M/S Ultra Tech Cement Limited vs Mast Ram on 20 September, 2024

2024 INSC 709 REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10662 of 2024

(Arising out of the Special Leave Petition (Civil) No. 14286 of

M/s. ULTRA-TECH CEMENT LTD. …APPELLANT

VERSUS

MAST RAM & ORS. …RESPONDENTS

JUDGMENT

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts: -

1. Leave Granted.

2. This appeal arises from the order passed by the High Court of Himachal Pradesh at Shimla dated 12.07.2022 in Civil Writ Petition No. 2350/2018 filed by the Respondent Nos. 1 to 6 herein (original petitioners) by which the High Court allowed the writ petition and directed the Appellant herein to pay the requisite amount towards compensation as determined in the Supplementary Award dated 02.05.2022 passed by the Land Acquisition Collector, Arki ("LAC") (Respondent No. 10) in the first instance with liberty to recover the same from M/s Jaiprakash Associates Limited ("JAL") (Respondent No. 11) if permissible under the legal relationship between the two companies.

I. FACTUAL MATRIX

3. The State of Himachal Pradesh (Respondent No. 7) issued a notification dated 25.07.2008 under Section 4 of the Land Acquisition Act, 1894 (the "1894 Act") through its Department of Industries declaring its intention to acquire the subject land admeasuring 56-14 bigha, situated at Mauza Bhalag, Tehsil Arki, District Solan, Himachal Pradesh (the "subject land") in favour of Jaypee Himachal Cement project, a unit of JAL, invoking special powers in cases of urgency as provided under Section 17 of the 1894 Act. It appears that the purpose for acquiring the subject land was to create a safety zone surrounding the mining area. In other words, the subject land was situated in the vicinity of the leasehold area of the mining project and could not have been otherwise used for residential purposes or creation of any other structures. Subsequently notifications were also issued under Sections 6 and 7 respectively of the 1894 Act.

4. It appears from the materials on record that during the acquisition proceedings, some of the landowners, including the Respondent Nos. 1-6 herein did not allow the authorities to undertake the evaluation of their houses, trees, structures, etc., standing on the subject land for the purpose of determination of compensation.

5. The acquisition proceedings ultimately came to be challenged by some of the landowners before the High Court by way of CWP No. 2949 of 2009 titled as Premlal & Ors. v. State of Himachal Pradesh & Ors. and CWP No. 481 of 2010 titled as Chunni Lal & Ors. v. State of Himachal Pradesh & Ors. inter alia, on the ground that sub-section (4) of Section 17 of the 1894 Act could not have been invoked as the acquisition was not for any public purpose. The High Court passed an ad interim order dated 14.12.2011 granting stay on the acquisition proceedings.

6. The High Court by a common judgment dated 23.06.2016 dismissed the writ petitions referred to above inter alia, on the ground that acquisition of the lands in question was for a public purpose as the said land contained vital raw material (limestone) for the manufacturing of cement and the

usage of such mineral wealth would advance the public purpose of infrastructure development.

7. As the writ petitions stood dismissed, the Land Acquisition Collector, Arki proceeded to pass the Award No. 1/2018 dated 08.06.2018 as per Section 11(1) of the 1894 Act and Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the "2013 Act") determining the compensation to the tune of Rs. 10,77,53,842.27/- (Rupees Ten Crore Seventy Seven Lakh Fifty Three Thousand Eight Hundred and Forty Two and Twenty Seven paisa Only) along with the incidental charges @ 2% amounting to Rs. 9,09,315.12/-. The LAC clarified in the award passed by him that the compensation amount towards the houses and other structures constructed prior to the date of notification under Section 4, whose survey was not allowed by the landowners during the acquisition proceedings would be considered in the supplementary award that may be passed separately after the reports regarding the valuation of structures were received.

8. The amount as determined under the Award dated 08.06.2018 was deposited by JAL and disbursed to the landowners. The possession certificate dated 07.06.2019 in respect of the subject land was issued in favour of JAL. Subsequently, the entries in the revenue record of the subject land in favour of JAL came to be mutated on 12.11.2020.

9. Being dissatisfied with the Award dated 08.06.2018, the Respondent Nos. 1- 6 herein filed writ petition no. 2350 of 2018 before the High Court on 16.09.2018, praying for a direction to the LAC to pass a supplementary award after quantifying the compensation for the damage caused to the structures and standing crops on the subject land for the period between 2008 and 2018 as well as for a direction to the LAC to pass a fresh award under the provisions of the 2013 Act to provide additional amount @ 12% on market value with effect from the date of notification under Section 4 till the date of Award dated 18.06.2018. On 12.07.2019, the Respondent Nos. 1-6 also filed a Reference Petition under the 2013 Act praying inter alia for the enhancement of the amount of compensation determined under the Award dated 08.06.2018.

10. On 24.11.2021, the High Court passed an order directing the LAC to pass a supplementary award in accordance with law. On 23.05.2022, the High Court recorded that the supplementary award dated 02.05.2022 had been passed in compliance with its order dated 24.11.2021 under which an additional amount of Rs. 3,02,75,605/- along with incidental charges @ 2% of total assessment value was to be paid by JAL. Thus, the total additional amount determined was Rs. 3,05,31,095/- (Rupees Three Crore Five Lakh Thirty One Thousand and Ninety Five). However, the High Court recorded on 20.06.2022 that the said amount had not been deposited in terms of its order dated 23.05.2022.

11. During the pendency of the acquisition proceedings, JAL entered into an agreement with the Appellant herein for the transfer of the cement project in question. In this regard, a Scheme of Arrangement was signed between the Appellant, JAL and Jaypee Cement Corporation Ltd. (the unit of JAL operating the cement project) (the "Scheme") under the relevant provisions of the Companies Act, 1956. The Scheme was approved by the National Company Law Tribunal ("NCLT") Mumbai Bench on 15.02.2017 and NCLT Allahabad Bench on 02.03.2017.

12. On 21.06.2017, the Director of Industries, Department of Industries, Government of Himachal Pradesh issued a letter to JAL and the Appellant acknowledging the approval given by the Joint Secretary to the Government of Himachal Pradesh as regards the transfer of the cement plant, as per the Scheme approved by the NCLT and as per the Tripartite Agreement between the Appellant, JAL and Government of Himachal Pradesh respectively, entered into on 29.06.2017.

13. In such circumstances, the High Court examined the relationship between the Appellant and JAL and also referred to the Scheme for the purpose of determining the issue as to who should pay the compensation amount determined under the Supplementary Award to the Respondent Nos. 1-6 respectively.

14. On 12.07.2022, the High Court relying on Clause 7.1 of the Scheme, passed the impugned order, directing the Appellant to pay the compensation amount at the first instance and left it open for the Appellant to recover the same from JAL later, if permissible in law.

15. In view of the aforesaid, the Appellant is before this Court with the present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Mr. Navin Pahwa, the learned senior counsel appearing for the Appellant made the following submissions:

> a. The High Court, in its impugned order, erred in directing the Appellant to pay the compensation amount determined under the Supplementary Award because the initial Award dated 08.06.2018 as well as the Supplementary Award dated 02.05.2022 were passed by the LAC fixing the liability to pay compensation on JAL.
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> b. The High Court failed to consider that under the Scheme between the Appellant and JAL, as sanctioned by NCLT, Mumbai on 15.02.2017 and NCLT, Allahabad on 02.03.2017, all contingent liabilities pertaining to matters relating to the "JAL Business" (as defined in Clause 1.1(w) of the Scheme), including those of pending litigations where the disputed claims were not crystallized on or before the effective date, i.e., 29.06.2017, would be the sole liability of JAL. Since the acquisition proceedings for the subject land were initiated by a notification under Section 4 of the 1894 Act dated 25.07.2008, therefore, the litigation was pending as on 29.06.2017 (the "Effective Date") and the disputed claim was not crystallized till the passing of the Supplementary Award dated 02.05.2022.

c. The High Court erred in recording that the Appellant had made the payment under the Award dated 08.06.2018, whereas factually, it was JAL who had paid the compensation amount under the said Award. The High Court also failed to consider that by making the payment under the Award dated 08.06.2018, JAL had accepted its liability for claims arising out of the acquisition proceedings.

d. The subject land was acquired for JAL. Accordingly, the LAC had issued a possession certificate dated 07.06.2019 in favour of JAL and handed over spot possession of the subject land to it under Section 16 of the 1894 Act. The subject land was duly mutated in the name of JAL vide Mutation No. 232 dated 12.11.2020. The High Court failed to take into consideration the fact that the subject land had not been transferred as an asset to the Appellant under the Scheme. To establish the same, the Appellant had placed on record and referred to a Chart of Comparison of Khasra Numbers under the Scheme and the Khasra Numbers which were transferred to JAL under the Award dated 08.06.2018 contending that none of the Khasra Numbers of the subject land or portions thereof overlap with the Khasra Numbers of the land/assets transferred under the Scheme. Therefore, since the Appellant was not enjoying the possession or benefit, if any, of the subject land, the liability of paying the compensation under the Supplementary Award could not have been fastened on it.

e. As per the Scheme, the Appellant only purchased certain assets listed in the Schedule-I and Schedule-IA thereof on a "slump exchange basis" and did not take over JAL. Mr. Pahwa clarified that JAL is a surviving entity and the High Court had erred in understanding that JAL stood merged or transferred with the Appellant.

f. Mr. Pahwa also brought our attention to the order passed by this Court dated 16.12.2019 in Ultratech Cement Ltd. v. Tonnu Ram, SLP (C) (Diary) No. 42997 of 2019 wherein this Court clarified that the impugned judgment of the High Court of Himachal Pradesh could not have been construed as permitting third party to pursue claim for recovery against the Appellant in disregard of the Scheme and the executing court would be duty-bound to examine the purport of the Scheme and pass orders strictly in consonance therewith.

The relevant observations made by this Court in Tonnu Ram (supra) are reproduced below:

> "...It cannot be construed as permitting third party to pursue claim for recovery against the petitioner in disregard of the scheme of arrangement propounded by the NCLT in respect of respondent No.4- M/s. Jaiprakash Industries.
>
> Despite this clear position, if any third party intends to pursue remedy against the petitioner, the Executing Court would be duty bound to examine the purport of the stated scheme propounded by the NCLT and pass orders strictly in consonance therewith. It would be open to the petitioner to invite attention of the Executing Court or any other Forum about the relevant provisions in the scheme in support of the argument that the liability to pay the dues will remain that of respondent No.4- M/s. Jaiprakash Industries as per the stated scheme." [Emphasis supplied] g. The senior counsel also submitted that JAL had made a declaration on oath in Form-16A under Order XXI Rule 41(2) of the Code of Civil Procedure, 1908 dated 04.12.2023 in Civil Revision Petition No. 174 of 2022 titled Tohnu Ram (Deceased) v. M/s Ultratech Cement Ltd. before the High Court of Himachal Pradesh which read as follows:
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> "...(e) Other Property: List of Property of Jaiprakash Associates Ltd., i.e. Land measuring 56-14 bigha, situate at village bhalag, PO Kandhar, Tehsil Arki, Distt.

Solan (HP), vide which the Mutation was attested on 12.11.2020 in favour of Jaiprakash Associates Ltd...” Therefore, in view of the above, the subject land remained in ownership of JAL and the Appellant had no connection with the subject land, directly or indirectly and that the subject land was neither acquired for the benefit of the Appellant nor was it transferred under the Scheme to the Appellant.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1-6

17. Mr. Biju P. Raman, the learned counsel appearing for the Respondent Nos. 1-6 made the following submissions:

a. The subject land forms a part of the safety zone area meant for the cement plant that was being operated by the cement unit of JAL. The District Administration acquired 56.14 bhigas of land and the Award for the same was passed on 08.06.2018 by the LAC, Arki.

b. The plant/project had been taken over by the Appellant herein by acquiring all the assets and liabilities of JAL in the year 2017 and all movable and immovable assets and liabilities ancillary thereto were transferred to the Appellant, which was affirmed by a tripartite Memorandum of Understanding signed between the Appellant, JAL and the Government of Himachal Pradesh (the “MOU”) dated 29.06.2017.

c. The High Court vide order dated 12.07.2022 recorded the submission of the Respondent Nos. 1-6 that the payment towards the Award No. 1 of 2018 pertaining to the subject land was deposited by the Appellant.

d. The Appellant and JAL are trying to escape from their legal obligation and liability to pay the compensation amount as determined under the Supplementary Award to the Respondents and are in collusion with each other creating an inter-se dispute with the intention of depriving the original landowners of their legitimate right to receive compensation due to them.

e. The subject land was acquired for public purpose and was being utilized by the Appellant for its purposes.

IV. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 10

18. Mr. Puneet Rajta, the learned Additional Advocate General appearing for the Respondent No. 10 i.e., the Land Acquisition Collector, Arki made the following submissions:

a. The subject land was acquired in the year 2018 for providing a safety zone to the cement plant which had already been taken over by the Appellant in the year 2016.

b. The acquired land is being utilized by the Appellant as a safety zone for the cement plant being run by them. However, the land is recorded in the name of JAL.

c. The role of the State was limited to the extent of initiating the acquisition proceedings and as per the MOU signed with the Government of Himachal Pradesh, all costs pertaining to the acquisition/transfer of land would be borne by the company only. It was clarified that the State had no role to play in the business of manufacturing or running the cement plant of the company and all payments under the Award No. 1 of 2018 dated 08.06.2018 stood paid to the landowners by JAL.

d. The Supplementary Award was passed on 02.05.2022 in accordance with the direction of the High Court dated 16.09.2018 in CWP No. 2350 of 2018 and the High Court through a separate order dated 12.07.2022 directed the Appellant to make the payment to the landowners and recover the said amount from JAL. The said order was challenged by the Appellant and this Court while issuing notice vide order dated 22.08.2022 directed that there shall be a stay of operation and implementation of the impugned order of the High Court.

e. The land is being used by the Appellant for the purpose of operating the cement plant however, they are raising disputes only with the view to deny the rights of the landowners. Therefore, the liability for payment of compensation be fixed as against the Appellant or JAL. It was submitted that if the State was directed to compensate the landowners, it would have to do so out of public funds and seek reimbursement.

V. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 11

19. Mr. Ranjit Kumar, the learned senior counsel appearing for the Respondent No. 11 i.e., M/s Jaiprakash Associates Limited (JAL) made the following submissions:

a. During the process of passing of the Supplementary Award dated 02.05.2022, JAL had clarified that that it had handed over the cement project to the Appellant on 29.06.2017 and the subject land was acquired for the purpose of mining activities and safety zone. It was asserted that the subject land was an integral part of the cement project. Therefore, whosoever was operating the cement plant and carrying out the mining activities was responsible for maintaining the safety zone. Accordingly, it was the duty of the Appellant to pay the amount determined under the Supplementary Award.

b. During the course of the hearing of the Writ Petition No. 2350 of 2018, the Appellant had stated that it did not require the subject land for its projects. The Counsel contended that since JAL had already handed over the cement project to the Appellant and the subject land was acquired for the purpose of safety zone for the said project, the Appellant cannot say that they never had any need for this particular land. c. Although the State Government had handed over the symbolic possession of the subject land in favour of JAL on 07.06.2019 yet the physical possession of this land remained

with the villagers/landowners including Respondent Nos. 1-6 who had illegally occupied the subject land and had constructed houses/structures on the same even after the deliverance of the Award dated 08.06.2018 and the Supplementary Award dated 02.05.2022.

d. It was submitted that the substantial delay in the issuance of the Award by the LAC had frustrated the purpose of acquisition for JAL. Since the entire project has been under the custody and possession of the Appellant, it is the appropriate party to address the issue of the requirement of the subject land for the purpose of Mining Activities & Safety Zone. If the Appellant is not interested in the subject land, then the same should be returned to the original landowners (Respondent Nos. 1-6 herein) and the amount deposited as an award of Rs. 10,77,53,842/- in the year 2018 should be refunded to JAL.

e. Mr. Kumar contended that according to the statement provided by the Appellant to the High Court, it can be reasonably concluded that the Appellant does not require the land in question, which was acquired for the purpose of Mining Activities and Safety Zone for the Cement project.

Therefore, the Appellant may proceed to submit an application in this regard to the Government of Himachal Pradesh, as submitted before the High Court.

f. The Counsel reiterated that JAL had sold out and handed over the entire cement project to the Appellant in the year 2017, which included the acquired private land and government land diverted for this purpose. It was submitted that the subject land was required for an entity involved in cement production in the area, therefore, the responsibility for maintaining the Safety Zone of the cement project was with the Appellant. If the Appellant is not interested in the acquired subject land, then the same may be returned and the amount of Rs. 10,77,53,842/- deposited as award in the year 2018 be refunded to JAL. VI. ISSUES FOR DETERMINATION

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following four questions fall for our consideration: -

> i. Whether the subject land and all other liabilities associated with it were transferred to the Appellant in terms of the Scheme?
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> ii. Whether it was the Appellant or JAL who was legally obliged to pay the compensation amount determined under the Supplementary Award?
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> iii. Whether the land in terms of Section 101 of the 2013 Act can be returned to the Respondent Nos. 1-6 at this stage under the scheme of the Act? In other words, what is the scope of Section 101?
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> iv. Whether the State of Himachal Pradesh, being a welfare state, had the responsibility to ensure full payment of compensation amount determined under the Supplementary Award dated 02.05.2022?

VII. ANALYSIS A. Scheme of Arrangement between the Appellant and JAL under Sections 391 to 394 respectively of the Companies Act, 1956

21. An analysis of the Scheme agreed between the Appellant and JAL as sanctioned by the NCLT, Mumbai and NCLT, Allahabad respectively is the key to determine who should pay the amount determined under the Supplementary Award dated 02.05.2022. With respect to the Scheme, the following questions need to be looked into:

i. Whether the dispute pertaining to payment of the requisite amount under the Supplementary Award arose before or after the "Effective Date" fixed in the Scheme?

ii. Whether the subject land is an integral part of the cement project and the liability of paying compensation under the Supplementary Award for the said land can be imposed on the Appellant despite the said land not being in its name?

22. Clause 1.1 (o) defines the "Effective Date" as the date on which the Scheme becomes effective in accordance with its terms, which shall be the Closing Date [defined in Clause 1.1(k) and Clause 10.1]. The said date was decided to be 29.06.2017 among the parties.

23. Clause 1.1(w) defines the business and assets transferred by JAL to the Appellant. The definition of the same is reproduced below:

"...(w) "JAL Business" means the business of manufacturing, sale and distribution of cement and clinker manufactured at the JAL Cement Plants, including all rights to operate such business, its movable or immovable assets, captive power plants, DG sets, coal linkages, rights, privileges, liabilities, guarantees, land, leases, licenses, permits, mining leases, prospecting licenses for mining of limestone, letters of intent for mining of limestone, tangible or intangible assets, goodwill, all statutory or regulatory approvals, logistics, marketing, warehousing, selling and distribution networks {marketing employees, offices, depots, guest houses and ether related facilities for the JAL Business), employees, existing contracts including fly-ash contracts, railway sidings, fiscal incentives in relation to the JAL Business, more particularly described in Schedule I hereto, but does not include

(i) construction equipment an.d such assets to be listed in Schedule II.

(ii) any liability including contingent liability disclosed in the balance sheet of JAL Business on the Closing Date provided to the Transferee, other than those included in the JAL Financial Indebtedness and JAL Net Working Capital;

(iii) any guarantee or deposits for any disputes;

(iv) the JAL Excluded Employees;

(v) JAL Non Moving Stores, Doubtful Receivables of the JAL Business, non-recoverable debtors, loans or advances in the books of the Transferor1. For this purpose, non-recoverable debtors; loans or advances shall refer to such debtors; loans or advances for which Transferor1 has not received any confirmation for the receivables as mentioned in Clause 9.1

(i);

(vi) coal mitting block - Mandla (North) and the related guarantees, deposits etc;

(vii) fiscal incentives in relation to the JAL Business that accrue up to the Closing Date;

(viii) any intellectual property of Transferor1;

(ix) litigations pertaining to the JAL Business as of the Closing Date;

(x) freehold plot of land admeasuring about 1087 square metres at Varanasi and land admeasuring 24.7 acres outside the Balaji plant in Krishna, Andhra Pradesh;

(xi) 180 megawatt power plant at Churk, Uttar Pradesh;

(xii) railway siding in Turki, Rewa, Madhya Pradesh;

(xiii) Related Party payables or receivables; and

(xiv) Ghurma limestone mine, Padrach limestone mine and Bari dolomite mine It is clarified that the guarantee listed in Schedule III B, which shall be updated as of the Closing Date, shall be the only guarantees which shall be taken over by the Transferee on the Closing Date…" [Emphasis Supplied]

24. The parties by way of Clause 1.1(w)(ix) agreed that all litigations pertaining to the business and assets being transferred to the Appellant that arose before or on the Closing Date would not be transferred to the Appellant and will remain with JAL.

25. The aforesaid aspect has been further elaborated under Clause 7 of the Scheme which is reproduced below:

"7. LEGAL PROCEEDINGS 7.1 All legal or other proceedings (whether civil or criminal, including before any statutory or judicial or quasi-judicial authority or tribunal) by or against the Transferor1 and /or the Transferor2, initiated on or arising and pending before the Effective Date, and relating to the JAL Business and the JCCL Business shall remain with the Transferor1 and/or the Transferor2, as the case may be.

7.2 In the event any case or matter pertaining to contingent liabilities being in the nature of disputed claims, not crystallized on the Closing Date or guarantees listed in Schedule III A and Schedule XI A or any similar instrument by whatsoever name called which have been advance against disputes related to the JAL Business or the JCCL Business existing on the Closing Date, or pertaining to NPV of afforestation charges in respect of mining land being Block 1, 2, 3, 4 and Ningha of Dalla Plant and Jaypee Super Plant, by force of law are transferred to the Transferee, then the Transferor1 and the Transferor 2, shall have full control in respect of the defence of such proceedings including filing the necessary appeals, revisions, etc.. provided that the Transferor1 and the Transferor2, as the case may be, shall not, take any action that is detrimental to the operation of the JAL Business and the JCCL Business. Provided that in respect of such cases pertaining to immovable properties which are part of the JAL Business or the JCCL Business, as the case may be the Transferee shall have a right to participate in such proceedings to ensure that no action detrimental to the operation of JAL Business and the JCCL Business is taken. It is clarified that: (a) any liabilities in respect of cases or matter referred to in this Clause 7.2 shall be paid by the Tranferor1 or the Transferor2 and if paid by the Transferee, the same shall be reimbursed by the Transferor1 or the Transferor2 within 7 (seven) days of such payment; and (b) the aforesaid bank guarantees provided by the Transferor1 and the Transferor2 in respect of the contingent liabilities being in the nature of disputed claims related to the JAL Business or the JCCL Business shall continue wherever required and the Transferee shall have no obligation to replace such bank guarantees on the Closing Date and in the event the period of any such bank guarantee expires after the Closing Date, the Transferor1 and /or the Transferor2, as the case may be, shall renew or replace such guarantees wherever required.

7.3 The Transferor1, the Transferor2 and the Transferee shall give full and timely cooperation to each other for the pursuit of such case or matter. The Transferee shall promptly give necessary authorization, power of attorney, board resolution, etc. for pursuit of such case or matter to the Transferor1 and the Transferor2. " [Emphasis Supplied]

26. Clause 7.1 of the Scheme states without any ambiguity that any legal or other proceeding by or against JAL or its unit operating the cement project relating to the JAL Business as defined in Clause 1.1(w), initiated on or arising and pending before the Effective Date shall remain with JAL.

27. It is pertinent to note that the subject land was acquired under the compulsory provisions of the 1894 Act to provide a safety zone for the cement plant and mining areas. Therefore, the land was acquired in connection with the JAL Business. The acquisition proceedings began with the notification issued under Section 4 dated 25.07.2008 which was stayed by the High Court of Himachal Pradesh on 14.12.2011. After the disposal of the writ petitions filed by the original landowners, the operation of the stay on the acquisition proceedings came to an end on 23.06.2016. As the next step towards the proceedings, an Award dated 08.06.2018 was passed. The facts indicate

that the land acquisition proceedings had commenced before the Effective Date of the Scheme (i.e. 29.06.2017) and the compensation remained undetermined as on the Effective Date. To our understanding, these facts attract the application of Clause 7.1 of the Scheme as the acquisition proceedings and the liability to pay compensation associated with it squarely falls within the meaning of 'other proceedings' as intended by the parties under the said Clause.

28. JAL has also not disputed that it had made payment of the amount determined under the Award of 2018 i.e., Rs. 10,77,53,842/- after the Effective Date of the Scheme. The said amount has already been disbursed to the landowners. There is nothing on record to show that the payment of compensation amount at that time was contested by JAL.

29. Further, the exercise of determination of compensation amount which is a part of the acquisition proceedings remained pending even after the Effective Date of the Scheme. After the LAC determined the amount under the Award dated 08.06.2018, JAL paid the same without any protest or reference to the Scheme. Therefore, at the stage of the Supplementary Award pertaining to the same land and same original landowners, JAL cannot be allowed to take the plea that the payments with respect to the subject land were required to be made by the Appellant.

30. As regards the contention of JAL that the subject land formed an integral part of the cement project transferred to the Appellant for the purpose of payment of compensation determined under the Supplementary Award, we find it difficult to accept the same. The subject land was acquired as a safety zone for the cement project and in light of the several safety hazards as stated in the Award No. 1 of 2018, the land had to be acquired to safeguard the lives and property of the original landowners.

31. However, we take notice of the fact that the subject land was not covered under the list of assets transferred to the Appellant under the Scheme and remains in the ownership of the JAL till date. While we agree that the acquisition of the subject land was done for the purposes of the cement project, we cannot accept the contention of JAL that the liabilities arising out of the said land should be fastened upon the Appellant without any such liabilities being covered by the Scheme, not even on the strength of the argument that the subject land was integral to the cement project.

32. We may only say that the issue regarding the ownership of the subject land may be decided between the parties i.e., the Appellant and JAL amongst themselves. In our considered view, disputes regarding the ownership of the subject land, if any cannot be an impediment to the legitimate rights of the original landowners to receive compensation. Therefore, the contention of JAL that the Appellant should pay the amount as determined under the Supplementary Award because the subject land was integral to the cement project is rejected.

B. Return of acquired land under the 2013 Act

33. It is the case of JAL that the substantial delay in acquisition of the subject land has frustrated its purpose, and it could not make any use of the land. It was submitted that if the Appellant does not require the said land, then it should be returned to the original landowners and the amount of Rs.

10,77,53,842/- paid under the Award of 2018 should be refunded to JAL.

34. The return of acquired land is governed by Section 101 of the 2013 Act which is reproduced below:

> "101. Return of unutilised land.– When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.
>
> Explanation.—For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use." [Emphasis Supplied]

35. The necessary conditions for the application of Section 101 are: (1) the land should be unutilized; and (2) the period it remains not in use should be at least five years from the date of taking of possession.

36. We do not find any merit in the contention of JAL that the land be returned to the original landowners. While we agree that a period of five years has elapsed from the date of taking of possession by JAL, the first condition that the land should remain unutilized is not fulfilled.

37. The subject land was acquired for the purpose of providing a safety zone to the mining area of the cement plant. The objective for acquiring the subject land mentioned in the Award of 2018 is reproduced below:

> "...3. Compulsory Acquisition by invoking the provisions of Section 17 (4) During the process of Notification issued under Section
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> - 4 of the Land Acquisition Act, the matter was taken up for compulsory acquisition U/s 17(4) of Land Acquisition, Act, 1894 with the Govt. or Himachal Pradesh for the reasons that the land area under acquisition fell just below the mine leasehold area and was necessarily required as Mining Area Safety Zone. As the land area under acquisition cannot be allowed for any residential purpose in view of safety reasons and because the land proposed for acquisition is located just along the bank or Bhalag Nallah and most of the residents of village Bhalag had been constructing structures in large numbers on the right Bank of Nallah in Bhalag village, therefore provisions of compulsory acquisition needed to be invoked.
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> Furthermore, to invoke the provisions of compulsory acquisition, it was submitted vide this office letter No. 2766 dated 06.01.2009 to Pr. Secretary (Industries) GoHP that the main dumping site of the project at Baga - Sehnali is situated above village

> Bhalag and during the unprecedented I I heavy rain season of 2007 – 08, muck had over flown into the Bhalag Nallah endangering the Safety Zone area under proposed acquisition…" [Emphasis Supplied]

38. Therefore, the acquisition of the subject land was done as a safety measure for the residents of the area and not to be used actively in the cement project. No other use except that the subject land may pose hazard to the residents was envisaged during the acquisition proceedings. JAL cannot pray for return of the land as that would result in endangering the lives and property of the original landowners. We find that the subject land has been in use all throughout the operation of the cement project by serving as a safety zone and the condition of being unutilized is not satisfied.

39. It is not in dispute that the Supplementary Award had to be passed as the compensation for standing crops, structures and other damages for the subject land which could not be fixed and evaluated under the Award No. 1 dated 08.06.2018. The same was also recorded in the Award of 2018. We find that the passing of Supplementary Award was not a fresh exercise but rather a continuation/extension of the Award of 2018. Therefore, when JAL has already paid the compensation amount as determined under the previous Award without any demur, it cannot be allowed to question its liability under the Supplementary Award and make a plea for return of the land at this stage on the ground that the purpose of the land is frustrated due to delay in acquisition proceedings.

40. At this stage, it is necessary for us to discuss the purport of Section 101 of the 2013 Act. The instant section was introduced in the 2013 Act for the first time as a beneficial provision for the landowners whose lands were usurped but remained unutilized or were not used in accordance with the purpose stated in the notifications under Section 4. However, the application of the Section is warranted only in the circumstances where the return of the land would benefit the landowners. The party which has failed to utilize the land cannot plead for the return of the land and consequent refund of the compensation paid, as that would tantamount to taking advantage of its own wrong or default.

C. Impugned Order of the High Court

41. The High Court directed the Appellant herein to pay compensation amount determined under the Supplementary Award at the first instance and if permissible, recover the same from JAL.

42. We find that the High Court's reasoning for passing such a direction is unsustainable for the following reasons:

> i. The High Court has referred to Clause 7.1 of the Scheme but has not applied it correctly in any manner, thereby ignoring the Scheme of Arrangement between the parties.
>
> ii. The High Court has also recorded that JAL has been taken over by the Appellant herein and that the Appellant had made payment of compensation under the Award

No. 1 of 2018 dated 08.06.2018. We find that these are incorrect facts on the basis of the materials presented to us by the parties to this appeal.

JAL has only transferred the cement project and clinkerisation business to the Appellant by way of the Scheme and is still existing independently of the Appellant's control in respect of its other functions.

The documents on record also show that it was JAL that had made payments under the Award of 2018 and not the Appellant.

iii. The High Court failed to consider that the ownership of the subject land continued to be with JAL despite the Scheme being brought into effect on 29.06.2017. The Appellant cannot be directed to make payment of the amount determined by the Supplementary Award for the portions of land which are neither in its ownership nor possession.

iv. The High Court also failed to consider the order of this Court in Tonnu Ram (supra) dated 16.12.2019 which imposed a duty on the executing court to examine the purport of the Scheme propounded by the NCLT and pass orders strictly in consonance therewith. It was held that it would be open to the Appellant to take support of the relevant provisions of the Scheme in support of the argument that the liability to pay the dues remains with JAL as per the stated scheme.

D. Role of the State under Article 300-A of the Constitution

43. The Right to Property in our country is a net of intersecting rights which has been explained by this Court in Kolkata Municipal Corporation & Anr. v. Bimal Kumar Shah & Ors., 2024 SCC OnLine SC 968. A division bench of this Court identified seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his/her property. The relevant observations of this Court under the said judgment are reproduced below:

"...27.

... Seven such sub-rights can be identified, albeit non- exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property – the right to notice, ii) the duty of the State to hear objections to the acquisition – the right to be heard, iii) the duty of the State to inform the person of its decision to acquire – the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose – the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate – the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings – the right to an efficient and expeditious process, and

vii) final conclusion of the proceedings leading to vesting – the right of conclusion…" [Emphasis Supplied] This Court held that a fair and reasonable compensation is the sine qua non for any acquisition process.

44. In Roy Estate v. State of Jharkhand, (2009) 12 SCC 194; Union of India v. Mahendra Girji, (2010) 15 SCC 682 and Mansaram v. S.P. Pathak, (1984) 1 SCC 125, this Court underscored the importance of following timelines prescribed by the statutes as well as determining and disbursing compensation amount expeditiously within reasonable time.

45. The subject land came to be acquired by invoking special powers in cases of urgency under Section 17(4) of the 1894 Act. The invocation of Section 17(4) extinguishes the statutory avenue for the landowners under Section 5A to raise objections to the acquisition proceedings. These circumstances impose onerous duty on the State to facilitate justice to the landowners by providing them with fair and reasonable compensation expeditiously. The seven sub-rights of the landowners identified by this Court in Kolkata Municipal Corporation (supra) are corresponding duties of the State. We regret to note that the amount of Rs. 3,05,31,095/- determined as compensation under the Supplementary Award has not been paid to the landowners for a period of more than two years and the State of Himachal Pradesh as a welfare State has made no effort to get the same paid at the earliest.

46. This Court has held in Dharnidhar Mishra (D) and Another v. State of Bihar and Others, 2024 SCC OnLine SC 932 and State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. This Court held in Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder v. M.I.D.C. and Ors., (2013) 1 SCC 353 that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non-fulfilment of such obligations under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.

47. That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Company & Ors. v. State of Maharashtra & Ors., 2024 SCC OnLine SC 2547 wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.

48. In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the Appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300A

and the idea of a welfare State.

49. Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.

50. The State Government, in peculiar circumstances, was expected to make the requisite payment towards compensation to the landowners from its own treasury and should have thereafter proceeded to recover the same from JAL. Instead of making the poor landowners to run after the powerful corporate houses, it should have compelled JAL to make the necessary payment.

51. Although the requirement to pass a supplementary award for the purpose of determining additional compensation for the standing trees, damaged structures, houses, etc. had been envisaged and recorded in the Award dated 08.06.2018, yet the possession of the subject land came to be handed over to JAL vide the possession certificate dated 07.06.2019 without passing such a supplementary award. We are of the considered view that the omission or lapse to complete such exercise before taking possession of the land could be said to be in contravention of the mandate of Section 38(1) of the 2013 Act. The relevant portion of Section 38 is reproduced below:

> "38. Power to take possession of land to be acquired. – (1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30:
>
> Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award: Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired..." [Emphasis supplied]
>
> 52. A bare reading of Section 38 as reproduced above indicates that the payment of full and final compensation to the land owners is a precursor to taking possession of the land sought to be acquired from such persons. It is clear from the facts that the acquisition proceedings herein failed to confirm to this statutorily mandated sequence of events. It is regrettable that the State of Himachal Pradesh, being a welfare state, did not ensure payment of compensation to the Respondent Nos. 1-6 before taking possession of their land. In fact, the landowners had to approach the High Court to seek directions to the LAC for passing of the supplementary award

which was finally passed on 02.05.2022 that is, after a period of almost four years from the date of passing of the Award of 2018.

53. Further, the acquisition proceedings for the subject land had commenced vide the notification under Section 4 dated 25.07.2008. In such circumstances it is necessary to consider the relevant provisions of the 1894 Act, more particularly Section 41 thereof which pertains to the process required to be followed in cases of acquisition of land for companies. The relevant portion of Section 41 of the 1894 Act is reproduced below:

"41. Agreement with appropriate Government. – If the appropriate Government is satisfied [after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40 that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of section 40, it shall require the Company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely :-

(1) the payment to the appropriate Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company...." [Emphasis supplied]

54. Section 41 necessitates an agreement between the appropriate government and the company for whose purpose the land is being acquired. One of the purposes of such an agreement is to ensure that payment towards the cost of acquisition is made by the company to the appropriate government and it is only upon such payment that the land is transferred to the company. Thus, it can be said that JAL was mandated to make the requisite payment to the State of Himachal Pradesh prior to the subject land being transferred to it.

55. However, as discussed in the foregoing paragraphs, even before the amount of compensation could be determined by way of a supplementary award as stipulated in the Award dated 08.06.2018, the subject land stood transferred to JAL. This, in our view, is in contravention of Section 38 of the 2013 Act and Section 41 of the 1894 Act respectively.

56. Thus, we deem it appropriate to direct the Respondent Nos. 7 and 10 that is, the State of Himachal Pradesh and the Land Acquisition Collector, Arki, to pay the amount of Rs. 3,05,31,095/- to the Respondent Nos. 1-6 for expeditious conclusion of the acquisition proceedings. However, we clarify that the State shall recover the said amount from JAL as the liability to pay the cost of acquisition of the subject land ultimately falls on JAL in view of the aforesaid discussion.

VIII. CONCLUSION

57. For all the foregoing reasons, this appeal succeeds and is hereby allowed in the aforesaid terms. The impugned order dated 12.07.2022 passed by the High Court is set aside.

58. The Respondent Nos. 7 and 10 are directed to pay the compensation amount of Rs. 3,05,31,095/- (Rupees Three Crore Five Lakh Thirty-One Thousand and Ninety-Five Only) along with 9% interest thereupon from the date of passing of the Supplementary Award i.e., 02.05.2022 till the date of realization, within a period of fifteen days from today. The total amount paid by the State shall be recovered from the Respondent No. 11 (JAL).

.....J. [J. B. Pardiwala] .....J. [Manoj Misra] New Delhi:

September 20, 2024