

SHRACHI BURDWAN DEVELOPERS PRIVATE LIMITED A

v.

THE STATE OF WEST BENGAL & ORS.

(Civil Appeal No. 5856 of 2021)

OCTOBER 05, 2021 B

[M. R. SHAH AND A. S. BOPANNA, JJ.]

Land Acquisition Act, 1894: Notification issued under s.4 for acquiring land for public purpose for setting up the Satellite Township for Burdwan Town at public expenses – After the declaration was published under s.6, an unregistered MoA was executed by the BDA with Bengal Shrachi who was chosen in a bid process amongst some other companies for development of lands acquired under a public private partnership – Land acquisition collector declared award – The said amount was paid by BDA – Thereafter, the state government took over possession of the lands from the farmers and handed it over to BDA and BDA handed it over to Bengal Shrachi – In the meantime, at the instance of the landowners, references were successfully made to reference court wherein compensation was enhanced from Rs.5.8 lacs to Rs.35 lacs – Feeling aggrieved and dissatisfied with the common judgment and order passed by the Reference Court, at the instance of the BDA, four appeals are pending before the High Court – Feeling aggrieved and dissatisfied with the judgment and award passed by the Reference Court, the appellant Shrachi Burdwan filed a Writ Petition before the High Court challenging the judgment and award passed by the Reference Court enhancing the amount of compensation – Maintainability of writ petition – Held: Appellant was not a party to the Reference proceedings – The locus of the appellant was seriously disputed on behalf of the landowners/ claimants and it was seriously disputed whether the appellant can be said to be a ‘person interested’ within the definition of s.3(b) of the LA Act – In the facts and circumstances of the case and more particularly when the locus of the appellant to challenge the judgment and award passed by the Reference Court is seriously disputed and whether the appellant can be said to be a ‘person interested’ within the definition of s.3(b) of the LA Act and thereby the appellant can challenge the judgment and award passed by the

- A *Reference Court enhancing the compensation are all disputed questions of facts and are all contentious issues, High Court ought not to have entertained the writ petition under Art.226 and ought not to have set aside the judgment and award passed by the Reference Court enhancing the amount of compensation under the provisions of the Land Acquisition Act – The remedy available to the appellant would have been to prefer appeal before the High Court with application for leave to appeal.*
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Disposing of the appeals, the Court

HELD: The appellant Shrachi Burdwan was not a party to

- C the Reference proceedings. The *locus* of the appellant – Shrachi Burdwan has been seriously disputed on behalf of the landowners/ claimants and it is seriously disputed whether the appellant - Shrachi Burdwan can be said to be a ‘person interested’ within the definition of Section 3(b) of the Land Acquisition Act. As such out of 24 Reference cases, before the High Court in Writ Petition No. 9778(W) of 2012, the appellant restricted the prayer with respect to only four respondents namely 6, 16, 17 and 25 in the writ petition. At the instance of the BDA four appeals challenging the judgment and award passed by the Reference Court are pending before the High Court. Therefore, in the facts and
- E circumstances of the case and more particularly when the locus of the appellant, Shrachi Burdwan to challenge the judgment and award passed by the Reference Court is seriously disputed and whether the appellant, Shrachi Burdwan can be said to be a ‘person interested’ within the definition of Section 3(b) of the Land Acquisition Act and thereby the appellant can challenge
- F the judgment and award passed by the Reference Court enhancing the compensation are all disputed questions of facts and are all contentious issues, we are of the opinion that Single Judge of the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India and ought
- G not to have set aside the judgment and award passed by the Reference Court enhancing the amount of compensation under the provisions of the Land Acquisition Act. The remedy available to the appellant would have been to prefer appeal before the High Court with application for leave to appeal. [Para 8][935-E-H; 936-A-C]
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N. P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal Salem District and Four Others, AIR 1952 SC 64 : [1952] SCR 218; State of U.P. v. Mohammad Nooh, [1958] SCR 595; Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1 : [1998] 2 Suppl. SCR 359; Harbanslal Sahnia and Anr. v. Indian Oil Corpn. Ltd. and Ors., (2003) 2 SCC 107; Neyvely Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition) Neyvely and Ors., (1995) 1 SCC 221 : [1994] 4 Suppl. SCR 567; U.P. Avas Evam Vikas Parishad v. Gyan Devi (Dead) by LRs. And Ors., (1995) 2 SCC 326 : [1994] 4 Suppl. SCR 646; Peerappa Hanmantha Harijan (Dead) by Legal Representatives and Ors. v. State of Karnataka and Anr., (2015) 10 SCC 469 : [2015] 9 SCR 498; Satish Kumar Gupta and Ors. v. State of Haryana and Ors. (2017) 4 SCC 760 : [2017] 1 SCR 767; Hindu Kanya Maha Vidyalaya, Jind and Anr. v. Municipal Committee, Jind and Ors., (1988) Suppl. SCC 719; Himalayan Tiles and Marble (P) Ltd. v. Francis Victor Countinho (Dead) by LRs., (1980) 3 SCC 223 : [1980] 3 SCR 235; Neelagangabai and Anr. v. State of Karnataka and Ors., AIR 1990 SC 1321 : [1990] 3 SCR 20 - referred to.

Case Law Reference

[1952] SCR 218	referred to	para 4.3	
[1958] SCR 595	referred to	para 4.3	F
[1998] 2 Suppl. SCR 359	referred to	para 4.3	
(2003) 2 SCC 107	referred to	para 4.3	
[1994] 4 Suppl. SCR 567	referred to	para 4.3	
[1994] 4 Suppl. SCR 646	referred to	para 4.3	G
[2015] 9 SCR 498	referred to	para 5.2	
[2017] 1 SCR 767	referred to	para 5.2	
(1988) Suppl. SCC 719	referred to	para 5.2	

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| A | [1980] 3 SCR 235
[1990] 3 SCR 20 | referred to
referred to | para 5.3
para 5.3 |
| CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5856 of 2021. | | | |
| B | From the Judgment and Order dated 11.09.2019 of the High Court of Calcutta at Calcutta in FMA No. 887 of 2019. | | |
| With
Civil Appeal Nos. 5857-5880 of 2021. | | | |
| C | Shyam Divan, Basava Prabhu Patil, Ms. Kiran Suri, Ranjit Kumar, Sr. Advs., Arindam Bannerji, Amit Kumar Mishra, Shashank Manish, Ms. Smriti Shah, Ms. Nidhi Sahay, Sudipto Sircar, Rajkumar Gupta, Sarad Kumar Singhania, Ms. Rashmi Singhania, Kumarjit Banerjee, Gaurav Gupta, Ms. Sanchari Chakroborty, Aakash Khattar, Rajesh Kumar, Gaurav Goel, Suhaan Mukerji, Vishal Prasad, Nikhil Parikshith, Abhishek | | |
| D | Manchanda, Sayandee Pahari, for M/s PLR Chambers and Co., Ms. Madhumita Bhattacharjee, Ms. Srija Chowdhury, Anant, Advs. For the appearing parties. | | |
| The Judgment of the Court was delivered by
M. R. SHAH, J. | | | |
| E | 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.09.2019 passed by the High Court of Judicature at Calcutta in FMA No. 887 of 2019 by which the High Court has allowed the said appeal preferred by the original landowners/claimants by quashing and setting aside the judgment and order dated 16.02.2017 passed by the learned Single Judge and consequently dismissed the Writ Petition No. 9778(W) of 2012, Shrachi Burdwan Developers Private Limited [claiming to be interested party and ‘person interested’ as defined under Section 3(b) of the Land Acquisition Act (hereinafter referred to as “Act”)] has preferred the present Civil Appeal No. 5856 of 2021 arising out of SLP (C) No. 29801 of 2019. | | |
| F | 2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26.02.2020 passed by the High Court of Judicature at Calcutta in C.O. No. 1232 of 2018 and other allied matters by which the learned Single Judge of the High Court has allowed the said revisional applications and has quashed and set aside the awards passed by the | | |
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Reference Court enhancing the compensation, the original landowners have preferred the present Civil Appeal Nos. 5857-5880 of 2021 arising out of SLP (C) Nos.9991-10014 of 2020.

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3. The facts leading to the present appeals in nutshell are as under:-

3.1 Burdwan Development Authority (hereinafter referred to as "BDA") requisitioned the land in question. The Government issued 12 separate notifications under Section 4 of the Land Acquisition Act in the months of April and May, 2005 stating inter alia that the lands would be acquired for public purpose for setting up the Satellite Township for Burdwan Town at public expenses. That thereafter, the declaration under Section 6 of the Land Acquisition Act was published.

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3.2 In the month of August, 2005, Paschim Bardhaman Krishi Kalyan Samity, a group of farmers filed a writ petition before the High Court challenging the notifications issued under Section 4 of the Act on the grounds inter alia that the acquisition are not for public purpose and not on public expenses but on private expenses of Bengal Shrachi Housing Development Ltd. (hereinafter referred to as "Bengal Shrachi"). According to the original claimants – landowners, BDA filed objection pleading that the entire cost of acquisition is borne by the BDA itself and the lands were needed for public purpose. The High Court dismissed the said writ petition holding the acquisition was for public purpose and at public expenses, entirely to be paid by BDA.

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3.3 It appears that after declaration was published under Section 6 of the Act, an unregistered Memorandum of Agreement (MoA) dated 08.03.2006 was executed by the BDA with Bengal Shrachi who was chosen in a bid process amongst some other companies for development of lands acquired under a public private partnership.

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3.4 That thereafter, the Land Acquisition Collector declared award under Section 12(1) of the Act. The said amount was paid by BDA. That thereafter on 26.02.2007, the State of West Bengal took over possession of the lands from the farmers and handed it over to BDA and BDA handed it over to Bengal Shrachi. In the meantime, at the instance of the landowners References were made to the Reference Court under Section 18 of the Act. The Reference Court allowed the References and enhanced the compensation from Rs.5,80,700/- per acre as determined by the Collector to Rs.35,00,000/- per acre together with solatium, interest, and other statutory dues thereon.

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- A 3.5 Feeling aggrieved and dissatisfied with the common judgment and order passed by the Reference Court, at the instance of the BDA, four appeals are pending before the High Court of judicature at Calcutta.
- 3.6 Feeling aggrieved and dissatisfied with the judgment and award passed by the learned Reference Court, the appellant herein Shrachi
- B Burdwan Developers Private Limited (hereinafter referred to as “Shrachi Burdwan”) filed a Writ Petition No. 9778(W) of 2012 before the High Court of Calcutta in which the following prayers were stated:-
- a) A declaration that the petitioners are not liable to pay any amount over and above the original cost of acquisition already paid to the respondent authorities;
- C b) In the alternative, a declaration that the impugned judgments and/or orders passed by the Learned Additional District Judge, Burdwan in the 24 land acquisition cases (being Annexure “P:29” hereto) and detailed in the letter dated 16th December, 2011 are arbitrary, illegal, null and Void;
- D c) A writ of and/or in the nature of Mandamus do issue restraining the respondent authorities from demanding from the petitioners any amount over and above the original cost of acquisition already paid to the respondent authorities;
- E d) A writ of and/or in the nature of Mandamus do issue calling upon the respondent authorities to forthwith revoke, rescind, recall, cancel and set aside:-
- i. The impugned judgments and/or orders passed by the Learned Additional District judge, Burdwan in the 24 land acquisition cases (being Annexure “P29” hereto) and detailed in the letter dated 16 December, 2011 (being Annexure °P27° hereto);
- ii. The purported decision arrived at the board meeting dated 11th January, 2012 (being Annexure “P30” hereto);
- F e) A writ of and/or in the nature of Mandamus do issue restraining the respondent authorities from acting under and from giving any further and/or any effect to:-
- i. The impugned judgments and/or orders passed by the Learned Additional District Judge, Burdwan in the 24 land acquisition cases (being Annexure “P29” hereto);
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- ii. The purported decision arrived at the board meeting dated 11thJanuary, 2012 (being Annexure “P30” hereto); A
- f) A writ of and/or in the nature of Mandamus do issue directing the respondents to hear the 24 land acquisition cases (being Annexure “P29” hereto) afresh after serving notice and granting hearing to the petitioners in accordance with law; B
- g) A writ of and/or in the nature of Prohibition do issue prohibiting the respondents from proceeding with:-
 - i. The impugned judgments and/or orders passed by the Learned Additional District Judge, Burdwan in the 24 land acquisition cases (being Annexure “P29” hereto); C
 - ii. The purported decision arrived at the board meeting dated 11thJanuary, 2012 (being Annexure “P30” hereto);
- h) A writ of and/or in the nature of Certiorari do issue calling upon the respondents to transmit to this Hon’ble Court all the records pertaining the impugned judgments and/or orders passed by the Learned Additional District Judge, Burdwan in the 24 land acquisition cases (being Annexure “P29” hereto) so that conscientable justice may be done by quashing the same; D
- i) Rule Nisi in terms of the prayers above; E
- j) Injunction restraining the respondents from demanding from the petitioners any amount over and above the original cost of acquisition already paid to the respondent authorities;
- k) Stay of operation of:-
 - i. The impugned judgments and/or orders passed by the Learned Additional District Judge, Burdwan in the 24 land acquisition cases (being Annexure “P29” hereto); F
 - ii. The purported decision arrived at the board meeting dated 11thJanuary, 2012 (being Annexure “P30” hereto); G
- m) A direction upon the Land Acquisition Collector, Burdwan to issue notice to the respondent No.27 and 28;
- n) Ad interim orders in terms of prayers (j) and (m) above;
- o) Such further or other order or orders be made and/ or directions be given as this Hon’ble Court may deem fit and proper,” H

- A 3.7 The learned Single Judge of the High Court allowed the said writ petition by the judgment and order dated 16.02.2017 and quashed and set aside the judgment and award passed by the Reference Court in the Reference cases initiated by original respondent Nos. 6, 16, 17 and 25 in the Writ Petition No.9778(W) of 2012. At this stage, it is required to be noted that the writ petition was confined to only four respondents referred to herein above. Learned Single Judge held that the petitioner can be said to be an ‘interested party’ within the definition of Section 3(b) of the Act and as the Reference Court passed the judgment and award enhancing the amount of compensation without giving an opportunity to the appellant – Shrachi Burdwan Developers Private Limited. While quashing and setting aside the judgment and award passed by the learned Reference Court, learned Single Judge of the High Court remanded the case back to the learned Additional District Judge, Burdwan (Reference Court) for being decided afresh after giving an opportunity of hearing to the appellant company.
- D 3.8 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge dated 16.02.2017, the landowners preferred appeal before the High Court being FMA No. 887 of 2019 and by the impugned judgment and order dated 11.09.2019, the Division Bench of the High Court has allowed the said appeal and has quashed and set aside the judgment and order passed by the learned Single Judge leaving the original writ petitioners - appellants herein free to pursue whatever other remedies may be available to them in accordance with law.
- E 3.9 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, appellant herein – Shrachi Burdwan has preferred the present Civil Appeal No.5856 of 2021.
- G 3.10 In the meantime, the landowners preferred the execution petition before the Reference Court. In the execution petitions, Shrachi Burdwan preferred the application to implead them as party relying upon the judgment and order dated 16.02.2017 passed in Writ Petition No. 9778(W) of 2012. The Reference Court – Executing Court dismissed the said applications, which were the subject matter of revision applications before the High Court being C.O. No. 1232 of 2018 and other allied revision applications. At this stage, it is required to be noted that the Writ Petition No.9778(W) of 2012 was restricted to only four respondents namely 6, 16, 17 and 25 in the Writ Petition No. 9778(W) of

2012. However, the applications were filed in the execution petitions with respect to 24 claimants/landowners and 24 revision applications were preferred before the High Court. Before the learned Single Judge, Shrachi Burdwan relied upon the judgment and order passed by the learned Single Judge in Writ Petition No. 9778(W) of 2012 by which the learned Single Judge held that Shrachi Burdwan is a necessary and interested party and can be said to be ‘interested person’ within the definition of Section 3(b) of the Land Acquisition Act. Relying upon the judgment and order passed by the learned Single Judge in Writ Petition No. 9778(W) of 2012, which as such was set aside by the Division Bench of the High Court by its judgment and order dated 11.09.2019 passed in FMA No. 887 of 2019, the learned Single Judge allowed the said revision applications being C.O. No. 1232 of 2018 and other allied revision applications and unfortunately has quashed and set aside the judgment and award passed by the Reference Court holding that Shrachi Burdwan – the revisionist can be said to be a “person interested” within the definition as envisaged in Section 3(b) of the Act. By the impugned judgment and order, the learned Single Judge of the High Court has passed the following order in paragraph 113:-

“**113.** In view of the aforesaid findings, all the revisional applications which are taken up for hearing together, are allowed, thereby setting aside the orders impugned therein and holding that the reference awards, enhancing the amount of compensation, were null and void in the eye of law, since those were passed without impleading Shrachi, a necessary party due to its direct interest in the compensation to be made on account of the acquisition of land, as envisaged in Section 3(b) of the LA Act. However, this will not prevent the land losers from initiating fresh proceedings under Section 18 of the LA Act, impleading Shrachi as a party.”

3.11 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge of the High Court dated 26.02.2020 passed in C.O. No.1232 of 2018 and other allied revision applications quashing and setting aside the judgment and award passed by the Reference Court, the original landowners/claimants have preferred the present Civil Appeal Nos.5857-5880 of 2021.

4. We have heard Shri Shyam Divan, learned senior counsel appearing on behalf of Shrachi Burdwan Developers Private Limited in Civil Appeal No. 5856 of 2021 on maintainability of the writ petition

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- A before the learned Single Judge challenging the judgment and award passed by the learned Reference Court.
- 4.1 Shri Shyam Divan, learned senior counsel appearing for the appellant has vehemently submitted that in the facts and circumstances of the case, the appellant was justified in invoking the jurisdiction of the
- B High Court under Article 226 of the Constitution of India challenging the judgment and award passed by the Reference Court.
- 4.2 It is submitted that as the appellant can be said to be a ‘person interested’ in view of the definition of Section 3(b) of the Act in as much as the ultimate liability to pay the enhanced compensation would be upon
- C the appellant and as the appellant was not impleaded as a party in the Reference under Section 18 of the Act and was not heard by the Reference Court before enhancing the amount of compensation the appellant was justified in invoking the jurisdiction of the High Court under Article 226 of the Constitution of India. It is submitted that in the facts and circumstances of the case, as such the learned Single Judge rightly entertained the writ petition under Article 226 of the Constitution of India and rightly exercised the jurisdiction under Article 226 and rightly quashed and set aside the judgment and award passed by the Reference Court on the ground that before enhancing the amount of compensation, the appellant was not heard. It is submitted that as such the learned Single
- E Judge of the High Court remanded the matter to the Reference Court to decide the references afresh after giving an opportunity to the appellant. It is submitted that, therefore, in the facts and circumstances of the case, the Division Bench ought not to have interfered with the order passed by the learned Single Judge.
- F 4.3 Shri Shyam Divan, learned senior counsel appearing on behalf of the appellant has relied upon the following decisions of this Court in support of his submission that in the facts and circumstances of the case, the appellant rightly invoked the jurisdiction of the High Court under Article 226 of the Constitution of India and the learned Single Judge rightly entertained the writ petition under Article 226 challenging the judgment and award passed by the Reference Court and the learned Single Judge rightly set aside the award passed by the Reference Court in exercise of the powers under Article 226 of the Constitution of India:-
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- (a) **N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency, Namakkal Salem District and Four Others, AIR 1952 SC 64;**
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- (b) State of U.P. Vs. Mohammad Nooh, 1958 SCR 595; A
- (c) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1;
- (d) Harbanslal Sahnia and Anr. Vs. Indian Oil Corp. Ltd. and Ors., (2003) 2 SCC 107;
- (e) Neyvely Lignite Corporation Ltd. Vs. Special Tahsildar (Land Acquisition) Neyvely and Ors., (1995) 1 SCC 221; and B
- (f) U.P. Avas Eevam Vikas Parishad Vs. Gyan Devi (Dead) by LRs. And Ors., (1995) 2 SCC 326. C

5. Present appeal is opposed by Ms. Kiran Suri, learned senior counsel appearing on behalf of the original landowners. It is vehemently submitted on behalf of the original land owners that in the facts and circumstances of the case the Division Bench of the High Court has rightly held that the writ petition before the learned Single Judge challenging the judgment and award passed by the Reference Court was not maintainable and/or was not required to be entertained, particularly, in view of the fact that even the four appeals against the judgment and award passed by the Reference Court were pending before the High Court at the instance of BDA.

5.1 It is submitted that as such the appellant company cannot be said to be the beneficiary of the acquisition under Part II of the Land Acquisition Act and, therefore, cannot be said to be an ‘interested person’ under Section 3(b), 9, 11, 20(b) read with Section 54 of the Land Acquisition Act.

5.2 It is submitted that even the writ petition under Article 226 by the company was not maintainable to challenge the Reference Court’s award under Section 26 of the Act. Reliance is placed upon the decision of this Court in the case of **Peerappa Hanmantha Harijan (Dead) by Legal Representatives and Ors. Vs. State of Karnataka and Anr.**, (2015) 10 SCC 469. It is submitted that as such the appellant company has no right to file the present appeal under Section 54 of the Land Acquisition Act as they are not person aggrieved in this case. It is submitted that the appellant company cannot be said to be either interested or proper party and has no locus to be heard. It is submitted that the land has been acquired for public purpose at public expenses for HISDC. It

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- A is submitted that the land has been allotted to BDA and the allottee company cannot be said to be a person interested under Section 3(b) of the Act and have no right to be heard. Reliance is placed upon **Satish Kumar Gupta and Ors. Vs. State of Haryana and Ors. (2017) 4 SCC 760** and **Hindu Kanya Maha Vidyalaya, Jind and Anr. Vs. Municipal Committee, Jind and Ors., (1988) Supp. SCC 719.**
- B 5.3 It is further submitted by Ms. Suri, learned senior counsel appearing on behalf of the claimants that the decisions cited on behalf of the appellant in the cases of **Himalayan Tiles and Marble (P) Ltd. Vs. Francis Victor Countinho (Dead) by LRs., (1980) 3 SCC 223;**
- C **Neelagangabai and Anr. Vs. State of Karnataka and Ors., AIR 1990 SC 1321; and Neyveli Lignite Corporation Ltd. (supra)** shall not be applicable to the facts of the case as all the aforesaid decisions relate to acquisition for accompany under Part – VII of the Act and the respective companies were the beneficiaries. Making aforesaid submissions, it is prayed to dismiss the Civil Appeal No.5856 of 2021.
- D 5.4 Now, sofaras the Civil Appeal Nos.5857-5880 of 2021 arising out of the impugned common judgment and order passed by the learned Single Judge of the High Court dated 26.02.2020 in C.O. No. 1232 of 2018 and other allied revision applications are concerned, it is vehemently submitted by Ms. Suri, learned senior counsel appearing on behalf of the
- E original landowners- claimants that the impugned common judgment and order passed by the High Court is absolutely unsustainable and not tenable at law.
- F 5.5 It is vehemently submitted by Ms. Suri, learned senior counsel that the impugned judgment and order passed by the learned Single Judge is just contrary to the decision of the Division Bench dated 11.09.2019 in FMA No.887 of 2019 arising out of judgment passed by the learned Single Judge in Writ Petition No. 9778(W) of 2012. It is submitted that before the Executing Court and before the learned Single Judge, the Shrachi Burdwan Developers Private Limited- the original revisionist
- G relied upon the decision of learned Single Judge in Writ Petition No. 9778(W) of 2012 and claimed to be the person interested under Section 3(b) of the Land Acquisition Act and on that ground sought an impleadment in the execution petitions.
- H 5.6 It is submitted that despite the fact that the learned Single Judge was made aware of the decision of the Division Bench in FMA

No.887 of 2019, by the impugned judgment and order the High Court has set aside the judgment and award passed by the Reference Court. It is submitted that as such even the learned Single Judge in Writ Petition No. 9778(W) of 2012 remanded the matter to the Reference Court for fresh decision. However, by the impugned judgment and order, the High Court has not remanded the Reference to the Reference Court and, however, only has reserved the liberty in favour of the landowners to make fresh reference under Section 18 of the Act. It is submitted that if the impugned common judgment and order passed by the High Court is sustained in that case there shall be number of complications including the limitation period etc. It is submitted that in any case, Shrachi Burdwan, the appellant herein, cannot be said to be a ‘person interested’ under Section 3(b) of the Act in view of the submissions on behalf of the landowners recorded hereinabove.

6. Shri Ranjit Kumar, learned senior counsel appearing on behalf of BDA has supported the submissions made on behalf of the Shrachi Burdwan, the appellant, however, he is not disputing that the four appeals preferred by the BDA challenging the judgment and award passed by the Reference Court are pending before the High Court.

7. Heard the learned counsel for the respective parties at length.

8. So far as Civil Appeal No.5856 of 2021 is concerned, Shrachi Burdwan filed a writ petition under Article 226 of the Constitution of India for the reliefs referred to hereinabove and more particularly, challenging the judgment and award passed by the Reference Court enhancing the amount of compensation. The appellant herein, Shrachi Burdwan was not a party to the Reference proceedings. The locus of the appellant – Shrachi Burdwan has been seriously disputed on behalf of the landowners/claimants and it is seriously disputed whether the appellant - Shrachi Burdwan can be said to be a ‘person interested’ within the definition of Section 3(b) of the Land Acquisition Act. It is also required to be noted that as such out of 24 Reference cases, before the High Court in Writ Petition No. 9778(W) of 2012, the appellant restricted the prayer with respect to only four respondents namely 6, 16, 17 and 25 in the writ petition. As observed hereinabove, at the instance of the BDA four appeals challenging the judgment and award passed by the Reference Court are pending before the High Court. Therefore, in the facts and circumstances of the case and more particularly when the locus of the appellant, Shrachi Burdwan to challenge the judgment and

- A award passed by the Reference Court is seriously disputed and whether the appellant, Shrachi Burdwan can be said to be a ‘person interested’ within the definition of Section 3(b) of the Land Acquisition Act and thereby the appellant can challenge the judgment and award passed by the Reference Court enhancing the compensation are all disputed questions of facts and are all contentious issues, we are of the opinion that learned
- B Single Judge of the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India and ought not to have set aside the judgment and award passed by the Reference Court enhancing the amount of compensation under the provisions of the Land Acquisition Act. The remedy available to the appellant would have been
- C to prefer appeal before the High Court with application for leave to appeal.

9. At this stage, it is required to be noted that in view of the judgment and award passed by the learned Reference Court, now, nothing remains to be done in the appeals preferred by the BDA challenging the

- D judgment and award passed by the Reference Court, which was set aside by the learned Single Judge. Therefore, in the facts and circumstances of the case, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the judgment and award passed by the Reference Court. The question is not about maintainability of the writ petition. The question is with respect
- E to the entertainability of the writ petition and for the reasons stated above, we are of the firm opinion that the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the judgment and award passed by the Reference Court, more particularly, when the appellant would have a remedy to file the
- F appeal under Section 54 with the leave of the Court and if at all the Appellate Court – High Court grants leave to prefer the appeal challenging the judgment and award passed by the Reference Court.

10. None of the judgments/decisions relied upon by the learned senior counsel appearing on behalf of the appellant on maintainability of

- G the writ petition under Article 226 of the Constitution of India shall be applicable to the facts and circumstances of the case in hand.

11. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court IN FMA No. 887 of 2019 is not required to be interfered by this Court. The Division

- H Bench of the High Court has also reserved liberty in favour of the

appellant to pursue whatever other remedies may be available to them in accordance with law, which may be including to prefer the appeal before the High Court challenging the judgment and award passed by the Reference Court provided the leave to appeal is granted by the High Court – Appellate Court.

12. So far as the Civil Appeal Nos. 5857-5880 of 2021 are concerned, they arise out of the impugned judgment and order passed by the learned Single Judge of the High Court quashing and setting aside the judgment and award passed by the Reference Court passed in 24 References. It is to be noted that the revisions before the High Court were arising out of the order passed by the Executing Court and though the Writ Petition No. 9778(W) of 2012 was restricted to only four respondents as observed hereinabove and so observed in the judgment and order passed by the learned Single Judge in Writ Petition No. 9778(W) of 2012, by the impugned judgment and order, the learned Single Judge of the High Court has set aside the judgment and award passed by the Reference Court in 24 References.

13. Even otherwise, the impugned judgment and order passed by the learned Single Judge is not sustainable and it is untenable at law. Before the Executing Court and even before the High Court, the appellant company – Shrachi Burdwan heavily relied upon the judgment and order passed by the High Court in Writ Petition No. 9778(W) of 2012 and prayed to implead them as a party, which as such was set aside by the Division Bench and even special leave petition against the judgment and order passed by the Division Bench was pending before this Court. Therefore, once the judgment and order passed by the learned Single Judge in Writ Petition No. 9778(W) of 2012 was set aside by the Division Bench, the impugned judgment and order passed by the High Court taking a contrary view can be said to be in teeth of the judgment and order passed by the learned Division Bench. The learned Single Judge of the High Court while passing the impugned judgment and order has not maintained the judicial discipline and has passed the judgment and order just contrary to the order passed by the Division Bench. The order passed by the Division Bench was binding on the learned Single Judge.

14. Even otherwise, it is required to be noted that even while passing the judgment and order in Writ Petition No. 9778(W) of 2012, the learned Single Judge remanded the matter to the Reference Court

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- A for fresh consideration after giving an opportunity to Shrachi Burdwan, the appellant herein (which as such has been set aside by the Division Bench and confirmed by this Court today) and despite the same by the impugned judgment and order in revision applications, the learned Single Judge has set aside the judgment and award passed by the Reference Court in all the 24 cases and not remanded the matter to the Reference Court but has observed that it will be open for the original landowners to initiate fresh proceedings under Section 18 of the Land Acquisition Act, impleading Shrachi Burdwan - the appellant as a party. Learned Single Judge has not appreciated that to initiate fresh proceedings under Section 18 of the Land Acquisition Act now would create so many problems
- B including the question of limitation etc. In any case, even such an order reserving liberty in favour of the land losers to initiate fresh process under Section 18 is also just contrary to the decision of the learned Single Judge in Writ Petition No. 9778(W) of 2012 by which the learned Single Judge remanded the matter to the Reference Court for fresh decision.
- C Of course, as observed hereinabove, the order passed by the learned Single Judge in Writ Petition No. 9778(W) of 2012 has been set aside by the Division Bench.

15. In view of the above and for the reasons stated hereinabove, Civil Appeal No. 5856 of 2021 stands dismissed. However, it is observed that it will be open for the appellant – Shrachi Burdwan Developers Private Limited to pursue whatever other remedies may be available to them in accordance with law, which may be including the filing of appeal under Section 54 of the Land Acquisition Act, however, subject to the leave to appeal granted by the High Court for which the appellant has to file a proper application for leave to appeal and satisfy the High Court that the appellant company can be said to be a ‘person interested’ under Section 3(b) of the Land Acquisition Act and that the appellant has a locus to prefer appeal under Section 54 of the Land Acquisition Act. It will be open for the landowners to challenge the locus of the appellant - Shrachi Burdwan Developers Private Limited, as a ‘person interested’ within the definition of Section 3(b) of the Land Acquisition Act and to contend that the appellant has no locus to challenge the judgment and award passed by the Reference Court. All the aforesaid questions are kept open to be considered by the High Court as and when any such application is preferred alongwith the appeals. It is made clear that this Court has not expressed anything on merits in favour of either parties on
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the aforesaid. With above observations and clarifications Civil Appeal A No. 5856 of 2021 stands dismissed.

16. Now, so far as Civil Appeal Nos. 5857-5880 of 2021 are concerned, in view of the above and for the reasons stated above, all these appeals are allowed. Impugned common judgment and order passed by the learned Single Judge of the High Court dated 26.02.2020 passed in C.O. No. 1232 of 2018 and other allied revision applications are hereby quashed and set aside and the proceedings before the Executing Court are restored and the learned Executing Court is directed to proceed further with the execution petitions, subject to any stay granted by the Appellate Court, if any, and of course, subject to the further order that may be passed by the High Court in the applications for leave to appeal/ the appeals to be preferred by Shrachi Burdwan Developers Private Limited, the appellant herein, as observed hereinabove.

In the facts and circumstances of the case, there shall be no order as to costs.

Pending applications, if any, stand disposed of.

Devika Gujral

Appeals disposed of.