of income tax and deduction of tax at source in the awards at Annexure-AL dated 14.06.2019 and award at Annexure-AN dated 30.01.2020 and also the precedence in the nature of judgments passed in the case of Viswanathanm v. The Chief Commissioner [(2020) 2 KLJ 309.] , by the High Court of Kerala and Division Bench of Andhra Pradesh High Court*



*in the case C. Nanda Kumar v. Union of India [2017 SCC OnLineHyd 55.] , wherein it has been held that compensation payable to the land losers would be exempt from payment of income tax, we do not see any reasons to deviate and hold contrary to the said view more particularly, for the reason of respondent/writ petitioners having held to be entitled for determination of their claim for compensation under Act, 2013. Since the only contention raised by the appellant in W.A. No. 1070/2022 that the exemption is provided under the new Act, 2013 and that having been held in favour of the respondents/writ petitioners, no grounds are made out warranting interference with the impugned order.*

7.21 Viewed from this angle also, I am of the considered opinion that Section 96 of the RFCTLARR Act is applicable to compensation for land acquired under the N.H.Act and the said compensation is exempted from TDS / payment of income tax under the I.T.Act and the impugned order deserves to be set aside on this score also.

7.22 A perusal of the impugned order will indicate that the respondent has come to the conclusion that in view of Section 105(1) of the RFCTLARR Act is not applicable to acquisition of land under the N.H.Act, which is excluded in the Fourth Schedule, since the land of the petitioner was acquired under the N.H.Act and not under the RFCTLARR Act.



7.23 As stated hereinbefore, I have already come to the conclusion that by virtue of the Three Ordinances, Removal of difficulties order, Notification, Correspondence etc., Section 96 of the RFCTLARR Act is applicable to compensation paid / payable for acquisition of land under the N.H.Act, as a result of which, the compensation would not be exigible to income tax and therefore, the obligation to comply with tax deduction at source would not arise and as such, the said findings recorded by the respondent deserves to be set aside.

7.24 Insofar as the findings recorded by the respondent in relation to the CBDT Circular No.36/2016 dated 25.10.2016 and applicability of Section 96 of the RFCTLARR Act is concerned, for the reason mentioned above, even the said finding recorded by the respondent in the impugned order deserves to be set aside.

7.25 A perusal of the impugned order will indicate that the respondent has misconstrued and misinterpreted the various statutory provisions, Ordinances, Orders, Notifications, Circulars etc., as well as the judgment of the Apex Court and this Court relied upon by the petitioner and has rejected the application by assigning wholly untenable reasons warranting interference by this Court in the present petition.



7.26. **Points 1 and 2** are accordingly answered in favour of the petitioner and against the respondent-revenue by holding that Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is applicable to compensation payable for land acquired under the National Highways Act, 1956 and consequently, compensation payable for acquisition of land under the National Highways Act, 1956 is exempt from payment of income tax / TDS under the Income Tax Act, 1961.

**Re: Point No.3:**

8. The next question that arises for consideration is as to whether the respondent was justified in refusing to condone the delay in filing the Income Tax returns by passing the impugned order dismissing the application for condonation of delay filed by the petitioner. In this context, a perusal of the material on record clearly indicates that the said Chidananda could not file his I.T. returns before the stipulated date on account of his ill health and ultimate demise on 14.08.2022 and the inability and omission on the part of his wife, the petitioner herein to file the I.T. returns within the prescribed period was due to bonafide reasons, unavoidable circumstances and sufficient cause and as such, the respondent



clearly erred in refusing to condone the delay in filing the income tax returns by rejecting the application by passing the impugned order which deserves to be set aside.

8.1 While dealing with Section 119(2)(b) of the I.T.Act, this Court in the case of **Dr. Sujatha Ramesh vs. CBDT - (2018) 401 ITR 242**, held as under:

*Learned counsel Mr. V. Raghuraman, submitted that a fair and dispassionate view of the facts in the case of the assessee ought to have persuaded the Respondent (CBDT) which has a wide discretion in the matter under Section 119 of the Act, to condone the comparatively smaller delay of six months and allow the assessee to Date of Order 24-10-2017 W.P.No.54672/2015 Dr.(Smt.)Sujatha Ramesh Vs. Central Board of Direct Taxes and another. avail the said exemption from capital gain tax in terms of Section 54 EC of the Act. He placed reliance on the following decisions in this regard.*

*(i) Artist Tree Pvt. Ltd. Vs. Central Board of Direct Taxes and others (2014) 369 ITR 691 (Bombay). The relevant para 11 to 14 and 23 of the said judgment are quoted below for ready reference.*

*"11. The expression "genuine hardship" came up for consideration of the Supreme Court in the case of B.M. Malani (Supra), wherein, by reference to New Collins Concise English Dictionary, the Supreme Court accepted the position that "genuine" means not fake or counterfeit, real, not pretending (not bogus or merely a ruse). Further, a genuine hardship would, inter alia, mean a genuine difficulty.*



*The ingredients of genuine hardship, must be determined keeping in view the dictionary meaning thereof and legal conspectus attending thereto. For the said purpose, another well known principle, namely, that a person cannot take advantage of his own wrong, may also have to be borne in mind.*

*Compulsion to pay any unjust dues per se would cause hardship. But a question as to whether the default in payment of the amount was due to circumstances beyond the control of the assessee, also bears consideration.*

*12. In the case of R. Seshammal (supra), the Madras High Court was pleased to observe as under (page 187 of 237 ITR):*

*"This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and there after seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hyper technical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Date of Order 24-10-2017 W.P.No.54672/2015 Dr.(Smt.)Sujatha Ramesh Vs. Central Board of Direct Taxes and another.*

*Board has acted arbitrarily in rejecting the petitioner's request for refund" (emphasis supplied)*

*13. In the case of Sitaldas Motwani (supra), this court has held that the expression "genuine hardship" used*





*in section 119(2)(b) of the said Act should be construed liberally, particularly in matters of entertaining of applications seeking condonation of delay. This court was pleased to observe as under (page 228 of 323 ITR):*

*"The phrase 'genuine hardship' used in section 119 (2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated October 12, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on the merits. The expression 'genuine' has received a liberal meaning in view of the law laid down by the apex court referred to hereinabove and while considering this aspect, the authorities are expected to bear in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold an cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on the merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be*



*justice oriented so as to advance the cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund."*

*14. In the case of Bombay Mercantile Co-operative Bank Ltd. (supra), this court again observed that it is well settled that in matters of condonation of delay highly pedantic approach should be eschewed and a justice-oriented should be adopted. It also observed that a party should not be made to suffer on account of technicalities.*

*23. In the light of the aforesaid discussion, we are of the opinion that an acceptable explanation was offered by the petitioner and a case of genuine hardship was made out. The refusal by the Central Board of Direct Taxes to condone the delay was a result of adoption of an unduly restrictive approach. The Central Board of Direct Taxes appears to have proceeded on the basis that the delay was deliberate, when from the explanation offered by the petitioner, it is clear that the delay was neither deliberate nor on account of culpable negligence or any mala fides. Therefore, the impugned order dated May 16, 2006, made by the Central Board of Direct Taxes refusing to condone the delay in filing Date of Order 24-10-2017 W.P.No.54672/2015 Dr.(Smt.)Sujatha Ramesh Vs. Central Board of Direct Taxes and another, the return of income for the assessment year 1997-98 is liable to be set aside.*

8.2 In the instant case, a perusal of the material on record, in particular the undisputed fact that the petitioner's husband being unable to file the I.T returns within the prescribed period due to ill



health and ultimate demise, the same constituted genuine hardship and the inability and omission on the part of his wife, the petitioner herein to file the I.T. returns within the prescribed period was due to bonafide reasons, unavoidable circumstances and sufficient cause and failure to appreciate this by the respondent has resulted in erroneous conclusion.

**Point No.3** is accordingly answered in favour of the petitioner.

9. In the result, the points formulated above are answered as hereunder:-

(i) Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is applicable to compensation for land acquired under the National Highways Act, 1956;

(ii) The compensation for acquisition of land under the National Highways Act, 1956, is exempt from payment of TDS / income tax.

(iii) The respondent erred in refusing to condone the delay in filing the Income Tax returns and consequently, the application filed by the petitioner under Section 119(2)(b) of the Income Tax Act, 1961, deserves to be allowed.



10. In view of the aforesaid facts and circumstances, I am of the view that the impugned order at Annexure-C dated 28.06.2024 passed by the respondent deserves to be set aside and the application filed by the petitioner on 27.03.2023 under Section 119(2)(b) of the Income Tax Act, 1961, deserves to be allowed by condoning the delay in filing the income tax returns for assessment year 2022-23 and necessary directions are to be issued in this regard.

11. In the result, I pass the following:-

**ORDER**

(i) Petition is hereby allowed.

(ii) The impugned order at Annexure-C dated 28.06.2024 passed by the respondent is hereby quashed.

(iii) The application filed by the petitioner on 27.03.2023 under Section 119(2)(b) of the I.T.Act 1961, is hereby allowed and delay stands condoned.



(iv) The respondent is directed to receive the income tax returns submitted by the petitioner and proceed further in accordance with law.

**Sd/-**  
**(S.R.KRISHNA KUMAR)**  
**JUDGE**

Srl.  
List No.: 1 Sl No.: 15