Dhiraj Ambalal Patel vs State Of Gujarat on 12 September, 2019

Equivalent citations: AIRONLINE 2019 GUJ 338

Author: Anant S. Dave

Bench: Anant S. Dave, Biren Vaishnav

C/SCA/8734/2019 CAV ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8734 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8735 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8755 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8756 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8757 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 8758 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8760 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 8761 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8762 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 8764 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 8840 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8841 of 2019

With
R/SPECIAL CIVIL APPLICATION NO. 8842 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8843 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 11238 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ANANT S. DAVE

and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

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1 Whether Reporters of Local Papers may be allowed to YES see the judgment ?

2 To be referred to the Reporter or not ? YES 3 Whether their Lordships wish to see the fair copy of the NO judgment ?

4 Whether this case involves a substantial question of law NO as to the interpretation of the Constitution of India or any order made thereunder ?

========== DHIRAJ A M B A L A L P A T E L V e r s u s S T A T E O F G U J A R A T ========== Appearance In Special Civil Application No. 11238 of 2019:

MR SN SHELAT, SENIOR COUNSEL WITH MR JV VAGHELA, for the Petitioner(s) No. 1,2 MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER WITH Nisha Thakore, AGP for the Respondent(s) No. 1,2 Appearance In Rest of the Matters:

MR GHANSHYAM AMIN(123) for the Petitioner(s) No. 1,2 MR SAURABH G AMIN(2168) for the Petitioner(s) No. 1,2 MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER WITH Nisha Thakore, AGP for the Respondent(s) No. 1,2 KSHITIJ M AMIN(7572) for the Respondent(s) No. 3

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C/SCA/8734/2019 CAV ORDER CORAM: HONOURABLE MR. JUSTICE ANANT S. DAVE and HONOURABLE MR.JUSTICE BIREN VAISHNAV Date : 12/09/2019 COMMON CAV ORDER (PER : HONOURABLE MR.JUSTICE BIREN VAISHNAV)

1. In all these petitions filed under Article 226 of the Constitution of India, a common issue is raised regarding the legality and validity of the Government Resolutions dated 10.11.2016 and 11.09.2018 issued by the Revenue Department, Government of Gujarat. These resolutions have been issued in context of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act 2013' for short).

2. In all these petitions except Special Civil Application No. 11238 of 2019, the lands in question are agricultural lands within the ceiling limits of village:Lavarpur, Firozpur, and Prantiya of Gandhinagar District. In Special Civil Application No.11238 of 2019, the lands in question are situated at Village:Koteshwar, District:Gandhinagar.

3. Since the prayers are common, prayers of Special Civil Application No.8734 of 2019 are reproduced, which read as C/SCA/8734/2019 CAV ORDER under:

"8. The petitioners therefore most respectfully pray that:

(A) Your Lordship may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction and thereby be pleased to quash and set aside the impugned resolutions dated 10.11.2016 and 11.09.2018 (to the extent it is made prospective) issued by Government of Gujarat, Revenue Department bearing No.LAQ-22-2014/179/GH.

(B) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction and thereby be pleased to direct the respondent number 2 to amend/modify/revise the award dated 29.02.2016 bearing no.LAQ/N.H-8/Case No.4(17) Lavarpur/2015 and award dated 29.02.2016 bearing No.LAQ/N.H-8/Case No.21, 78/(22)(54) Lavarpur/2016, and recompute the compensation qua the land of the petitioner by multiplying the market value as determined under Section 26(1) of LARR, 2013 Act with a factor of 2(two) as per Section 26(2) and applying all other statutory benefits as provided under the LARR Act 2013 including solatium under Section 30(1), interest under Section 30(3) and be further pleased to direct the respondents to pay the compensation so determined, with interest from 29.02.2016 @ 9% for the first year and 15% per annum for

subsequent years till the date of realization; within six weeks of the judgment."

4. It shall be relevant to state the facts in brief which have led to filing these petitions. For the sake of convenience, facts of Special Civil Application No.8734 of 2019 shall be considered and the same are discussed hereinbelow.

C/SCA/8734/2019 CAV ORDER 4.1 The petitioners are owners of agricultural lands at Village:Lavarpur. According to the petitioners, such lands do not fall under any transitional area, smaller urban area, or larger urban area as defined and specified under Article 243Q(2) of the Constitution of India.

4.2 In exercise of powers under Section 3A of the National Highways Act, 1956, the land of the petitioners was notified for acquisition for the public purpose of broadening the national highway no.8. Notification under Section 3D was issued on 21.09.2011. Subsequently for further broadening of the highway, notification under Section 3A was published on 20.09.2012 and under Section 3D on 20.09.2012 and 11.10.2013.

4.3 It is an undisputed position that for the purposes of computing compensation, the provisions of the Act of 2013 are applicable. It is the case of the petitioners that for computing "market value" provisions of Section 26(1) and for the purposes of determination of factor, provisions of Section 26(2) read with First Schedule are applicable.

4.4 The Government of Gujarat by a resolution dated 25.04.2014 directed all Land Acquisition Officers that pending determination of "Factor" all awards should be passed by C/SCA/8734/2019 CAV ORDER applying Factor "1" and after such Factor for rural area is decided, the acquiring body will pay additional compensation with interest.

Looking to this resolution, in the separate awards passed in case of the petitioners dated 29.02.2016, para 10 of such award made such reference.

4.5 The Government of Gujarat through the Revenue Department issued a Government Resolution dated 29.07.2016 notifying that in case of Rural areas, the factor by which the market value is to be multiplied will be "2" (two).

The notification dated 29.07.2016 reads as under:

> "GOVERNMENT OF GUJARAT REVENUE DEPARTMENT SACHIVALAYA,GANDHINAGAR DATED 29 JULY 2016 The Right to Fair Compensation and Transparency In Land Acquisition,Rehabilitation and Resettlement Act,2013 No:AM-2016-17-M-LAQ-22-2014-179(1)-GH, In exercise of powers conferred by column no.3 of serial no.2 of the First Schedule read with Sections 26 to 30 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013 (No.30-2013), the State Government hereby notifies that in case of Rural Areas, the factor by which the

market value is to be multiplied shall be 2.00 (Two). By order in the name of Governor Of Gujarat;

(K.D.Upadhyay) Deputy Secretary to the Government Revenue Department."

C/SCA/8734/2019 CAV ORDER 4.6 Subsequently, the Government issued a Government Resolution dated 10.11.2016 whereby, it was observed that in cases where compensation is not paid as per multiplying factor "2", benefit of factor as per Government Resolution dated 29.07.2016 needs to be given and an amended award with revised compensation has to be paid. However, the resolution specified certain areas to be falling within urban areas and those not so specified to be falling within rural areas. The translated version of the notification dated 10.11.2016 reads as under:

"Re:Sanction of Award under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 REVENUE DEPARTMENT GOVERNMENT OF GUJARAT 10.11.2016 REF: 1. Rev; Dept. Government Resolution dated 25.04.2014

2. Rev; Dept. Government Resolution dated 29.07.2016 RESOLUTION The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014. Provisions of Sections 24 to 30 are relating to publication of the award and compensation. Section 26(2) is regarding multiplying the market value calculated as per sub-section (1) by a Factor to be specified in the First Schedule. In accordance with Serial No.3 of the First Schedule, if the lands are in urban area the C/SCA/8734/2019 CAV ORDER Factor to be applied is 1 and as per Serial No.2 of the Schedule if the lands are in rural areas, keeping the distance from urban areas in mind, the Factor from 1 to 2 is to be applied.

On coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, keeping in mind the provisions of Section 24(1) of the Act, the Government has issued the Resolution dated 25.04.2014 indicating that until the factor regarding lands in rural areas is quantified the market value calculated should be multiplied by Factor 1. A specific condition after taking an undertaking from the acquiring body was incorporated in the awards that as and when a decision is taken on the Factor to be applied in rural areas, the additional or revised compensation together with interest shall be paid by the acquiring body.

In cases where awards are passed and compensation based on market value assessed on a factor has not been paid, in such cases, benefit of factor as per Government Resolution dated 29.07.2016 needs to be given and an amended award with revised compensation will have to be passed.

As per Government Resolution dated 29.07.2016, it has been decided that for lands in rural areas, market value shall be multiplied by Factor 2 and keeping this in mind, now in order to assess market value and the factor which needs to be considered for multiplying it, the areas shown hereunder shall be considered as "urban areas" and except such areas shown hereunder, the rest will be considered as "rural areas"

URBAN AREAS

1. Former ULC Areas

2. Mahanagarpalika Areas

3. Areas under "Urban Development Area"

4. Areas under "Area Development Authority"

5. Nagarpalika Areas (including Burrough Nagarpalikas)

6. Notified Areas

7. Cantonment Areas These instructions have been issued after obtaining approval of the Finance Department."

C/SCA/8734/2019 CAV ORDER 4.7 Subsequently, the Government issued a resolution dated 11.09.2018. By the aforesaid resolution, it was resolved that areas falling under "Urban Development Area" and "Area Development Authority" shall not be considered as urban area. The resolution further stipulated that the same would be applicable only to such awards which are made after the date of the resolution.

4.8 The translated version of the resolution reads as under:

"Re:Publication of Award under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

REVENUE DEPARTMENT
GOVERNMENT OF GUJARAT
11.09.2018

REF: 1. Rev; Dept. Government Resolution dated 29.07.2016

2. Rev; Dept. Government Resolution dated 10.11.2016 RESOLUTION Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, provisions of Sections 24 to 30 are relating to publication of the award and compensation.

By the Government Resolution dated 29.07.2016, it was resolved that Factor 1 shall be applied as a multiplier for lands falling within urban areas, whereas Factor 2 shall be so applied when lands are within rural areas. By a Government Resolution dated 10.11.2016, it was specified as to which areas will be urban areas. Such urban areas were specified C/SCA/8734/2019 CAV ORDER as under:

1. Former ULC Areas

2. Mahanagarpalika Areas

3. Areas under "Urban Development Area"

4. Areas under "Area Development Authority"

5. Nagarpalika Areas (including Burrough Nagarpalikas)

6. Notified Areas

7. Cantonment Areas Looking to the industrial development, acquisition proceedings for important projects is being undertaken. On the other hand, representations are being received from farmers that as per Government Resolution dated 10.11.2016 "urban areas" has been defined so as to include their lands which are otherwise in rural areas as lands within "urban areas" by virtue of they falling in urban development areas or under area development authorities. This, according to them deprives such farmers of Factor 2 and lands of agriculturists whose lands are adjacent to such lands but do not fall within urban areas get higher factor.

In order to redress this injustice that results in computing compensation, the criteria of urban areas is modified to be as under:

URBAN AREAS

1. Former ULC Areas

2. Mahanagarpalika Areas

3. Nagarpalika Areas (including Burrough Nagarpalikas)

4. Notified Areas

5. Cantonment Areas These instructions have been issued after obtaining approval of the Finance Department."

4.9 These notifications are under challenge before this Court.

5. In Special Civil Application No.11238 of 2019, apart from the challenge to these notifications on the same grounds, C/SCA/8734/2019 CAV ORDER the land holder - an agriculturist has his lands in Village:Koteshwar, District:Gandhinagar. It is his case that only a draft award has been passed and therefore, he would be entitled to the benefit of Factor 2.

6. We have heard Mr. Saurabh Amin, learned advocate for the petitioners in petitions other than Special Civil Application No. 11238 of 2019. Mr. S.N. Shelat, learned Senior Counsel appears with Mr. J.V. Vaghela, learned advocate for the petitioner in Special Civil Application No. 11238 of 2019.

6.1 According to Mr. Amin, the villages:Lavarpur, Firozpur, and Prantiya of District:Gandhinagar are interior villages.

They are 10 kms away from the city of Gandhinagar. The lands fall within the revenue and the panchayat limits of the respective Gram Panchayats which are elected local bodies of self governance. The area does not fall within the city or municipal limits of Gandhinagar Municipal Corporation or any other municipality.

6.2 The lands admittedly are in rural areas. Inclusion of such lands under an Urban Development Authority will not automatically make it land within "urban areas". Such urban development authorities such as Gandhinagar Urban C/SCA/8734/2019 CAV ORDER Development Authority is only an authority which is for the limited purpose of preparing and implementing development plans and Town Planning Schemes. Such Urban Development Authority is therefore not a local body. Even otherwise, the lands of such villages are designated/reserved in agricultural zone and hence, no development is permitted. Reliance is placed on Sections 22 and 23 of the Gujarat Urban Development and Town Planning Act.

6.3 Inviting our attention to the definition of the term "rural area" as provided under Rule 2(p) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat) Rules, 2017(for short, 'the Rules of 2017') and definition of "Urban Area" in Rule 2(v) of the Rules of 2017, Mr.Amin submitted that an Area Development Authority or an Urban Development Authority cannot be said to be a local body of self governance.

An urban area would mean an area falling within Municipality, Municipal Corporation as defined under the provisions of the Gujarat Municipalities Act, 1963 read with the provisions of Articles 243, 243P and 243Q of the Constitution of India.

6.4 It is his submission that once the terms "rural area"

C/SCA/8734/2019 CAV ORDER and "urban area" have been defined under the Rules of 2017, resolutions cannot redefine such terms.

6.5 Inviting our attention to relevant provisions of the Act of 2013, particularly, Sections 106, 107, 109 and 110, Mr.Amin submitted that keeping in view these provisions read in context with the Statements and Objects of the Act, the Act provides a complete comprehensive mechanism. The factor is determined in the First Schedule and the State cannot amend the Factor by issuing Government Resolutions. The Government Resolutions therefore are bad and fail the test as they are without the authority of law and there is excessive delegation by virtue of such resolutions.

6.6 The resolutions violate the constitutional guarantee enshrined under Article 14 of the Constitution of India.

Reading of Resolution dated 11.09.2018 would indicate that the same is unreasonable and discriminatory as it treats two equals as unequals. By the prospective operation of the resolution, it creates an artificial classification based on the date of the resolution whereby if the award for land falling within limits of Urban Development Authority is made on 11.09.2018, the land would be treated as in "urban area"

> entailing Factor 1 and if the award for the very same land is C/SCA/8734/2019 CAV ORDER passed on or after 12.09.2018, the very same area and land would be "rural area" entailing higher compensation by applying Factor 2. The classification has no rational principle and does not bear any nexus to the object sought to be achieved.
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> 6.7 Mr. Amin, in support of his submissions, has relied on the following decisions:
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> I. Judgment dated 09.03.2014 passed in Writ Petition No.4274 of 2014 by Bombay High Court in the case of Panjabrao S/o. Ganpatrao Borade v. State of Maharashtra.
>
> II. Judgment of the Apex Court dated 11.07.2019 passed in Civil Appeal No.10857 of 2016 in the case of All Manipur Pensioners' Association v. State of Manipur.
>
> III. Judgment in the case of State of Jharkhand and Ors. v. Jitendra Kumar Srivastava and Anr. [(2013)

12 SCC 210]

7. In Special Civil Application No.11238 of 2019, Mr. S.N. Shelat, learned Senior Counsel appearing with Mr. J.V. Vaghela would submit that village:Koteshwar is a rural area.

That, a draft award has already been made and therefore, apparently the resolution of 11.09.2018 should apply. Even otherwise, the cut-off criteria referred to in the resolution is C/SCA/8734/2019 CAV ORDER ex-facie arbitrary. Reliance is placed on a decision of the Supreme Court in the case of Smt. Shashikalabai v. State of Maharashtra and Anr.; [AIR 1999 SC 706].

8. Ms.Manisha Lavkumar, Government Pleader appearing with Ms.Nisha Thakore, Assistant Government Pleader, has appeared for the Government. She has invited our attention to the

affidavits filed on behalf of the Government. She contends as under:

> 8.1 A preliminary objection has been taken that the National Highway Authority has not been impleaded as party respondent.
>
> 8.2 Inviting our attention to the definition of the term "appropriate government" under Section 3(e) of the Act of 2013, she submits that it is within the powers of the State Government to notify 'Factor' as well as the terms "urban area" and "rural area".
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> 8.3 Ms. Lavkumar submitted that the resolutions dated 10.11.2016 and 11.09.2018 are valid, not in excessive delegation, but merely clarificatory.
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> 8.4 Drawing our attention to the Government Notification dated 16.03.2010, Ms. Lavkumar submitted that the Urban C/SCA/8734/2019 CAV ORDER Development and Urban Housing Department has in exercise of powers conferred under Clause-(2) of Article 243Q of the Constitution of India declared that the Government land situated within the entire area of Gandhinagar Notified Area shall not vest in the Gandhinagar Municipal Corporation.

Since, the villages are included in the Urban Development Area even prior to the issuance of this notification, the argument based on the provisions of Article 243 of the Constitution of India are misconceived. She further submitted that reading the statement and objects of the 73rd and 74th Amendments to the Constitution of India, recognition was given to rural local government for Gram Panchayats and Municipalities for local governance of urban areas.

8.5 Ms. Lavkumar further submitted that there is no excessive delegation and that prospective enactment is permissible. Reliance is placed by her on the following decisions:

> I. Karnail Kaur and others v. State of Punjab and others; [(2015) 3 SCC 206] II. Janardan Reddy v. The State [(1950) 1 SCR 940]

9. ANALYSIS:

> 9.1 Before we dwell into the consideration of the issue at C/SCA/8734/2019 CAV ORDER hand, it would be relevant to reproduce relevant Sections and Rules of the Act of 2013. They read as under:
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> 26. Determination of market value of land by Collector. -(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:--
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> (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area,

where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule. (emphasis supplied)

30. Award of solatium. -

(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a "Solatium" amount equivalent to one hundred per cent. of the compensation amount.

Explanation. --For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.(emphasis supplied) C/SCA/8734/2019 CAV ORDER THE FIRST SCHEDULE [See section 30(2)] COMPENSATION FOR LAND OWNERS The following components shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in clause (c) of section 3 in a proportion to be decided by the appropriate Government.

Serial No. Component of compensation package in respect of land acquired under the Act Manner of determination of value Date of determination of value

1. Market value of land to be determined as provided under section 26.

2. Factor by which the market value is to be multiplied in the case of rural areas:

1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.

3. Factor by which the market value is to be multiplied in the case of urban areas 1(One).

NOTIFICATION New Delhi, the 9th February, 2016 S.O. 425(E).--

In exercise of the powers conferred by column no. 3 of serial no. 2 of the First Schedule read with sub-section (2) of section 30 of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013), the Central Government, hereby, notifies that in case of rural areas, the factor by which the market value is to be multiplied shall be 2.00 (two). [F. No. 13011/04/2015-LRD] HUKUM SINGH MEENA, Jt. Secy.

106. Power to amend Schedule. -

(1) The Central Government may, by notification, amend or C/SCA/8734/2019 CAV ORDER alter any of the Schedules to this Act, without in any way reducing the compensation or diluting the provisions of this Act relating to compensation or rehabilitation and resettlement.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Gujarat) Rules 2017.

2(m) "Local Bodies" means and includes rural local bodies and urban local authorities constituted or established under the respective Acts.

2(n)."Municipal Corporation" means a Municipal Corporation constituted or deemed to have been constituted under the provisions of the Gujarat Provincial Municipal Corporations Act,1949.

2(o). "Panchayat" means a Panchayat established or deemed to have been established under the Gujarat Panchayats Act,1993.

2(p). "Rural Area" means any area in the State except the areas covered by any urban local body or a cantonment board established or constituted under any law for the time being in force.

2(v). "Urban Area" means any area in the State covered by any urban local body or a cantonment board established or constituted under any law for the time being in force:

C/SCA/8734/2019 CAV ORDER

9.2 We will first consider the challenge to the

Government Resolutions dated 10.11.2016 and 11.09.2018 insofar as the submissions that they are contrary to and in violation of the Act of 2013 and Rule 2(p) and Rule 2(v) of the Rules of 2017. This

has to be considered in light of the submission that once the Act of 2013 provides a comprehensive mechanism and procedure for determining compensation, can the State, by Government Resolutions legislate? Should not such Government Resolutions be held to be bad as they go beyond the powers which cannot be exercised by delegated legislation?

The scheme of the Act of 2013 can be gathered from the preamble of the Act. The Act of 2013 starts with the following paragraphs:

> "An Act to ensure, in consultation with institutions of local self-Government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for C/SCA/8734/2019 CAV ORDER matters connected therewith or incidental thereto."(Emphasis supplied) Clause 5 and 13 of the Statement of Objects and Reasons of this Act of 2013 are very material for deciding the controversy and they read as under :-
>
> "5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement {22} Final 4274.14 wp.odt mechanism for the affected persons and their families. The bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families."
>
> "13. To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent. of the total compensation. Where land is acquired for urbanization, 20 per cent. of the developed land will be offered to the affected land owners."

9.3 Reading conjointly the Preamble, Statement and Objects and Reasons of the Act of 2013 and the relevant provisions thereof would indicate that the Factor for rural areas as well as urban areas is specified in the First Schedule.

The Factor is so specified by virtue of a notification. We for the sake of convenience reproduce herein above the notification dated 9th February, 2016.

C/SCA/8734/2019 CAV ORDER 9.4 Reading Section 106 of the Act of 2013 would also indicate that it is the Central Government which only can amend the Schedule and that too by a notification. Even here, the amendment to the Schedule by such a notification should be such that it should not in any way reduce the compensation or dilute the provisions of the Act relating to compensation.

9.5 Section 107 of the Act does not prevent any State from enacting any law, however, such law must enhance or add to the entitlements enumerated under the Act which confers higher compensation. Even when we read Section 109 of the Act, the power is vested with the appropriate Government to make Rules for carrying out the provisions of the Act but that too, by way of a notification.

9.6 Conjoint reading of Sections 110 to 112 of the Act of 2013 also will suggest that any rules either made by the Central Government or the State Government has to be laid before the House of Parliament or the State Legislature, as the case may be.

9.7 What is therefore evident on the reading of the preamble, statement of objects and reasons and the provisions of the Act of 2013 is that a comprehensive mechanism is provided for carrying out the purposes of the Act. The Rules C/SCA/8734/2019 CAV ORDER of 2017 define "Rural Area" and "Urban Area" in Rule 2(p) and Rule (v) of the Rules, 2017. The provisions of Section 26(2) of the Act provides that compensation includes the Factor so provided in the First Schedule which is so notified.

Therefore, once the Factor is notified for the relevant area, in this case "Rural Area", the State cannot further in exercise of powers of delegated legislation seek to redefine such "Urban Areas" or "Rural Areas". This exercise of power to redefine the concept by issuing Government Resolutions is an exercise of powers which suffers from the vice of excessive delegation.

9.8 In support of the above submission, Mr.Saurabh Amin had relied on a decision of the Division Bench of the Bombay High Court in the case of Panjabrao (supra). It would be relevant to reproduce paras 28 to 36 which read as under:

> "28]Section 26 of the Act of 2013 provides the criteria which needs to be adopted by the Collector for assessing and determining the market value of the land on the date of notification under Section 11 of the Act.
>
> Section 26(2) provides for multiplication of that market value by a factor to be notified by the appropriate Government. Section 26(2) read with the {23} Final 4274.14 wp.odt First Schedule to the Act of 2013 mandates that the market value of the land located in rural areas needs to be multiplied by a Factor ranging between 1 (one) to 2 (two) based on the distance of the project from urban area. Thus, the First Schedule which is titled as "

Compensation For Land Owners"contains component of compensation package and the C/SCA/8734/2019 CAV ORDER package placed at Sr. No.2 in that schedule prescribe guiding principle which needs to be used for determination of multiplier factor in rural areas. This guiding

principle, as seen from compensation package at Sr. No. 2 for the land located in rural areas is distance of the project from urban area. This makes it explicitly clear that in rural areas which are farthest from urban area, the multiplier factor is required to be two and when rural area covered under the project is closer to the urban area, such multiplier factor scales down to less than two and even up to one, when the land sought to be acquired for the project is closest to the urban area. One cannot dispute the proposition that a Schedule in an Act is not mere question of drafting and is as much a part of statute and as much an enactment, as any other part. Miss Talekar, learned counsel for petitioner has rightly relied on M/s. Ujagar Prints and others vs. Union of India (1989)3 SCC 488 and M/s. Pharmacuiticals vs. State of Maharashtra and others (1989)4 SCC 378 to buttress this proposition.

29] The basic reason which seems to be considered for providing higher multiplier factor even up to two for lands situated in rural area sought to be acquired for the project is dependence of the people on such land for their survival and livelihood, coupled with low market price of such {24} Final 4274.14 wp.odt remotely located land, as compared to land situated in urban area. A fair balance appears to have been achieved by making a provision of multiplication of the market value by the factor to be notified by the appropriate Government considering the distance of the land under acquisition in rural area from urban area, so as to provide for infrastructural needs and sustainability of agriculture and rural livelihood. For this reason, entry No.2 in the First Schedule provides for higher multiplier factor in respect of lands sought to be acquired from rural area based on their distance from urban area. Therefore, as the distance of land sought to be acquired from rural area increases from that of urban area, the multiplier factor is required to be increased suitably. It is seen that there was no such analogous C/SCA/8734/2019 CAV ORDER provision regarding multiplier in the old Act i.e. Act of 1894.

Similarly, it needs to be mentioned here that Section 30 of the Act of 2013 makes a provision for awarding solatium @ 100% of the total compensation which is required to be paid. The Act of 1894 was providing for solatium only @ 30% on the market value of the land.

30]The Act of 2013 and more particularly, Section 106 thereof, makes it clear that the Central Government cannot amend or alter any of the Schedules to the said Act including the First Schedule, so as to reduce the compensation payable or for diluting the provisions of the Act relating to compensation or rehabilitation and resettlement. Section 107 of the Act of 2013, empowers the State Legislature, to enact any law to enhance or add to the entitlement enumerated under the Act, which confers higher{25} Final 4274.14 wp.odt compensation than the one payable under the Act of 2013. Thus, the State Legislature can enact any law conferring higher compensation than the one provided under the Act of 2013. Section 108 of the Act of 2013 provides an option to affected families to avail better compensation and rehabilitation and resettlement if State law or policy so provides. The thrust seems to be that the compensation cannot be lower than the one prescribed under the Act of 2013. From the affidavit of the respondent/State it is seen that vide notification dated 27.8.2014 issued by the respondent No.5 - Revenue and Forest Department, a policy under Section 108 is framed after considering all the objections and suggestions received by the State. Part 1 of the said policy framed under Section 108 by the respondent/State provides for land valuation. Clauses 2 and 3 of this policy needs reproduction. They read thus :-

"2. The multiplication factor by which market value of the land is multiplied will be 1.20 in case of rural areas and 1.10 for urban areas. (This factor should be atleast 10 percent higher than the State approved multiplier.)

3. Compensation of the land to be acquired in rural area : (market valule x 1.20) plus (value of assets C/SCA/8734/2019 CAV ORDER attached to land or building) plus (100 % solatium) = Land Compensation price.

Compensation of the land to be acquired in urban area :

(market valule x 1.10) plus (value of assets attached to land or building) plus (100 % solatium) = Land Compensation."

{26} Final 4274.14 wp.odt 31] It is well settled that a statute is to be read as a whole and every clause of a statute has to be constructed with reference to the context and other clauses of the Act. Ordinarily, the intention of the legislature is what it states to be its intention by the words employed in the statute. The Act of 2013 as seen from the provisions thereof, gives very high weightage to the provisions relating to payment of compensation. Even it makes provision for penalty for contravention of the provisions of the said Act relation to payment of compensation or rehabilitation or resettlement.

Section 85 of the said Act prescribes penalty by providing that if any person contravenes any of the provisions of the Act relating to payment of compensation etc, he shall be liable to punishment for six months which may extend to 3 years or with fine or with both. If the entire scheme of the Act of 2013 is considered then it becomes crystal clear that the said Act is a social welfare legislation enacted to benefit the land owners in the event of acquisition of their land by the State. It is not a statute dealing with fiscal matter or economic policy of the State such as hiking tax liability. As such the provisions of the Act of 2013 deserve liberal construction in favour of the subject. The Act of 2013 makes provision for minimum quantum of compensation payable to land holders and simultaneously it provides for various safeguards so that provisions for compensation payable under the Act should not be diluted by adopting any tactics. It is well settled that while construing a welfare statute, the Court is required to give such statute widest operation which its language permits. In the C/SCA/8734/2019 CAV ORDER matter of Executive Engineer Southern Electricity Supply Company of Orissa Ltd and another {27} Final 4274.14 wp.odt vs. Shri Seetaram Rice Mills reported in (2012) 2 SCC 108, it is held that the legislative history and objects are important aids in constructing provisions of a statute. Similarly, the statement of objects and reasons are also considered to be an internal aid while interpreting statute as laid down by the Honourable Supreme court in Devachand Builders and Contractors vs. Union of India and others reported in (2012)1 SCC

201. 32] According to respondent/State, it's suggestion over the Draft Bill came to be accepted and the proposed multiplier factor of 3 in case of rural area came to be changed as 1 (One) to 2 (Two).

Respondent / State has further contended that the First Schedule empowers the appropriate Government to limit the factor to any figure between 1 (One) and 2 (Two).

As such, according to respondent / State, radial distance of rural area from urban area (from nearest Municipal Corporation area) was considered for fixing multiplier factor. Respondent / State has stated that from nearest Municipal Corporation area there are about 1520 villages in distance ranging from 1 to 10 Kilometers. Similarly, according to respondent, in a distance ranging between 10 to 25 Kilometers from nearest Municipal Corporation area, there are about 2593 villages and near about 20601 villages are at a distance of more than 25 Kilometers from nearest Municipal Corporation area. What is the longest distance of the project from urban area is not clarified by the State. It is thus clear that the respondent / State has undertaken the exercise of calculating the distance to the maximum of 25 Kilometers only from the urban area. In fact, the First Schedule to the Act {28} Final 4274.14 wp.odt of 2013 and more particularly clause 2 thereof requires fixation of multiplier in the range between 1 to 2 on the basis of distance of project in rural area from the urban area and the appropriate Government is empowered to do this job. As such, it was incumbent on the part of the respondent/State which is an appropriate C/SCA/8734/2019 CAV ORDER Government in the instant case, to undertake the exercise of calculating the distance of farthest rural area from urban area (Municipal Corporation area) and thereafter exercise of fixing of appropriate multiplier ranging from maximum of 2 for the lands situated at remotest rural area should have been undertaken. Then, as the distance of rural area start decreasing from urban area, adoption of multiplier of less than 2 could have been thought of by the respondent/State. The respondent/State has not undertake the exercise of examination of of the distance of land situated in rural area as well as its remoteness from urban area. While fixing the multiplier factor, as seen from impugned notifications.

33] Mere providing a fixed multiplier for all land in rural area which are situated more than 25 Kilometers away from the urban area (nearest Municipal Corporation area) depicts total non application of mind while exercising the discretion provided in First Schedule to the Act of 2013 by respondent/State. Policy guideline to exercise discretion for fixing multiplier provided by the First Schedule is the distance of land under acquisition located in rural area from the urban area. Fixation of fixed multiplier of 1.10 in respect of all lands from rural area which are 25 or more kilometers away from urban area in absence of any such guideline or {29} Final 4274.14 wp.odt policy depicts colourable exercise of discretion as well as total non-application of mind and it is contrary to the Constitutional mandate under Article 14. The exercise undertaken by respondent/State in limiting the multiplier factor to 1.10 only for all lands in rural area which are at a distance of more than 25 Kilometers from urban area, shows that the respondent/State has failed to consider the relevant factor of remoteness of land situated in rural area from urban area. The very relevant factor of remoteness from urban area seems to he kept out of consideration by the respondent/State by undertaking half-hearted exercise, concluding that near about 20601 villages are situated above the distance of 25 Kilometers from nearest Municipal Corporation area. With this reasoning, the multiplier factor is spelt out at 1.10 C/SCA/8734/2019 CAV ORDER though the First Schedule provides that the same needs to be ranging from 1 to 2 on the basis of actual distance of the project from the urban area. Low market price of remotely located land from rural area requires provision for higher multiplier. This seems to be the object for provision of multiplier ranging from 1 (one) to 2 (two). Pegging multiplier factor at 1.10 for all rural lands located more than 25 Kilometers away from urban lands has resulted in giving discriminatory treatment to the land holders whose lands are situated at a far off place from urban area. A land holder whose land is just 25 Kilometers away

from urban area will now get compensation by applying very same multiplier factor which a land holder whose land is located at a very long distance, say more than 100 Kilometers or 150 kilometers away from nearest urban area will get. By this arbitrary exercise of discretion the very object of the Act of 2013 of providing {30} Final 4274.14 wp.odt adequate compensation to the land holders whose lands are situated at remotest place is frustrated. For judicious exercise of discretion conferred by the First Schedule to the Act of 2013, it was incumbent on the part of respondent/State to undertake survey of calculating exact distance of all lands situated in rural areas from the nearest urban area and then based upon such actual distance multiplier factor ought to have been determined by it. In a similar way, adopting method of calculating radial distance from urban area is also not in consonance with the guideline for fixation of multiplier enumerated in the First Schedule to the Act of 2013. Even in the case in hand, land of the petitioner proposed for acquisition is stated to be located in a rural area situated at a distance of about 75 Kilometers from Jalna town. Still, he will get multiplier factor of only 1.10 in view of notification dated 13.8.2014.

34] By ignoring relevant factor of undertaking exercise of assessment and calculation of actual distance of the remotest rural area from nearest urban area (nearest Municipal Corporation area) and by pegging maximum multiplier only to 1.10, respondent/State has virtually refused to exercise the discretion conferred upon it under Section 26(2) C/SCA/8734/2019 CAV ORDER as well as clause 2 of the First Schedule to the Act of 2013. In this manner, the desire of the legislature as expressed in Section 26(2) and the First Schedule to the Act of 2013 is not implemented by respondent/State in its true letter and spirit. 35] Depending upon the distance between the land from rural area proposed to be acquired and the urban area, the multiplier factor was required to be prescribed from range given i.e. from 1 to 2 and by limiting the exercise of calculating distance and that too radial only up to 25 Kilometers from urban area, respondent/State has defeated the object and purpose of the Act of 2013. At this juncture, it is relevant to note that as per the provisions of Section 106 of the Act of 2013, even the Central Government cannot amend or alter any Schedule to the Act of 2013 in order to reduce the compensation payable or to dilute the provisions relating to compensation. By fixing the multiplier factor at 1.10 for all lands in rural area situated at a radial distance of more than 25 Kilometers from urban area, the State has virtually caused an amendment to the First Schedule of the Act of 2013 in order to reduce the amount of compensation payable to land holders. The First schedule to the Act of 2013 is part and parcel of that statute and the State Government being an appropriate Government could not have prescribed maximum multiplier factor of 1.10 only for all lands in rural area, which are more than 25 Kilometers away from the urban area. In the similar way, act of respondent/State in fixing the multiplier to 1 by earlier notification dated 19.3.2014 (Exhibit D) reflects complete refusal to exercise discretion conferred by the First Schedule by ignoring to consider the relevant factor of distance of project from urban area.(emphasis supplied) 36] The State legislature is empowered to enact any law more beneficial than the Act of 2013 in view of provision of Section 107 of the said {32} Final 4274.14 wp.odt Act. As such, the State legislature, by enacting suitable law, can provide for multiplier of more than 2 but while exercising the discretion, the appropriate Government could not have limited C/SCA/8734/2019 CAV ORDER the multiplier to 1.10 by fixing the limit of distance to 25 Kilometers and above from the urban area."

[Emphasis Supplied] 9.9 In view of the scheme of the Act of 2013 and the judgment in the case of Panjabrao (supra), we are of the opinion that the State Government could not have ventured in redefining the terms "Rural Area" and "Urban Area" once they had been so specifically defined under the Rules of 2017.

Moreover, once a Factor is notified in accordance with the powers vested by Section 26(2) read with the First Schedule, variation of a Factor by redefining areas by way of resolutions would amount to colourable exercise of powers which suffers from excessive delegation and is therefore impermissible in law. The Government Resolutions dated 10.11.2016 and 11.09.2018 are therefore without authority of law and therefore, deserve to be set aside.

10. Now, we may consider the next substantial issue i.e. as to whether the villages:Lavarpur, Firozpur and Prantiya fall within the revenue limits of the Gram Panchayat and are "Rural Areas" as defined under Rule 2(p) of Rules 2017 or are they within "Urban Area" as defined in Rule 2(v). Secondly, even if the Government Resolutions dated 10.11.2016 and 11.09.2018 were valid, are villages Lavarpur, Firozpur and C/SCA/8734/2019 CAV ORDER Prantiya deemed to be within the limits of "Urban Areas"

merely because they are included under "Urban Development Areas".

10.1 Before we consider these issues on merits, the relevant provisions of the Constitution of India which have been pressed into service, the provisions of the Gujarat Municipalities Act, 1963, and Gujarat Town Planning and Urban Development Act, 1976, are reproduced as under:

RELEVANT ARTICLES OF THE CONSTITUTION OF INDIA 1 [PART IX THE PANCHAYATS.

243. Definitions. In this Part, unless the context otherwise requires,--

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(e) "Panchayat area" means the territorial area of a Panchayat;

(g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243B. (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

1 [PART IXA THE MUNICIPALITIES 243P.Definitions: In this Part, unless the context otherwise requires, --

(d) "Municipal area" means the territorial area of

a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-

government constituted under article 243Q;

(f) "Panchayat" means a Panchayat constituted under article 243B;

243Q. (1) There shall be constituted in every State,--

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

> Provided that (2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

THE GUJARAT MUNIPALITIES ACT,1963 Section 2: Definitions: In this Act, unless the context otherwise requires, -

(13) "Municipal Borough" means a local area declared as or deemed to be a municipal borough under section 4 of this Act;

(14) "Municipality" means a municipality constituted or deemed to be constituted for a municipal borough;

Section 5 Incorporation of Nagar Panchayat and Municipal Council: (1). In every transitional area there shall be Nagar Panchayat and every such Nagar Panchayat shall be a body corporate by the name of "The ..... Nagar Panchayat" and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name through its Chief Officer.

C/SCA/8734/2019 CAV ORDER (2). In every small urban area there shall be a Municipal Council and every such Municipal Council shall be a body corporate by the name of "The .....Municipal Council and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name through its Chief Officer.

Section 264A:

> Constitution Of Notified Areas (1). The State Government may be notification declare that with respect to some or all the matters upon which a municipal fund may be extended under this Act, improved arrangements are required within a specified area,which,nevertheless,it is not expedient to constitute as a municipal borough under Section 4.

THE GUJARAT TOWN PLANNING AND URBAN DEVELOPMENT ACT,1976

> CHAPTER III. [Presi : Act No. 27 of 1976 DECLARATION OF URBAN DEVELOPMENT AREAS AND CONSTITUTION OF URBAN DEVELOPMENT AUTHORITIES.
>
> Declaration of urban development area and constitution of urban development authority.
>
> Section 22. (1) Where the State Government is of opinion that the object of proper development or redevelopment of any urban area or group of urban areas in the State together with such adjacent areas as may be considered necessary, whether covered under a development area already declared as such under section 3 or not, will be best served by entrusting the work of development or redevelopment thereof to a special authority, instead of to an area development authority, the State Government may, by notification, declare such area to be an urban development area and constitute an authority for such area to be called the urban development authority of that area, and thereupon all the powers and functions of an area development authority relating to the development or redevelopment of a development area under this Act shall, in relation to such urban development area, be exercised and performed by such C/SCA/8734/2019 CAV ORDER urban development authority 1***.
>
> Section 23. (1) 2[The powers and functions of] an urban development authority shall be:~ to undertake the preparation of development plans under the provisions of this Act, for the urban development area ;
>
> (ii) to undertake the preparation 3[and execution] of town planning schemes under the provisions of this Act, if so directed by the State Government;

(iii)to carry out surveys in the urban development area for the preparation of development plans or town planning. schemes;

(iv) to guide, direct and assist the local authority or authorities and other statutory authorities functioning in the urban development area in matters pertaining to the planning, development and use of urban land;

(v) to control the development activities in accordance with the development plan in the urban development area;

[(v-a) to levy and collect such security fees for secrutiny of documents submitted to the appropriate authority for ,permission for development as may be prescribed by regulations;].

(vi) to execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities;

[(vi-a) to levy and collect such fees for the execution of works referred to in clause (vi) and for provision of other services and amenities as may be prescribed by regulations;]

(vii) to acquire, hold, manage and dispose of property, movable or immovable, as it may deem necessary;

(viii) to enter into contracts, agreements or arrangements, with any local authority, person or organisation as the urban development authority may consider necessary for performing its functions;

(ix) to carry any development works in the urban C/SCA/8734/2019 CAV ORDER development area as may be assigned to it by the State Government from time to time;

(x) to exercise such other powers and perform such other functions as are supplemental, incidental or consequential to any of the foregoing powers and functions or as .may be directed by the State Government.

10.2 Briefly retracing the chronology, we have analyzed the provisions of Section 26(2) of the Act of 2013 and the First Schedule together with the notifications dated 9th February, 2016 and 29th July, 2016. The State Government notified that in case of "Rural Areas", the Factor by which the market value is to be multiplied shall be 2.00 (two). The case of the petitioners rests on these notifications. On 10.11.2016, the Revenue Department issued a resolution laying down that certain areas would be "Urban Areas" which amongst others would include "Urban Development Areas" and "Area Development Authorities". Then came the Government Resolution dated 11.09.2018 by which "Urban Development Areas" and "Area Development Authorities" were not treated as "Urban Areas" with effect from 12.09.2018.

10.3 The case of the petitioners is that Lavarpur, Firozpur and Prantiya are local self Government bodies under the Gram Panchayat and the villages are at a distance of 10 kms C/SCA/8734/2019 CAV ORDER from Gandhinagar, hence in "Rural Areas". The State through an additional affidavit dated 29.07.2019 has relied on a notification dated 12.03.1996 issued by the Urban Development and Urban Housing Department in exercise of powers conferred by Sub-Sections (1), (2) and (4) of Section 22 of the Gujarat Town Planning and Urban Development Act, 1976. The notification declares the areas within Gandhinagar city and the areas within the limits of Villages specified in column-4 of the appended Schedule to be an Urban Development Area viz. Gandhinagar Urban Development Authority ('GUDA' for short). Lavarpur, Firozpur and Prantiya are shown in the Schedule.

10.4 The State has further relied on a notification dated 16.03.2010 issued by the Urban Development and Urban Housing Department, in exercise of powers under Section 264A of the Gujarat Municipalities Act, 1963, wherein, in exercise of powers conferred by Clause-(2) of Article 243Q, the entire area of Gandhinagar is declared under the notified area and a larger Urban Area forming the city of Gandhinagar.

10.5 By filing a rejoinder to the additional affidavit dated 31.07.2019, the petitioners would contend that though it is C/SCA/8734/2019 CAV ORDER true that Villages:Lavarpur, Firozpur and Prantiya were declared to be under the "Urban Development Areas" but, that by itself would not bring such villages under an Urban Local Body. Inviting our attention to provisions of Sections 22 and 23 of the Gujarat Town Planning Act, 1976, it was submitted that the powers and functions of such Urban Development Authorities is to prepare development plans and implement Town Planning Schemes. The members are appointed by the Government. The traits of an Urban Development Area would indicate that it is not a local body of self-governance as a Municipality, Corporation which comprise of larger Urban Areas or smaller Urban Areas so defined under the scheme of the Constitution.

9.4 Taking into consideration these aspects, what emerges is:

> A. That the villages Lavarpur, Firozpur and Prantiya have been put in the Special Agricultural Zone and the lands are not permitted to be used for any purpose other than agriculture.
>
> B. No Town Planning Scheme has been proposed or implemented in the area. No development is permitted in the lands of the petitioners as per development plan C/SCA/8734/2019 CAV ORDER 2024.
>
> C. What has come on record by virtue of a Government Resolution dated 23.12.1969 is that 12 different villages mentioned therein were carved out to form part of revenue village of Gandhinagar. Villages Lavarpur, Firozpur and Prantiya are not mentioned in the order.
>
> D. Vide notification dated 24.12.1975 issued in exercise of powers under Section 264A of the Gujarat Municipalities Act, 1963, the areas comprised in the revenue

village:Gandhinagar, constituted by order/resolution dated 23.12.1969 was declared as a notified area. Since the three villages Lavarpur, Firozpur and Prantiya are not part of the 1969 order, they do not form part of the Gandhinagar notified area.

11. Reading the above chronology would indicate that since the three villages never formed part of the Gandhinagar notified area, they cannot be treated to be a part of such area.

However, if these three villages, as per the stand of the Government are treated to be part of GUDA, and therefore within the Urban Development Area, by virtue of it being part of GUDA, it would not become a local body of self-governance C/SCA/8734/2019 CAV ORDER as they are not "Urban Local Body" which means local body of self-governance of democratically elected representatives falling within Municipalities, Municipal Corporations, Municipal Burroughs, Transitional Areas or Larger and/or Smaller Urban Areas as specified in the Constitution of India read together with the provisions of the Gujarat Municipalities Act. "Urban Development Areas" are merely authorities with the object of proper development, preparation of plans and town planning schemes to guide, direct and assist the local authorities for plans etc. Therefore, they are not local bodies.

11.1 Keeping in view the definition of "Urban Area" as provided under Rule 2(v) of the Rules of 2017 when read in the context of the definition of the term "Local Bodies" as defined under Rule 2(m) which means and includes Rural Local Bodies and Urban Local Authorities constituted or established under the respective Acts, it is apparent that when these provisions are read in juxtaposition to the provisions of the Constitution of India viz. Article 243Q, what is essentially the thrust is that an Urban Authority means an Urban Local Body constituted under Section 5 of the Gujarat Municipalities Act, 1963, being democratic unit of Local Self Government. Thus, reading the definitions of "Rural Area"

C/SCA/8734/2019 CAV ORDER and "Urban Area" under the Rules of 2017 it is clear that only areas falling within the Municipality and Municipal Burroughs are urban areas. This is explicitly clear on reading the Rule.

What has also come on record by way of an RTI communication dated 24.07.2019 is that the Gandhinagar Municipal Corporation itself has made it clear that villages Lavarpur, Firozpur and Prantiya are not part of the Gandhinagar Municipal Corporation.

12. Therefore, firstly even if the villages of Lavarpur, Firozpur and Prantiya were to be treated as part of "Urban Development Areas", such Urban Development Areas cannot be said to be an Urban Local Body as defined under Rule 2(v) of the Rules of 2017 and therefore, they are not part of Urban Areas. Reading of the resolutions of 1969 and 1975 produced with the rejoinder would also indicate that these three villages were not part of the revenue village of Gandhinagar nor part of the Gandhinagar Notified Area. Obviously therefore, they never formed part of the Revenue village Gandhinagar or Gandhinagar notified area and were never declared within the City limits of Gandhinagar. These villages therefore squarely fall within the term "Rural Area" and even according to the notification dated 29.07.2016, the C/SCA/8734/2019 CAV ORDER multiplying factor by

which the market value of the lands of the petitioners is to be multiplied shall be 2.00. This is because we have held that an "Urban Development Area" is not an "Urban Area" as defined under the Rules of 2017.

Even otherwise, from what narrative we have discussed herein above, the lands fall within "Rural Area" as defined in Rule 2(p) of the Rules of 2017.

13. Since we hold that the lands of the villages Lavarpur, Firozpur and Prantiya even were treated to be part of Urban Development Areas, that by itself would not bring them within Urban Area and therefore even otherwise the resolution dated 10.11.2016 and 11.09.2018 are contrary to law.

14. The challenge to the resolutions dated 10.11.2016 and 11.09.2018 is that these resolutions fail the test of reasonableness and therefore, violate the constitutional guarantee enshrined under Article 14 of the Constitution of India. The challenge is particularly keeping the focus on the Government Resolution dated 11.09.2018. The resolution dated 11.09.2018 stipulates that lands falling within "Urban Development Areas" and "Area Development Authorities"

> would not be part of "Urban Areas" as defined by the resolution dated 10.11.2016. However, the resolution of C/SCA/8734/2019 CAV ORDER 11.09.2018 states that this clarification shall be applicable to the awards that will be passed after the date of this resolution. The resolution therefore is prospective. In other words, according to the petitioners, it creates an artificial classification inasmuch as if the award is made for the same land on 11.09.2018, the land would be treated to have Factor 1.00 applicable and if the award for that land were to be made on 12.09.2018, the very land would fetch a higher compensation as it would fall within "Rural Areas" eligible to a multiplying Factor of two (2.00). This would treat two equals as unequals which has no rationale and does not bear any nexus to the object sought to be achieved.
>
> 15. Having read the Government Resolutions dated 10.11.2016 and 11.09.2018, what emerges is that initially "Urban Area" was defined so as to include within its fold "Urban Development Authorities" and therefore, eligible for Factor 1.00. Reading of the Government Resolution dated 11.09.2018 indicates that farmers who had lands in Rural Areas made several representations against the stand of the department in treating such lands within "Urban Areas" by virtue of they being under "Urban Development Authorities".

Keeping in mind these representations, the Government omitted "Urban Development Areas" from the purview of C/SCA/8734/2019 CAV ORDER "Urban Areas". However, the resolution further expressly stated that such omission would be prospective i.e. it would be applicable to such lands where awards were passed after 11.09.2018 i.e. from 12.09.2018 onwards.

15.1 This artificial classification based on a cut-off date is apparently against the principle of reasonable classification.

Such artificial classification is and cannot be said to have any reasonable nexus to the object sought to be achieved. Lands in rural areas are entitled to the multiplying factor two (2). If the Government Resolution dated 11.09.2018 is allowed to operate, it treats equals as unequals. Land holders of rural areas of the same area, who have awards passed on or before 11.09.2018 will have their compensation multiplied by Factor 1.00 whereas, in case awards are passed for lands of the same area on or after 12.09.2018, they will get a higher compensation as their lands will get the benefit of Factor 2.00. In fact, Mr.Saurabh Amin placed on record an award dated 06.12.2018 of Prantiya acquired for the same project under the National Highways Act, 1956. Such land holders who are otherwise similarly situated to the petitioners, are given the benefit of Factor 2 though their lands are within the vicinity as that of the petitioners, merely because their award is post 11.09.2018.

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16. Reliance placed by Mr.Amin, in our view would support his case as by the decision in the case of All Manipur Pensioners' Association (supra), the Supreme Court has reiterated the principle regarding cut-off date and whether such a cut-off date has a reasonable nexus sought to be achieved. The Supreme Court has held as under:

> "6. We have heard the learned Senior Advocates for the respective parties at length.
>
> 6.1 It is not in dispute that the State of Manipur has adopted the Central Civil Services (Pension) Rules to be applicable to the State of Manipur. Therefore, all the government servants retired in accordance with the provisions of the Pension Rules and after completing qualifying service are entitled to the pension/pensionary benefits. It appears that considering the increase in the cost of living, the State Government enhanced/revised the pension of its employees with effect from 1.1.1996 as in the case of Central Government employees. However, this revision in pension was done differently, viz., for employees who retired prior to 1.1.1996 and for employees who retired after 1.1.1996. Consequently, the State provided a lower percentage of increase to those who retired pre1996 and provided higher percentage of increase to those who retired post 1996. The learned Single Judge of the High Court held that such a classification is not permissible in law keeping in mind the equality clause of the Constitution. However, on an appeal, by the impugned judgment and order, the Division Bench of the High Court has reversed the decision of the learned Single Judge and has observed and held that as in the present case the State does not have the financial resources to pay uniform pension to all the retired employees, the cutoff date fixed by the State Government as 1.1.1996 for payment of revised pension to pre 1996 retirees and post1996 retirees C/SCA/8734/2019 CAV ORDER cannot be termed to be unreasonable and irrational in the light of Article 14 of the Constitution of India. While passing the impugned judgment and order, the Division Bench of the High Court has not followed the decision of this Court in the case of D.S. Nakara (supra), considering some of the observations made by this Court in the subsequent decisions in the cases of R. Veerasamy (supra); Amar Nath Goyal(supra) and P.N. Menon (supra) to the effect that the decision in the case of

> D.S. Nakara (supra) is one of the limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement.

6.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the original writ petitioners - All Manipur Pensioners Association - employees/pensioners who retired pre1996 have preferred the present appeal.

7. The short question which is posed for consideration before this Court is, whether in the facts and circumstances of the case, the decision of this Court in the case of D.S. Nakara (supra) shall be applicable or not, and in the facts and circumstances of the case and solely on the ground of financial constraint, the State Government would be justified in creating two classes of pensioners, viz., pre1996 retirees and post1996 retirees for the purpose of payment of revised pension and whether such a classification is arbitrary, unreasonable and violative of Article 14 of the Constitution of India or not?

7.1 At the outset, it is required to be noted that in the present case, the State Government has justified the cutoff date for payment of revised pension solely on the ground of financial constraint. On no other ground, the State tried to justify the classification. In the backdrop of the aforesaid facts, the aforesaid question posed for consideration before this Court is required to be considered.

C/SCA/8734/2019 CAV ORDER 7.2 It is not in dispute that the State Government has adopted the Central Civil Services (Pension) Rules, to be applicable to the State of Manipur. The State has also come out with the Manipur Civil Services (Pension) Rules, 1977. It is also not in dispute that subject to completing the qualifying service the government servants retired in accordance with the pension rules are entitled to pension. Therefore, as such, all the pensioners form only one homogeneous class. Therefore, it can be said that all the pensioners form only one class as a whole. Keeping in mind the increase in the cost of living, the State Government increased the quantum of pension and even pay for its employees. The State Government also enhanced the scales of pension/quantum of pension with effect from 1.1.1996 keeping in mind the increase in the cost of living. However, the State Government provided the cut-off date for the purpose of grant of benefit of revised pension with effect from 1.1.1996 to those who retired post1996 and denied the revision in pension to those who retired pre1996. The aforesaid classification between these pensioners who retired pre1996 and post1996 for the purpose of grant of benefit of revision in pension is the subject matter of this appeal. As observed hereinabove, the aforesaid classification is sought to be justified by the State Government solely on the ground of financial constraint.

7.3 At the outset, it is required to be noted that in the case of D.S.Nakara (supra), such a classification is held to be arbitrary, unreasonable, irrational and violative of Article 14 of the Constitution of India. In paragraphs 42 and 65, this Court in the case of D.S. Nakara (supra) has observed and held as under:

> "42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a

homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be C/SCA/8734/2019 CAV ORDER based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme.

In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed C/SCA/8734/2019 CAV ORDER inArticle 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.

65. That is the end of the journey. With the expanding horizons of socioeconomic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects

sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in impugned memoranda, Exs. P1 & P2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Ex. P1, the words:

"that in respect of the government servants who were in service on March 31, 1979 and retiring from service on or after that date" and in Ex. P2, the words:

"the new rates of pension are effective from April 1, 1979 and will be applicable to all service officers C/SCA/8734/2019 CAV ORDER who became/become non- effective on or after that date" are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs." 7.4 While the aforesaid decision of this Court in the case of D.S. Nakara (supra) was relied upon by the appellant herein and as such which came to be considered and followed by the learned Single Judge, the Division Bench considering some of the observations made in the cases of Hari Ram Gupta (supra); R. Veerasamy (supra); Amar Nath Goyal(supra) and P.N. Menon (supra), has observed and held that the decision of this Court in the case of D.S. Nakara (supra) is one of the limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement. However, by not following the decision of this Court in the case of D.S. Nakara (supra), considering some of the observations made by this Court in the aforesaid decisions, namely P.N.Menon(supra) and other decisions, the Division Bench of the High Court has not at all considered the distinguishable facts in the aforesaid decisions.

7.5 In the case of P.N. Menon(supra), the controversy was altogether different one. The factual position that needs to be highlighted insofar as P.N. Menon (supra) is concerned, is that the retired employees had never been in receipt of "dearness pay" when they retired from service and therefore the O.M. in question could not have been C/SCA/8734/2019 CAV ORDER applied to them. This is how this Court examined the matter. This Court also noticed that prior to the O.M. in question, the pension scheme was contributory and only with effect from 22.9.1977, the pension scheme was made non contributory. Since the respondent employees in the first cited case were not in service at the time of introducing the same they were held not eligible for the said benefit. Therefore, the said decision shall not be applicable to the facts of the case on hand, more particularly while considering

and/or applying the decision of this Court in the case of D.S. Nakara (supra).

7.6 In the case of Amrit Lal Gandhi (supra), pension was introduced for the first time for the University teachers based on the resolution passed by the Senate and Syndicate of Jodhpur University. The same was approved by the State Government with effect from 1.1.1990. Therefore, the controversy was not between one set of pensioners alleging discriminatory treatment as against another set of pensioners. There were no pensioners to begin with. The retirees were entitled to provident fund under the existing provident fund scheme. The question of discrimination between one set of pensioners from another set of pensioners did not arise in the said decision. With the aforesaid facts, this Court observed that financial viability is a relevant issue.

7.7 Similarly, the decision of this Court in the case of Indian Ex Services League (supra) also shall not be applicable to the facts of the case on hand. The facts in this case and the facts in the case of D.S. Nakara (supra) are clearly distinguishable. In the case of Indian ExServices League (supra), the dispute was with respect to PF retirees and Pension retirees and to that it was held that PF retirees and Pension retirees constitute different classes and therefore this Court distinguished the decision of this Court in the case of D.S. Nakara (supra). Therefore, the aforesaid decision shall not be applicable to the facts of the case on hand at all.

C/SCA/8734/2019 CAV ORDER 7.8 Similarly, the decisions of this Court in the cases of Hari Ram Gupta (supra) and Kallakkurichi Taluk Retired Officials Association, Tamil Nadu (supra) also shall not be applicable to the facts of the case on hand.

7.9 In view of the above, we are satisfied that none of the judgments, relied upon by the learned Senior Advocate for the respondent - State, has any bearing to the controversy in hand. The Division Bench of the High Court has clearly erred in not appreciating and/or considering the distinguishable facts in the cases of Hari Ram Gupta (supra); R. Veerasamy (supra); Amar Nath Goyal (supra); P.N. Menon (supra) and Amrit Lal Gandhi (supra).

8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre1996 and another who retired post1996, for the purpose of grant of revised pension, In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff C/SCA/8734/2019

CAV ORDER date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cutoff date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. 8.1 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre1996 or post1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cutoff date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cutoff date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision."

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17. Based on this settled proposition of law, the classification sought to be made by the Government

Resolution dated 11.09.2018 by making it prospective is a classification which is without any rational basis and has no nexus with the objects sought to be achieved and therefore, the Government Resolution dated 11.09.2018, insofar as it operates prospectively violates the constitutional guarantee enshrined under Article 14 of the Constitution of India and therefore, set aside insofar as it is prospective.

18. At this stage, we may mention the facts of Special Civil Application No.11238 of 2019. Here too the Government Resolution dated 11.09.2018 is challenged insofar as it is prospective. The lands are in Koteshwar. A draft award has already been published. In addition to the challenge therefore to the resolution dated 11.09.2018 what is contended is that since the award is only at a draft stage, the benefit of Factor 2.00 needs to be given. It is further stated that the lands are within AUDA.

19. For the reasons discussed herein above, since we have held the notification dated 11.09.2018 to the extent it is made prospective, the question that whether merely because there is a draft award and even otherwise therefore the petitioner C/SCA/8734/2019 CAV ORDER would be entitled to, need not be gone into. Factor 2.00 shall be held to be applicable for the purposes of awarding compensation to the petitioners.

20. Accordingly, we hold that the Government Resolutions dated 10.11.2016 and 11.09.2018 are without authority of law, contrary to and ultra-vires the Gujarat Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2017. The resolutions are held to be illegal as they violate the constitutional guarantee enshrined under Article 14 of the Constitution of India. The resolution dated 11.09.2018 to the extent that it is made prospective also violates Article 14 and therefore to that extent, the resolution is quashed and set aside.

21. Both the resolutions i.e. resolutions dated 10.11.2016 and 11.09.2018 are set aside. Petitions are allowed. As far as Special Civil Application Nos.8734 of 2019 and cognate matters (except Special Civil Application No. 11238 of 2019) are allowed with a direction to the respondents to modify the awards and also recompute the compensation qua the lands of the petitioner by multiplying the market value as determined under Section 26(1) of the Act of 2013 with Factor 2 as per Section 26(2) and applying all other statutory benefits C/SCA/8734/2019 CAV ORDER including solatium under Section 30(1), interest under Section 30(3) of the Act of 2013 and determine and pay such compensation with interest as prayed for.

In case of petitioner of Special Civil Application No.11238 of 2019, we hold that in view of the fact that the resolution dated 11.09.2018 is quashed and set aside insofar as it is prospective, while computing compensation for the land of the petitioner, the Factor 2.00 shall be applicable to the land of the petitioner.

(ANANT S. DAVE, J) (BIREN VAISHNAV, J) After this order is pronounced in the open Court, learned AGP Ms.Nisha Thakore has prayed for stay of this order. The request is rejected.

(ANANT S. DAVE, J) (BIREN VAISHNAV, J) ANKIT SHAH