

Haryana State Industrial And ... vs Deepak Aggarwal on 28 July, 2022

Author: C.T. Ravikumar

Bench: C.T. Ravikumar, Abhay S. Oka, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

CIVIL APPEAL NOS.....OF 2022
(Arising out of SLP(C)Nos.16631-16632/2018)

HARYANA STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD. & ORS.

...APPELLANT(S)

VERSUS

MR. DEEPAK AGGARWAL & ORS.

...RESPONDENT(S)

WITH

C.A.NO...../2022 @ SLP(C)No.13883/2018

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SLP(C)D.No. 32828/2018

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JUDGMENT

C.T. RAVIKUMAR, J.

1. Leave granted.

2. Overlapping issues are involved in this bunch of cases. The point of polemics, which is common in all these cases, pertain to the meaning and interpretation of the word “initiated” employed in Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity “the 2013 Act”) with reference to land acquisition proceedings under the Land Acquisition Act, 1894 (for brevity “the L.A. Act”). Going by the appellants in the appeals arising from SLP(C)Nos.16631-16632 of 2018, including the State of Haryana, the Haryana State Industrial and Infrastructure Development Corporation and the appellants or respondents in certain other appeals sailing along with them (hereinafter referred to as Party ‘A’), for the purpose of Section 24(1) of the 2013 Act, issuance and publication of a Notification under Section 4(1) of the L.A. Act, 1894 alone would amount to initiation of acquisition proceedings thereunder. Per contra, the contesting parties, viz., the respondents therein and appellants in other appeals who hold the contra view, (hereinafter referred to as Party ‘B’) would contend that it is the declaration that the land is required for a public purpose under Section 6(1) of the L.A. Act that would mark the point of initiation of acquisition proceedings thereunder. To buttress the respective contentions, the parties rely on various decisions of this Court as also of different High Courts. We may hasten to add that the decisions of various High Courts cited before us would also reflect the cleavage in opinion among the High Courts on this issue.

Legal background

3. The legal background from which the stated question stems may be encapsulated thus:

The L.A. Act was a general law relating to acquisition of land for public purposes and also for companies, and for determination of amount of compensation to be made to the owner/holder of the property concerned upon acquisition. Inadequacy of the provisions in the L.A. Act in addressing various issues such as rehabilitation and resettlement of affected parties of such acquisition led to the enactment of the 2013 Act and the consequent repeal of the L.A. Act. However, Section 114 of the 2013 Act carries provisions not only for repeal but also for saving the L.A. Act to certain extent in given circumstances, from the prejudicial effect of repeal under sub-section (1) thereof, in the manner provided specifically in the 2013 Act. Section 114 of the 2013 Act reads thus:

“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.” When an enactment is repealed, normally some of its provisions are saved by a repealing provision. The extent and scope of such provisions under the repealed Act would depend upon the ‘Repeal and Saving’ provision under the repealing Act.

4. Thus, as per sub-section (1) of Section 114 of the 2013 Act, the L.A. Act was repealed and at the same time, sub-Section (2) thereof carries a saving clause. As per sub-Section (2) thereof, 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, with respect to the effect of repeals. Hence, to know the actual impact of the saving clause it is only proper and profitable to refer to Section 6 of the General Clauses Act before entering into the task of interpretation of the provisions under the L.A. Act which remains saved for the purpose of Section 24(1) of the 2013 Act and the scope of further operation of such provisions.

5. Section 6 of the General Clauses Act, 1897 (Act 10 of 1897) deals with the effect of repeals. It reads thus :-

“S.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.” (emphasis added)

6. Section 24 of the New 2013 Act is also to be extracted for a proper consideration of the common question(s) involved in the above appeals. It provides 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,—

(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.”

7. At this juncture it is only appropriate to refer to the decision of this Court in Maharashtra Vidarbha Irrigation Development Corpn. Vs. Mahesh & Ors. reported in (2022) 2 SCC 772. It was held therein that in terms of Section 24(1)(a) of the 2013 Act, Section 114 of 2013 Act as well as Section 6 of the General Clauses Act would not apply to the extent hindered by Section 24(1) of the 2013 Act for the following reasons:

(i) Section 114 of the 2013 Act while accepting the applicability of Section 6 of the General Clauses Act made its application subject to ‘save as otherwise provided’ in the 2013 Act;

(ii) Section 6 of the General Clauses Act itself provided that the general savings would not apply when legislative intent is contrary.

In this context it is also apposite to refer to the decision of this Court in Chandavarkar Sita Ratna Rao vs. Ashalatha S. Guram reported in (1986) 4 SCC 447 explaining the effect of a non- obstante clause. This Court held:

“A Clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the act or in some particular act or in any law for the time being in force, or any contract” is often than not appended to a Section in the beginning with a view to give the enacting part of this Section in case of a conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that inspite of the provision of the Act or any other Act mentioned in the non- obstante clause or any contract or document mentioned in the enactment following it will have its full operation or that the

provisions embraced in the non-obstante clause would not be an impediment for operation of the enactment”.

(emphasis supplied)

8. In the light of the aforesaid decisions what needs to be looked into is the extent and scope of the applicability of the provisions under the L.A. Act, despite its repeal, by virtue of section 24 of the 2013 Act. A perusal of Section 24 would reveal that passing of an Award under Section 11 of the L.A. Act is the key factor in deciding the manner and nature of continuance of the land acquisition proceedings. A scanning of Section 24(1)(a) would reveal that if land acquisition proceeding was initiated under the L.A. Act, but no award was passed under Section 11 thereof, then, all provisions of the 2013 Act relating to the “determination of compensation” would apply. At the same time, if upon initiation of acquisition proceedings under the L.A. Act, an award under Section 11 of the L.A. Act was passed, then, such proceedings shall continue under the provisions of the L.A. Act itself, as if the same had not been repealed.

9. Party ‘B’ who canvass the position against the view that issuance and publication of notice under Section 4(1) is the point of initiation, would contend that land acquisition proceedings could not be held as initiated, for the purpose of Section 24(1)(a) of the 2013 Act, unless Section 6 declaration under the L.A. Act was issued in respect of the land proposed to be acquired before 01.01.2014, the date on which the 2013 Act came into force. At the same time, the contention of Party ‘A’ is that land acquisition proceedings should be taken as initiated under the L.A. Act when Section 4(1) Notification under the L.A. Act was issued and published in the official gazette of the appropriate Government. Obviously, when land acquisition proceedings have been initiated and an award was also passed under section 11 of the L.A. Act, such proceedings, thereafter, could be continued only under the provisions of the L.A. Act, as if had not been repealed. It is in the aforesaid rival contentions and the impact of ‘initiation’ of land acquisition proceedings in the context and purpose of Section 24 of the 2013 Act that the construction of the word “initiated” used under Section 24(1) became necessary.

10. We have already noted the stand of the parties on the question of point of initiation of acquisition proceedings under the L.A. Act, for the purpose of Section 24(1) of the 2013 Act. To buttress the contention, Party ‘A’ mainly reliance is placed on the decisions in Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. State of Rajasthan [(1975) 4 SCC 296)]; and V.K.M. Kattha Industries (P) Ltd. Vs. State of Haryana [(2013) 9 SCC 338]. In the light of those decisions, they would contend that without issuance of Section 4(1) Notification acquisition under the L.A. Act could not be effected. It is further contended that without such a notification, it would not be lawful for any officer, either generally or specially authorised by the appropriate Government on their behalf, and also for his/her servants and workmen to enter upon and survey and take levels of any land in the locality concerned or lawfully do such further actions specified and permissible under Section 4(2) of the L.A. Act. The sum and substance of their manifold contentions is that issuance of Section 4(1) Notification for acquisition under the L.A. Act is not a mere formality and it is the point of initiation of acquisition proceedings under the L.A. Act.

11. On the other hand, Party 'B' would contend that issuance and publication of Section 4(1) Notification is a mere formality only to enable the authorised officer and workmen for carrying out preliminary steps for acquisition of the land proposed to be acquired. Nonetheless, they would admit that without the issuance of a notification thereunder acquisition proceedings under the L.A. Act would not be possible. Their contention is that Section 4(1) notification carries only a formal decision as to whether any particular land is needed or likely to be needed for a public purpose and it is only under Section 6 of the L.A. Act that ultimately a firm declaration would be made as to the requirement of the land mentioned in the preliminary notification for public purpose. Hence, according to Party 'B', for all purposes, it alone could be and should be treated as the point of initiation of acquisition proceedings under the L.A. Act. To drive home their contention, reliance is mainly placed on the decisions in Babu Barkya Thakur vs. State of Bombay & Ors. (AIR 1960 SC 1203) and M/s. Fomento Resorts & Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto & Ors. [(1985) 2 SCC 152.

12. The succinct narration of the rival contentions itself would reveal the diverse contentions of the parties made relying on different decisions to support their respective stand on the question relating to what would amount to initiation of acquisition proceedings under the L.A. Act, for the purpose of Section 24(1) of the 2013 Act.

13. In Indrapuri Griha Nirman Sahakari Samiti Ltd. case (supra) a Constitution Bench held thus: -

“Land acquisition proceedings commence with the notification under Section 4 of the Act.” It is true that the Constitution Bench was not considering the question whether it is issuance and publication of a notification under Section 4(1) of the L.A. Act or the declaration that the land is required for public purpose under Section 6 of the L.A. Act, that tantamounts to initiation or commencement of the land acquisition proceedings under L.A. Act. In fact, the Constitution Bench was considering the challenge against the notifications under Sections 4 and 6 of the Rajasthan Land Acquisition Act, 1953. But then, a two-Judge Bench of this Court in Civil Appeal No.6392 of 2003 titled as ‘Laxman Lal (Dead) Through LRs. & Anr. V. State of Rajasthan’ held that Section 4 of Rajasthan Land Acquisition Act is identical to Section 4 of the L.A. Act and Section 6 of Rajasthan Land Acquisition Act is similar to Section 6 of the L.A. Act. Therefore, the declaration of the position of Section 4 of the L.A. Act by the Constitution of Bench that land acquisition proceedings commence with the notification under Section 4 of the Act cannot be ignored neither on the ground that it was held so while considering the said provisions in the Rajasthan Land Acquisition Act nor on the ground that it was not made upon consideration of the question as to whether it is Section 4 or Section 6, of the L.A. Act that marks the point of initiation of land acquisition proceedings under the L.A. Act.

14. As noted hereinbefore, the decision in V.K.M. Kattha Industries (P) Ltd. case (supra) is by a three-Judge Bench of this Court. Paragraphs 13 to 14 (both inclusive) therein would reveal that after extracting Sections 4, 5A and 6 of the L.A. Act, in paragraph 14 the three-Judge Bench held: “Among the above provisions, Section 4 of the Act empowers the appropriate Government to initiate

proceedings for the acquisition of land”. It was so held by the Bench while considering the contention of the appellant therein that publication of notification under Section 4 (1) of the L.A. Act was not in accordance with the mandate provided in the statute and while looking into the scheme of the L.A. Act for answering the same.

15. Now, we will look into the decisions cited by the Party ‘B’ viz., in Babu Barkya Thakur’s case and in M/s Fomento Resorts & Hotels Ltd. In Babu Barkya Thakur’s case (supra), this Court considered the purpose and object of the notification under Section 4 of the L.A. Act. The same was explained in paragraph 17 therein thus:-

“The purpose of the notification under Section 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under Section 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated under Section 5-A or Section 40 necessarily after the notification under Section 4 of the Act.”

16. That apart, in paragraph 7 in Babu Barkya’s case it is stated thus:

“The proceedings begin with a Government notification under Section 4 that land in any locality is needed or is likely to be needed for any public purpose. On the issue of such a notification it is permissible for a public servant and workmen to enter upon the land to do certain acts specified therein, with a view to ascertaining whether the land is adapted for the purpose for which it was proposed to be acquired as also to determine the boundaries of the to be included in the scheme of acquisition”. In Babu Barkya Thakur’s case, the Constitution Bench was considering the challenge to the constitutionality of the land acquisition proceedings with particular reference to the notification under Section 4 of the L.A. Act. The contentions of the appellant therein, as can be seen from paragraph 6 therein, were that notification under section 4 of the L.A. Act was illegal, that the land acquisition proceedings were in violation of Articles 14, 19 and 31 of the Constitution and that the acquisition was not for public purpose and was malafide. It was in the said circumstances that in paragraph 17 the Constitution Bench held as above.

17. In Fomento Resorts’ case (supra) the above extracted recital from Babu Barkya Thakur’s case was quoted with agreement and then, held thus:- “...Though preliminary steps for initiation of acquisition proceedings are necessary and those can only be taken by the authority of the notification under Section 4 as mentioned in

the decision of Babu Barkya Thakur Vs. State of Bombay the initiation of the acquisition proceedings for all practical purposes being after Section 6 notification. Satisfaction is necessary for proceedings for acquisition under Section 6 of the Act but Section 4 unlike Section 6 does not require for the issuance of the notice to be satisfied but it might act only “when it appears” to it then the land is needed or is likely to be needed for any public purpose”. It is relying on the aforesaid decisions that Party ‘B’ would contend that for all practical purposes, Section 6 declaration is the initiation of acquisition proceedings under the L.A. Act. In other words, the contention of Party ‘B’ is that Section 6 declaration is the point of initiation of land acquisition proceedings under the L.A. Act is founded on what this Court observed in the above extracted portions of the said decisions.

18. It is to be noted that in Fomento Resort’s case (supra) in paragraph 13, it is stated that ‘to complete the acquisition proceedings, notification under Section 6 of the Act is required.’

19. A careful scanning of all the decisions cited by both sides would thus reveal that all those decisions hold that land acquisition proceedings under the L.A. Act begin with the publication of a notification under sub-section (1) of Section 4. A declaration under Section 6 of the L.A. Act is one of the steps under the L.A. Act which ultimately culminates into the conclusion of the proceedings by making an Award and taking over possession of the acquired land. A declaration under Section 6 cannot be made without holding an inquiry unless urgency clause under Section 17 is applied. Publication of a notification under sub-section (1) of Section 4 of the L.A. Act is condition precedent for taking further steps. Hence, such a notification is the starting point of acquisition proceedings under the L.A. Act.

The initiation of the proceedings is by the publication of the notification under sub-section (1) of Section 4 of the L.A. Act.

20. Bearing in mind the aforesaid position and also the observation in another Constitution Bench decision viz., in Offshore Holdings Private Limited V. Bangalore Development Authority [(2011) 3 SCC 139 that ‘a statute should be construed with reference to the context and its provisions to make a consistent enactment i.e. *ex visceribus actus*’. We will consider the question as to what exactly is the purport of employing the expression ‘initiate’, with reference to the L.A. Act, under Section 24(1) of the 2013 Act.

21. We are of the considered view that while construing the expression ‘initiated’ used in Section 24(1) of the 2013 Act with reference to commencement of acquisition proceedings under the L.A. Act, the decision in Ambica Quarry Works Vs. State of Gujarat [(1987) 1 SCC 213 is also to be borne in mind. In Ambica Quarry Works’ case while construing the words ‘may be renewed’ this Court held that all interpretations must subserve and help implementation of the intention of the Act concerned.

22. The legislative intention behind bringing up the 2013 Act was to have a unified enactment facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner and at the same time, providing for just and fair compensation, to make adequate provision for rehabilitation and resettlement mechanism for affected persons and their families. As a preamble its objects and reasons have been given in the 2013 Act thus:

“An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.”

23. Bearing in mind the aforesaid legislative intention we will have to construe Section 24 and also the word ‘initiated’ employed in section 24(1), of the 2013 Act. The word ‘initiated’ has to be construed with a view to implement the aforesaid twin purposes of providing fair and just compensation and facilitating acquisition of land for industrialization, infrastructure and urbanization projects. We have already referred to the impact of ‘initiation’ of land acquisition proceedings and its culmination in an award under Section 11 of the L.A. Act and also non-culmination in such an award.

24. For a proper and purposive construction of the word ‘initiated’, in the contextual situation it will not be inappropriate to look into the legislative history of Section 24 of the 2013 Act as well, as explained in the written submission filed on behalf of HSIIDC/STATE/COMMITTEE dated 11.04.2022. However, we do not deem it necessary to refer to or to deal with it, in detail. In short, it is stated therein that the events happened prior to the drafting of Section 24, as it exists on the statute book today, is a safe guide to cull out the legislative intent in formulating Section 24 in the 2013 Act, by the legislature. Furthermore, it is stated therein that the legislature was fully aware of the fact that lands acquired under the L.A. Act were already being used for several public purposes and more particularly for infrastructural projects and large number of acquisition proceedings under the L.A. Act, relating large number of public projects for various public purposes, are in progress at various stages. Hence, lapsing of everything would be seriously detrimental to public interest and at the same time, the interest of land holders is also taken into account. The consideration of all such relevant aspects and the pros and cons made the legislature to come up with a balancing provision under Section 24(1)(a) and clauses therein, in the 2013 Act. This was incorporated as a balancing provision for controlling the extent of retrospectivity and for curtailing the erosion of rights of land holders.

25. However, in resistance, all the learned counsel appearing for Party 'B' would contend that the question requires to be considered on a totally different angle. It is contended that Section 24 of the 2013 Act and the word 'initiated' used under clause (a) of sub-section (1) thereof must be read and understood consistent with and in view of Article 21 of the Constitution of India. It is also contended that permitting continuance of proceedings initiated under the L.A. Act would violate Article 300-A of the Constitution.

26. The contentions raised by Party 'B' based on violation of Articles 21 and 300-A of the Constitution of India are only to be repelled. Right to property had ceased to be a fundamental right. True that it is a human right as also constitutional right. Hence, compulsory acquisition by scrupulous adherence to the procedures authorised by law would not violate Article 300-A of the Constitution. Article 21 mandates that no person shall be deprived of life or personal liberty, except according to procedures established by law. In this context the decision in *State of M.P. Vs. Narmada Bachao Andolan* [(2011) 7 SCC 639] assumes relevance. Paragraph 28 therein reads thus:-

“28. However, in case of land acquisition, “the plea of deprivation of right to livelihood under Article 21 is unsustainable”. (Vide *Chameli Singh Vs. State of U.P.* and *Samantha vs. State of A.P.*). This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide *Lachhman Dass Vs. Jagat Ram and Amarjit Singh Vs. State of Punjab*).

However, in *Jilubhai Nanbhai Khachar Vs. Stte of Gujarat* this Court held:

30. Thus it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right...

58. ... The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles.”

27. Bearing in mind the twin purposes mentioned hereinbefore, we are of the view that they can only be achieved if the word 'initiated' is taken as the point of time when section 4 (1) notification is issued and published under the L.A. Act, in the Official Gazette. Such a construction would embrace more number of affected persons within the fold of affected persons entitled to higher amount of compensation by application of the 2013 Act in the matter of determination of compensation. As a necessary sequel more extent of land in respect of which acquisition proceedings have been initiated, for public purposes, under the L.A. Act for the various ongoing and proposed projects, would remain protected from lapsing. In this context, it is to be noted that all the parties in all the appeals in unison would admit the fact that determination of compensation based on the 2013 Act would be beneficial to the persons affected by acquisition and entitled to be compensated. The words 'initiate' or 'initiated' are not defined under the L.A. Act and also under the 2013 Act. Hence, to ascribe its meaning the dictionary meaning of the word has to be looked into.

In Webster's Third New International Dictionary. The word "initiate" has inter alia been defined thus:-

"to begin or set going; make a beginning of; perform or facilitate the first actions, steps, or stages of;" In Shorter Oxford English Dictionary the word "initiate" is defined as:

"to begin, commence, enter upon, to introduce, set going, originate." In the light of the above discussion and taking note of the legislative intention we have no hesitation to hold that the point of initiation of land acquisition proceedings under the L.A. Act for the purpose of Section 24(1) of the 2013 Act, is issuance and publication of Section 4(1) notification in the official gazette of the appropriate Government.

28. We think it only befitting to supplement further reasons for supporting our conclusion as above. A perusal of Section 4 of the L.A. Act would reveal that a preliminary Notification under Section 4(1) is issued whenever it appears to the appropriate Government that land in any locality is needed or likely to be needed for any public purpose. The said formal expression of the decision takes concrete shape and forms only on its Publication in the Official Gazette. It is only upon issuance and publication of a Notification under Section 4(1) that any officer, either generally or specially authorised by the appropriate Government and his servants and workmen could lawfully enter upon and survey and take levels of any land in such locality in terms of sub-Section (2) thereof. In the circumstances, it is only worthy to refer to Section 4 as a whole. They read thus :-

"S.4. Publication of preliminary notification and power of officers thereupon. – 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)].

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;"

29. Section 4(2) would reveal that besides entering upon and surveying and taking levels of any land in the locality concerned, the officer authorised by the Government through the Notification is also empowered to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for all purposes; to set out the boundaries of the land proposed to be taken and the intended line of work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches and such other activities mentioned under sub-Section (2) thereof. In such circumstances, the fact is that it is the issuance and publication of Section 4(1) notification that will empower the authorised officer and workmen to enter into and do such permissible acts and activities. This fact was noted in Babu Barkya Thakur's case as well.

30. In the decision in Shiv Kumar and Anr. Vs. Union of India and Ors. [(2019)] 10 SCC 229] a three-Judge Bench of this Court held that a purchaser of land in respect of which notification under Section 4(1) of the L.A. Act issued and published (after the issuance of Section 4 notification under the L.A. Act) did not acquire any right in the land concerned and such sale is ab initio void and such a person would have no right to claim that land under the policy of law. Section 23 of the L.A. Act deals with matters to be considered in determining compensation. Going by the said provision, the market value of the land in question was to be decided taking the market value at the date of the publication of the notification under Section 4. Going by the settled position, a vital defect in the Section 4(1) notification under the L.A. Act cannot be cured by issuing and publishing a declaration under Section 6 of the L.A. Act and in such circumstances, it would entail annulment of both the notifications and also the acquisition proceedings. All the aforesaid aspects would reveal that issuance and publication of a valid Section 4(1) Notification, was the foundation for acquisition of land in any locality under the L.A. Act. All the above reasons will fortify our conclusion and justify the rejection of the contention that Section 4(1) notification is nothing but a mere formality and got no real relevance or importance in the process of land acquisition under the L.A. Act.

31. Now, we will consider the other common questions involved in the captioned appeals. They pertain to the questions as to whether Section 4 notification issued under the L.A. Act prior to 01.01.2014 (date of commencement of 2013 Act) could continue or survive after 01.01.2014 and, as to whether Section 6 notification under the L.A. Act could be issued after 01.01.2014.

32. We think that while considering those questions we will have to bear in mind the purposes and the legislative history of the 2013 Act and also the intention of the legislature in drafting the same in the manner in which it now exists. We have already dealt with those aspects. One crucial aspect discernible from Section 24(1)(a) has also to be taken note of in this context. The combined effect of Section 24(1) and clause (a) thereof is that if land acquisition proceeding under the L.A. Act was initiated prior to 01.01.2014, the date of coming into force of the 2013 Act, and if it was not culminated in an award under Section 11 of the L.A. Act, then all the provisions of the 2013 Act relating to the determination of compensation should apply to such acquisition proceedings. Thus, it is obvious that in case of non-passing of an award in terms of Section 11 of the L.A. Act where the acquisition proceedings have been initiated prior to 01.01.2014, all provisions under the 2013 Act relating to the determination of compensation alone would apply to such acquisition proceedings. In other words, it would mean that in such circumstances the land acquisition proceedings should continue, but all the provisions relating to the determination of compensation under the 2013 Act

alone will be applicable to such proceedings, meaning thereby, the 2013 Act would come into play only at that stage. There can be no doubt with respect to the position that between the initiation of land acquisition proceedings by issuance and publication of notice under Section 4(1) of the L.A. Act and the stage at which compensation for the acquisition calls for determination, there are various procedures to be followed to make the acquisition in accordance with the law. The question is when Section 24(1) of the 2013 Act makes it clear with necessary implication that all provisions of the 2013 Act relating to the determination of compensation alone would be applicable to such proceedings initiated under the L.A. Act but, not culminated in an award, how the procedures are to be regulated during the intervening period till the proceedings reach the stage of determination of compensation. There cannot be any uncertainty on that aspect. The procedures to be undertaken and the manner in which they are to be regulated cannot remain uncertain. They are conducted either in the manner provided under the L.A. Act or in the manner provided under the 2013 Act. But then, in view of Section 24(1)(a), the provisions relating to the determination of compensation alone can be applied to such proceedings or in other words, there is only a restricted application of the provisions of the 2013 Act in relation to such proceedings. The inevitable conclusion can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the L.A. Act. We have no doubt that without such a construction, the provisions under Section 24(1)(a) would not work out, in view of the restrictive application of the 2013 Act. It is in this context that the decision in *Ambica Quarry Works'* case (supra) assumes relevance. Any construction of the said provision without taking into the legislative intention, referred hereinbefore would defeat the legislative intention as also the very objects of the 2013 Act. Certainly, it would not be in public interest to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will. A uniform procedure has to be followed in respect of such proceedings. The acquisitions initiated for public purposes should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and at the same time, the persons affected shall have definite idea about the manner in which procedures would be conducted. The Party 'B' would not be justified in describing such situations of necessity and the consequential application of provisions which are actually saved on account of the construction of Section 24 as an attempt to bring the words expressly employed in Section 24(1)(b) and absent in Section 24(1)(a), by indirect method to Section 24(1)(a) of the 2013 Act. The aforesaid conclusions and findings would make the contentions of Party 'B' that Section 4(1) notification issued prior to 01.01.2014 could not survive after 01.01.2014 and also that Section 6 notification under the L.A. Act could not be issued after 01.01.2014, unsustainable. In fact, all such procedures and formalities shall be continued till the determination of compensation by applying all the provisions for determination of compensation, under the 2013 Act. A contra-construction, in view of the restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1)(a) of the 2013 Act unworkable.

33. Having decided the common questions as above we are of the view that all the other issues involved in the individual appeals have to be considered on their own merits and subject to this judgment in respect of all the stated common questions.

34. To conclude, we hold that for the purposes of sub-section (1) of Section 24 of the 2013 Act, the proceedings under the L.A. Act shall be treated as initiated on publication of a notification under sub-section (1) of Section 4 of the L.A. Act. We further hold that when Clause (a) of sub-section (1) of Section 24 of the 2013 Act is applicable, the proceedings shall continue as per the L.A. Act. However, only for the determination of compensation amount, the provisions of the 2013 Act shall be applied.

35. We have already observed that other issues are also involved in the captioned appeals besides the common questions and issues which we have answered in this judgment. Hence taking note of involvement of other legal and factual issues in these appeals shall be listed before appropriate Bench for disposal on their own merits.

.....,J.

(A.M. KHANWILKAR)J.

(ABHAY S. OKA)J.

(C.T. RAVIKUMAR) NEW DELHI;

28 July, 2022