

The Executive Engineer Gosikhurd ... vs Mahesh on 10 November, 2021

Author: Sanjiv Khanna

Bench: Sanjiv Khanna, A.M. Khanwilkar

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. 13093-13094

THE EXECUTIVE ENGINEER, GOSIKHURD
PROJECT AMBADI, BHANDARA,
MAHARASHTRA VIDARBHA IRRIGATION
DEVELOPMENT CORPORATION

.....

VERSUS

MAHESH AND OTHERS

.....

WITH

CIVIL APPEAL NOS. OF 2
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS. 13089-13090

JUDGMENT

SANJIV KHANNA, J.

Leave granted.

2. The legal issue that arises in these appeals relates to interpretation of Section 24(1)(a) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act', for short), and in particular the question:

Whether the two-year period specified under Section 11A of the Land Acquisition Act, 1894 ('1894 Act', for short) Date: 2021.11.10 16:52:39 IST Reason:

will apply even after the repeal of the 1894 Act, or the twelve-month period specified in Section 25 of the 2013 Act will apply for the awards made under clause (a) of

Section 24(1) of the 2013 Act?

Subsequent to the decision on the aforesaid question of law, we shall consider the second aspect – whether the award dated 30th October 2014 is within the permissible time-limit or whether the acquisition proceedings have lapsed? To answer this question, we shall also examine whether the award claimed to have been passed on 30th October 2014 is backdated and whether the date has been changed by manipulating the award? For convenience and clarity, we would deal with the two issues separately.

3. In order to answer the legal question, some elemental facts are required to be noted. The State of Maharashtra, on 16th June 2011, had issued a notification under Section 41 of the 1894 Act for the

14. Publication of preliminary notification and power of officers thereupon - (1) Whenever it appears to the appropriate Government the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification). (2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle; Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such acquisition of 203.86 hectares of land in village Adyal, District Bhandara, Maharashtra for the Gosikhurd Project. This was followed by publication of declarations under Section 62 of the 1894 Act, the last of which is dated 8th August 2012. Vide Gazette Notification No. S.O. 3729(E) dated 19th December 2013, the 2013 Act came into force on 1st January 2014, and in terms of Section 114 of the 2013 Act, the 1894 Act was repealed. On 30th October occupier at least seven days' notice in writing of his intention to do so.

26. Declaration that land is required for a public purpose. – (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a

Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub- section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) Published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1 – In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2 – Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues. (2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

2014, the Special Land Acquisition Officer purportedly made an award in terms of clause (a) to Section 24(1) of the 2013 Act.

4. On 18th December 2015 and 25th January 2016, two writ petitions were filed by some of the landowners for quashing and setting aside of the award dated 30th October 2014, which have been allowed by the judgment under challenge passed by the Nagpur Bench of the High Court of Judicature at Bombay on 27th July 2017, inter alia, ruling that in terms of Section 11A of the 1894 Act, the award ought to have been passed within two years from the date of the declaration under Section 6, that is, before 8th August 2014. The acquisition proceedings having lapsed, the award was considered to be of no consequence and has been set aside. The High Court also agreed with the landowners that the award purportedly made on 30th October 2014 was backdated. Discerning negligence on the part of the officers, which necessitates fresh acquisition proceedings thereby causing great financial burden to the acquisition authority, directions have been issued to the State of Maharashtra to conduct an inquiry against the Collector, Bhandara and the Land Acquisition Officer, Bhandara.

Consideration and decision on interpretation of Section 24(1)(a) of the 2013 Act

5. Section 11A of the 1894 Act reads:

“11A. Period within which an award shall be made (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation – In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.” Simply put, Section 11A requires that an award under Section 11 must be passed within a period of two years from the date of publication of the declaration and if no award is so made, the proceedings for acquisition of land shall lapse. As per the explanation, the period during which any action or proceedings to be taken pursuant to the declaration is stayed by an order of a court is to be excluded while calculating the period of two years.

6. Sections 24, 25 and 114 of the 2013 Act read thus:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.– (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of

1894), -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

25. Period within which an award shall be made.— The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

xx xx xx

114. Repeal and saving. – (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897)

with regard to the effect of repeals.”

7. Before we interpret the above provisions, it would be appropriate to refer to Section 6 of the General Clauses Act, 1897 which deals with the effect of repeal of any statute or regulation and reads:

“6. Effect of repeal — Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.” Section 6 of the General Clauses Act interdicts the common law principle that an enactment after repeal is ineffective as if it had never existed, except as to matters past and closed. Section 6 is a general transitory provision that resurrects operation of the repealed law in terms of comprehensive and broadly worded clauses (a) to (e). Clauses (b), (c) and (e) of Section 6, in particular, state that the repeal does not affect anything duly done or suffered under the repealed enactment; any right, privilege, obligation or liability acquired or accrued under any repealed enactment; or any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, etc. Legal proceedings, investigation or remedy may be instituted, continued or enforced, and any penalty, punishment or forfeiture may be enforced as if the repealed Act or regulation were still in existence notwithstanding its repeal. However, the savings of Section 6 do not apply to some extent or in entirety when the legislative intent is different. The contrary intent can be expressed or gathered by necessary implication. Further, the ambit of repeal cannot be wider than the boundary envisaged by the repealing enactment. Therefore, a comprehensive repeal may be limited if the repealing enactment directly or by necessary implication clamours that it will not apply to certain matters.

8. Section 114 of the 2013 Act repeals the 1894 Act, which ceases to be effective and applicable from the date of enforcement of the 2013 Act. In terms of sub-section (2) to Section 114, the repeal shall not act so as to prejudice or affect application of Section 6 of the General Clauses Act. However, the application of Section 6 of the General Clauses Act is subject to “save as otherwise provided” by the 2013 Act. In other words, when it is commanded or imperative by the provisions of the 2013 Act, Section 6 of the General Clauses Act is not to be given legal effect.

9. Sub-section (1) to Section 24 of the 2013 Act is a non-obstante clause. It confers the provision with an overriding status over other provisions. Accordingly, in terms of Sections 24(1) of the 2013 Act, Section 114 of the 2013 Act as well as Section 6 of the General Clauses Act will not apply to the extent hindered by Section 24(1) of the 2013 Act. The reason is that Section 114 of the 2013 Act, while accepting the applicability of Section 6 of the General Clauses Act, makes its application subject to “save as otherwise provided” in the 2013 Act. Further, Section 6 of the General Clauses Act itself states that the general savings will not apply when the legislative intent is contrary.

10. Section 24(1) deals with two specific situations where the land acquisition proceedings were initiated before the repeal of the 1894 Act, namely: (i) where an award has been made, and (ii) where an award has not been made. As per clause (b) to Section 24(1) where an award under Section 11 of the 1894 Act has been made, the proceedings would continue under the repealed 1894 Act, notwithstanding its repeal. In such cases, the 2013 Act will not apply. Clause (b) to Section 24(1) is not applicable in the case at hand as it is admitted that no award was made on or before 31st December 2013.³ In the present case, we are not required to examine Section 24(2) of the 2013 Act, which provision when applicable prevails over sub-section (1) to Section 24 of the 2013 Act and has been interpreted in *Indore Development Authority v. Manoharlal and others* (lapse – 5 Judges).

11. In the present case, clause (a) to Section 24(1) of the 2013 Act would apply as the land acquisition proceedings initiated under the 1894 Act had not culminated into an award till the repeal of the 1894 Act. Section 24(1)(a) partly nullifies the legal effect of savings under Section 6 of the General Clauses Act as it hybridizes application of the 1894 Act and the 2013 Act. While preserving validity of the acquisition proceedings by issue of declarations under the 1894 Act, it states that all the provisions for determination of compensation under the 2013 Act shall apply. The section consciously saves the legal effect of the notifications issued under Section 4 and/or Section 6 of the 1894 Act and obviates the necessity to issue a fresh notification under the 2013 Act. This ‘perseveration of the determination date’ for the computation of compensation for the awards made under Section 24(1)(a) of the 2013 Act is a thought through legislative invocation that curtails time delays and cost escalation of infrastructure projects, as well as checks the post-acquisition notification malpractices, and at the same time ensures that the landowners are entitled to the benefit of the enhanced compensation as per the 2013 Act.

12. In *Indore Development Authority v. Manoharlal and Others*⁴ (Lapse - 5 Judges), a Constitution Bench held that where proceedings for acquisition had been initiated under the 1894 Act but no award under Section 11 of the 1894 Act had been made, the provisions of the 2013 Act would apply limited to determination of compensation. Where, however, an award had been made under the 1894 Act, clause (b) to Section 24(1) protects the vested rights of the parties. We need not, for the

purpose of the present case, elucidate the ratio of the aforementioned judgment on interpretation of Section 24(2) of the 2013 Act, but it is apposite to notice that the Constitution Bench has emphasised that the 2013 Act provides for higher compensation along with provisions for rehabilitation, and that this intended benefit, wherever applicable, should not be taken away. At the same time, on the aspect of legal interpretation, it is observed that full effect has to be given to the provisions contained in Section 24 as it is not for the court to legislate. The courts can and do, in appropriate cases, clear ambiguity in legislations.

13. Dealing with the interplay of vested rights and retrospective application of statutes, Indore Development Authority (supra) refers to several decisions to draw a distinction between 'rights' and 4 (2020) 8 SCC 129 'procedure', to observe that the question of extent of retrospectivity would also depend upon the degree of unfairness it causes to the parties. Thus, if the limitation period is shortened but the claimant has time to sue before the expiry of the shortened period, then notwithstanding that he is likely to be statutorily barred if he does not sue within the shortened period, retrospectivity may be given effect to. We add that when the law extends the limitation period, benefit of extended period applies to proceedings to be initiated that are not time barred. Per contra, if the limitation period is extended after the shorter limitation period has already expired, which could have been an absolute defence for the party sued, then it may not be fair to deprive the party sued of the accrued right of claiming such defence. Further, absence of express limiting words is not to be used as a basis for implying retrospective operation as this would be reverse of the true presumption. However, presumption in favour of retrospectivity may be necessary when distinct implications typically arise in the context of the statute which repeals a previous statute, and would leave a 'lacuna' if the new statute were not construed as having retrospective effect. A statute which is prospective in its direct operation cannot be called as retrospective because a part of the requisites for its action is drawn from time antecedent to its passing. Another cardinal principle of interpretation is that a construction which results in unreasonably harsh and absurd results must be avoided. These dictums being relevant would help us resolve and answer the question in issue.

14. In paragraph 195 in Indore Development Authority (supra), the Constitution Bench held that the 2013 Act operates prospectively. Further, Section 114 of the 2013 Act effects a repeal but with certain savings, in accordance with Section 24. Thus, the acquisition proceedings are preserved under the 1894 Act till the stage of making of the award. Where an award is not made, the provisions relating to determination of compensation under the 2013 Act would apply; where the award is made, proceedings would continue under the provisions of the 1894 Act as if the said Act has not been repealed. Our interpretation of Section 24(1) of the 2013 Act respectfully follows this precedent.

15. Clearly, Section 11A of the 1894 Act and Section 25 of the 2013 Act prescribe two different periods of limitation with adverse consequences, as on failure to make the award the acquisition proceedings lapse. The choice is between Section 11A of the 1894 Act and Section 25 of the 2013 Act.⁵ Absence of precise words or ⁵In paragraph 21 below we have rejected the State's alternative argument that the legislator has not prescribed any period for making of an award under Section 24(1)(a) of the 2013 Act. express declaration would not inhibit us from interpreting and exercising the right choice, keeping in view the language as also the object and purpose of clause (a) to Section 24(1) of the 2013 Act. In other words, we have to give effect and meaning to the underlying intention

of the Parliament in the words “all the provisions relating to determination of compensation” under the 2013 Act.

16. We begin by examining the phrasing of clause (a) to Section 24(1) of the 2013 Act. We would prefer to read the words “all the provisions relating to determination of compensation” in Section 24(1)(a) as including the period of limitation specified in Section 25 of the 2013 Act. To elaborate, the word ‘all’ and the expression “relating to” used in Section 25 are required to be given a wide meaning to ensnare the legislative intent. The expressions “relating to” or “in relation to” are words of comprehensiveness which may have a direct as well as indirect significance depending on the context.⁶ Similarly, interpreting Section 129C of the Customs Act, 1962, this Court while giving the phrase ‘in relation to’ a narrower meaning of direct and proximate relationship to the rate of duty and to the value of goods for purpose of assessment, did observe that ⁶The State Wakf Board, Madras represented by its Secretary v. Abdul Azeez Sahib & Ors., AIR 1968 Madras 79 ordinarily the phrase ‘in relation to’ is of a wider import.⁷ Several cases assigning a wider import to the expression ‘relating to’, in view of the contextual background, find reference in Gujarat Urja Vikas Nigam Limited v. Amit Gupta and Others.⁸ In Renusagar Power Co. Ltd. v. General Electric Company and Another⁹, this Court held that the term ‘in relation to’, when used in the context of arbitration clause, is of widest amplitude and content. In Mansukhlal Dhanraj Jain and Others v. Eknath Vithal Ogale,¹⁰ the expression ‘relating to’ in the context of Small Causes Court Act, 1887 has been held to be comprehensive in nature that would take in its sweep all types of suits and proceedings which are concerned with recovery of possession. Broad and wider interpretation was again preferred in M/s. Doypack Systems Pvt. Ltd. v. Union of India and Others,¹¹ observing that the expression “in relation to” is a very broad expression which presupposes another subject matter. In M/s. Doypack Systems Pvt. Ltd. (supra), in the context of Section 3 of Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986, the expression “relating to” was held to mean ‘bring into ⁷Navin Chemicals Mfg. and Trading Co. Ltd. v. Collector of Customs, (1993) 4 SCC 320 ⁸2021 SCC Online SC 194 ⁹(1984) 4 SCC 679 ¹⁰(1995) 2 SCC 665 ¹¹(1988) 2 SCC 299 association or connection with’.¹² The words are comprehensive and might have both direct as well as indirect significance. The decision in Gujarat Urja Vikas Nigam Limited (supra) refers to Corpus Juris Secundum, wherein the expression “relating to” has been held to be equivalent to or synonymous with as to “concerning with” and “pertaining to”. It has been observed that the expression “pertaining to” is an expression of expansion and not of contraction. The expression “relating to” when used in legislation normally refers to “stand in some relation, to have bearing or concern, to pertain, to refer, to bring into association with or connection with”.¹³ Therefore, the expression ‘relating to’ when used in legislation has to be construed to give effect to the legislative intent when required and necessary by giving an expansive and wider meaning. Given this trend in interpretation, the words “all the provisions of this Act relating to the determination of compensation” must not be imputed a restricted understanding of the word ‘relating’ only to the substantial provisions on calculation of compensation, that is, Sections 26 to 30 of the 2013 Act. Rather, the expression should be given an expansive meaning so as to include the provision on ¹²M/S Doypack Systems Pvt. Ltd. v. Union of India and others, (1988) 2 SCC 299 ¹³See judgment of Mitter, J. (paragraph 308) in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior etc. v. Union of India & Anr., (1971) 1 SCC 85. limitation period for calculation of compensation, that is, Section 25 of the 2013 Act.

17. Law of limitation is generally regarded as procedural as its object is not to create any right but prescribe periods within which legal proceedings should be instituted for enforcement of rights or adjudication orders should be passed. Statutes of limitation, therefore, have retrospective effect insofar as they apply to all legal proceedings brought after they come into force. However, the laws relating to limitation have been held to be prospective in the sense that they do not have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on the date. In this sense, the limitation provisions can be procedural in the context of one set of facts and substantive in the context of a different set of facts. Therefore, unless the language of the provision dealing with period of limitation clearly manifests, in express terms or by necessary implication, a contrary intention divesting vested rights, such provision is to be construed as prospective. In the context of clause (a) to Section 24(1) of the 2013 Act, it is to be stated that the said clause would apply only if the period for making of an award had not ended and time was available as on 1st January 2014. Where and if the period for making of the award had already lapsed before 1st January 2014, clause (a) to Section 24(1) would not apply so as to deprive and deny the vested rights which have already accrued in favour of the landowners. The present case is not of divesting of vested rights of the landowners on enactment of the 2013 Act.

18. Section 25 is a rule of procedure immediately following Section 24 and a part of fasciculus of “all the provisions”, from Sections 25 to 30, “relating to determination of compensation”. Hence, the expression “all the provisions relating to the determination of compensation” under the 2013 Act will encompass Section 25 of the 2013 Act.

19. The determination of compensation is never simple. It is a complex factual and legal exercise. As per sub-section (2) to Section 26 of the 2013 Act, the market value calculated under sub-section (1) is to be multiplied by the factor to be specified in the First Schedule. Section 30(2) requires the Collector to issue individual awards detailing the particulars of compensation payable and details of payment as specified in the First Schedule. As per the First Schedule, the factor/multiplier in case of rural areas can be between one and two, based on the distance from the urban area, and this factor/multiplier is to be notified by the “appropriate government”. This aspect is of importance when we examine the second issue and would be adverted to later. Thus, it clearly delineates that until notification of the multiplier is issued by the “appropriate government” for rural areas, compensation in terms of sub-section (2) to Section 26 cannot be determined. When a multiplier of more than 1 applies, the compensation payable under Section 26 of the 2013 Act would be higher than the market value of the land. Section 30(1) of the 2013 Act adumbrates that the Collector having determined the total compensation shall, to arrive at the final award, impose ‘solatium’ of an amount equivalent to 100% of the compensation amount. As per Section 30(3), the landowners in addition to the market value of the land are entitled to an amount calculated at the rate of twelve percent per annum commencing from the date of publication of “the notification of the Social Impact Assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier”.¹⁴ Per contra, the provisions for determination of compensation under the 1894 Act are different. Under the 1894 Act, no multiplier/factor is to be applied and solatium payable is 30 percent. Prescription of 14For the purposes of the present dispute, we are not interpreting provisions of Section 30(3) of

the 2013 Act.

the outer limit of twelve months in Section 25 is a calculated dictate, necessary and appropriate given the time, task and effort involved in making an award under the 2013 Act.

20. Given the object and purpose behind Sections 24, and 26 to 30 of the 2013 Act, we notice that practical absurdities and anomalies may arise if the two-year period for making of an award in terms of Section 11A of the 1894 Act commencing from the date of issue of the declaration is applied to the awards to be made under Section 24(1)(a) of the 2013 Act. This would mitigate against the underlying legislative intent behind prescription of time for making of an award in respect of saved acquisition proceedings initiated under the repealed 1894 Act, which is two-fold: (i) to give sufficient time to the authorities to determine compensation payable under the 2013 Act; and (ii) to ensure early and expedited payment to the landowners by reducing the period from two years under Section 11A of the 1894 Act to twelve months under Section 25 of the 2013 Act. In case of declarations issued in January 2012, on application of Section 11A of the 1894 Act, the time to determine compensation under the 2013 Act would vary from a day to a month, and while in cases where the declarations were issued within twelve months of the repeal of the 1894 Act, the landowners would be at a disadvantage as an award beyond the twelve-month period specified in Section 25 of the 2013 Act would be valid. In the first set of cases, given the onerous factual and legal exercise involved in determination of compensation and the need to issue notification under Section 26(2) of the 2013 Act, publication of the awards would be impractical. Hasty and incorrect awards would be deleterious for the landowners. If the awards are not pronounced, the acquisition proceedings would lapse defeating the legislative intent behind Section 24(1)(a) of the 2013 Act to save such proceedings. We would, therefore, exercise our choice to arrive at a just, fair and harmonious construction consistent with the legislative intent. A rational approach so as to further the object and purpose of Sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24(1) of the 2013 Act there would be no notification under Section 19, but declaration under Section 6 of the 1894 Act. When the declarations under Section 6 are valid as on 1st January 2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1st January 2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1st January 2014. This dictum is subject to the caveat stated in paragraph 16 (*supra*) that a declaration which has lapsed in terms of Section 11A of the 1894 Act before or on 31st December 2013 would not get revived.

21. The contention of the land owners, relying upon Rule 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement (Maharashtra) Rules, 2014,¹⁵ for giving a restrictive meaning and excluding Section 25 of 2013 Act is misplaced. This Rule states that the formula provided in Sections 26 to 30 of the 2013 Act would apply where a notification under

Section 4(i) of the 1894 Act was issued before 31st December 2013, and an award has not been made before the 31st December 2013. The Rule refers to the formula for computation of compensation to 1519. Land Acquisition Proceedings Initiated Under Land Acquisition Act, 1894.– (1) Any proceeding where a notification under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (I of 1894) has been issued before the 31st December 2013 and an award under section 11 of the said Land Acquisition Act, 1894 (I of 1894) has not been made before the 31 st December 2013, then the proceeding shall be continued as per the formula provided in sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).” be applied under Section 24(1)(a) of the 2013 Act, but it does not follow that Section 25 which prescribes the limitation for making of an award will not apply. For the reasons stated above, we hold that Section 25 of the 2013 Act applies to awards made under Section 24(1)(a) of the 2013 Act and the period of limitation of twelve months would commence from 1st January 2014.

22. Alternative argument by the State that neither the period for making of an award under Section 11A of the 1894 Act nor Section 25 of the 2013 Act would apply, would result in a situation which we believe the legislature had never envisaged. The consequence would be that there is no time period prescribed for making and passing of an award under clause (a) to Section 24(1) of the 2013 Act. This would be unacceptable and again completely contrary to the legislative intent in enacting Section 25 in the 2013 Act. Section 24 read and as interpreted in Indore Development Authority (supra) would not support such construction. Sensible and purposive construction to avoid absurdities and inconsistencies is, therefore, justified when we interpret Section 25 of the 2013 Act. Whether the award has been passed within the period stipulated under Section 25 of the 2013 Act or the acquisition proceedings have lapsed?

23. As per the arguments put forth by the appellants, the award was pronounced on 30th October 2014, which is within the period of twelve months prescribed by Section 25 of the 2013 Act coming into force on 1st January 2014. The landowners, however, dispute the date of publication. The impugned judgment holds that the award, though dated 30th October 2014, has been backdated. However, before we examine this controversy, it would be appropriate to first notice the effect of the stay order passed by the Aurangabad Bench of the Bombay High Court in Writ Petition No. 4274 of 2014. To understand the effect of the said stay order, we must again advert to Section 26(2) of the 2013 Act. This Section postulates that the market value calculated as per sub-section (1) shall be multiplied by a factor specified in the First Schedule. The First Schedule enumerates different components which constitute the minimum compensation package to be given to those whose land is acquired and to the tenants referred to in clause (c) of Section 3. Columns 2 and 3 of the First Schedule mandate that the market value in case of rural areas is to be multiplied/factored between 1 and 2 based on the distance of the project from urban area. The factor is to be notified by the “appropriate government”. As noticed above, when the factor/multiplier is more than 1, the compensation payable would be proportionately higher than the market value.

24. On 19th March 2014, the State of Maharashtra had published a notification directing that the multiplier in all rural areas shall be a factor of 1. This notification was challenged before the Aurangabad Bench of the Bombay High Court in Writ Petition No. 4274 of 2014, whereupon the High Court stayed the operation, execution and implementation of the notification vide the interim

order dated 26th May 2014. Consequently, the Government of Maharashtra had addressed its letter dated 7th July 2014 to the Divisional Commissioners directing them not to declare awards till further orders of the High Court in Writ Petition No. 4274 of 2014. On 13th August 2014, the State of Maharashtra published another notification whereby the multiplier factor made applicable to some of the rural areas was 1.10. In response, an application was made for the amendment of Writ Petition No. 4274 of 2014 to challenge and seek stay of the notification dated 13th August 2014. The State Government, in turn, had moved an application for modification/ vacation of the stay order. By order dated 23rd September 2014, the High Court, though denying a stay on the notification dated 13th August 2014, held that the awards passed after the issuance of the notification dated 13th August 2014 would be subject to the decision in the writ petition.

25. The impugned judgment, however, holds that the period when the stay order dated 26th May 2014 was effective is inconsequential and irrelevant as the High Court had not stayed the acquisition proceedings. It is difficult to accept the aforesaid reasoning for the simple reason that it ignores the language of the interim order and its true effect in redetermination of compensation. The interim order passed by the High Court had inhibited further action on the part of the authorities to proceed with the acquisition of land. Indore Development Authority (*supra*) refers to a catena of authorities, including *Abhey Ram (D) by LRs. and Others v. Union of India and Others*¹⁶, to give fitting meaning to the words “stay of action or proceedings” used in the proviso to Section 11A of the 1894 Act to mean any type of order passed by a court, which in one way or the other prohibits or prevents the authorities from passing an award. This period of inhibition is excluded while computing the period for passing of the award by an authority, under Section 11A of the 1894 Act. Further, the stay granted in the present case would be applicable to others also who had not obtained stay in that behalf. 16(1997) 5 SCC 421

26. In *Indore Development Authority (supra)*, with reference to Section 24(2) of the 2013 Act, the Constitution Bench has noticed that there is no similar provision for exclusion of time, though there is express provision for exclusion of time under Sections 19 and 69 of the 2013 Act. Nevertheless, the Constitution Bench, while discussing issue no.5 – ‘the effect of interim order of a court granting stay or injunction by which the authorities are unable to take possession or make payment and its exclusion’, has observed that omission of such exclusion and specific stipulation in Sections 19 and 69 of the 2013 Act does not indicate any special legislative intent. The provision for exclusion of time was read into Section 24(2) of the 2013 Act. For the aforesaid purpose, the relevant portions of the judgment have been reproduced below:

“331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the 2013 Act, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted,

for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80.

The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject-matter, refusal to apply the principle underlying the maxim *actus curiae neminem gravabit* would result in injustice.”

27. In the context of absence of any provision excluding the period of operation of stay orders under Section 24(2), it was noted that the statute cannot provide for all possible scenarios, and it is for the courts to plug the gaps through the process of judicial interpretation by ascertaining the legislative intent. The Court resorts to construe the words of the provision in a reasonable way having regard to the context. Accordingly, it was held that Section 24(2) ousts the period spent during the interim stay, and no fault or inaction could be attributed to the authorities when the payment of compensation or taking possession of land was inhibited by operation of a stay order.

In arriving at this finding, this Court relied on several judgments and treatises on statutory interpretation which elaborated on legal maxims encapsulated below:

- “*lex non cogit ad impossibilia*” – the law does not expect the performance of the impossible;
- “*actus curiae neminem gravabit*” – an act of the court shall prejudice no man;
- “*nemo tenetur ad impossibilia*” – no one is bound to do an impossibility; and • “*impotentia excusat legem*” – where a person is disabled from performing a duty created by law, without any default in him, and has no remedy over, there the law will in general excuse him.

28. It was further concluded, based on the maxim “*commodum ex-*

injuria sua nemo habere debet” (meaning: convenience cannot accrue to a party from his own wrong), that the legislation did not intend for relentless litigants to derive the benefit of enhanced compensation under the 2013 Act, but rather to deliver advantage to those who accepted the compensation and handed over possession.

29. The aforesaid reasoning will be applicable to Section 25 of the 2013 Act as well. If interpreted otherwise, it would bring inconsistencies and would cause injustice.

30. The foregoing discussion makes it abundantly clear that inasmuch as the High Court had, on 26th May 2014, stayed the operation of the notification dated 19th March 2014, and subsequently modified the order on 23rd September 2014 permitting publication of the awards, the intervening period of 129 days between 26th May 2014 until 23rd September 2014 and in any case of 79 days from 26th May 2014 till the new notification dated 13th August 2014 was issued must be excluded. Ordinarily, an award made or passed before 31st December 2014 would be valid. However, owing to the abovementioned intervening period of 79 days, it could be made up to 20th March 2015. Be it noted that the specific case of the landowners before the High Court was about lapsing of acquisition proceedings owing to the mandate of Section 11A of the 1894 Act. It was not even remotely suggested that the acquisition proceedings had lapsed even in terms of the mandate of the new legislation being 2013 Act, in particular Section 25 thereof. In other words, the High Court was essentially called upon to answer the assail in reference to the lapsing provision in the 1894 Act. However, as aforesaid, that will have no bearing on the fact situation of the present case, to which the regime predicated in Section 25 of the 2013 Act ought to apply.

31. In light of the asseveration of the landowners, the High Court had to consider the case made out by the landowners regarding subject award being not made within the specified period under Section 11A of the 1894 Act, to save acquisition proceedings. It, therefore, became necessary to examine the plea of the landowners that the concerned officials backdated the award as 30th October 2014. While considering that issue, the High Court in the impugned judgment noted thus:

“It appears on a perusal of the documents annexed to the writ petition and the rejoinder and the affidavit-in- reply filed on behalf of the respondent nos. 1 to 4 that though the award was passed much later, a show is made by the respondent nos. 2 and 3 of having passed the award on 30.10.2014. It is apparent from the documents annexed to the petition and the rejoinder which are not disputed by any of the respondents that there is a mention of the issuance of the communication by the Town Planning Department to the Special Land Acquisition Officer on 11.11.2014 pertaining to the land acquisition proceedings in the award. There is an outward entry no. 32 in regard to the communication dated 11.11.2014 in the outward register maintained by the Town Planning Department. This entry shows that indeed a communication was issued by the Town Planning Department to the Special Land Acquisition Officer on 11.11.2014. The respondent no.3 has the audacity to state that they have not received any such communication from the Town Planning Department and the reference to the said communication in the award is a clerical mistake. From outward entry no. 32, we find that this communication was issued by the Town Planning Department to the Special Land Acquisition Officer and from the reference of this communication in the award, it is apparent that the special land acquisition officer had received the communication dated 11.11.2014 before passing the award and, hence a reference to that communication is made in the award. This clearly shows that a show is made by the respondent nos. 2 and 3 that the award was passed on 30.10.2014 when the award was passed much later. Though the enquiry in the matter under Section 9 of the Act was conducted by the Deputy Collector, the District Collector has signed the award. It is clear from a perusal of the award, the

documents annexed to the petition and the rejoinder that the award is falsely stated to have been passed on 30.10.2014 though it was passed much later.

Actually, it was not necessary for the respondent nos. 2 and 3 to have made the show of passing the award on 30.10.2014 as even if the award was passed on 30.10.2014, the acquisition proceedings would have lapsed in view of the provisions of Section 11-A of the Act as the last Section 6 notification was admittedly issued on 08.08.2012 and the award ought to have been passed on or before 08.08.2014. We do not find any merit in the submission made on behalf of the respondent nos. 1 to 3 that since there was a stay to the proceedings by the Aurangabad Bench, the State Government decided not to proceed with the land acquisition proceedings. We are afraid that Writ Petition No. 4274 of 2014 that was pending before the Aurangabad Bench had no relation with the land acquisition proceedings in this case. The Aurangabad Bench had merely stayed the effect and operation of the notification dated 19.03.2014 which pertains to the multiplier. The Aurangabad Bench had not stayed the proceedings in any land acquisition matters, much less the land acquisition matter with which we are concerned. If that is so, the award could not have been passed on 30.10.2014, as the same would have lapsed in view of the provisions of Section 11-A of the Act. It is surprising that though the respondent nos. 1 to 3 have relied on the communication of the State Government dated 18.10.2014 that proceedings in all land acquisition matters should not be continued in view of the stay granted by the Aurangabad Bench in Writ Petition No. 4274 of 2014, just within two weeks from the said date, the award is purportedly passed on 30.10.2014.

We find that several irregularities and illegalities have been committed while proceeding with the land acquisition case initiated in pursuance of the Section 4 notification dated 16.06.2011. It appears that the roznama is maintained only till 06.05.2014 as a copy of the roznama, that was received by the petitioners on 13.03.2015 and that is placed on record, shows that the roznama is maintained till 06.05.2014 only. Had the roznama been maintained till the end, this Court could have gauged as to when the award was actually passed. It is surprising that the respondent no. 3 has taken a stand that the roznama was never maintained after 06.05.2014 as the proceedings were in the office of the Commissioner. Even assuming that the proceedings were in the office of the Commissioner, if they were received before 30.10.2014, as the award was purportedly passed on that date, the roznama could have been maintained after the proceedings were received from the office of the Commissioner however, the roznama ends on 06.05.2014. We do not know whether all the subsequent pages of the roznama have been destroyed with a view to conceal as to what happened in the land acquisition proceedings after 06.05.2014.”

32. The stand of the appellant(s) before the High Court and before us is that the High Court had erroneously quashed the award on the basis of prima facie findings that for the same communication of the Town Planning Department, different dates are mentioned i.e., 26th September 2014 and 11th November 2014. Whereas, the High Court failed to consider the detailed affidavit filed by the State of Maharashtra dated 5th July 2017 in W.P. No. 6884/2015, clarifying that the date at page Nos. 32 and 37 of the award was wrongly written as 11th November 2014

instead of 26th September 2014. The High Court had also noted that the Commissioner gave approval to the award on 20th November 2014, but it failed to consider the letter dated 8th October 2014 of the Divisional Commissioner granting approval to the draft award. It is urged that the High Court ought not to have based its conclusion on a prima facie view especially in a beneficial project of such vital public importance and burden the appellant(s) with heavy financial loss for no fault whatsoever.

33. Before us again the landowners rely on the fact note in the award dated 30th October 2014, referring to communication dated 11th November 2014 from the Town Planning Department to the Special Land Acquisition Officer, indicative of the fact that the award was not published until that date. The landowners are also relying on another communication dated 1st December 2014 issued by the Special Land Acquisition Officer to the acquiring body stating that the draft award had been submitted to the Commissioner and was likely to be approved, calling upon the acquiring body to deposit the compensation amount of Rs. 43.94 crores with their office. Reference is also made to the fact that roznama was not maintained by the Special Land Acquisition Officer after 6th May 2014. Further, the landowners had received certified true copy of the award along with notice only on 6th May 2015.

34. Indeed, the High Court leaned in favour of the argument that the stated award dated 30th October 2014 is backdated. That, however, was in the context of applicability of Section 11A of the 1894 Act and by not excluding the period during which the High Court stay was operating. Indisputably, the High Court did not examine the matter in the context of applicability of provisions of Section 25 of the 2013 Act and further, as has been held by us hitherto, the period during which the court's stay to the notification dated 19th March 2014 was operative, needs to be excluded. In the case of latter, the factum of manipulation and backdating of award becomes insignificant unless the High Court was to go a step further and hold that the award was not made even until 20th March 2015. In that view of the matter, the conclusion reached by us in the present appeals is inevitable and it must follow that the acquisition proceedings in question had not lapsed in law.

35. Arguendo, if we were to entertain the afterthought plea raised by the landowners before this Court for the first time that the acquisition proceedings had lapsed even on account of the mandate of Section 25 of the 2013 Act, the same needs to be negated for more than one reason. First, no factual foundation has been set out by the landowners including to assert that the stated award was not made even till 20th March 2015 nor was the High Court called upon to examine that fact. Secondly, the landowners "themselves" have stated (admitted) that the Commissioner had given permission/approval to the draft award on 20th November 2014¹⁷. Further, the High Court had not held that the award was made or pronounced beyond the period specified under Section 25 of the 2013 Act.

36. Ordinarily, in terms of Section 25, the award ought to have been published up to 31st December 2014. However, as held by us, the period of 79 days, when interim stay order was in operation, needs to be excluded. As stated in paragraph B (ii) (Page 2) of the Written Arguments filed on behalf of respondent/claimants, dated 02.09.2021 in reference to the findings of fact noted by the High Court in the impugned judgment at the end of paragraph 7 thereof, relying on entry no. 1081 in the Inward

Register of the Land Acquisition Officer.

to be excluded, in which case the award could be validly made until 20th March 2015. Given this date, in our opinion, even if it is assumed that the award dated 30th October 2014 is backdated, it was duly made soon after the approval was accorded by the Commissioner on 20th November 2014, which was certainly without any doubt, before 20th March 2015.

37. We are, therefore, of the considered opinion that the prima facie opinion noted by the High Court on the factum of backdating of the subject award would not make any difference to the outcome of the relief pursued by the landowners by way of writ petition for a declaration that the subject acquisition proceedings had lapsed. Such declaration, in our opinion, cannot be issued in the fact situation of the present case.

38. However, as the High Court has noticed certain discrepancies, as pointed out to it by the landowners in the record and proceedings before the Special Land Acquisition culminating in making of the stated award, it would be appropriate to leave that aspect open for being enquired into by the appropriate authority by conducting enquiry to identify the relevant facts and circumstances and if it is found to be a mischief, responsible person therefor may be proceeded against as per law. Suffice it to state that neither the observations made by the High Court nor this decision may affect the final opinion or conclusion that may have to be reached in such an enquiry. In other words, the enquiry be proceeded independently on its own merits by giving opportunity to all concerned.

39. While dealing with this submission made by the landowners, we must consider the submission that the notice under Section 12(2) of the 1894 Act dated 6th May 2015 was served on the landowners on various dates in May 2015. Section 37 of the 2013 Act is *pari materia* with Section 12(2) of the 1894 Act and hence we are not required to examine and consider in detail which of the two sections would apply in a case covered by clause (a) to Section 24(1) of the 2013 Act. Sub-section (1) to Section 37 of the 2013 Act as well as sub-section (1) to Section 12 of the 1894 Act state that the award shall be filed in the Collector's office and shall be final and conclusive evidence as between the Collector and the persons interested. It would not matter whether the person interested have appeared before the Collector or not. Further, the award is final and conclusive evidence as of the true area. Sub-section (3) to Section 37 of the 2013 Act requires the Collector to keep open to public and display summary of the entire proceedings undertaken in the case of acquisition of land, including the amount of compensation awarded. These mandates must be complied with, but as they are post the making of the award and, therefore, would not affect the validity of the award when made within the statutory time. Issue of notice by the Collector to the persons interested, which is to be given to the persons not present personally or through the representatives when the award is made, is to be issued immediately, but the issue of notice is not a condition precedent for making the award. Belated issue of notice would not, therefore, legally affect the validity of the award, though there may be other consequences. Equally, the limitation period to challenge and question the compensation awarded would commence on the service/intimation about making of the award on the landowners.¹⁸ Be that as it may, when satisfied that the award was made/ published within the prescribed period, even when there was backdating of the award or delay in effecting service on the

landowners, the land acquisition proceedings need not be set aside.

40. In view of the aforesaid discussion, we hold as under:

(i) Section 25 of the 2013 Act would apply to the awards made and published under Section 24(1)(a) of the 2013 Act.

18See Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and Another, AIR 1961 SC 1500 - the date for counting limitation period means the date of communication or is known by a party whether actually or constructively.

(ii) The limitation period for passing/making of an award under Section 24(1)(a) in terms of Section 25 of the 2013 Act would commence from 1st January 2014, that is, the date when the 2013 Act came into force.

(iii) Period during which the Court order would inhibit action on the part of the authorities to proceed with the making of the award would be excluded while computing the period under Section 25 of the 2013 Act.

(iv) Accordingly, period of 79 days from 26th May 2014 when the High Court had stayed operation of the notification dated 19th March 2014, till the new notification dated 13th August 2014 was issued has to be excluded.

(v) The award purportedly dated 30th October 2014, was in any case duly made on or before the extended date of 20th March 2015. Hence, the concerned award is valid.

(vi) The State of Maharashtra may conduct an inquiry in reference to the imputation regarding manipulation and backdating of the subject award and take such remedial and corrective action as may be necessary and to ensure such situations do not arise in future.

41. The impugned judgment setting aside the award and holding that the acquisition proceedings had lapsed is, accordingly, set aside. It is held that the acquisition proceedings had not lapsed and the award is legal and valid. The appeals are allowed in the aforesaid terms without any order as to costs.

.....J. (A.M. KHANWILKAR)J. (SANJIV KHANNA)
NEW DELHI;

NOVEMBER 10, 2021.