M/S Delhi Airtech Services Pvt. ... vs State Of U.P. & Anr on 18 August, 2011

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Bench: Swatanter Kumar, Asok Kumar Ganguly

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.24 OF 2009

M/s. Delhi Airtech Services

Pvt. Ltd. & Anr. ... Appellants

Versus

State of U.P. & Anr. ... Respondents

J U D G M E N T

Swatanter Kumar, J.

1. I had the advantage of reading the well-written judgment of my learned brother, A.K. Ganguly, J. Regretfully but respectfully, I am unable to persuade myself to concur with the findings recorded and the exposition of law expressed by my learned brother. In order to discernly state the reasons for my expressing a contrary view and dismissing the appeals of the appellants on merits, it has become necessary for me to state the facts as well as the law in some detail. It has been necessitated

for the reason that complete facts, as they appear from the record and the facts which were brought to the notice of the Court during the course of hearing by the respondents, supported by the official records, duly maintained by them in normal course of their business, have not, in their entirety, and correctly been noticed in the judgment. I am also of the considered view that, in fact, the questions framed (particularly question `D') in the judgment by my learned brother neither so comprehensively arise in the facts and circumstances of the present case nor were argued in that manner and to that extent before the Court. Be that as it may, I consider it necessary to restate the facts, deal with different legal aspects of the case and then record the conclusions which would even provide answers to the questions framed by my learned brother at the very beginning of his judgment. Before I proceed to do so, let me briefly but, inter alia, state the reasons for my taking a view contrary to the one recorded in the judgment of my learned brother:

> I. I have already stated that complete and correct facts, in their entirety, as they emerge from the records produced before the Court (including the trial court record) as well as the documents referred to during the course of arguments by the respondents have not been correctly noticed. The records referred to have been maintained by the authorities in the normal course of their business and their authenticity can hardly be questioned. These documents have been executed inter se various institutions/departments, including the Collector's office, who discharges quasi- judicial functions under the Act. II. The judgment of this court in the case of Satendra Prasad Jain & Ors. v. State of U.P. & Ors. [AIR 1993 SC 2517 = (1993) 4 SCC 369], in my humble view, cannot be ignored and the principle stated therein cannot be avoided on the ground that the judgment was sub silentio. This I say so, for the reason that it is not a decision in which the point was not raised, argued and perceived by the Court. On the contrary, the issue in relation to the consequences of non- payment flowing from Section 17(3A) of the Land Acquisition Act (for short, the `Act') was specifically noticed by the three-Judge Bench in paragraph 11 of the judgment. It was discussed in some detail and a definite finding was recorded thereby bringing the judgment well within the dimensions of good precedent. Thus, I, with respect, would prefer to follow the larger Bench judgment rather than ignoring the same for the reasons stated by my learned brother in his judgment do not apply in the facts of the present case.
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> III. The ratio decidendi of the judgment of this Court in the case of Satendra Prasad Jain (supra) is squarely applicable to the present case, on facts and law. IV. It has not been correctly noticed in the judgment that 80 per cent of due compensation, which even the appellants did not dispute during the course of hearing, had not been tendered or paid to the claimants, as contemplated under Section 17(3A) of the Act. From the facts recorded hereinafter, it is clear that within the prescribed period, the payments were deposited with the State office of the Collector/competent authority and it was for the State to distribute the money in accordance with the provisions of the Act. It is not only the scheme of the Act but also an established practice that the amounts are disbursed by the Collector to the claimants and not directly by the beneficiary, for whose benefit the land had been acquired. The beneficiary had

> discharged its obligation by depositing, in fact, in excess of 80 per cent of due compensation with the competent authority. De hors the approach that one may adopt in regard to the interpretation of Section 17(3A), on facts the notification is incapable of being invalidated for non-compliance of the said Section.

V. The doctrine of strict construction does not per se mandate that its application excludes the simultaneous application of all other principles of interpretation. It is permissible in law to apply the rule of strict construction while reading the provisions of law contextually or even purposively. The golden rule of interpretation is the rule of plain language, while preferring the interpretation which furthers the cause of the Statute rather than that which defeats the objects or purposes of the Act.

VI. Non-providing of consequences under Section 17(3A) of the Act, in contradistinction to Sections 6 and 11 of the same Act, in my considered view is largely the determinative test for proper and judicious interpretation of Section 17(3A).

VII. The judgment by my learned brother does not consider the judgments of the Constitution Bench, the larger Bench and even the equi-Bench, which have to some extent a direct bearing on the matters in issue before us. In this regard, reference can be made to the Constitution Bench judgment of this Court in the case of Offshore Holdings Pvt. Ltd. v. Bangalore Development Authority & Ors. [(2011) 3 SCC 139], the three-Judge Bench judgment in the case of Tika Ram & Ors. v. State of U.P. & Ors., [(2009) 10 SCC 689] and particularly the judgment of another equi-Bench of this Court in the case of Banda Development Authority, Banda v. Moti Lal Agarwal & Ors. [2011 (5) SCALE 173], to which my learned brother (Ganguly, J.) was a member. The latter case, inter alia, dealt with a question of lapsing of proceedings under Section 11A on the ground that the possession of the property had not been taken as required under that provision. While rejecting such a contention in that case, the Court observed that if the beneficiary of the acquisition is an agency or instrumentality of the State 80 per cent of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, it could reasonably be presumed that the possession of the acquired land had been irrevocably taken. The Court then held that relief to the appellants (like the appellants in the present case) of invalidating the acquisition proceedings and restoring the land could not be granted.

VIII. The 44th Constitutional Amendment, on the one hand, omitted Article 19(1)(f) and Article 31 while introducing Articles 31A and 300A to the Constitution of India on the other. Right to property was deleted as a fundamental right in the Constitution. Thus, this right cannot be placed on equi terms, interpretatively or otherwise, to the pre-constitutional amendments. The right to eminent domain would operate on a different sphere, interpretation and effect, pre and post constitutional repealments of these Articles and introduction of Article 300A of the Constitution. Even on this aspect, I respectfully disagree with the conclusions recorded by my learned brother (Ganguly, J.).

FACTS:

2. Appellant No.1 is a company duly incorporated under the provisions of the Indian Companies Act, 1956 and is alleged to be the owner of the land sought to be acquired by the respondents. The land of

the appellant, admeasuring about 2- 06-1/3-0 Bighas situated in Village Haldauni, Tehsil and Pargana Dadri, District Gautam Budh Nagar, which is an abadi land, was sought to be acquired by the appropriate Government under a notification dated 17th April, 2002 issued under Section 4(1) read with Sections 17(1) and 17(4) of the Act. This land was acquired for the planned industrial development in District Gautam Budh Nagar through the New Okhla Industrial Development Authority (NOIDA). The notification also stated that the provisions of Section 5A of the Act shall not apply. In pursuance to the said notification, a declaration under Section 6 of the Act was published on 22nd August, 2002, declaring the area which was required by the Government. It also stated that after expiry of 15 days from the date of the publication of the notification possession of the acquired land shall be taken under sub-section (1) of Section 9 of the Act. The appellants have alleged that they did not receive any notice under Section 9(1) of the Act but possession of the land was nevertheless taken on 4th February, 2003.

According to the appellants, even after lapse of more than three and a half years after publication of declaration under Section 6 of the Act, the award had not been made and published.

The appellants also alleged in the petition that, despite inordinate delay, they were neither paid 80 per cent of the estimated compensation in terms of Section 17(3A) of the Act at the time of taking of possession, nor had the Collector passed an award within two years of making the declaration under Section 17(1), as required by Section 11A of the Act. It was the case of the appellants in the writ petition that this has the effect of vitiating the entire acquisition proceedings. Non-

payment of the compensation and conduct of the Government compelled the petitioners to file a writ petition in the High Court of Allahabad praying for issuance of an order or direction in the nature of certiorari or any other writ, not to create any encumbrance or interest on the land of the petitioners. Further, they prayed that the acquisition proceedings, in so far as they relate to the land of the petitioner, be declared void ab initio and that the respondents be directed to return the land from the possession of the Government to the owners. Lastly, the petitioners prayed that the respondents/Government be directed to pay damages for use and occupation of the land.

To this writ petition, the respondents had filed a counter affidavit in the High Court, denying that the acquired land was in fact a part of the abadi land. The respondent-authority has also stated that 80 per cent compensation in terms of Section 17(3A) of the Act had been deposited with the authorities. The land had been acquired for planned development of NOIDA and was in the physical possession of the said authority.

Possession of the land had been taken on 4th February, 2003 and no right had survived in favour of the petitioners as the land vested in the Government.

The High Court, vide its judgment dated 28th August, 2006, dismissed the writ petition. The High Court relied upon the judgment of this Court in the case of Satendra Prasad Jain (supra) and dismissed the petition holding that the provisions of Section 11A of the Act are not attracted to proceedings for acquisition taken by the Government under Section 17 of the Act. However, liberty was granted to the petitioners to pray for grant of appropriate compensation in accordance with law

before the competent forum.

Aggrieved by the said order of the High Court, the appellants have filed the present appeal impugning the judgment dated 28th August, 2006.

In the counter affidavit filed by respondent No.2 before this Court, the submissions made before the High Court have been reiterated with an additional fact that the sector in question was designated as industrial area and after the development activity was completed, allotment has been made and possession of these industrial plots has also been handed over to such entrepreneurs/allottees. This land falls under Sector 88 of the NOIDA City. The rest of the allegations made in the writ petition, except the dates in question, have been disputed.

It has also been stated at the Bar, on the basis of the record maintained in regular course of its business by the respondent-authority, that 10 per cent of the estimated compensation was deposited by the Authority with the State Government even prior to the date of the notification under Section 4(1) read with Section 17(4) of the Act, issued by the Government, i.e., 17th April, 2002. The remaining 70 per cent of the estimated compensation had allegedly been deposited vide cheque dated 8/14th July, 2002 amounting to approximately `6,66,00,000/-. As such, there is complete compliance with the provisions of Section 17(3A) of the Act by the authority concerned. The Award was made on 9th June, 2008, which has been accepted by a large number of owners, i.e., 97.6 per cent of all owners. Some of these facts have also been averred in the counter affidavit filed before the High Court.

From the above pleadings of the parties, the admitted facts that emerge from the record can be usefully recapitulated. The Governor of the State of Uttar Pradesh on 17th April, 2002, issued a notification under Section 4(1) of the Act, expressing the intention of the Government to acquire the land stated in the said Notification for a public purpose, namely, for the planned industrial development in District Gautam Budha Nagar through NOIDA. Vide the same notification the emergent provisions contained in Section 17 of the Act, specifically Section 17(4), were also invoked, intimating the public at large that the provisions of Section 5A of the Act shall not be applicable. After issuance of the declaration under Section 6 of the Act, admittedly the possession of the land in question was taken on 4th February, 2003. However, it remains a matter of some dispute before the Court as to whether 80 per cent compensation, which is deposited by the beneficiary with the State, had actually been received by the land owners/claimants, if so, to what extent and by how many.

The Collector had not made or published the award even at the time of pronouncement of the judgment of the High Court, in Writ Petition No. 22251 of 2006, on 28th August, 2006. The High Court, in the impugned judgment, has directed the respondent No.1 to ensure that the Award is made as early as possible, preferably within a period of three months from the date of production of the certified copy of that order.

In the counter affidavit filed before this Court, it has been stated by the State of Uttar Pradesh that the Award was finally made and published on 9th June, 2008. According to the appellant, given the fact that the declaration under Section 6 of the Act was dated 22nd August, 2002, then in terms of

Section 11A of the Act, the acquisition proceedings had lapsed as the award ought to have been pronounced on or before 21st August, 2004.

Discussion on objects and reasons of the Act With the enormous expansion of the State's role in promoting public welfare and economic development since independence, the acquisition of land for public purposes, like industrialization, building of institutions, etc., has become far more numerous than ever before. This not only led to an increase in exercise of executive powers, but also to various legislative amendments to the Act. The 1870 Act abolished the system of uncontrolled direction by arbitrators and in lieu thereof, required the Collector, when unable to come to terms with the persons interested in the land which it desired to acquire, to refer these differences to the Civil Courts. It was also felt necessary by the framers, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of servicing the interests of the community in harmony with the rights of the individual.

Various amendments were made and certain new provisions added to the Act by Amendment Act, 68 of 1984, which took effect from 24th September, 1984. Amongst others, Sections 11A and 17(3A) of the Act were new provisions added by this enactment. The objects and reasons for amending the Act were to bring a greater degree of harmony between the interests of the owners of the land, on the one hand, and the acquiring authority on the other. In its recommendations, the Law Commission also expressed a view that individuals and institutions, who are unavoidably deprived of their property rights, need to be adequately compensated for their loss keeping in view the sacrifice they have had to make in the larger interests of the community. The pendency of acquisition proceedings for long periods causes hardship to the affected parties; so steps were required to be taken to truncate the procedural aspect of acquisition proceedings on the one hand, and to pay adequate compensation to the owners of the land on the other. By introducing the provisions of Section 11A of the Act to the normal course of acquisition proceedings, greater responsibility was intended to be fastened upon the concerned authorities, whereby they were obliged to make an award within two years of the declaration made under Section 6 of the Act. The other obvious purpose of the amendment was that before emergency provisions are invoked by the State and possession is taken in terms of Section 17(1) of the Act, as opposed to the normal procedure of acquisition of land where possession is taken after the making of an award, it was to be obligatory upon the authorities concerned to pay 80 per cent of the estimated compensation to the land owners, prior to taking possession of the land in terms of Section 17(3A) of the Act. Despite the fact that Right to Property in terms of Article 19(1)(f) of the Constitution stood deleted from Chapter III of the Constitution, vide 44th Constitutional Amendment, 1978, Article 300A of the Constitution was added by the same Constitutional Amendment, mandating that `no person shall be deprived of his property save by authority of law'. This indicates that the Constitution still mandates two aspects in relation to acquisition of land by the exercise of power of eminent domain vested in the State. Firstly, such acquisition has to be by the authority of law; in other words, it has to be in accordance with the law enacted by the competent legislature and not by mere executive action. Secondly, there has to be a public purpose for acquisition of land and the person interested in such land would be entitled to compensation.

The objects and reasons for introducing the Bill leading to the Amendment Act 68 of 1984, have explained the amendments made to the Act. It is not necessary for us to dwell upon all the amendments carried out in the Act. Suffice it to refer to the amendment made in the definition of `public purpose' under Section 3(f) of the Act and to the provisions of Sections 11A and 17(3A), with which this Court is primarily concerned in the present case. If I may put it in rather simple language, the object of the legislation was to create greater balance between the exercise of power of eminent domain by the State and the owner's deprivation of his property by way of compulsory acquisition and the greater acceptability of acquisition proceedings amongst land owners. This balance is sought to be created by introducing higher responsibility and statutory obligations upon the acquiring authority.

Expeditious and proper payment of fair market value for the acquired land to the claimants is required in the light of sacrifice made by them in the larger public interest.

In the case of Devinder Singh & Others v. State of Punjab and Others [(2008)1 SCC 728], a Bench of this Court took the view that the provisions of the Act should be strictly construed. Referring to the provisions of the Act, it spelt out the ingredients of valid acquisition to be, (a) the existence of a public purpose; and (b) the payment of requisite compensation. In cases of acquisition of land for a private company, the existence of a public purpose is not necessary but all other statutory requirements were held to remain imperative in character, requiring strict compliance.

Whether the provisions of Sections 17(3A) and 11A of the Act are mandatory or directory and to what effect?

Let us first examine the general principles that could help the Court in determining whether a particular provision of a statute is mandatory or directory.

In `Principles of Statutory Interpretation', 12th Edition, 2010, Justice G.P. Singh, at page 389 states as follows:

> "As approved by the Supreme Court: "The question as to whether a statute is mandatory of directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislation must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other"
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> "For ascertaining the real intention of the Legislature", points out Subbarao, J, "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non- compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the

> serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered".

If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored, but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative construction. Thus, the use of the words `as nearly as may be' in contrast to the words `at least' will prima facie indicate a directory requirement, negative words a mandatory requirement `may' a directory requirement and `shall' a mandatory requirement."

Maxwell, in Chapter 13 of his 12th Edition of `The Interpretation of Statutes', used the word `imperative' as synonymous with `mandatory' and drew a distinction between imperative and directory enactments, at pages 314-315, as follows:

> "Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the legislature on questions necessarily arising out of its enactments and on which it has remained silent."

The first such question is: when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, is the requirement to be regarded as imperative (or mandatory) or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially".

It is impossible to lay down any general rule for determining whether a provision is imperative or directory. "No universal rule," said Lord Campbell L.C., "can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed." And Lord Penzance said: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

In a recent judgment of this Court, May George v. Special Tehsildar and Ors. [(2010) 13 SCC 98], the Court stated the precepts, which can be summed up and usefully applied by this Court, as follows:

(a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;

(b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;

(c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;

(d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words `shall' or `may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

Reference can be made to the following paragraphs of May George (supra) :

"16. In Dattatraya Moreshwar v. The State of Bombay and Ors. [AIR 1952 SC 181], this Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:

`7.....It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.'

17. A Constitution Bench of this Court in State of U.P. and Ors. v. Babu Ram Upadhya [AIR 1961 SC 751] decided the issue observing:

> `29.....For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non- compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.'

22. In B.S. Khurana and Ors. v.

Municipal Corporation of Delhi and Ors.

[(2000) 7 SCC 679], this Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

23. In State of Haryana and Anr. v.

Raghubir Dayal [(1995) 1 SCC 133], this Court has observed as under:

> `5. The use of the word `shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, or consequences to flow from such construction would not so demand. Normally, the word `shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word `shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word `shall; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the

same would be construed as directory.' "

The Legislature in Sections 11A and 17(3A) of the Act has used the word `shall' in contradistinction to the word `may' used in some other provisions of the Act. This also is a relevant consideration to bear in mind while interpreting a provision.

The distinction between mandatory and directory provisions is a well accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word `shall' would be read as `must' unless it was essential to read it as `may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word `shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.

Crawford on `Statutory Construction' has specifically stated that language of the provision is not the sole criteria; but the Courts should consider its nature, design and the consequences which could flow from construing it one way or the other.

Thus, the word `shall' would normally be mandatory while the word `may' would be directory. Consequences of non-

compliance would also be a relevant consideration. The word `shall' raises a presumption that the particular provision is imperative but this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction. Where a statute imposes a public duty and proceeds to lay down the manner and timeframe within which the duty shall be performed, the injustice or inconvenience resulting from a rigid adherence to the statutory prescriptions may not be a relevant factor in holding such prescription to be only directory. For example, when dealing with the provisions relating to criminal law, legislative purpose is to be borne in mind for its proper interpretation. It is said that the purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property and it is in the interests of everyone that serious crime be effectively investigated and prosecuted. There must be fairness to all sides. (Attorney General's Reference (No. 3 of 1999) (2001) 1 All ER 577 Reference : Justice G.P. Singh on `Principles of Statutory Interpretation', 11th Edition 2008). In a criminal case, the court is required to consider the triangulation of interests taking into consideration the position of the accused, the victim and his or her family and the public.

The basic purpose of interpretation of statutes is further to aid in determining either the general object of the legislation or the meaning of the language in any particular provision. It is obvious that the intention which appears to be most in accordance with convenience, reason, justice and legal principles should, in all cases of doubtful interpretation, be presumed to be the true one. The intention to produce an

unreasonable result is not to be imputed to a statute. On the other hand, it is not impermissible, but rather is acceptable, to adopt a more reasonable construction and avoid anomalous or unreasonable construction. A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to the well settled rules of construction, but it may properly lead to the selection of one, rather than the other, of the two reasonable interpretations. In earlier times, statutes imposing criminal or other penalties were required to be construed narrowly in favour of the person proceeded against and were more rigorously applied. The Courts were to see whether there appeared any reasonable doubt or ambiguity in construing the relevant provisions. Right from the case of R. v. Jones, ex p.

Daunton [1963(1) WLR 270], the basic principles state that even statutes dealing with jurisdiction and procedural law are, if they relate to infliction of penalties, to be strictly construed;

compliance with the procedures will be stringently exacted from those proceedings against the person liable to be penalized and if there is any ambiguity or doubt, it will be resolved in favour of the accused/such person. These principles have been applied with approval by different courts even in India. Enactments relating to procedure in courts are usually construed as imperative. A kind of duty is imposed on court or a public officer when no general inconvenience or injustice is caused from different construction. A provision of a statute may impose an absolute or qualified duty upon a public officer which itself may be a relevant consideration while understanding the provision itself. (See `Maxwell on The Interpretation of Statutes', 12th Edition by P. St. J. Langan and R. v. Bullock, [(1964)1 QB 481]) One school of thought has accepted that the word `shall' raises a presumption that the particular provision is imperative, while the other school of thought believes that such presumption is merely prima facie, subject to rebuttal by the other considerations mentioned above. For example, in M/s. Sainik Motors, Jodhpur & Others v. The State of Rajasthan [AIR 1961 SC 1480], the word `shall' has been held to be merely directory.

G.P. Singh in the same edition of the above-mentioned book, at page 409, stated that the use of the word `shall' with respect to one matter and use of word `may' with respect to another matter in the same section of a statute will normally lead to the conclusion that the word `shall' imposes an obligation, whereas the word `may' confers a discretionary power. But that by itself is not decisive and the Court may, having regard to the context and consequences, come to the conclusion that the part of the statute using `shall' is also directory. It is primarily the context in which the words are used which will be of significance and relevance for deciding this issue.

Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual

should be adopted. (See `Maxwell on The Interpretation of Statutes', 12th Edition by P. St. J. Langan) This Court in the case of Devinder Singh (supra) held that the Land Acquisition Act is an expropriatory legislation and followed the case of Hindustan Petroleum Corporation v. Darius Shapur Chennai and Ors. [(2005) 7 SCC 627]. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary.

If I analyze the above principles and the various judgments of this Court, it is clear that it may not be possible to lay down any straitjacket formula, which could unanimously be applied to all cases, irrespective of considering the facts, legislation in question, object of such legislation, intendment of the legislature and substance of the enactment. In my view, it will always depend upon all these factors as stated by me above. Still, these precepts are not exhaustive and are merely indicative. There could be cases where the word `shall' has been used to indicate the legislative intent that the provisions should be mandatory, but when examined in light of the scheme of the Act, language of the provisions, legislative intendment and the objects sought to be achieved, such an interpretation may defeat the very purpose of the Act and, thus, such interpretation may not be acceptable in law and in public interest. Keeping in mind the language of the provision, the Court has to examine whether the provision is intended to regulate certain procedure or whether it vests private individuals with certain rights and levies a corresponding duty on the officers concerned. The Court will still have to examine another aspect, even after holding that a particular provision is mandatory or directory, as the case may be, i.e., whether the effect or impact of such non-compliance would invalidate or render the proceedings void ab initio or it would result in imposition of smaller penalties or in issuance of directions to further protect and safeguard the interests of the individual against the power of the State. The language of the statute, intention of the legislature and other factors stated above decide the results and impacts of non-compliance in the facts and circumstances of a given case, before the Court can declare a provision capable of such strict construction, to term it as absolutely mandatory or directory.

Having analysed the principles of statutory interpretation, I will now refer to the provisions of Section 17(3A) of the Act. Section 17 of the Act vests the appropriate Government with special powers to be exercised in cases of urgency. This provision falls within Part II of the Act. Part II of the Act deals with the entire scheme of acquisition of land by the State, right from the stage of issuance of a notification under Section 4 of the Act till making of an award taking possession of acquired land and its consequential vesting in the State. However, to some extent, the provisions of Section 17 of the Act are an exception to the provisions under Sections 4 to 16 of the Act. The distinguishing features of normal acquisition are that after the issuance of notification under Section 4 of the Act, the State must provide an opportunity to the owners of the land to object to the acquisition in terms of Section 5A of the Act, issue a declaration under Section 6 of the Act, issue notice under Section 9 of the Act and

determine compensation by making an award under Section 11 of the Act. However, under the scheme of Section 17 of the Act, the Government can take possession of the property on the expiration of 15 days from publication of notice mentioned in Section 9(1) of the Act. Furthermore, the provisions of Section 5 of the Act, i.e., the right of the owner to file objection can be declared to be inapplicable. Besides these two significant distinctions, another important aspect that the land vests in the Government under Section 16 of the Act only after the award is made and possession of the land is taken, while under Section 17(1), at the threshold of the acquisition itself, the land could vest absolutely in the Government free from all encumbrances. The possession of the acquired property has to be taken by the Collector in terms of Sections 17(2) and 17(3) of the Act. Section 17(3A) of the Act, as already noticed, was introduced by the Amendment Act 68 of 1984 for the purposes of safeguarding the interests of the claimants and required the payment of 80 per cent of the estimated compensation before taking possession. At this stage itself, it will be useful to refer to the relevant provisions of Section 17 of the Act.

Section 17 reads as under:

"17. Special powers in case of urgency. -

(1) In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-

section (1) take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) xxxxxx

(3) xxxxxx

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3)(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the person interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-

section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-

section (1)."

Section 17(3A) of the Act makes it obligatory on the part of the authority concerned to tender/pay 80 per cent of the compensation for the acquired land, as estimated by the Collector, to the persons interested and entitled thereto;

unless prevented by any of the contingencies mentioned under Section 31(2) of the Act. The use of the word `shall' in Section 17(3A) indicates that the enactors of law desired that the above mentioned procedure should be complied with by the authority concerned prior to taking of possession. That is why the legislature has even taken care to make a provision for deposit of due compensation in court in terms of Section 31(2) of the Act, where an authority is prevented from tendering the amount to the claimants for reasons stated in Section 31(1) of the Act. 80 per cent of the estimated compensation is to be deposited in the Court to which reference under Section 18 of the Act would lie. This clearly shows that there is statutory obligation upon the authorities concerned to tender to the interested persons, compensation in accordance with law. Deposit of money, certainly, is the condition precedent to taking of possession as is amply clear from the language `before taking possession of any land'. The amount so deposited or paid in terms of Section 17(3A) of the Act will be taken into account for determining the amount of compensation required to be tendered under Section 31 of the Act and provides for the recovery of amounts if it exceeds the awarded amount. Section 17(3A) unambiguously provides a complete mechanism of taking possession and the requirement of payment of 80 per cent of estimated compensation to the claimants.

Now, I would examine WHAT ARE THE CONSEQUENCES of default in compliance to the provisions of Section 17(3A) of the Act. The said Section is completely silent on such consequences.

Where the Legislature has, in specific terms, provided for the extent of payment, mode of payment and even the difficulties which are likely to arise, i.e, where a person may not be entitled to receive the compensation or in any other eventuality such as where the compensation cannot be paid for the reasons stated in Section 31(1) of the Act, there the Legislature in its wisdom has provided no contingencies and/or consequences of non-deposit of this money. This is in complete contradistinction to the provisions contained in Sections 6 and 11A of the Act. Section 6 provides that no declaration shall be issued where the period specified in the first proviso to Section 6(1) of the Act has expired. In other words, it spells out the consequences of failure to do an act within the stipulated period. Similarly, Section 11A of the Act provides that the acquisition proceedings shall lapse where the Collector fails to make an award within a period of two years from the date of publication of declaration under Section 6 of the Act.

Thus, the legislative intent is very clear. Keeping the objects and reasons for amendment in mind, the Act strives for a fair balance between the rights of private individuals and the power of eminent domain of the State and also attempts to ensure expeditious disbursement of compensation, as determined in accordance with law, to the claimants. The legislature has provided for every contingency for tendering payment, while remaining silent about consequences flowing from default under some other provisions. Sections 11A and 17(3A) of the Act are clear illustrations of clarity and purpose in legislative intent. When the framers of law have not provided for any penal consequences for default in compliance to Section 17(3A), then it will be uncalled for to provide such consequences by judicial interpretation. While interpreting the provisions for compensation, the Court can provide such interpretation as would help to bridge the gaps left by the Legislature, if any, in implementation of the provisions of the Act. But it will hardly be permissible for the Court to introduce such consequences by way of judicial dicta, like requiring lapse of acquisition proceedings. This is not a matter covered by the principles of judicial interpretation.

It is a well settled canon of statutory interpretation that the courts would neither add nor subtract from the plain language of the statutory provision. In the present case also, there is hardly any justification for the courts to take any contrary view. Once the land has vested in the State and there being no provision for re-vesting the land in the original owners under the provisions of the Act, then it will be in consonance with the scheme of the Act and legislative intent to give an interpretation that would allow provisions of Section 17(1) to operate without undue impediment and keep the vesting of land in the State intact. Otherwise, in some cases the purpose for which such lands were acquired might stand frustrated, while in other cases the purpose of acquisition might have already been achieved and, therefore, divesting State of its title and possession in the acquired land will be incapable of performance. Under such circumstances, then, to interpret Section 17(3A) of the Act to be so mandatory in its absolute terms that the non-payment of money would result in vitiating or lapsing entire acquisition proceedings, can hardly be justified on the strength of any known principle of interpretation of statutes. This question arises more often, as the provisions of Section 17 of the Act are being invoked by the Union of India and State Governments very frequently, so, the consequences of this default, within the framework of law and anything short of invalidation of the acquisition proceedings should be stated by the court with reference to the facts and circumstances of each case. It is a complete safeguard provided to the land owner inasmuch as the compensation stipulated under Section 17(3A) of the Act should be paid in terms of the

provisions of the Act so that the owner is not made to suffer on both counts i.e. he is deprived of his land as well as compensation. It will be unfair for the authorities concerned not to pay the compensation as contemplated under the provisions of the Act. It would be just and fair to read into the provisions of the Section 17(3A) as imposing an obligation on the part of the authorities concerned/the Collector to pay the compensation within the time specified under Section 17(3A). Of course, no specific time, within which the payment has to be made in terms of Section 17(1) has been stated in the provision. But, it is a settled principle of law that wherever specific limitations are not stated, the concept of `reasonable time' would become applicable. So, even if it is argued that there is no specific time contemplated for payment/deposit of 80 per cent of the estimated compensation, even then the claimants would be entitled to receive the amount expeditiously and in any case within very reasonable time. If the authorities are permitted to take possession of the land without payment of the amounts contemplated under Section 17(3A) of the Act, then it would certainly amount to abuse of power of eminent domain within its known legal limitations. The authorities should discern the distinction spelt out under Section 16 of the Act on the one hand and Section 17(1) read with Section 17(3A) of the Act on the other.

Let me examine the judgment of this Court dealing with the provisions of Section 17(3A) of the Act. The judgments of different High Courts have been brought to the notice of this Court, taking divergent views on the question whether the provisions of Section 17(3A) are mandatory or directory. Some of these judgments, I would shortly refer to, if necessary.

However, I may notice that none of these judgments have specifically discussed the consequences of non-adherence to the provisions of Section 17(3A) of the Act. A Bench of Delhi High Court in the case of Banwari Lal & Sons Pvt. Ltd. vs. Union of India & Ors., [1991 (1) DRJ (Suppl.) 317 (Delhi Reported Journal)], whilst quashing the notification issued under Section 4 read with Section 17(1) of the Act on the ground of factual lack of urgency for acquisition, held that there was non-compliance to the provisions of Section 17(3A) of the Act. Of course, the High Court took the view that the notification issued under Section 4 read with Section 17(1) of the Act was not maintainable and while quashing the said notification, it also held that there was violation of provisions of Section 5A of the Act and, in fact, no urgency existed. There was no direct discussion as to whether the provisions of Section 17(3A) of the Act are mandatory or directory. However, this judgment neither provides any reasoning nor actually states the consequences of non-compliance with the provisions of Section 17(3A). For these reasons, this judgment is of no help to the parties appearing in the present appeal. Against the judgment of Delhi High Court in Banwari Lal (supra), the Special Leave Petition preferred before this Court was dismissed at the admission stage itself.

In the case of Union of India & Ors. v. Krishan Lal Arneja & Ors., [(2004) 8 SCC 453], a part of the acquisition was challenged and writ petitions had been filed for quashing the notification dated 6th March, 1987 issued under Section 4 and Section 17(1) of the Act by Banwari Lal and other owners of the acquired lands. These writ petitions were allowed by a learned Single Judge of the High Court, appeal against which was dismissed by the Division Bench of the High Court. While considering the appeal against the order of the Division Bench, this Court also dismissed the same. In the appeal, arguments had also been advanced that since the Government before this Court had not made the payment of 80 per cent of estimated compensation in terms of Section 17(3A) of the Act, the

acquisition had lapsed. However, in paragraph 36 of that judgment, this Court declined to deal with these contentions as it had dismissed the appeal on other grounds. The Court incidentally observed that it was not a fair stand to be taken by the State before the Court to argue that it could de-notify the acquired land on the plea that it had failed to comply with the statutory provisions of the Act. In short, the question in controversy in the present case was not actually pronounced upon by the Court in that case.

The question of the provisions of Section 17(3A) of the Act being mandatory or directory again fell for consideration before this Court in the case of Tika Ram & Ors. v. State of U.P. & Ors. [(2009) 10 SCC 689]. In this case, challenge to the constitutional validity of the provisions of Section 17 was also made. The Court, while holding that the said provisions are constitutional, also declared that the provisions of Section 17(3A) were not mandatory and their non-compliance would not vitiate the whole acquisition proceedings. The following paragraphs of the judgment are relevant:

> "91. However, the question is as to what happens when such payment is not made and the possession is taken. Can the whole acquisition be set at naught?
>
> 92. In our opinion, this contention on the part of the appellants is also incorrect. If we find fault with the whole acquisition process on account of the non-payment of 80% of the compensation, then the further question would be as to whether the estimation of 80% of compensation is correct or not. A further controversy can then be raised by the landlords that what was paid was not 80% and was short of 80% and therefore, the acquisition should be set at naught. Such extreme interpretation cannot be afforded because indeed under Section 17 itself, the basic idea of avoiding the enquiry under Section 5-A is in view of the urgent need on the part of the State Government for the land to be acquired for any eventuality discovered by either sub-section (1) or sub-section (2) of Section 17 of the Act.
>
> 93.
>
> The only question that would remain is that of the estimation of the compensation. In our considered view, even if the compensation is not paid or is short of 80%, the acquisition would not suffer. One could imagine the unreasonableness of the situation. Now suppose, there is state of emergency as contemplated in Section 17(2) of the Act and the compensation is not given, could the whole acquisition come to a naught? It would entail serious consequences.
>
> 94. This situation was considered, firstly, in Satendra Prasad Jain v. State of U.P. It was held therein that once the possession is taken as a matter of fact, then the owner is divested of the title to the land. The Court held that there was then no question of application of even Section 11-A. Commenting upon Section 11-A, it was held that that the Section could not be so construed as to leave the Government holding title or the land without an obligation to determine the compensation, make an award and pay to the owner the difference between the amount of the award and the amount of the

> 80% of the estimated compensation. The three-Judge Bench of the Court took the view that even where 80% of the estimated compensation was not paid to the landowners, it did not mean that the possession was taken illegally or that the land did not vest in the Government. In short, this Court held that the proceedings of acquisition are not affected by the nonpayment of compensation. In that case, the Krishi Utpadan Mandi Samiti, for which the possession was made, sought to escape from the liability to make the payment. That was not allowed. The Court, in para 17, held as under : (Satendra Prasad Jain case, SCC p. 375, para 17) "17. In the instant case, even that 80% of the estimated compensation was not paid to the appellants although Section 17 (3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27.6.1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."

95. Further, in a judgment of this Court in Pratap v. State of Rajasthan, a similar view was reported. That was a case under the Rajasthan Urban Improvement Act, 1987, under which the acquisition was made using Section 17 of the Act. The Court took the view that once the possession was taken under Section 17 of the Act, the Government could not withdraw from that position under Section 18 and even the provisions of Section 11-A were not attracted. That was of course a case where the award was not passed under Section 11-A after taking of the possession. A clear-cut observation came to be made in that behalf in para 12, to the effect that the non-compliance with Section 17 of the Act, insofar as payment of compensation is concerned, did not result in lapsing of the land acquisition proceedings. The law laid down by this Court in Satendra Prasad Jain v. State of U.P. was approved. The Court also relied on the decision in P. Chinnanna v. state of A.P. and Awadh Bihari Yadav v. State of Bihar, where similar view was taken regarding the land acquisition proceedings not getting lapsed. The only result that may follow by the non-payment would be the payment of interest, as contemplated in Section 34 and the proviso added thereto by the 1984 Act. In that view, we do not wish to further refer the matter, as suggested by Shri Trivedi, learned Senior Counsel and Shri Qamar Ahmad, learned counsel for the appellants. Therefore, even on the sixth question, there is no necessity of any reference."

As is obvious from the above paragraphs, there is an indefeasible obligation on the part of the Government to make the payment in terms of Section 17(3A) of the Act but non-

compliance thereto could not result in vitiation of the acquisition proceedings. The observations made by this Court in the case of Satendra Prasad Jain (supra), in paragraph 17, suggest that the Government was required to hold title to the acquired land coupled with its obligation to determine the compensation, make the award and then to pay to the owner the difference between the amount of 80 per cent of the estimated compensation and the amount finally determined.

The Court even went to the extent of observing that non-

payment of 80 per cent of the estimated compensation per se does not mean that possession was taken illegally or that the said land did not thereupon vest in the Government. This decision does provide any reasoning and conclusions which support the view that Section 17(3A) of the Act is not a mandatory provision. Following this judgment, another Bench of this Court in the case of Pratap & Anr. v. State of Rajasthan [(1996) 3 SCC 1] took the same view.

However, another Bench of this Court, in the case of Rajender Kishan Gupta v. Union of India [(2010) 9 SCC 46], had made certain observations which were at some variance to the dicta of this Court in the cases referred above. In that case, neither the validity nor the effects of non-compliance with Section 17(3A) of the Act were directly in issue. The challenge was to a notification issued under Section 4(1) of the Act for the land which was subsequently needed for the Metro Project in Delhi. The challenge was primarily based on the ground that the land could only be acquired under the Metro Rail Construction Works Act, 1978 and the emergency clause could not be used as a way to dispense with enquiry under Section 5A of the Act. The Court, while dismissing the appeal preferred by the claimants and rejecting the contentions in paragraph 29, made the following observations :

> "In the light of the above discussion, we are satisfied that the existence of public purpose and urgency in executing the project before the Commonwealth Games, the adjoining land belonging to DDA being forest land as per the notification and also of the fact that the respondents have fully complied with the mandatory requirements including deposit of 80% of the compensation amount, we are in entire agreement with the stand taken by the respondents as well as the conclusion of the High Court."

The Bench, dealing with the matter, did use the expression `mandatory requirements, including deposit of 80 per cent of the compensation amount', but there was no discussion or reasoning of the effects and consequences of such default, anywhere in the judgment, before it has been concluded that the said provisions are mandatory. Thus, these observations do not come to the aid of the appellants in challenging the entire acquisition proceedings on this ground.

Consistent with the view expressed by this Court in the cases referred (supra), I am of the considered view that the provisions of Section 17(3A) of the Act are not mandatory.

Such a conclusion can safely be arrived at, even for the reason that the Court would have to read into the provisions of Section 17(3A) consequences and a strict period of limitation within which amount should be deposited, which has not been provided by the Legislature itself in that section. The consequences and contingencies arising from non-compliance of the said provisions have not been stated in the Act. Once the land has vested in the Government, non-compliance with the obligation of payment of 80 per cent of estimated compensation would not render the possession taken under Section 17(1) as illegal. The land cannot be re-vested or reverted back to the claimants as no provisions under the Act so prescribe. Furthermore, if the interpretation put forward by the appellants is accepted, it would completely frustrate the objects and purpose of the Act, rather than advancing the same. The expression `shall' used in Section 17(3A) has to be understood in its correct

perspective and is not to be construed as suggestive of the provisions being absolutely mandatory in its application. Inter alia for these reasons and as per the above discussions, I hold that the provisions of Section 17(3A) are not mandatory. They are directive provisions, though their compliance is necessary in terms of the Act.

Having held as above, I hasten to add that the obligation on the part of the Government or concerned authority to deposit the amount prior to taking possession under Section 17(1) of the Act should essentially be complied with. The amount of 80 per cent of the estimated compensation in terms of Section 17(3A) should be deposited. Once we read the provisions of Sections 17(1) and 17(3A) conjunctively, it implies that the amounts are to be deposited within 15 days from the publication of the notice in terms of Section 9(1) of the Act and before taking of possession of the acquired land.

The Legislature has sufficiently indicated that the payment of the due 80 per cent of compensation should be made at the earliest and, particularly, before possession is taken. Non-

compliance of the provisions of Section 17(3A) would not vitiate the acquisition proceedings, but depending on the facts of a given case, the payment should be made within the time indicated and in any case within a reasonable time, and the claimant should then be entitled to additional benefits for such non-compliance. The Court would fill a part of the gap which has remained unfilled by the Legislature.

Irrespective of whether the provision is held to be mandatory or directory, compliance with its substance is equally important. In either case, the authority entrusted with a duty is not absolved of its obligation to perform the specified duty or obligation in the manner stated in law. It is primarily the consequences which result from non-performance of duty, which are of significance in determining the impact of mandatory or directory nature of a provision. Normally, in both cases, some consequences should flow from non-

performance. Even if the provisions of Section 17(3A) are directory, as held by me above, the deposit of 80 per cent of estimated compensation within the period of limitation i.e. 15 days and prior to taking possession of the land, has to be made. There is no ambiguity in this requirement. Thus, it shall be the duty of the Court to fill the lacuna (i.e., the consequences of non-payment of compensation) to complete the chain of the legislative scheme contained in Section 17 of the Act. Having taken recourse to the emergency provisions and having taken possession of the land, the Government and its authorities cannot be permitted to defer the payment of the requisite amount, in terms of Section 17(3A) of the Act, indefinitely or for an unduly long period. A responsibility is cast upon the authorities concerned to make payments within time and not unduly cause inconvenience and harassment to persons interested in the compulsorily acquired land and who have been deprived of possessory benefits also. Persons who are so deprived of their land and possessory benefits thereof, are not in a position to carry out agricultural activity or derive any other benefit as they might have been deriving prior to compulsory acquisition/taking possession of the land. In other words, it is a case of deprivation of property and to some extent deprivation of sources of income. Without hesitation, the claimants/owners of land should be and ought to be entitled to

certain additional benefits within the legislative framework of the Act. Certain additional and interest benefits are provided under Sections 23(1A), 23(2), 28 and 34 of the Act. The legislature has even taken care of providing higher rates of interest where the possession of the land has already been taken and compensation has not been paid or deposited within the specified time or in the manner prescribed under Section 34 of the Act. Proviso to this Section states that where the compensation payable, or any part thereof, has not been paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15 per cent per annum shall be payable from the date of expiry of the said period of one year, calculated on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry, until the time such payment is finally made. We have to read the provisions of Section 34 together with the provisions of Sections 17(1) and 17(3A) of the Act.

They have to be construed harmoniously, keeping in mind the object sought to be achieved by a conjoint reading of these provisions. The expression `before taking possession of the land' has been used in Section 17 read with Section 17(3A) and in Section 34 as well. Once the Government has invoked the emergency provisions, it is pre-supposed that the Government needs the land urgently and, in its wisdom, has decided that it is not in public interest to go through the normal procedure prescribed for acquisition and payment of compensation under Part II of the Act. It requires immediate possession of the land for achievement of the purpose for which land was required. As the Government would take possession by depriving the land owners of some of their rights, as would have been available to them under normal acquisition procedure, the Legislature has created special safeguards in their favour. Firstly, they would be given 15 days notice prior to taking of possession of the land (Section 9(1) of the Act). Secondly, 80 per cent of the estimated compensation shall be paid to them in terms of Section 17(3A) of the Act, before the possession is taken. Thus, the Legislature has balanced the rights and obligations between the parties. Section 34, therefore, cannot be read so as to destroy the protections or safeguards provided to claimants/owners of the land under Section 17 of the Act.

These provisions must be read harmoniously. These provisions should be construed so as to give benefit to the owners of the land against compulsory acquisition, rather than accepting an interpretation which would defeat the benefits intended by the Legislature. The Legislature was fully aware of the provisions of Section 34 while introducing Section 17(3A) into the Act, as both the provisions were introduced by the same Amending Act of 1984. This clearly demonstrates the legislative intent that the protections specified under Section 17(1) would operate in their own field and the provisions of Section 34 would also apply in its own sphere. It will be unfair, if the Government takes possession of the property within 15 days of the notice issued under Section 9(1) (as is contemplated under Section 17(1) of the Act) and does not make payment of compensation for a long period, with no additional liability whatsoever. It appears to me that this is not the legislative intent that the Government would not be liable to pay higher rate of interest where it has taken possession of the land in exercise of its powers under Section 17 of the Act.

It will be unfair if the liability to pay higher rate of interest in terms of Section 34 would arise only after a period of one year from the date of possession even in cases of emergent acquisition. Such an interpretation may result in frustrating the balance sought to be created by the Legislature. For

these reasons, I am of the considered view that the statutory benefit contained in Section 34 of the Act should be made applicable to the provisions of Section 17(1) read with Section 17(3A) in the manner that it would give the requisite benefit to the owners/claimants of the land rather than deprive them of both, their land and income, without any additional benefit despite non-compliance of the provisions of the Act. Thus, the owners/claimants should be entitled to receive, on the strength of these provisions and alike, the interest payable under the proviso to Section 34 i.e. interest at the rate of 15 per cent per annum from the date of expiry of the period of 15 days as stated under Section 17(1) and from taking of possession of the land from the owners/persons interested in the land till payment of compensation in terms of Section 17(3A) of the Act.

These conditions have to be satisfied cumulatively and not alternatively, to give rise to the liability to pay interest of 15 per cent from the date afore-stated. This approach that I am adopting is restricted in application to the acquisitions made by the Government in exercise of its emergency powers under Section 17 of the Act. Section 34 would otherwise operate in its own sphere and only after the lapse of the period specified in the proviso. The conclusion of the above discussion is that non-compliance of provisions of Section 17(1) read with Section 17(3A) would not render the acquisition proceedings invalid or void ab initio in law however, liability to pay interest at the rate of 15 per cent per annum would arise from the date and for the period afore-noticed.

Do the provisions of Section 11A apply to the acquisition proceedings commenced by the Government in exercise of its powers of urgency under Section 17 of the Act?

I have already noticed that Section 11A of the Act was introduced into the statute book by the Legislature vide Land Acquisition (Amendment) Act (68 of 1984). This provision was introduced primarily to provide safeguards and to secure the interests of owners/persons interested, whenever their land was acquired under the provisions of the Act. Section 11A of the Act reads as under :

> "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."

A bare reading of the above provision shows that the Legislature places an obligation upon the Collector to make an award at the earliest. Wherever the award under Section 11 of the Act has not been made within two years from the date of publication of the declaration, the entire proceedings for acquisition of land shall lapse. Explanation to Section 11A of the Act further excludes from this

period, any period during which any action or proceeding, to be taken in pursuance of the said declaration, is stayed by an order of a Court which had been in force. Exclusion of no other period is contemplated under this provision. Thus, a definite intention of the framers of law is clear that the award should be made at the earliest and, in any case, within a maximum period of two years from the declaration under Section 6 of the Act, if the acquisition proceedings are to survive. The acquisition under the Act being compulsory acquisition, a safeguard or right has been provided to the private party against the State. Thus, the statute imposes a duty upon the State to act within time and also provides for consequences that shall ensue in the event of default. These consequences are of a very serious nature, whereby the entire acquisition proceedings shall stand lapsed.

This would render the land free from acquisition or any restriction and title over the land would stand reverted to the owners/persons interested.

I have already discussed in some detail the principles which will help the Court in determining whether a provision is directory or mandatory. It is clear from the substance of the language and from the intention of the legislature that the right created in favour of the citizen and the duties imposed on the State should be construed strictly. Section 11A of the Act provides for discharge of obligations within the specified time and there are serious consequences of such non-fulfillment.

This would clearly lead to the conclusion that the provisions of Section 11A of the Act are capable of strict construction and are mandatory in their application. In number of cases, including the case of Mohan & Anr. v. State of Maharahtra [(2007) 9 SCC 431], this Court has already held that Section 11A of the Act is mandatory. This view, with respect, and for the reasons recorded above, I follow.

A three-Judge Bench of this Court in the case of Satendra Prasad Jain (supra) went further to specifically consider the question as to whether the provisions of Section 11A of the Act were attracted and, if so, whether they should be strictly construed and where the possession of the acquired land is taken and it is vested in the Government under Section 17 of the Act, whether the acquisition proceedings could lapse in terms of Section 11A of the Act. Answering the question in the negative, the Court stated that the Government could not withdraw from the acquisition under Section 48 of the Act and claim the benefit of its own default in not making an award within the period of two years. The Court laid down the following dictum:

> "15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes

> possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.
>
> 16. Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation."

This judgment was followed by another Bench of this Court in the case of Awadh Bihari Yadav & Ors. v. State of Bihar & Ors. [(1995) 6 SCC 31], which held, "...we, therefore, hold that the land acquisition proceedings in the instant case did not lapse...".

The principle of law stated in Satendra Prasad Jain (supra) was again followed by this Court in the case of P. Chinnanna & Ors. v. State of A.P. & Ors. [(1994) 5 SCC 486] and Pratap (supra) and in the case of Allahabad Development Authority v. Nasiruzzaman & Ors. [(1996) 6 SCC 424], this Court held as under :

> "In the impugned judgment, it would appear that the learned Judges asked the counsel to verify whether the award came to be made within two years, as indicated. The counsel on verification had stated that the award was not made within two years from the commencement of the Amendment Act, namely, 24-9- 1984. Consequently, the declaration was given that the notification under Section 4(1) and the declaration under Section 6 stood lapsed. This question was examined by this Court in Satendra Prasad Jain v. State of U.P. and Awadh Bihari Yadav v. State of Bihar and held that Section 11-A does not apply to cases of acquisitions under Section 17 where possession was already taken and the land stood vested in the State. The notification under Section 4(1) and declaration under Section 6 do not lapse due to failure to make an award within two years from the date of the declaration. The view of the High Court is erroneous in law."

In a very recent judgment of a Division Bench of this Court, (to which, one of us, Asok Kumar Ganguly, J. was a member) in the case of Banda Development Authority, Banda v.

Moti Lal Agarwal & Ors. [2011 (5) SCALE 173], this Court followed the aforesaid view with further clarification. Usefully, paragraphs 33, 36 and 38 of the said judgment can be referred to at this stage, which read as under :

> "33. XXX XXX XXX ... v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.
>
> XXX XXX XXX
>
> 36. Once it is held that possession of the acquired land was handed over to the BDA on 30.6.2001, the view taken by the High Court that the acquisition proceedings had lapsed due to non- compliance of Section 11A cannot be sustained.....
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> XXX XXX XXX
>
> 38. In the result, the appeal is allowed. The impugned order is set aside and the writ petition filed by Respondent No. 1 is dismissed with cost quantified at Rs. 1,00,000/-. Respondent No. 1 shall deposit the amount of cost with the Appellant within a period of two months from today."

However, the learned counsel appearing for the appellant has placed reliance upon a judgment of this Court in the case of Yusufbhai Noormohmed Nendoliya v. State of Gujarat [(1991) 4 SCC 531] to contend that the provisions of Section 11A of the Act are applicable to the acquisition under Section 17 as well. For non-adherence to those provisions, the entire acquisition proceeding should be declared to have lapsed and the applicants should be entitled to their lands free from any encumbrance. Let me analyze this judgment to appreciate the contention raised by the counsel appearing for the appellants.

In this case, the appellants were occupants of the lands sought to be acquired by the State of Gujarat for the purposes of establishing North Gujarat University and notification under Section 6 of the Act in respect of the said land was issued on 12th May, 1988. An interim order restraining the State from taking possession was granted by the Court. However, the Acquisition Officer proceeded to issue a notice under Section 9(1) of the Act and determined the compensation payable. As the award had not been made, the appellants therein had made a representation to the Government that the award had not been made within the period of two years mentioned under Section 11A of the Act and, therefore, the acquisition proceedings had lapsed. This plea was rejected. The appellants filed an application challenging the said decision, praying for a declaration that the acquisition proceedings had lapsed. The Division Bench of the Gujarat High Court took the view that the explanation to Section 11A is not confined to stay of making of the award pursuant to notification under Section 6, but it is widely worded and covers in its sweep the entire period during which any matter or proceedings due to be taken are stayed by a competent Court. This decision was challenged before this Court. In other words, this Court, in Yusufbhai (supra), was primarily concerned with the interpretation of Explanation to Section 11A of the Act and was determining the period which needs to be excluded while computing the limitation period of two years provided for the making of an award. While rejecting the view taken to the contrary by a Single Judge of the Kerala High Court,

this Court made a reference to taking of possession under Section 17 of the Act and held :

> "In the first place, as held by the learned Single Judge himself, where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise... The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder...".

It is obvious from a bare reading of the above observation that the question of applicability of Section 11A to acquisition proceedings under Section 17 was not in issue before the Court. This controversy was neither argued nor was it even remotely necessary for the adjudication of the dispute between the parties. These observations are merely an obiter of the Court, which is made to support its conclusion in paragraph 8 of the judgment and cannot be treated as ratio decidendi of the judgment or a precedent for the proposition raised in the present case. The learned counsel attempted to argue that the expression `whether the case is covered by Section 11 or otherwise' unequivocally states the principle of law that Section 11A is applicable to the present case. I am unable to accept this contention as it is not an authority for the proposition. This controversy was never raised before the Bench. The argument raised on behalf of the appellants is, therefore, misplaced.

A half hearted attempt was also made by the learned counsel for the appellants to advance the argument that there is difference of opinion by equi Benches of this Court, in the case of Satendra Prasad Jain (supra) on the one hand and Yusufbhai Noormohmed Nendolia (supra) on the other and, therefore, this matter should be referred to a larger Bench. I am not impressed with this contention at all. There is no conflict. Satendra Prasad Jain (supra) lays down the law and on true application of the principle of ratio decidendi, it is a direct precedent for the proposition involved in the present case. I can squarely answer the questions of law arising in the present case with reference to the settled principles and, therefore, have no hesitation in rejecting this request made on behalf of the appellants.

Let me also examine the other reasons which will support the view taken by this Court in Satendra Prasad Jain (supra) and followed in subsequent cases referred above. Section 17(1) of the Act uses the expression `though no such award has been made'. This clearly demonstrates that making of an award is not a sine qua non for issuance of a notification under Section 4(1) read with Section 17(1) of the Act or even taking possession in terms thereof. After publication of a notification under Section 4 read with Sections 17(1) and 17(4) of the Act, the authority is obliged only to publish a notice under Section 9(1) of the Act and comply with the provisions of Section 17(3A) before it can take possession within the stipulated period. Once possession of the land is taken, it shall thereupon vest absolutely in the Government free from all encumbrances. In other words, Section 17(4) itself is a permissible exception to the provisions of Section 11 of the Act and, therefore, the question of enforcing Section 11A against proceedings under Section 17 would not arise. Under Section 16, the land shall vest in the Government free from all encumbrances only after the award is made and

possession is taken. In contradistinction to this, under Section 17(1) the land shall vest absolutely in the Government free from all encumbrances even when no award is made and possession thereof is taken in terms of Sections 17(1) and 17(3A) of the Act. We have to give the language of Section 17(1) its plain meaning, within the field of its operation. Another reason in support of taking such a view is that, once such possession is taken and the land is so vested, the Act does not make any provision for re-vesting of land in the owners/persons interested. Reversion of title or possession of property acquired, which has vested in the Government or in the authority for whose benefit such lands are acquired, is unknown to the scheme of the Act. To introduce such a concept by interpretative process would neither be permissible nor proper.

Discussion on reverting back of land to the owners in terms of Section 48 of the Act A Constitution Bench of this Court (to which I was a member) in the recent judgment in the case of Offshore Holdings Pvt. Ltd. v. Bangalore Development Authority & Ors.

[(2011) 3 SCC 139], while dealing with the provisions of Sections 27 and 36 of the Bangalore Development Authority Act read with the provisions of the Land Acquisition Act and while referring to non-reversion of property to owners where it is vested in the Government, held as under :

> "Where, upon completion of the acquisition proceedings, the land has vested in the State Government in terms of Section 16 of the Land Acquisition Act, the acquisition would not lapse or terminate as a result of lapsing of the scheme under Section 27 of the BDA Act. An argument to the contrary cannot be accepted for the reason that on vesting, the land stands transferred and vested in the State/Authority free from all encumbrances and such status of the property is incapable of being altered by fiction of law either by the State Act or by the Central Act. Both these Acts do not contain any provision in terms of which property, once and absolutely, vested in the State can be reverted to the owner on any condition. There is no reversal of the title and possession of the State. However, this may not be true in cases where acquisition proceedings are still pending and land has not been vested in the Government in terms of Section 16 of the Land Acquisition Act."

As already discussed, no award is required to be made before the provisions of Section 17(1) can be invoked. Such an approach is further buttressed by another factor that is reflected under Section 17(3B) of the Act. The amount of 80 per cent of the estimated compensation deposited under Section 17(3A) of the Act is to be finally adjusted against the award made under Section 11 in terms of Section 17(3B) of the Act. A cumulative reading of these provisions clearly suggests that provisions of Section 11A of the Act can hardly be applied to the acquisition under Section 17 of the Act.

Another point which would support the view that I am taking is with reference to the provisions of Section 48 of the Act. Section 48 empowers the Government to withdraw from the acquisition of the land of which possession has not been taken. Where the Government withdraws from such an acquisition, it is its duty to determine the amount of compensation for the damages suffered by the owners as a consequence of the notice or any other proceeding taken thereunder, which amounts

have to be paid as per provisions of Part III. Section 48, thus, is a clear indication that the power of the Government to withdraw the acquisition is subject to the limitation stated under Section 48 itself. The scheme of Section 48 can be summarized as follows:

> A. Except in cases provided under Section 36, the Government has the power to withdraw from the acquisition of any land; B. Provided the possession of such land had not been taken; C. Government is liable to pay compensation for the damages suffered by the owner as a consequence of notice or any proceeding thereunder which have to be computed in accordance with the provisions of Part III. There is no ambiguity in the language of Section 48 of the Act to give it any other interpretation except that the Government is not vested with the power of withdrawing from the acquisition of any land, of which the possession has been taken. Where the award has been made and possession has been taken, the land vests in the Government in terms of Section 16 of the Act. On the contrary, the land vests absolutely in the Government free from all encumbrances where award has not been made and only possession as contemplated under Section 17(1) of the Act has been taken. If the Government has no power to withdraw from acquisition of any land, the possession of which has been taken, then by no stretch of imagination can it be held that the Government will have the power to withdraw from the acquisition of any land where the land has vested in the Government or the land has been subsequently transferred in favour of an authority for whose development activity the lands were acquired. In the case of Lt. Governor of Himachal Pradesh and Anr. v. Avinash Sharma [(1970) 2 SCC 149], this Court took the view that once the notification under Section 17(1) of the Act is issued and land accordingly vested with the Government, the notification can neither be cancelled under Section 21 of the General Clauses Act nor can it be withdrawn in exercise of powers conferred by the Government under Section 48 of the Act. This Court in Avinash Sharma's case (supra) held as under :
>
> "But these observations do not assist the case of the appellants. It is clearly implicit in the observations that after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

In another case titled Rajasthan Housing Board and Others v. Shri Kishan and Others [(1993) 2 SCC 84], this Court was concerned with a notification issued under Section 4 of the Act and also a notification issued a few days after the issuance of the first notification, under Section 17(4) of the Act. These were challenged on the ground that there was no urgency and so, the provisions of Section 5A of the Act could not be dispensed with and that there were structures on the land which

could not have been acquired. An argument was also raised that the Government had intended and, in fact, issued letters de-notifying the lands acquired and, thus, they should be treated as having been de-notified as per the decision of the Government. In these circumstances, the Court held as under:

> "26. We are of the further opinion that in any event the government could not have withdrawn from the acquisition under Section 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the government to withdrawn from the acquisition. The very letter dated 24.2.1990 relied upon by the counsel for the petitioner recites that "before restoring the possession to the society the amount of development charges will have to be returned back...."

This shows clearly that possession was taken over by the Housing Board. Indeed the very tenor of the letter is, asking the Housing Board as to what development work they had carried out on the land and how much expenditure they had incurred thereon, which could not have been done unless the Board was in possession of the land. The Housing Board was asked to send the full particulars of the expenditure and not to carry on any further development works on that land. Reading the letter as a whole, it' cannot but be said that the possession of the land was taken by the government and was also delivered to the Housing Board. Since the possession of the land was taken, there could be no question of withdrawing from the acquisition under Section 48 of the Land Acquisition Act, 1894."

In the case of Sanjeevanagar Medical & Health Employees' Cooperative Housing Society v. Mohd. Abdul Wahab and Others [(1996) 3 SCC 600], it was held that the acquired land had already been transferred to the society for the benefit of which the lands were acquired, by invoking the urgency clauses. The question of reverting acquired land had not arisen in this case directly, as the Court was primarily concerned with the contention that the notification issued under Section 4 was liable to be quashed. A question, with regard to inconsistency between the Central and the State Acts, was also raised. The Court, in paragraph 12 of the judgment, held that by operation of Section 16, land had been vested in the State free from all encumbrances and while referring to the judgment of this Court in Satendra Prasad Jain (supra) reiterated the principle that `Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48 gives power to withdraw from acquisition that too before possession is taken.' This principle was followed by another Bench of this Court in the case of Bangalore Development Authority and Others v. R. Hanumaiah and Others [(2005) 12 SCC 508] wherein, it was held as follows:

> "46. The possession of the land in question was taken in the year 1966 after the passing of the award by the Land Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in- interest of the appellant. After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Section 21 of the General

> Clauses Act cannot be exercised after vesting of the land statutorily in the State Government."

Similarly, even in the case of National Thermal Power Corporation Limited v. Mahesh Dutta and Others [(2009) 8 SCC 339], the Government had desired to withdraw lands from acquisition after the lands had vested in it, in exercise of its power under Section 48 of the Act. Rejecting the contention of the State in paragraph 16 of the judgment, the Court stated that `it is a well settled proposition of law that in the event the possession of the land, in respect whereof a notification had been issued, had been taken over, the State would be denuded of its power to withdraw from the acquisition in terms of Section 48 of the Act.' The Court then went to the extent of expressing the view that the possession taken may be symbolic or actual.

I must notice that in the case of U.P. Jal Nigam, Lucknow through its Chairman and Another v. Kalra Properties (P) Ltd., Lucknow & Others [(1996) 3 SCC 124], a Bench of this Court had made a passing observation in paragraph 3 of the judgment:

> "It is further settled law that once possession is taken by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11A, as amended by the Act of 68 of 1984, therefore, does not apply and the acquisition does not lapse".

The aforesaid observations that the State may issue `a notification under Section 48(1)' and this notification may be `published in the Gazette withdrawing from the acquisition', are nothing but an obiter of the Court without any discussion thereto. The question whether the acquisition proceedings lapse or that the notification cancelling acquisition could be issued after the possession is taken, where the land has vested in the Government did not arise in that case. The Court was primarily concerned with three main questions:

> 1. What was the effect of possession of land subsequent to notification issued under Section 4(1) of the Act?
>
> 2. Whether the provisions of Section 11A of the Act would apply to the acquisition under Section 17(1) read with Section 17(4) of the Act? and
>
> 3. How the market value should be determined?

Firstly, if the said interpretation is given, it shall be contrary to the specific language of Section 48 of the Act.

Secondly, the learned Judges did not refer to any judgment of this Court while making the observation that `it is further settled law'. I have referred to the consistent view of this Court right from the year 1970 till 2011 and no judgment to the contrary has been brought to the notice of the Court.

Thus, I must hold that the observations made in paragraph 3, as reproduced, are merely an obiter and not a binding precedent.

The lands which have been acquired under the provisions of Section 17 of the Act are incapable of being reverted to the owners/persons interested. The Act does not make any such provision and, thus, the Court is denuded of any such power.

The Court must exercise its power within the framework of law, i.e., the provisions of the Act.

In the case of an ordinary acquisition, if the land has vested in the State Government then neither the Government nor the court can take recourse to the provisions of Section 48(1) of the Act, there the question of applying Section 11A of the Act to acquisition proceedings under Section 17 of the Act cannot arise, as it would tantamount to achieving something indirectly which would be impermissible to be achieved directly. For all the above reasons, I hold that Section 11A of the Act has no application to the acquisition proceedings under the provisions of Section 17 of the Act.

There is no dispute in the present case that the provisions of Section 11A of the Act have not been complied with. Admittedly, the notification under Section 4(1) read with Section 17(4) was published on 17th April, 2002, declaration under Section 6 was made on 22nd August, 2002 and the possession of the property was taken on 4th February, 2003.

The award has been made on 9th June, 2008, much after the expiry of the prescribed period of two years under Section 11A of the Act. There being an admitted violation of the provisions of Section 11A of the Act, the natural consequence is that its rigours would be attracted. However, the most pertinent question that arises for consideration is: whether the provisions of Section 11A of the Act are applicable to the acquisition of land under Section 17 of the Act?

The main thrust of submissions on behalf of the appellants is that the provisions of Section 11A of the Act would be attracted even to the acquisition proceedings undertaken by the appropriate Government in exercise of powers vested in it under Section 17 of the Act. It is contended that Section 17 in the scheme of the Act is at parity to the normal and ordinary process of acquisition except that it is a power to be exercised in urgent basis. The other provisions like publication of notification under Section 4, declaration under Section 6, notice under Sections 9 and 12 and passing of award under Section 11 of the Act are argued to be essential features of an acquisition made under Section 17 of the Act as well. Thus, it is submitted that the provisions of Section 11A of the Act would also apply to an acquisition made under Section 17 of the Act. If an award is not made within two years from the date of declaration under Section 6 of the Act, the acquisition proceedings should lapse irrespective of whether the acquisition had commenced under Section 4 by invoking powers of urgency or otherwise. It is argued that there is no justification, whatsoever, for excluding the application of Section 11A of the Act from acquisitions made under Section 17 of the Act. On the contrary, the contention on behalf of the respondents is that provisions of Section 11A of the Act have no application to the provisions of Section 17 of the Act. In fact, there is an apparent, though limited, conflict between these provisions. The very purpose and object of the Act would stand defeated if provisions of Section 11A of the Act are applied to the acquisitions under Section 17 of the

Act.

I may now examine the scheme of the Act, with particular reference to the difference between acquisitions in exercise of emergent powers under Section 17 of the Act and the acquisitions made otherwise. In both the cases, notification under Section 4(1) has to be published in accordance with the provisions of the Act. Notification under Section 4 is a sine qua non for commencement of the acquisition proceedings and this has been the consistent view of this Court right from the case of Narender Jeet Singh v. State of U.P. [(1970) 1 SCC 125] wherein the Court clearly held that issuance of a notification under sub-section (1) of Section 4 is a condition precedent to exercise of any further powers under the Act and the notification issued under that provision should comply with the essential requirements of law under that provision.

Thereafter, the owners/persons interested have to be given an opportunity to file objections as contemplated under Section 5A of the Act and after granting them hearing, a declaration under Section 6 of the Act has to be published. Subsequent to the publication of such a declaration, notice under Section 9(1) of the Act has to be issued stating the intention of the Government to take possession of the land and that claims for compensation and for all interests in such land may be made to the competent authority. Following the procedure prescribed, an award has to be made under Section 11 of the Act awarding compensation for acquisition of the land with its complete details. Under the scheme of the Act, in the event of an ordinary acquisition in contradistinction to acquisition in exercise of emergent powers, if the award is not made within a period of two years from publication of the declaration under Section 6, the acquisition proceedings would lapse. In these proceedings, the possession of the land remains with the claimant/owners of the land and it is only when the award becomes final in terms of Section 12 of the Act, possession of the land is taken and the acquired land vests in the Government free from all encumbrances under Section 16 of the Act.

Where the lands are acquired in exercise of emergent powers of the State under Section 17 of the Act, a notification under Section 4(1) of the Act is issued and the notification itself refers to the provisions of Section 17(1) as well as Section 17(4) of the Act. A specific power is vested in the appropriate Government to declare that provisions of Section 5A would not be applicable to such acquisition. Therefore, there is no obligation upon the Collector/authority concerned to invite and decide upon objections in terms of Section 5A of the Act, prior to publication of a declaration under Section 6 of the Act.

However, notice under Section 9(1) of the Act has to be published to completely and fully invoke the powers vested in the State for taking possession of the land, in terms of Section 17(1) of the Act. After the expiry of 15 days from such publication under Section 9(1), the possession of the land can be validly taken by the Government, whereupon the land would vest absolutely in the Government, free from all encumbrances. In other words, for proper computation of the specified period of 15 days, issuance of notification under Section 9(1) of the Act would be necessary, but it cannot be held to be mandatory in its operation so as to render the execution proceedings invalid. In the case of May George (supra), a Bench of this Court has expressed the view that the notification under Section 9(1) of the Act as contemplated under Section 17(1) of the Act is not mandatory.

Before the Government takes possession of the land in exercise of its powers under Section 17(1) of the Act, it has to comply with the requirements of Section 17(3A) of the Act.

The amount so paid, if falls short, and/or is in excess of compensation actually due to the land owners, the same shall be determined and adjusted while making the final award under Section 11 of the Act. It is evident that both these acquisitions have distinct schemes of acquisition. Section 17 of the Act itself refers to some other provisions, like Sections 5A, 9, 11, and 31 of the Act. Wherever such reference was considered necessary by the Legislature, it has been so made.

Thus, there is no occasion for the Court to read into Section 17, the language of Section 11A of the Act which has not been provided by the Legislature; more so when doing so would destroy or frustrate the very object of the urgent acquisition.

Marked distinction between the implementation of these two types of acquisition schemes contained in the Act is clearly suggestive that these schemes operate in their respective fields without any contradiction. Hence, the Court would adopt an interpretation which would further such a cause, rather than the one which will go contra to the very scheme of the Act.

In my considered view, it will be difficult for me to hold that the provisions of Section 11A of the Act, despite being mandatory, would apply to the scheme of acquisition contained under Section 17 of the Act.

Whether the Claimants can be granted any relief even on equitable grounds?

The facts, as already noticed by me above, are hardly in dispute. Admittedly, the possession of the land had been taken on 4th February, 2002 and the Writ Petition No. 2225 was filed by the petitioners in the year 2006 i.e. after the possession has been taken. In terms of Section 17(1) of the Act, the land has been vested absolutely and free from all encumbrances in the Government. After vesting of the land, the development activity had been carried out over the years and it is informed that Sector 88, NOIDA is fully developed and operational.

Once the development activity has been completed in the entire sector, will it be equitable to release the lands from acquisition? Even if for the sake of argument, it is assumed that there is some merit in the contention raised on behalf of the appellant, the answer has to be in the negative. It is settled canon of equitable jurisdiction that the person who feels aggrieved by an action of the State should approach the Court without any unnecessary delay, particularly in cases such as the present one. While the notification under Section 4 read with Sections 17(1) and 17(4) of the Act was issued on 14th April, 2002 and possession taken on 4th February, 2003 the writ petitions in question were filed in August 2006, i.e., more than four years subsequent to the issuance of the notification under Section 4. It was contended that the cause of action to challenge the acquisition proceedings arose only after the period of two years had lapsed from the date of issuance of the notification. Even if that be so, still there is an unexplained and undue delay of more than two years in approaching the Court. This would itself disentitle the appellants to claim any equitable relief in the facts and circumstances of the present case.

I must not be understood to say that in every case of delay, per se, the Court would decline to exercise its jurisdiction if the party to the lis can otherwise be granted relief in accordance with law. This has to be decided keeping in view the facts and circumstances of a given case.

It is not in dispute and, in fact, can hardly be disputed that in the intervening period of nearly ten years, the acquired areas have fully developed. Not only this, it is informed during the course of hearing that the award was finally made by the authorities on 9th June, 2008 and has been accepted by nearly 97.6 per cent of the owners whose lands were acquired vide the said notification. In other words, nearly all land owners have accepted the award and permitted the development activity to be carried out. This conduct of the owners as a whole would again be a factor which will weigh against the grant of any relief to the appellants. Huge amounts of money and resources of the State, as well as other bodies or persons have been invested on the development of this sector which is stated to be an industrial sector. It will be unjust and unfair to uproot such a developed sector on the plea raised by the present appellants. In this view, I am fully supported by the judgment of a Division Bench of this Court, to which my learned brother (Ganguly, J.) was a member, in the case of Tamil Nadu Housing Board v. L. Chandrasekaran (Dead) by Lrs. & Ors. [(2010) 2 SCC 786]. The Bench was primarily dealing with the question of re-conveyance of the acquired lands on the grounds of discrimination and arbitrariness. The High Court had passed a direction against the Board to re-

convey the acquired land, which was held by this Court, on appeal, to be contrary to the provisions of Section 48 of the Act. This Court settled the point of law holding that it is not appropriate for the Court to quash the acquisition proceedings at the instance of one or two land owners, where the development had taken place and majority of the land owners had not challenged the acquisition. The Court, while relying upon the case of A.S. Naidu v. State of Tamil Nadu [(2010) 2 SCC 801] held as under:

> "15. The first issue which requires consideration is whether the order passed by this Court in A.S. Naidu case has the effect of nullifying the acquisition in its entirety. In this context, it is apposite to mention that neither the appellant Board nor have the respondents placed before the Court copies of the writ petitions in which the acquisition proceedings were challenged, order(s) passed by the High Court and the special leave petitions which were disposed of by this Court on 21-8-19903 and without going through those documents, it is not possible to record a finding that while disposing of the special leave petitions preferred by A.S. Naidu and others, this Court had quashed the entire acquisition proceedings. So far as A.S. Naidu is concerned, he did not even make a prayer before the High Court for quashing the preliminary notification issued under Section 4(1) of the Act.
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> 16. This is evident from the prayer made by him in Writ Petition No. 7499 of 1983, which reads as under:
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> "For the reasons stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of certiorari or any other proceeding or any other appropriate writ or direction or order in the nature of a writ

to call for the records of the first respondent relating to GOMs No. 1502, Housing and Urban Development Department dated 7-

11-1978 published in the Tamil Nadu Government Gazette Extraordinary dated 10-11-1978 in Part II Section 2 on pp. 22 to 26 and quash the said notification issued under Section 6 of the Land Acquisition Act, 1894 insofar as it relates to the land in the petitioners' layout approved by the Director of Town Planning in LPDM/DTP/2/75 dated 7-3-1975 in Survey Nos. 254, 257, 258, 260, 268 and 271 in Mogapperi Village, No. 81, Block V, Saidapet Taluk, Chingleput District and render justice."

From the above reproduced prayer clause, it is crystal clear that the only relief sought by Shri A.S. Naidu was for quashing the notification issued under Section 6 insofar it related to the land falling in Survey Nos. 254, 257, 258, 260, 268 and 271 in Mogapperi Village, No. 81, Block V, Saidapet Taluk and in the absence of a specific prayer having been made in that regard, neither the High Court nor this Court could have quashed the entire acquisition. This appears to be the reason why the Division Bench of the High Court, while disposing of Writ Appeals Nos. 676 of 1997 and 8-9 of 1998 observed that quashing of acquisition by this Court was only in relation to the land of the petitioner of that case and, at this belated stage, we are not inclined to declare that order dated 21-8-19903 passed by this Court had the effect of nullifying the entire acquisition and that too by ignoring that the appellant Board has already utilised portion of the acquired land for housing and other purposes. Any such inferential conclusion will have disastrous consequences inasmuch as it will result in uprooting those who may have settled in the flats or houses constructed by the appellant Board or who may have built their houses on the allotted plots or undertaken other activities.

XXX XXX XXX

26. A glance at the impugned order shows that the Division Bench did not at all advert to the factual matrix of the case and the reasons incorporated in the Government's decision not to reconvey the acquired land to the respondents. The Division Bench also did not examine the correctness or otherwise of the order passed by the learned Single Judge and allowed the appeals preferred by the respondents simply by relying upon order dated 18-2-2000 passed in Writ Appeal No. 2430 of 1999 and that too without even making an endeavour to find out whether the two cases were similar. In our view, the direction given by the Division Bench to the appellant Board to reconvey the acquired land to the respondents is per se against the plain language of Section 48-B of the Act in terms of which only the Government can transfer the acquired land if it is satisfied that the same is not required for the purpose for which it was acquired or for any other public purpose. The appellant Board is not an authority competent to transfer the acquired land to the original owner. Therefore, the Division Bench of the High Court could not have issued a

mandamus to the appellant Board to reconvey the acquired land to the respondents. As a matter of fact, the High Court could not have issued such direction even to the Government because the acquired land had already been transferred to the appellant Board and the latter had utilised substantial portion thereof for execution of the housing scheme and other public purposes.

27. There is one more reason why the impugned judgment deserves to be set aside. Undisputedly, the land of the respondents forms part of large chunk which was acquired for execution of the housing scheme. The report sent by the appellant Board to the State Government shows that the purpose for which the land was acquired is still subsisting. The respondents had neither pleaded before the High Court nor was any material produced by them to show that the report which formed basis of the Government's decision not to entertain their prayer for reconveyance of the land was vitiated by mala fides or that any extraneous or irrelevant factor had influenced the decision-making process or that there was violation of the rules of natural justice. Therefore, the Division Bench of the High Court could not have exercised the power of judicial review and indirectly annulled the decision contained in communication dated 18-3-1999.

28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

I am of the considered view that what has been stated by the learned Judges in that case is squarely applicable, even on facts, to the present case. Firstly, there is no merit in the contentions of law raised by the appellants, which I have already rejected. Secondly, even on equity, the appellants have no case.

Before I part with this file, I cannot ignore one very important aspect which has come to my notice during the hearing of the case and which, as stated at the Bar, is an often repeated default on the part of the Government Departments causing undue inconvenience, harassment, hardship and ultimately resulting in the acquisition itself being inequitable against the land owners/persons interested therein. The declaration under Section 6 was made on 22nd August, 2002, the notice under Section 9(1) had been issued and possession of the land was taken on 4th February, 2003. In the normal course and as per the requirements of the provisions of Section 17(3A) read with Section 17(1), 80 per cent of the estimated compensation ought to have been paid to the owners of the land/persons interested, within that period prior to taking possession and/or, in any case, within a very limited and reasonable time. This I am only noticing subject to my finding that there is

unequivocal statutory obligation upon the respondents to pay the amount prior to taking possession of the land in question. However, the award made on 9th June, 2008 would have otherwise vitiated the entire acquisition proceedings, but for the fact that, as held by me above and for reasons recorded supra that Section 11A does not apply to the acquisition made in exercise of emergent powers in terms of Section 17 of the Act. Still, to do things within a reasonable time is an obligation of the State, as is imposed by the Legislature itself and even otherwise as per the canons of proper governance, i.e., vigilantibus, non dormientibus, jura subveniunt, which means the laws assist those who are vigilant, not those who sleep over their rights. According to Respondent No.2, they had deposited 10 per cent of the estimated compensation prior to issuance of notification under Section 4, i.e., 17th April, 2002 and 70 per cent of the amount was deposited with the Government on 8/14th July, 2002 by a cheque. The amount deposited was nearly ` 6,66,00,000/-

and odd. For reasons best known to the State Government, this amount was not disbursed to the claimants until passing of the award. In other words, the amount was made available to the Government and its authorities for disbursement to the owner/claimants prior to (or soon after) taking of the possession, which was taken on 4th February, 2003, but still the claimants were deprived of their legitimate dues without any justification or reason. In order to show this, learned counsel appearing for respondent No.2 had even shown the records to the Court. It was also the duty of respondent No.2 to ensure that the payments were made to the claimants prior to taking of possession but, in any case, it was an unequivocal statutory obligation on the part of the State/Collector to ensure that the payments were made to the claimants in terms of Section 17(1) read with Section 17(3A) prior to taking of possession. No justification whatsoever had been advanced and can be advanced for such an intentional default and the casual attitude of the concerned officers/officials in the State hierarchy.

These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the Government department, if not with a greater rigour. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office. In the case of State of Bihar v. Subhash Singh [(1997) 4 SCC 430], this Court, in exercise of the powers of judicial review, stated that the doctrine of `full faith and credit' applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In the case of Centre for Public Interest Litigation & Anr. v. Union of India & Anr. [(2005) 8 SCC 202], this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency

in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

The doctrine of `full faith and credit' applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision making process in Government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties besides there being violation of the statutory rule. This Court had occasion to express its concern in different cases from time to time in relation to such matters. In the case of State of Andhra Pradesh v. Food Corporation of India [(2004) 13 SCC 53], this Court observed that it is a known fact that in transactions of Government business, no one would own personal responsibility and decisions would be leisurely taken at various levels.

Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being `public officer' or `public servant', is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.

I find no justification, whatsoever, for the Government, despite deposit by the beneficiary, not to pay 80 per cent of the estimated compensation due to the claimants within the requisite time and not even within the reasonable time. It was breach of statutory and governance obligation of the State's officers/officials to pay the amount to the claimants after more than five years. It is expected of the State officers not to forget that these are compulsory acquisitions in exercise of State's power of eminent domain and the legislative intent behind providing safeguards and some benefits against such acquisition ought not to be frustrated by inaction and omissions on the part of the officers/officials. There being patent unexplained mistakes, omissions and errors, committed by the officers/officials in the State of Uttar Pradesh in dealing with this entire matter, I hereby impose cost of ` 1,00,000/- on the State Government which at the first instance shall be paid by the State to the owners of the land, i.e., present appellants or persons situated alike. However this amount shall be recovered from the salary of all the officers/officials found guilty by the State which shall conduct an inquiry for that purpose in accordance with law. The inquiry shall be completed within a period of six months from today and a report shall be submitted to the Secretary General of this Court on the administrative side. Imperatively, it must follow that the Central Government and all State Governments must issue appropriate directions to ensure that there is no harassment, hardship or inequality caused to the owners/persons interested in the lands acquired by the State, in exercise of

its powers of eminent domain under Section 17(1) of the Act. Wherever the payments are not made within time and appropriate steps are not taken to finalize the acquisition of the land, the concerned Government should take appropriate disciplinary action against the erring officers/officials involved in and responsible for the process of acquisition.

I will prefer to record my conclusions and also answer the four legal questions (`A' to `D') as framed in the judgment by my learned brother. They are as follows:

> (A)I hold and declare that Section 11A of the Act has no application to the acquisition proceedings conducted under the provisions of Section 17 of the Act;

Once the acquired land has vested in the Government in terms of Section 16 or 17(1) of the Act, possession of which has already been taken, such land is incapable of being re-vested or reverted to the owners/persons interested therein, for lack of any statutory provision for the same under the Act.

(B) The provisions of Section 17(3A) of the Act, on their bare reading, suggest that the said provision is mandatory but, as no consequences of default have been prescribed by the Legislature in that provision, thus, it will hardly be permissible for the Court to read into the said provision any drastic consequences much less lapsing of entire acquisition proceedings. In other words, default in complying with provisions of Section 17(3A) cannot result in invalidating or vitiating the entire acquisition proceedings, particularly when the possession of the acquired land has been taken and it has vested in the Government free from all encumbrances.

(C) Keeping in view the scheme of the Act, the provisions of Section 17 of the Act can be construed strictly but such interpretation must be coupled with the doctrine of literal and contextual interpretation, while ensuring that the object of the legislation is not defeated by such an interpretation. Strict compliance to the conditions contemplated under Section 17 of the Act should be given effect to but within the framework of the statute, without making any additions to the language of the section.

(D) Once the right to property ceases to be a Fundamental Right after omission of Articles 19(1)(f) of the Constitution of India, the addition of Articles 31A and 300A by the 44th Constitutional Amendment, 1978, cannot place the legal right to property at the same pedestal to that of a fundamental right falling under Chapter III of the Constitution. It has been clearly held by the Courts that the provisions of the Land Acquisition Act are not violative of Article 14 of the Constitution. The rights of the citizens and interest of the State can be balanced under the provisions of the Act, without any violation of the Constitutional mandate.

Besides answering the questions of law and stating my conclusions as above, it is both appropriate and necessary to pass certain directive orders to ensure the maintenance of balance between the might of the State on the one hand and the rights of land owners on the other. It is, therefore, necessary to issue the following directions :

(i) The Government/acquiring authority shall be liable to pay interest at the rate of 15 per cent per annum with reference to or alike the provisions of Section 34 of the Act, after the expiry of 15 days from issuance of notification under Section 9(1) of the Act, and from the date on which the possession of the land is taken, till the amount of 80 per cent of the estimated compensation is paid to the claimants.

In the facts of the present case, it is clear that 80 per cent of the estimated compensation had been deposited by the beneficiary. However, it is no way clear on record that these amounts had actually been received by the owners/interested persons. Where the amounts have been paid beyond the period as stated in Section 17(3A), the claimants still would be entitled to the rate of interest afore-indicated. Interest should be computed from the date of the notification till the date of payment to the claimants. The Government is also liable to pay interest as afore-indicated on the balance amount determined upon making of an award in accordance with Section 11 of the Act.

(ii) The Central Government and all the State Governments shall issue appropriate and uniform guidelines, within 8 weeks from today, to ensure that the land owners and the persons interested in the lands cquired by the State or its instrumentalities are not put to any undue harassment, hardship and inequity because of inaction and omission on the part of the acquiring authority, in cases of urgent acquisition under Section 17 of the Act.

The Government should ensure timely action for acquisition and payment of compensation in terms of the provisions of the Act, particularly Section 17(3A) of the Act, as explained in this judgment.

(iii) Wherever the Government exercises its power under Section 17(1) of the Act and there is default in deposit of the amount in terms of Section 17(3A) of the Act, as explained in this judgment, the concerned Government shall take appropriate disciplinary action against the erring officers/officials including making good the loss caused to the Government revenue on account of the liabilities towards interest or otherwise, because of such undue delay on the part of such officers/officials;

(iv) In this case, the claimants would be entitled to the cost of ` 1,00,000/- (Rupees one lakh only) which shall be deposited at the first instance by the State Government of Uttar Pradesh and then would be recovered from the salaries of the defaulting/erring officers/officials in accordance with law. The inquiry shall be completed within a period of six months from today and a report shall be submitted to the Secretary General of this Court on the administrative side immediately thereafter.

In result, the appeal is accordingly dismissed with the above directions.

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.....J. [Swatanter Kumar] New Delhi;

August 18, 2011 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.24 OF 2009 M/s. Delhi Airtech Services Pvt. Ltd. & Anr. ... Appellants Versus State of U.P. & Anr. ... Respondents J U D G M E N T Ganguly, J.

1. The facts giving rise to the present appeal are simple and fall within a narrow compass. However, they raise questions which are of public importance and legal significance. Thus, it will be appropriate for us to state the questions of law at the very threshold:

> A. When the Government, in exercise of its emergency powers under Section 17 of the Land Acquisition Act, 1894 (for short the `Act') acquires lands, which have since vested in the State, can such an acquisition proceeding lapse and consequently the land can be transferred to the owners/persons interested in the event of default by the State, in complying with the provisions of Section 11A of the Act? B. Whether the provisions of Section 17(3A) of the Act are mandatory or directory? In either event, would non- compliance with this Section have the effect of invalidating or vitiating the entire acquisition proceedings, even where the land has vested in the State in terms of Section 17(1) of the Act? C. Whether with the invoking of the emergency provisions which have the effect of dispensing with the provision of hearing under Section 5A of the Act, the Court is entitled to construe the emergency provisions strictly, being drastic provisions in an exproprietory law and consider the safeguards inbuilt in Section 17(3A) against such drastic provisions as conditions precedent and mandatory for a valid exercise of emergency provisions.
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> D. Whether having regard to the principle of reasonableness being a basic component of fundamental rights under the Constitution, this Court has to construe the provisions of the said Act, a pre- constitutional law in consonance with reason and justice-the fundamental tenets of Article 14 and thus arrive at a balanced interpretation of the interest of the State as against the rights of citizens or land owners. FACTS:

2. The appellant No.1 is a company duly incorporated under the provisions of the Indian Companies Act, 1956 and is alleged to be the owner of the land sought to be acquired by the respondents. The appellant's land, admeasuring about 2-06-1/3-0 Bighas situated in Village Haldauni, Tehsil and Pargana Dadri, District Gautam Budh Nagar which is abadi land, was sought to be acquired by the appropriate Government under a notification dated 17th April, 2002 issued under Section 4(1) read with Sections 17(1) and 17(4) of the Act. This land was acquired for the planned industrial development in District Gautam Budh Nagar through the New Okhla Industrial Development Authority (NOIDA). The notification also stated that the provisions of Section 5A of the Act shall not apply. In pursuance to the said notification, a declaration under Section 6 of the Act was published on 22nd August, 2002, declaring the area which was required by the Government. It also stated that after expiry of 15 days from the date of the publication of the notification under sub-section (1) of Section 9 of the Act, possession of the acquired land shall be taken. The appellants have alleged that they did not receive any notice under Section 9(1) of the Act but possession of the land was nevertheless taken on 4th February, 2003.

According to the appellants, even after a lapse of more than three and a half years after the declaration under Section 6 of the Act, no award had been made and published.

3. The appellants further alleged that, despite inordinate delay, they were neither paid 80 per cent of the estimated compensation in terms of Section 17(3A) of the Act at the time of taking of possession, nor had the Collector passed an award within two years of making the declaration under Section 17(1), as required by Section 11A of the Act. It was the case of the appellants that this has the effect of vitiating the entire acquisition proceedings. Non-payment of compensation and conduct of the Government compelled the appellants to file a writ petition in the High Court of Allahabad praying for issuance of an order or direction in the nature of certiorari or any other writ, and not to create any encumbrance or interest on the land of the appellants. Further, they prayed that the acquisition proceedings, insofar as they relate to the land of the appellants, be declared void ab initio and that the respondents be directed to return the land under the possession of the Government to the owners. Lastly, the appellants pray that the respondents/Government be directed to pay damages for use and occupation of the land.

4. To this writ petition, on behalf of NOIDA a counter affidavit was filed in the High Court, denying that the acquired land was in fact part of abadi land. NOIDA also stated that 80 per cent compensation in terms of Section 17(3A) had been deposited with the state authorities. The land had been acquired for planned development of NOIDA and it was in the physical possession of the said authority. Possession of the land had been taken on 4th February, 2003 and no right had survived in favour of the appellant as the land had vested in the Government.

5. The High Court, vide its judgment dated 28th August, 2006, dismissed the writ petition. The High Court relied upon the judgment of this Court in the case of Satendra Prasad Jain & Ors. v. State of U.P. & Ors., [AIR 1993 SC 2517 = (1993) 4 SCC 369], and dismissed the petition as the High Court held that provisions of Section 11A of the Act are not attracted to proceedings for acquisition by the Government under Section 17 of the Act. However, liberty was granted to the appellants to pray for grant of appropriate compensation in accordance with law before the competent forum.

6. Aggrieved by the said order of the High Court, the appellants have filed the present appeal impugning the judgment dated 28th August, 2006.

7. In the counter affidavit filed before this Court by NOIDA, the stand in the counter filed before the High Court has been reiterated, with an additional fact that the sector in question was designated as industrial area, and, after development activity was completed, allotment has been made and possession of these industrial plots has also handed over to such entrepreneurs/allottees. This falls under Sector 88 of the NOIDA City. The rest of the allegations made in the writ petition, except the dates in question, have been disputed.

8. It has also been stated at the Bar by the State Counsel, on the basis of the record, without filing an affidavit, despite directions given to that effect by this Court on 5.1.2009, that 10 per cent of the estimated compensation was deposited by NOIDA with the State Government even prior to the date of the notification under Section 4(1) read with Section 17(4) of the Act, issued by the Government on 17.4.2002. The remaining 70 per cent of the estimated compensation had been allegedly deposited vide cheque dated 8/14th July, 2002 amounting to approximately Rs.6,66,00,000/-. As such, it is claimed there is compliance with the provisions of Section 17(3A) of the Act. The Award

was made on 9.6.2008, which has been accepted by a large number of owners, i.e., 97.6 per cent of all owners. Some of these facts have also been averred in the counter affidavit of NOIDA filed before the High Court.

9. It may be noted that neither before the High Court nor before this Court any affidavit was filed either by the State or by the Collector. The assertion of the appellant about non-payment of compensation as contemplated under Section 17(3A) of the Act has not been controverted. Such payment has to be tendered by the Collector to the person interested and entitled to the same, subject to certain statutory conditions.

Assuming there has been deposit of 80% of the compensation amount by NOIDA with the state authorities, that does not satisfy the requirement of Section 17(3A) of the Act. From the above pleadings of the parties, the admitted facts that emerge from the record can be usefully recapitulated.

10. The Governor of State of Uttar Pradesh on 17th April, 2002, issued a notification under Section 4(1) of the Act, expressing the intention of the Government to acquire the land stated in the said Notification for a public purpose, namely, for the planned industrial development in District of Gautam Budha Nagar through NOIDA. Vide the same notification the emergency provisions contained in Section 17 of the Act, specifically Section 17(4) of the Act, were also invoked, intimating the public at large that the provisions of Section 5A of the Act shall not be applicable. After issuance of the declaration under Section 6 of the Act, admittedly the possession of the land in question was taken on 4th February, 2003.

Another undisputed fact is that the claimants-owners of the land were not paid 80 per cent of the estimated compensation prior to taking of possession in terms of Section 17(3A) of the Act.

11. The Collector had not made or published this award even at the time of pronouncement of the judgment of the High Court, in Writ Petition No. 22251 of 2006, on 28 August 2006. The High Court, in the impugned judgment, directed respondent No.1 to ensure that the Award is made as early as possible, preferably within a period of three months from the date of production of the certified copy of that order. In the counter affidavit filed before this Court by NOIDA, it has been stated that the Award was finally made and published on 9th June, 2008. According to the appellant, in terms of Section 11A of the Act, the Award ought to have been pronounced on or before 26th August, 2004 as the declaration under Section 6 of the Act was dated 22nd August, 2002.

Legal Issues

12. If I may consider certain features of the said Act and the constitutional provisions.

13. Enactment of the said Act was rooted in the colonial past of this country having been brought on the statute book on 1894 as Act 1 of 1984. With enormous expansion of State's role in promoting welfare and development activities since independence, acquisition of land for public purposes increased with the passage of time. Several decades after the enactment of the Act, came

Constitution in India in 1950. Along with it came the concept of social and economic justice based on expansive values of human rights. Under article 366 (10) of the Constitution the Act was an `existing law' made before the commencement of the Constitution.

Article 366(10) is quoted below:-

> "366 (10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;"

14. Article 372 of the Constitution provides for continuance in force of such `existing law' and their adaptation. Article 372 (1) of the Constitution makes it clear that notwithstanding the provision of the Article 395, but subject to the other provisions of the Constitution, all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed or amended by a competent Legislature or other competent authority.

15. Article 13 of the Constitution, which is a part of Fundamental Right (Part III), also defines `laws in force' under Article 13(3)(b). Article 13(3)(b) is set out:-

> "13 (3) (b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

16. The said definition of `laws in force' under Article 13(3)

(b) with certain changes, is consistent with the definition of `existing laws' in Article 366(10).

17. The said Act is thus both an `existing law' within the meaning of Article 366(10) and `laws in force' within the meaning of Article 13(3)(b) of the Constitution.

18. Article 13(1), which is relevant in this context, is set out below:

> "Article 13. Laws inconsistent with or in derogation of the fundamental rights: (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

19. Under Article 372 such laws in force can continue with some amendments, subject to `the other provisions of this Constitution'. Article 13 certainly comes within `the other provisions of the Constitution'.

20. Therefore, Article 372 and Article 13 must be read together in as much as both the articles relate to continuance of pre-constitutional laws validly made.

Article 372 permits such continuance and Article 13 stipulates the condition on which they can continue.

Article 13 is of greater importance as it is part of fundamental right and makes all laws, whether pre or post-constitution, subject to the primacy of fundamental rights. The continuance of the said Act is thus made to depend on its compliance with the mandate of Article 13. The mandate of Article 13(1) is clear that such law can continue provided it is not inconsistent with the provision of Part III. In the event of such laws becoming inconsistent with the provision of Part III, such laws, to the extent of their inconsistency, shall be void. This is the mandate of the Constitution.

21. Therefore, several amendments were made to the said Act keeping in view the broad concept of social and economic justice which is one of the main constitutional goals. In the instant case I am concerned with some amendments to the said Act by amendment Act 68 of 1984 which took effect from 24th September 1984. Among several new sections, Section 11(A) and 17(3A) were introduced by amendment to the said Act.

22. From the Statement of Objects and Reasons for the said amendment it will be clear that the said amendment was brought into existence to give effect to the message of social and economic justice based on the concept of Social Welfare State on broad principles of human rights. The Statements of Objects and Reasons are as follows:

> "With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.
>
> 2. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act, 1894, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th

> April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill...."

(emphasis added)

23. It is clear from the aforesaid objects and reasons that by introducing the provisions of Section 11A and 17(3A) by way of amendment to the Act, greater responsibility was fastened upon the concerned State authorities, whereby they were obliged to make an award within two years of the declaration made under Section 6 of the Act. Thus the rights of the land owners were sought to be protected by balancing the same against the rights of the State. In respect of emergency provisions where land is acquired without a hearing, it is provided under Section 17(3A) that before taking possession either under Section 17(1) and 17(2) it was obligatory upon the authorities concerned to pay 80 per cent of the estimated compensation to the land owners. This was also for protecting the right of the land owners.

24. These amendments along with Statement, Objects and Reasons are very crucial in interpretation of some of the amended provisions. The amendment was brought about in 1984 and by that time, the contents and reach of Fundamental Rights in Part III, as interpreted by this Court had assumed a very expansive profile. In view of the mandate of Article 13, the provision of the said Act must be tested on the anvil of the broad interpretation of Fundamental Rights given by this Court. In view of the decision of this Court in Maneka Gandhi v. Union of India & Another - (1978) 1 SCC 248, the interpretation of Part III rights namely rights under Article 14, 19 and 21 given therein by this Court, read with Article 141, becomes the law of the land. Therefore, the reach of Article 13(1) is correspondingly widened. Thus, the 1984 amendments must be construed as a conscious attempt by the legislature being aware of the expansive interpretation of Fundamental Rights by this Court, to bring the said act consistent with the rights of the citizens and persons in Part III.

25. Despite the fact that Right to Property in terms of Article 19(1)(f) of the Constitution stood deleted from Chapter III of the Constitution, vide 44th Constitutional Amendment, 1978, Article 300A of the Constitution was added by the same Constitutional Amendment, mandating that `no person shall be deprived of his property save by authority of law'. This indicates that the Constitution still mandates that right to property may have ceased to be a fundamental right, but it is still protected by the Constitution and is a Constitutional right. Constitution also provides that deprivation of that right cannot be brought about save by authority of law.

26. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams.

Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists. The U.S. Supreme Court in Dorothy Lynch v. Household Finance Corporation, 405 US 538: 31 L Ed. 2d 424 held:

> "....the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, of Civil Government 82-85 (1924); J. Adams, A Defence of the Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries 138-

140..." (P.552 of the report)

27. Justice K.K. Mathew in his treatise on "Democracy, Equality and Freedom": (1978) very categorically expressed the view:

> "In a Society with a mixed economy, who can be sure that freedom in relation to property might not be regarded as an aspect of individual freedom? People without property have a tendency to become slaves. They become the property of others as they have no property themselves. They will come to say: "Make us slaves, but feed us". Liberty, independence, self- respect, have their roots in property. To denigrate the institution of property is to shut one's eyes to the stark reality evidenced by the innate instinct and the steady object of pursuit of the vast majority of people. Protection of property interest may quite fairly be deemed in appropriate circumstances an aspect of freedom." (P.38-39)

28. Explaining the interrelation between the right of property and personal liberty, Learned Hand ruled that property right is a personal right. (Learned Hand : The Spirit of Liberty)

29. In our Constitution the word `law' finds place both in Article 21 and in Article 300A. The term `law' in Article 21 has been interpreted by the Supreme Court from time to time. In A.K. Gopalan v. State of Madras, (AIR 1950 SC 27), the expression `law' meant enacted law, meaning thereby if the law was passed by a competent legislature and was not violative of any other provision of the Constitution, the law would be valid. But the said interpretation does no longer hold good after the epoch making decision of this Court in Maneka Gandhi (supra), where this Court held the law does not mean any enacted piece. According to the majority decision in Maneka Gandhi (supra) "law is reasonable law not any enacted piece" (para 85 page 338 of the report)

30. In Maneka Gandhi (supra) this Court held that the expression `procedure established by law' in Article 21 means a procedure established by a just, reasonable and fair law. Thus the concept of due process of law was incorporated in our constitutional framework by way of judicial interpretation even though it was rejected by the framers.

31. As a result of incorporation of this doctrine of `due process' in our constitutional framework, the concept of Articles 14 and 21 has undergone a sea-change. In Maneka Gandhi (supra), Justice Bhagwati, as His Lordship then was, gave a very dynamic interpretation of Articles 14 and 21.

32. Even prior to the decision in Maneka Gandhi (supra), a Constitution Bench of this Court in R.C. Cooper v.

Union of India - (1970) 1 SCC 248 also gave a composite and integrated interpretation of rights under Part III of the Constitution. The question before this Court in R.C. Cooper (supra) was whether the rights under Articles 19(1)(f) and 31(2) are mutually exclusive. Answering the said question, the majority of the Constitution Bench, speaking through Shah, J.

analysed the different features of Fundamental Rights in para 52 at page 289 of the report and came to a conclusion that part III of the Constitution "weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: they do not attempt to enunciate distinct rights." (page 289)

33. In the following paragraph 53, the learned judges further made it clear by saying:

> "acquisition must be under the authority of a law and the expression "law" means a law which is within the competence of the Legislature, and does not impair the guarantee of the rights in Part III."

34. In view of this clear enunciation of law by two Constitution Benches of this Court and the wording of Article 300A of the Constitution, let us examine the correctness of the impugned Judgment of the High Court which relies only on S.P. Jain's case (supra).

35. The facts are totally different in S.P. Jain (supra). It is clear from the facts in S.P. Jain (supra) that the third respondent, the Krishi Utpadan Mandhi Samity, in whose favour the land was acquired for construction of market-yard, resolved on 13th January, 1989 to withdraw from the acquisition as it was suffering from a fund crunch and the proposed Mandhi site was far away from Baraut (para 5).

36. The second round of litigation, out of which the judgment in S.P. Jain (supra) was rendered by this Court, was filed after the aforesaid resolution of the third respondent was passed. Challenging the same, the writ petition was filed before the High Court on 10th August, 1989 wherein the writ petitioner prayed that the State of Uttar Pradesh (the first respondent), The Collector, Merrut (the second respondent) and the Mandhi (the third respondent) be directed by Writ of Mandamus to make and publish an award in respect of the land. In that context this Court examined various

provisions of the Act and gave a direction upon the first and second respondents to publish an award within 12 weeks and imposed a cost of Rs.10,000/- on the third respondent. In fact the writ petition in terms of the prayer was allowed.

37. In coming to the aforesaid conclusion this Court held that in a case where the emergency provisions are invoked under Section 17 of the Act, the provisions of Section 11A will not apply. And this Court came to an incidental finding, though it was not strictly in issue, that taking over the possession without making payment under Section 17 (3A) of the Act is not illegal.

This finding was not at all necessary for deciding the issue, namely whether prayer in the writ petition for publishing the award was correctly made or not.

38. It has been held in the decision of this Court in Municipal Corporation of Delhi v. Gurnam Kaur, reported in AIR 1989 SC 38 that when a point does not fall for decision of a Court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form a part of the ratio of the case but the same is treated as a decision passed sub silentio. The concept of `sub silentio' has been explained by Salmond on Jurisprudence "12th Edition" as follows:

> "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

(page 43)

39. The aforesaid passage has been quoted with approval by the three Judge Bench in Gurnam Kaur (supra).

This Court in Gurnam Kaur (supra), in order to illustrate the aforesaid proposition further relied on the decision of the English Court in Gerard v. Worth of Paris Ltd., reported in 1936 (2) All England Reports

905. In Gerard, the only point argued was on the question of priority of the claimant's debt. The Court found that no consideration was given to the question whether a garnishee order could be passed. Therefore, a point in respect of which no argument was advanced and no citation of authority was made is not binding and would not be followed. This Court held that such decisions, which are treated having been passed sub silentio and without argument, are of no moment. The Court further explained the position by saying that one of the chief reasons behind the doctrine of

precedent is that once a matter is fully argued and decided the same should not be reopened and mere casual expression carry no weight. In Gurnam Kaur (supra) this Court conclusively held that not every passing expression of a Judge, however eminent, can be treated as "ex cathedra statement, having the weight of authority" (see para 12 page 43)

40. Similarly, it has also been held by the majority opinion in Constitution Bench of this Court in the case of Madhav Rao Jivaji Rao Scindia v. Union of India, reported in AIR 1971 SC 530 that "it is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment." (page 578 of the report)

41. In another Constitution Bench decision of this court in Padma Sundara Rao (Dead) & Ors., v. State of Tamil Nadu & others reported in (2002) 3 SCC 533, similar views have been expressed by this Court in para 9, at page 540 of the report wherein the unanimous Constitution Bench of this Court opined:

> "9. Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treting the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the seting of the facts of a particular case, said Lord Morris in Herrington V. British Railways Board - (1972) AC
>
> 877. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

42. The reason behind enacting Section 17 (3A) of the Act is clear from the Statement of Object and Reasons extracted above. It is clear therefore the provisions were incorporated in order to strike a balance between the rights of the State and those of the land owner. A clear legislative intent in Section 17(3A) was thus expressed that before taking possession of any land under sub-section (1) or sub-section (2) of Section 17, the Collector shall tender payment of 80% of the estimated compensation for such land to the persons interested and entitled thereto. This is the clear mandate of law.

43. In view of the principles enunciated in R.C. Cooper (supra) and Maneka Gandhi (supra), reasonableness in law has to be its implicit content. Here no challenge to the reasonableness of Section 17 (3A) is either argued or considered by this Court. But when law gives a specific mandate on the State to tender the payment before taking possession under Section 17(1) and Section 17(2) by invoking the emergency powers, to hold that the taking over of possession without complying with that mandate is legal is clearly to return a finding which is contrary to the express provision of the statute. Such a finding is certainly not on a reasonable interpretation of Section 17 (3A).

Therefore, the casual observation in para 17 (page 375) in S.P. Jain (supra) to the effect of taking possession of land under emergency provision and without making the payment mandated under

Section 17(3A) is a valid mode of taking possession is in clear violation of Section 17(3A) and be regarded made per incuriam and does not have the effect of a binding precedent.

44. If I look at the emergency provisions of the statute which empowers the State to acquire land by dispensing with the provisions of making an enquiry it is clear that the said provision is a drastic provision. It is well-known that the provisions of the said Act are expropriatory in nature and must be strictly construed. In that expropriatory legislation, Section 17 is a very drastic provision as Section 17 of the Act seeks to authorize acquisition and taking over of possession without hearing the land owner. This Court held that the right of hearing which is given under Section 5A of the Act and which is taken away in view of the emergency acquisition is a very valuable right and is akin to a fundamental right. (See Dev Sharan & Ors. v. State of U.P. & Ors. - JT 2011 (3) SC 102).

Therefore, when that right is taken away and the land is acquired by invoking the emergency provision of Section 17(3A) to hold that even the safeguards provided under Section 17(3A) are not mandatory and taking over of possession without complying with the provisions of Section 17 (3A) is not illegal is to overlook the clear provisions of the Act and come to a finding which is contrary to the Act. This Court is unable to accept that the taking over of the possession by invoking Section 17(1) or Section 17(2) of the Act and without making the payment under Section 17(3A) is legal taking over of possession.

45. This Court is of the view that Section 17(3A) is not an isolated provision. Section 17(3A) figures very prominently as part of the statutory mechanism in Section 17 of the Act which confers special powers in cases of urgency. Section 17 has four sub sections and all these sub sections comprise a composite mechanism and are closely intertwined. Power under one sub section cannot be exercised without complying with the conditions imposed by the other sub section.

For a proper appreciation of this question, section 17 with all its sub sections are set out:

> "17. Special powers in cases of urgency. (1) In cases of urgency, whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.
>
> (2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous

> sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:
>
> Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.
>
> (3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24;

and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-

section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under sub-

section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of publication of the notification under section 4, sub-section (1)."

46. Sub-section (3A) of Section 17 is linked with sub section (2) of Section 31. Sub section (2) of Section 31 runs thus:

> "(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:
>
> Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:
>
> Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:
>
> Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

47. It is thus clear that sub section (3A) of Section 17 read with sub section (2) of Section 31 of the Act form a composite statutory scheme. The said scheme has been legislatively framed to balance the promotion of public purpose in acquisition with rights of the individual whose land is acquired. This is clear from the Statement of Objects and Reasons which was kept in view for bringing about the amendment of the said Act by Amendment Act 68 of 1984. By the said amendment Section 17(3A) was brought on the statute.

48. Therefore, the provision of Section 17(3A) cannot be viewed in isolation as it is an intrinsic and mandatory step in exercising special powers in cases of emergency. Sections 17(1) and 17(2) and 17(3A) must be red together. Section 17(1) and 17(2) cannot be worked out in isolation.

49. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In Attorney General v. HRH Prince Earnest Augustus of Hanover, reported in (1957) 1 AER 49, Lord Viscount Simonds very elegantly stated the principle that it is the duty of Court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari material, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy" (page 53 of the report).

50. Lord Normand expressed the same view differently and which is equally pertinent and worth remembering and parts of which are excerpted below:

> "The key to the opening of every law is the reason and spirit of the law - it is the animus imponentis, the intention of the law maker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute,

> that particular phrase is not to be viewed detached from its context ... meaning by this as well the title and the preamble as the purview or enacting part of the statute" (page 61 of the report).

51. These principles have been followed by this Court in its Constitution Bench decision in Union of India v.

Sankalchand Himatlal Sheth & anr., [(1977) 4 SCC 193]. At page 240 of the report, Justice Bhagwati, as His Lordship then was, in a concurring opinion held that words in a statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its context. His Lordship explained that the word context has to be taken in its widest sense and expressly quoted the formulations of Lord Viscount Simonds, set out above. (See para 54, P.241 of the report).

52. In this connection, if I compare the normal mode of vesting of acquired property under Section 16 of the Act with the mode of vesting under emergency provisions of Section 17 thereof, I will discern that under the said Act the vesting of acquired property in the State presupposes compliance with two conditions.

Under Section 16, first there has to be an award under section 11 and then there has to be taking over of possession. Only thereupon the land shall vest absolutely in the state, free from all encumbrances.

Section 16 of the act which makes it clear is as under:

> "16. Power to take possession.- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

53. But in case of emergency acquisition, possession is taken before the making of an award. This is clear from section 17(1) and section 17(2). But the intention of the legislature is that even though the award is not made, payment mandated under Section 17(3A) must be made before possession is taken either under Section 17(1) and 17(2). Therefore this provision relating to payment under Section 17(3A) is a condition precedent to the vesting of land under Section 17(1) and 17(2). In the later part of this judgment, I shall discuss some authorities which have opined that when possession is illegally taken over without following the conditions precedent for taking such possession, vesting of a property in law does not take place in the authority which thus illegally enters upon the property.

54. Judicial opinion is uniformly in favour of strict construction of an expropriatory law which admittedly Land Acquisition Act, 1894 is. Reference in this connection can be made to the observations of Cottenham, L.C. in Webb v. Manchester and Leeds R ail Co . , [(1839), 4 Myl. & Cr.116] where the Lord Chancellor held:

> "The powers are so large - it may be necessary for the benefit of the people - but they are so large, and so injurious to the interests of the individuals, that I think it is the duty of every court to keep them most strictly within those powers; and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers; but they will get none from me by way of construction of their Act of Parliament."

55. In the Indian context, as early as in 1916. Judicial committee of Privy Council in Secretary of State for India v. Birendra Kishore Manikya (ILR 44 Cal 328), speaking through Lord Dunedin held, `the Act is drastic in its character and makes invasion in private rights...matter must be brought "strictly within its provisions".' (p 343)

56. Cripps in "The Law of Compensation for Land Acquired under Compulsory Powers" (8th ed., Stevens and Sons, Ltd.) has quoted the above opinion of the Lord Chancellor and further dealt with this aspect of the matter at page 27 of the book wherein the learned author said, "Where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with by virtue of that authority has a right to require that the promoters shall comply with the letter of the enactment, so far as it makes provision on his behalf." Again at page 100, the learned author has stressed the above position very strongly to the following effect:-

> "If no consent has been given, and the promoters have not complied with the statutory conditions as to entry on lands, they can be proceeded against as trespassers by any owner who has an interest in the lands. The principle is that all statutory conditions which have been imposed as condition precedent to an entry on lands must be fulfilled."

57. In support of this aforesaid proposition, the learned author has relied on Parkdale Corporation v. West [(1887), 12 App. Cas. 602, 614].

58. And again at page 173, the learned author opines:

> "It must be borne in mind that promoters have no powers, other than those comprised in their special Acts and the Acts therewith incorporated, to enter upon or take lands against the wish of the owners. It is incumbent on promoters to comply with all conditions and limitations imposed upon them, and, unless they have so complied, any interested owner can restrain them by injunction from taking, as against him, further proceedings".

I am in respectful agreement with the aforesaid principles.

59. I find that same principles have been laid down in Cooley's `A Treatise on the Constitutional Limitations' Volume II, (Eight Edition). Cooley while dealing with the concept of `Eminent Domain' in Chapter 15 opined (p.1120):

> "...whenever in pursuance of law the property of an individual is to be divested by proceedings against his will, a strict compliance must be had with all the provisions of law which are made for his protection and benefit, or the proceeding will be ineffectual. Those provisions must be regarded as in the nature of conditions precedent, which are not only to be observed and complied with before the right of the property owner is disturbed, but the party claiming authority under the adverse proceeding must show affirmatively such compliance".

(emphasis added)

60. The learned author explained the aforesaid proposition with certain illustration which very closely fit in with the legal framework with which I am concerned in this case. The learned author said:

> "So if the statute vests the title to lands appropriated in the state or in a corporation on payment therefore being made, it is evident that, under the rule stated, the payment is a condition precedent to the passing of the title."

(Emphasis added)

61. Reference in this connection should be made to the decision of Supreme Court of Vermont in Henry B. Stacey v The Vermont Central Railroad Co, (27 Vt.

39). In that case, while discussing the concept of Eminent Domain, the court after referring to various decisions held "that this provision (relating to deposit of the appraised value) should be considered in the nature of a condition precedent, not only to the acquisition of the legal title to the land, but also to the right to enter and take the permanent possession of the land for the use of the corporation."

62. The expression condition precedent has been defined in Words and Phrases (permanent edition, Vol. 8. St. Paul, Minn, West Publishing Co., 1951, p 629) as those which `must be punctually performed before the estate can vest'. Similarly, in Bouvier's Law Dictionary, (A Concise encyclopedia of the Law, Rawle's Third Revision, Vol. 1, Vernon Law Book Company, 1914, p

584), virtually the same principles have been followed.

The learned author expressed this even more strongly by explaining that:

> "The effect of a Condition precedent is, when performed, to vest an estate, give rise to an obligation, or enlarge an estate already vested; [...]. Unless a condition precedent be performed, no estate will vest; and this even where the performance is prevented by the act of God or of the law; [...]."

63. In Wharton's Law Lexicon, it has been held that conditions precedent in their primary meaning are those events, but for the happenings of which rights will not arise. (Wharton's Law Lexicon, 1976, reprint, p

228).

64. In the case of Gujarat Electricity Board v Girdharlal Motilal And Anr (AIR 1969 SC 267), this court while dealing with the power of the State Electricity Board to purchase the property of the licensee held that right can be exercised only in the manner provided in the act and not in any other way. The court held that since this power of the Board under the law is to interfere with the property rights of the licensee, such power will have to be strictly construed. In laying down the said principle this court relied on the well-known doctrine in case of Nazir Ahmad v King Emperor [AIR 1936 PC 253] that when a power is to be exercised in a manner it has to be exercised in that manner alone and in no other manner. In two other recent judgments, this court reiterated the same principle, and held that expropriatory statute, as is well known, must be strictly construed. [See Hindustan Petroleum corpn. Ltd., v. Darius Shapur Chenai and others reported in (2005) 7 SCC 627]. The said principle has also been followed by this Court in the case of Bharat Petroleum Corporation Ltd. v Maddula Ratnavalli and Others [(2007) 6 SCC 81] where learned judges relying on Hindustan Petroleum reiterated the same principle of strict construction of expropriatory legislation (p 91).

65. In an earlier decision Jilubhai Nanbhai Khachar and others v State of Gujarat and Anr [1995 Suppl (1) SCC 596], this Court while dealing with the concept of eminent domain and right to property in Article 300A held as follows (para 50, p. 628):

> "50. All modern constitutions of democratic character provide payment of compensation as the condition to exercise the right of expropriation. Commonwealth of Australia Act, a Frecnh Civil Code (Article 545), the 5th Amendment of the Constitution of USA and the Italian constitution provided principles of "just terms", "Just indemnity", Just compensation" as reimbursement for the property taken, have been provided for. As pointed out in Halsbury's Law of England that "when Parliament has authorized the compulsory acquisition of land it is almost invariably provided for payment of a money compensation to the person deprived of his interest in it."

66. On the basis of aforesaid principles, I hold that the requirement of payment under section 17(3A) is in the nature of condition precedent clamped by the statute before taking possession under emergency acquisition by the State. The vesting contemplated either under Section 17(1) or 17(2) of this Act is conditioned upon payment mandated under Section 17(3A). This is clear from the opening words of Section 17(3A) namely "before taking possession of any land either under sub-section (1) or (2), Collector shall..... tender payment." Therefore, the eminent domain concept is subject to the aforesaid statutory condition and must be read subject to due process concept introduced in our constitutional law in Maneka Gandhi (supra). If I read, Section 17(3A) as I must, consistently with the constitutional doctrine of due process as articulated in the expression `authority of law' under Article 300A which constitutionally protects deprivation of a right to

property, save by authority of law, the conclusion in my judgment is inescapable that the requirement of section 17(3A) constitutes the authority of law within the meaning of Article 300A. Therefore, in the context of aforesaid statutory dispensation and constitutional provision, the debate whether the provision of section 17(3A) is mandatory or directory does not present much difficulty for the reasons discussed above and also for the following reasons.

67. Basically, the language used is `shall' which primarily indicates mandatory compliance. That apart, in the context of the nature of statute which is admittedly expropriatory in character and the nature of the statutory requirement under section 17(3A) which is clearly and undoubtedly a condition precedent to the taking over of possession in emergency acquisition, there can be no doubt that the requirement under section 17(3A) is mandatory.

68. Section 17(3A) has been enacted for protecting the rights of deprived land-loser in an emergency acquisition. The said provision is therefore based on reason, justice and fairplay. Since the said provision has been introduced by way of an amendment as noted above to balance the right of the state as against the interest of the land-loser, the State's power of eminent domain is expressly made subject to aforesaid statutory provision as also the constitutional right to property protected under Article 300A. Right to property has been pronounced as fundamental human right by this Court in Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., and others reported in (2007) 8 SCC 705.

69. The expression `law' which figures both in Article 21 and Article 300A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Article 14 and 21 as explained in Maneka Gandhi (supra).

This is especially so, as `law' in both the Articles 21 and 300A is meant to prevent deprivation of rights.

Insofar as Article 21 is concerned, it is a Fundamental Right whereas in Article 300A it is a constitutional right which has been given a status of a basic human right.

70. I, therefore, hold that Section 17(3A) of the Act is a law which has been enacted to prevent deprivation of property rights guaranteed under Article 300 A. This provision of Section 17(3A) must therefore be given a very broad interpretation to mean a law that gives a fair, just and reasonable protection of the land-loser's constitutional right to property.

71. Therefore, the provisions of section 17(3A) read with Article 300A must be liberally construed. Reference in this connection be made to the majority opinion in the Constitution Bench decision in the case of Madhav Rao Jivaji Rao Scindia (supra). Shah, J., speaking for the majority opinion observed (para 33, p 576):

> "The court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and

> just will be adopted, for there is always a presumption against the law maker intending injustice and unreason. The court will avoid imputing to the Legislature an intention to enact a provision which flouts notions of justice and norms of fairplay, unless a contrary intention is manifest from words plain and unambiguous. A provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property will, unless the contrary mandate be precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitution and statutory provisions alike."

72. On the above premise, taking over a possession of land without complying with the requirement of section 17(3A) is clearly illegal and in clear violation of the statutory provision which automatically violates the constitutional guarantee under Article 300A. A passing observation to the contrary in S.P. Jain (supra) must pass sub silentio being unnecessary in the facts of the case as otherwise such a finding is per incuriam, being in violation of the statute. A fortiorari the said finding cannot be sustained as a binding precedent.

73. For the reason aforesaid, this Court holds that the writ petition cannot be dismissed in view of the decision in S.P. Jain (supra) which was decided on totally different facts. The judgment of the High Court is set aside.

74. This court further holds that in all cases of emergency acquisition under section 17, the requirement of payment under section 17(3A) must be complied with.

As the provision of section 17(1) and section 17(2) cannot be worked out without complying with requirement of payment under section 17(3A) which is in the nature of condition precedent. If section 17(3A) is not complied with, the vesting under section 17(1) and section 17(2) cannot take place. Therefore, emergency acquisition without complying with section 17(3A) is illegal. This is the plain intention of the statute which must be strictly construed. Any other construction, in my opinion, would lead to diluting the Rule of Law.

75. However, coming to the question of relief in the instant case, the Court has to take note of the fact situation.

Admittedly, possession of the land has been taken and same has been handed over to the beneficiary on which construction had taken place and third party interests had arisen. It is very difficult to put the hands of the clock back now, despite the aforesaid declaration of law by the Court. This Court, therefore, has to think in terms of adequately compensating the appellants. In the special facts of this case, compensation in respect of the land acquired insofar as the appellants are concerned cannot be decided on the basis of the date of notice under Section 4.

76. In view of the discussions above, the compensation has to be fixed with regard to the value of the appellant's land as on the date of filing of the writ petition which was in March, 2006 before the

High Court. The section 4 notification must be deemed to have been issued on March 1, 2006 and the compensation must be worked out on that basis. An award on that basis must be passed by the Collector within four months from date and the appellants are given liberty, if so advised, to challenge the same in appropriate proceedings. All questions relating to compensation in aforesaid proceeding are kept open for both the parties. As the respondent - the acquiring authority has proceeded illegally in the matter, it must pay costs of Rupees one lakh in favour of Allahabad High Court Mediation Centre within a period of six weeks from date. The State is at liberty to recover the same from the erring officials.

77. The appeal is, thus, allowed with costs as aforesaid.

.....J. [Asok Kumar Ganguly] New Delhi August 18, 2011 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.24 OF 2009 M/s. Delhi Airtech Services Pvt. Ltd. & Anr. ... Appellants Versus State of U.P. & Anr. ... Respondents O R D E R In view of the divergence of opinion on conclusions and also on various legal questions discussed in two separate judgments by us, the matter is required to be placed before the Hon'ble the Chief Justice of India for reference to a larger Bench to resolve the divergent views expressed in both the judgments and to answer the questions of law framed.

.....J. [Asok Kumar Ganguly] .....J. [Swatanter Kumar] New Delhi August 18, 2011 ***