Ramesh Chandra Sharma & Ors. vs State Of U.P. & Others on 30 March, 2018

Equivalent citations: AIR 2018 (NOC) 756 (ALL), 2018 (3) ALJ 462 2018 (3) KLT SN 82 (ALL), 2018 (3) KLT SN 82 (ALL)

Bench: Govind Mathur, Ashok Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 29 Reserved on 22.03.2018

Delivered on 30.03.2018

Case :- WRIT - C No. - 49326 of 2009

Petitioner :- Ramesh Chandra Sharma & Ors.

Respondent :- State Of U.P. & Others

Counsel for Petitioner :- K.M. Asthana,H.R. Mishra,K.M. Asthana

Counsel for Respondent :- C.S.C.,Ramendra P. Singh, M.C. Chaturvedi,

Yogendra Kumar Srivastava

Connected with

Case :- WRIT - C No. - 47539 of 2009

Petitioner :- Jageshwar @ Jage & Others

Respondent :- State Of U.P. & Others

Counsel for Petitioner :- Dheeraj Singh Bohra,Anil Sharma

Counsel for Respondent :- C.S.C.,Ramendra P. Singh, M.C. Chaturvedi,

Yogendra Kumar Srivastava

Connected with

Case :- WRIT - C No. - 16110 of 2010

Petitioner :- Lakhan Lal Aggarwal

Respondent :- State Of U.P. Thru. Spl. Secr. Industrial Devp. & Ors.

Counsel for Petitioner :- K.M. Asthana

Counsel for Respondent :- C.S.C.,Ramendra P. Singh, M.C. Chaturvedi,

Yogendra Kumar Srivastava

Hon'ble Govind Mathur,J.

Hon'ble Ram Surat Ram (Maurya),J.

Hon'ble Ashok Kumar,J.

(By the Court) Disagreeing with the ratio of Smt. Madhuri Srivastava Vs. State of U.P., 2016 (6) ADJ 1 (DB), the matter has been referred to larger Bench. In Smt. Madhuri Srivastava's case, a Division Bench of this Court held that classification of Pushtaini (property acquired before 28.01.1991, which included, recording the names in revenue record on the basis of partition decree, subsequent to 28.01.1991 also) and Gair-pushtaini (property acquired on or after 28.01.1991) was reasonable classification, having direct nexus with the object, for awarding compensation at different rates of the land, acquired under Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894").

The questions referred for adjudication:-

> When the case was listed before this Court on 09.03.2018, following questions for determination were framed with the help of the parties:-
>
> (i) Whether the law laid down by the Division Bench of this Court in the case of Smt. Madhuri Srivastava, reported in 2016 (6) ADJ 1 is in conflict with the law laid down by the Supreme Court in the case of Nagpur Improvement Trust and another Vs. Vithal Rao and others, (1973) 1 Supreme Court Cases 500 and also with the provisions of the Land Acquisition Act, 1894?

(ii) Whether the classification made under the U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules 1997, the distinction made among "Pushtaini and Gairpushtaini Farmers" is a classification reasonable having nexus with the objects sought to be achieved?

The creation of NOIDA:-

In early 1980s, it was realised that the rapid rate at which Delhi was expanding would result in chaos, so Government of India planned to develop residential and industrial areas around the capital to reduce the demographic burden. Gurgaon, across the border of Haryana was developed by Haryana Government and New Okhla Industrial Development Authority (Noida) was developed by U.P. Government, in district Gautam Budh Nagar. But the 1990s saw huge growth in Indian economy. Migration to cities like Delhi, Mumbai, Kolkata, Chennai, Hyderabad and Bangalore exceeded the planning estimates. Noida was developed to accommodate population growth for 20-25 years. But due to rapid growth, State of U.P. decided to expand industrial and urban township of Gautam Budh Nagar. Under the provisions of U.P. Industrial Area Develpoment Act, 1976, notification dated 28.01.1991 was published for creation of Greater Noida, in an area of 38000 hectare, comprising of 124 villages of Gautum Budh Nagar. This attracted the outsiders to purchase land in this area, which was going to be developed as an industrial and urban township.

The facts pertaining to the writ petitions:-

Jageshwar @ Jage and Gyan Chandra have filed Writ-C No. 47539 of 2009, for quashing resolution dated 28.10.1997 of Board passed in its 26th meeting, forming two categories i.e. 'Pushtaini and Gair-pushtaini' of farmers for payment of compensation at different rates and for mandamus directing the respondents to pay compensation at the rate as given to Pushtaini farmers. Jageshwar @ Jage and Gyan Chandra purchased 1/2 share of plot 40 (area 0.417 hectare) situated at village Itarra, pargana Dadri, district Gautam Budh Nagar, from its previous owner, namely. Smt. Krishna, through sale deed dated 01.04.2002. Notification under Section 4 of the Act was issued on 31.08.2007, for acquisition of their land along with other land. Notification under Section 6 read with Section 17 of the Act was issued on 04.07.2008. Possession over acquired land was taken thereafter. Compensation was given under an agreement between the parties at the rate of Rs. 739/- per Sq. Yard, on 15.10.2008. Compensation of Pushtaini farmers were given at the rate of Rs. 850/- per Sq. yard.

Ramesh Chandra Sharma, Smt. Maya Devi, Nitin Sharma and Arjoo Sharma have filed Writ-C No. 49326 of 2009, for mandamus, directing the respondents to pay compensation at the rate of Rs. 310/- per Sq. meter together with benefits of 15% as rehabilitation bonus and 10% for abadi land, as given to Pushtaini farmers. Ramesh Chandra Sharma and others acquired plots 16 (area 1.8008 hectare), 104 (area

1.0869 hectare), 156 (area 0.5735 hectare), 522 (area 1.8362 hectare), 561 (area 1.5467 hectare) and 641 (area 0.9029 hectare) situated at village Ghori Bachhera, Pargana Dadri, District Gautam Budh Nagar, after 28.01.1991. Notification under Section 4 of the Act was issued on 03.10.2005 for acquisition of their land along with other land. Notification under Section 6 read with Section 17 of the Act was issued on 05.01.2006. Possession over acquired land was taken on 14.06.2006. Compensation was given under an agreement between the parties on 15.07.2006 at the rate of Rs. 280/- per Sq. meter. Compensation to Pushtaini farmers were given at the rate of Rs. 310/- per Sq. meter.

Lakhan Lal Agrawal has filed Writ-C No. 16110 of 2010, for mandamus, directing the respondents to pay compensation at the rate of Rs. 310/- per Sq. meter together with benefits of 15% as rehabilitation bonus and 10% for abadi land, as given to Pushtaini farmers. Lakhan Lal Agrawal acquired plot 619-m (area 0.168 hectare) situated at village Sorkha Zahidabad, pargana Dadri, district Gautam Budh Nagar, after 28.01.1991. Notification under Section 4 of the Act was issued on 31.07.2005 for acquisition of his land along with other land. Notification under Section 6 read with Section 17 of the Act was issued on 27.07.2006. Possession over acquired land was taken thereafter. Compensation was given under an agreement between the parties on 09.03.2007 at the rate of Rs. 280/- per Sq. meter. Compensation of Pushtaini farmers was given at the rate of Rs. 322/- per Sq. meter. It may be mentioned that in exercise of powers under Section 55 of the Act, State of U.P. has framed Land Acquisition (Determination of Compensation and Declaration of Award By Agreement) Rules, 1997 (hereinafter referred to as "the Rules"). Under the Rules, the Collectors used to issue notice to the parties under Section 9 of the Act. After hearing the parties, the Collector passed the award under Section 11 of the Act, on the basis of agreement between the parties. After award, the parties used to execute a written agreement, on the basis of which compensation was paid.

Facts relating to the Land Acquisition proceedings in question and the Notification impunged:-

The Board of Noida authority, in exercise of its power under Section 6 (2) (a) of U.P. Industrial Area Development Act, 1976, passed resolution dated 28.10.1997, in its 26th meeting, forming two categories i.e. 'Pushtaini (property acquired before 28.01.1991, which included, recording the names in revenue record on the basis of partition decree, subsequent to 28.01.1991 also) and Gair-pushtaini (property acquired on or after 28.01.1991) for payment of compensation at different rates. Pushtaini farmers were given 15% more compensation of their land, 15% extra compensation of the compensation payable to them as rehabilitation bonus and 10% area of the land out of total acquired land was to be developed as residential area and be allotted to Pushtaini farmers, who had their residence in the village on the principles of "no profit no loss". This cut off date i.e. 28.01.1991 was fixed on the basis of notification by which Greater Noida was created.

By different notifications under the provisions of the Act, land of different villages were acquired for development of urban and industrial township. The Act provides complete procedure for determination of compensation. The Collector, after hearing the parties, decides compensation payable to them, under Section 11 of the Act. Award of the Collector, under Section 11 of the Act, is an offer of compensation to the interested person. The person, disagreeing with the determination of compensation by the Collector, has remedy to file an application under Section 18 of the Act, for referring the dispute relating to determination of compensation to the Court. Section 54 of the Act provides for an appeal before High Court from the award of District Judge. Section 28-A of the Act provides for re-determination of compensation by the Collector, if rate is enhanced by the Court. Second Proviso to Section 30 (2) of the Act bars right of reference, if award of the Collector is accepted without protest.

In the present cases, the Collector issued notices to the petitioners under Section 9 of the Act, for determination of compensation and after hearing them compensation was determined. On determination of compensation, the petitioners executed an agreement in the format of the Rules and accepted the compensation and did not ask the Collector for reference under Section 18 of the Act. They directly filed these writ petitions on the ground that award of compensation at different rates by forming two categories of farmers is arbitrary and violative of Article 14 of the Constitution. Supreme Court in Dayal Singh v. Union of India, (2003) 2 SCC 593, has held that the person whose lands were acquired, thus, having entered into an agreement cannot be said to have any legal right which can be enforced in a court of law so as to enable him to obtain an order from the court directing the Union of India to reopen the agreement, only because by reason of a subsequent award an enhanced amount of compensation has been paid for similar class of lands. If a right to get the amount of compensation redetermined is held to be implicit in the Act, the same for all intent and purport would amount to invoking the provisions of Section 28-A of the Land Acquisition Act indirectly which cannot be done directly. It is a well-settled principle of law that what cannot be done directly cannot be done indirectly. The enforceable right to reopen a proceeding, which has attained finality, must exist in the statute itself. The right to get the amount of compensation redetermined must expressly be provided by the statute. Such a right being a substantive one cannot be sought to be found out by implication nor can the same be read therewith.

Earlier a bunch of writ petitions (leading case was of Gajraj and others Vs. State of U.P. and others) were filed for quashing entire acquisition proceedings of various villages, falling within the limits of Greater Noida. Full Bench in its, judgment reported in Gajraj and others Vs. State of U.P. and others, 2011 (11) ADJ 1 (FB), quashed acquisition proceedings of some villages on the finding that powers under Section 17 (1) of the Act was mechanically exercised. Award was not given within time and acquisition lapsed under Section 11-A of the Act. However acquisitions of some villages have been upheld as in the meantime development activities were carried on and land was allotted to third parties also. In those cases, where acquisition was

upheld, Full Bench directed the respondents to pay 64.70% as additional compensation to all the tenure holders due to unreasonable delay between notifications under Section 4 and Section 6 of the Act and allot a developed abadi plot to the extent of 10% area of their acquired land subject to maximum of 2500 square meter. Noida authorities filed an application for review of the aforesaid order, to the extent of clarifying that direction to allot abadi plot was in respect of Pushtaini tenure holders only. Review application was however rejected by order dated 14.05.2012. This judgment has been upheld by Supreme Court in Savitri Devi Vs. State of U.P., (2015) 7 SCC 21. It is admitted that additional compensation of 64.70% as directed by Full Bench was given to the petitioners also, during pendency of the writ petitions. Now the claim of the petitioners in these writ petitions survives for payment of compensation at the rate, on which, it was given to Pustaini farmers and ex-gratia amount of 15% as rehabilitation bonus and allotment of abadi plots.

The background for making Reference:-

The writ petitions came up before a Division Bench of this Court on 07.07.2017. The Division Bench was of the opinion that the law laid down in the case of Smt. Madhuri Srivastava (supra) is in conflict with the decision of the Supreme Court in Nagpur Improvement Trust and another Vs. Vithal Rao and others, (1973) 1 Supreme Court Cases 500, hence recorded its disagreement with the law laid down in the case of Smt. Madhuri Srivastava (supra) in following terms:-

"14. Further, the reasoning given by the co-ordinate bench in the case of Smt. Madhuri Srivastava (Supra) that the object sought to be achieved is proper rehabilitation of original residents i.e. sons of soil of the area, who are likely to become landless due to acquisition of their land is also equally applicable to Gairpushtaini farmers. They also require proper rehabilitation. They are equally likely to become landless due to acquisition of their land. Thus, they are also entitled for equal treatment as given to Pustaini farmers.

15. A bare reading of the provisions of the Land Acquisition Act further makes it abundantly clear that the Land Acquisition Act does not distinguish between one class of land owner from another class of land owner. The Land Acquisition Act provides for payment of compensation to be paid uniformally to all class of land owners on the basis of the market value of their land. The only distinction is the rate of the land which largely depends on the location of the land or any other such criteria, affecting the market value of the land, which could cause a difference in grant of compensation. The Authority is admittedly paying compensation under the provisions of the Land Acquisition Act. It is bound by the said objects of the Land Acquisition Act and is therefore, responsible to treat all the persons affected by the acquisition equally. The classification made between Pushtaini and Gairpushtaini is beyond the object and purpose of the Land Acquisition Act. It is violative of Article 14 of the Constitution of India, which requires the State to treat all persons similarly

situated equally."

In the case of Smt. Madhuri Srivastava (supra), a Division Bench of this Court while examining the issue as to whether the distinction made among pushtaini and gair pushtaini farmers is based on intelligible differentia held as under:-

> "The larger issue is that once compensation in question has been awarded under the Land Acquisition Act, are the State instrumentalities stopped in law in discharging their social obligation by making scheme for rehabilitation of the oustees, whose land is being acquired.
>
> The answer to this question would be 'No' for the simple reason that it is always open to the Authorities, in addition to the compensation that is to be awarded under the Land Acquisition Act, to award something in addition to a different class of tenure holders for specific objects that are sought to be achieved.
>
> In this backdrop, we are perusing the facts of the case and what we find, in the present case, is that for the purposes of awarding additional compensation, other than the compensation that has already been awarded, that is of providing additional compensation to Pushtaini Kastakars and also providing ex-gratia to the Pushtaini Kastakars.
>
> Pushtaini Kastakars and Non Pushtaini Kastakars have been classified based on the situation qua the incumbents who were original residents of the area, which formed part of the NOIDA Authority, and on account of acquisition of their land as a result thereof, of their existing place of living agriculture land was being taken away and they were likely to be rendered landless and would have to face irreparable hardship, since their land itself was being acquired and the second class of incumbents were such, who have shifted to Noida after the Authority in question has been constituted.
>
> The NOIDA Authorities, in their wisdom, have proceeded to classify two category of tenure holders based on original resident, whose land has been acquired and from the class of persons who have shifted to Noida after the Authority in question has been constituted. Additional compensation and ex-gratia amount has been given as rehabilitation bonus to those farmers whose land has been recorded in the revenue records as on 17.04.1976 i.e. the date of constitution of NOIDA Authority and it was not at all part of the compensation but it was an additional compensatory amount so that they can rehabilitate themselves.
>
> In the present case, the classification that has been so made cannot be said to be arbitrary or unreasonable, inasmuch as, on one hand there are such tenure holders, who have been the original residents, whose land has been got recorded in the revenue records before the constitution of NOIDA Authority and who has to be rehabilitated and on the other hand, there is another class of tenure holders, who are

not at all the original residents but have subsequently migrated after the constitution of NOIDA Authority, in view of this, once such is the factual situation that is so emerging, then the classification in question that has been so carried out, has to be accepted as reasonable classification having direct nexus with the object sought to be achieved that is proper rehabilitation of original residents i.e. sons of soil of the area, who are likely to become landless due to acquisition of their land, in view of this, the challenge that has been so made on the basis of discrimination, cannot be accepted by us and has to be overruled."

Suffice to mention that in the case of Nagpur Improvement Trust (supra), Hon'ble Supreme Court while examining the issue as to whether the provisions of Nagpur Improvement Trust Act, 1936 (hereinafter referred to as "Act, 1936") are in violation of Article 14 of the Constitution inasmuch as it empowered the acquisition of land at prices lower than those which would have been payable if they had been acquired under the Act, 1894 held as under:-

"26. It is now well-settled that the State can make a reasonable classification for the purpose of the legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two test; (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the objection sought to be achieved by the legislation in question. In this connection it must be borne in mind that the objection itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?

28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is a politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

(Emphasis supplied)

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will

be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired; if the existence of two Acts enables the State to give one owner different treatment from another, equally situated the owner who is discriminated against can claim the protection of Art. 14."

The arguments advanced on behalf of the petitioners:-

The submission of learned counsels appearing on behalf of the petitioners is that in light of the law laid down by Hon'ble Apex Court in the case of Nagpur Improvement Trust (supra), no distinction is permissible among the land owners whose land is to be acquired as they form one class and no classification on basis of the date on which Notification for creating Greater NOIDA was issued is permissible. According to learned counsels, the land owners whose land has been acquired stands on same pedestal and there are no different categories under the Act, 1894 among the land owners so far as payment of compensation is concerned. The respondents have acquired land of all the persons under the same proceedings, for same public purpose, having same market value, therefore, any difference in rate of compensation is highly discriminatory, for which Article 14 of the Constitution of India does not permit.

Per contra, as per the respondents, the classification among the land owners is based on an intelligible differentia having nexus with the object sought to be achieved, as such, the same is reasonable. According to respondents, the pushtaini farmers are the persons who had their land in the area concerned from generations and they were really involved in agricultural activities. As a consequence to the land acquisition, these persons shall be uprooted from their residence and occupation. The gair pushtaini farmers, on the other hand, are the persons who purchased the land in the area concerned only on knowing about its prospective value. The gair pushtaini

farmers are not the traditional farmers but investors. While emphasizing the findings arrived by Division Bench of this Court in the case of Smt. Madhuri Srivastava (supra), it is urged that it is always open to the authorities to award under the Land Acquisition Act something in addition to the compensation and in the instant matter, it is only an additional compensation that is given to the pushtaini farmers. Learned counsel appearing on behalf of the State as well as on behalf of NOIDA Development Authority also relied upon the intent and scope of the Act, 1894.

It is stated that the Act, 1894 was enacted with object to have a law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition. Executive power of state to acquire private property can be exercised, according to the provisions of the Act. In present cases, we are concerned with compensation payable on acquisition of the land. Under the Act, compensation is payable equivalent to market value of the acquired land/property. Section 23 of the Act provides a detailed guide-lines for determination of compensation, which is quoted below:-

Section 23. Matters to be considered in determining compensation.(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration--

first, the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1-A) In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum of such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.--In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Section 24 of the Act, provides certain factors to be neglected while determining the compensation, which is quoted as follows:-

Section 24. Matters to be neglected in determining compensation.--But the Court shall not take into consideration--

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under Section 4, sub-section (1); or eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by land or opposed to public policy.

It is emphasized that the guidelines provided under Section 23 of the Act clearly indicate that apart from market rate of the acquired land, additional compensation has to be provided for the damages sustained by reason of the taking of any standing crops or trees, severing such land from his other land, injuriously affecting his other property, movable or immovable, in any other manner, or his earnings and if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change.

Heard learned counsels for the rival parties.

Before coming on merits of the case, it would be appropriate to state that sovereign power of state to acquire private property for public purpose is based upon maxim "salus populi est suprema lax" means welfare of the public is paramount law and maxim "necessita publica major est quam privata" means public necessity is greater than private. The maxim "eminent domain" (sabai bhumi Govind Ki) means state is supreme owner of the land. Constitution of India incorporates these maxims. Acquisition of private property can be made by legislation, exercising powers under Articles 245 and 246 of the Constitution. Subject "acquisition and requisition of property for the purposes of the Union" was mentioned as Entry No. 33 of List-I and "acquisition and requisition of property except for the purposes of the Union" was mentioned as Entry No. 36 of List-II of the Seventh Schedule of Constitution. By Section 26 of Constitution (Seventh Amendment) Act, 1956, Entry No. 33 of List-I and Entry No. 36 of List-II were deleted and Entry No. 42 of List-III of Seventh Schedule of the Constitution was amended as "acquisition and requisition of property". Acquisition of private parties can be made by exercise of executive power under Article 298 of Constitution. Union of India and State Governments can acquire private property, exercising legislative or executive powers.

The Supreme Court, in landmark judgment of Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461, while upholding validity of Article 31 (2-b) of Constitution, held that the newly substituted Article 31(2) does not destroy the right to property because (i) the fixation of ''amount' under that Article should have reasonable relationship with the value of the property acquired or requisitioned; (ii) the principles laid down must be relevant for the purpose of arriving at the ''amount' payable in respect of the property acquired or requisitioned; (iii) the ''amount' fixed should not be illusory; and (iv) the same should not be fixed arbitrarily. The question whether the ''amount' in question has been fixed arbitrarily or the same is illusory or the principles laid down for the determination of the same are relevant to the subject-matter of acquisition or requisition at about the time when the property in question is acquired or requisitioned are open to judicial review. But it is no more open to the court to consider whether the "amount" fixed or to be determined on the basis of the principles laid down is adequate.

By Constitution (Forty-fourth Amendment) Act, 1978, Article 19 (1) (f) and Article 31 have been deleted and Article 30 (1-A) and Article 300-A have been added. Constitution Bench of Supreme Court in K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1, has held that we find no apparent conflict with the words used in List III Entry 42 so as to infer that the payment of compensation is inbuilt or inherent either in the words "acquisition and requisitioning" under List III Entry 42. Right to claim compensation, therefore, cannot be read into the legislative List III Entry 42. Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors. Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed Article 31(1) (the "Rule of Law" doctrine) and not Article 31(2) (which had embodied the doctrine of eminent domain). Article 300-A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300-A is immune from challenge before a constitutional court for violation of Articles 14, 21 or overarching principle of rule of law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300-A, unlike Article 30(1-A) and second proviso to Article 31-A(1).

It would also be appropriate to state that in Chirangji Lal v. Union of India, AIR 1951 SC 41, Hon'ble Supreme Court held that mere differentiation or inequality of treatment does not per se amount to discrimination with the inhabitation of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the Legislature has in view. In the same case it was observed that the Court should not adopt a doctrinaire approach which might choke all beneficial legislation. The U.S. Supreme Court in Arkansas Gas Co. v. Railroad Commission, 261 US 379, while discussing the concept of equality, held that mere production of inequality is not enough to hold that equal protection has been denied. For, every selection of person for regulation produces inequality in some degree. The inequality produced, in order to encounter the challenge of the

Constitution, must be "actually and palpably unreasonable and arbitrary".

In the case of Kesavananda Bharati v. State of Kerala (supra), the Apex Court held that Article 14 of the Constitution has the flexibility of the classification and Article 19 of the Constitution has the flexibility of reasonable restrictions. It is the social justice that will determine the nature of individual right and also the restriction of such right. Social justice may require modification or restriction of rights under Part III of the Constitution. The scheme of the Constitution generally discloses that the principles of social justice are placed above individual rights and whenever or wherever rights have to be subordinated or cut down to give effect to the principles of social justice. Social justice means various concepts which are evolved in directive principles of State and enshrined under Part IV of the Constitution.

While dealing with an issue pertaining to classification and its reasonability, we must also keep in mind that the governance is not a simple thing. It encounters and deals with the problems which come from persons in an infinite variety of relations. Classification is the recognition of those relations, and, in making it a wide latitude of discretion and judgment must be given.

Having considered all aspects of the matter by keeping in mind the Constitutional provisions discussed above and also the intent of the Act, 1894 especially the provisions of Sections 23 and 24 of the Act, 1894, we are of considered opinion that the classification introduced among the pushtaini and gair pushtaini farmers is reasonable with intelligible differentia and that in no manner causes any discrimination among the similarly situated person. The law laid down in the case of Smt. Madhuri Srivastava (supra) has taken adequate care of all these provisions while concluding that the pushtaini and gair pushtaini farmers are two different classes and the resolution to award additional compensation on different rates is not at all discriminatory.

In the case of Nagpur Improvement Trust (supra), the Apex Court was examining the discrimination in payment of compensation in lieu of land acquisition under different enactments. In the case in hand, the alleged discrimination is not founded on irrational and artificial segmentation but looking to the ground reality and that too in consonance with the consideration prescribed under Section 23 of the Act, 1894. The resolution impugned provides only an additional compensation to the pushtaini farmers due to loss of home, property, their earnings as a consequence of the acquisition of their land. These farmers were involved in agricultural activities, may those be of different nature quite prior to Notification dated 28.01.1991. Their sole earnings were dependent on the land that came to be acquired whereas the persons termed as gair pushtaini farmers purchased the land after coming into force the Notification pertaining to the industrial and urban development of the area concerned. As a matter of fact, the pushtaini farmers lost their livelihood whereas gair pushtaini farmers invested to have better livelihood. As such, the additional

compensation is nothing but a reasonable expense incurred in incidental change of residence or place of business due to land acquisition. This additional compensatory amount cannot be placed at the same pedestal with the compensation awarded to all the land holders. The object of this additional compensation is reasonable rehabilitation of original residents, who were uprooted from their ancestral place of residence and occupation. They are not the persons who occupied the land with any intent of profit earning or to be a part of development projects as a creation of NOIDA or Greater NOIDA. It is pertinent to notice that the gair pushtaini farmers are not deprived of market value of their land. It would also be appropriate to notice that the Bench that decided Nagpur Improvement Trust's case (supra) on December 11, 1972 also heard and decided a writ petition on the same day, i.e., Sardarmal Lalwani Versus State of M.P. and others, (1973) 1 SCC 599 arriving at the conclusion that there has been no discrimination in the matter of compensation between the land acquired in Bhopal area and other areas in the State. The classification between land in Bhopal area and other parts of the State was with reason and that is reasonable being for the purpose of enabling the State to acquire land at a reasonable price in Bhopal for construction of the Capital. Suffice to mention that in this case, difference in the rate of compensation was with effect from the date on which Bhopal was proposed as Capital of Madhya Pradesh in place of Jabalpur. It was argued that the date given has no rational. The view taken by the Apex Court in the case of Sardarmal Lalwani (supra) adequately negativates the argument advanced by learned counsel for the petitioners in the instant matter about illegality in fixing the cut off date. As a matter of fact, in the case in hand, the cut off date is nothing but the date on which Notification was issued for creation of Greater NOIDA in an area of 38,000 hectare. Subsequent to that day, the petitioners were aware of the future prospects of the area and that would have been a reason for investment in real estate. The pushtaini farmers are real toiling farmers whereas the petitioners are investors. The investors and toiling farmers certainly constitute two different group of land owners, hence the classification among them is quite reasonable.

In addition to whatever stated above, it would also be appropriate to state that Section 23 of the Act, 1894 in quite unambiguous terms indicate that apart from the market rate of the acquired land, additional compensation has to be provided for the damages sustained in prescribed eventualities. The eventualities so prescribed exists in the instant matter and, as such, the additional compensation awarded is in tune thereto.

In view of the aforesaid discussion, we answer question No. 1 in negative and question No. 2 in affirmative. The view taken by Division Bench in Smt. Madhuri Srivastava' case (supra), that classification of Pushtaini (property acquired before 28.01.1991, which included, recording the names in revenue record on the basis of partition decree, subsequent to 28.01.1991 also) and Gair-pushtaini (property acquired on or after 28.01.1991) is a reasonable classification, having direct nexus with the object, sought to be achieved.

After answering the questions framed by us, nothing remains to be decided in these writ petitions, as such, the same are dismissed.

Order Date :- March 30, 2018

mt/shubham

(Ashok Kumar,J.) (Ram Surat Ram (Maurya),J.) (Govind Mathur,J.)