National Highways Authority Of India vs P. Nagaraju @ Cheluvaiah on 11 July, 2022

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Bench: A.S. Bopanna, Indira Banerjee

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4671 OF 2022
(Arising out of SLP (CIVIL) No.19775 of 2021)

National Highways Authority of India …Appellant(s)

Versus

Sri P. Nagaraju @ Cheluvaiah & Anr. ...Respondent(s)

With

C.A. No.4676/2022 @ SLP(C)No.19811/2021

C.A. No.4677/2022 @ SLP(C)No.19958/2021

C.A. No.4678/2022 @ SLP(C)No.19810/2021

C.A. No.4679/2022 @ SLP(C)No.20762/2021

C.A. No.4680/2022 @ SLP(C)No.19729/2021

C.A. No.4681/2022 @ SLP(C)No.2503/2022

JUDGMENT

C.A. No.4671/2022 @ SLP (C) No.19775 of 2021 C.A. No.4676/2022 @ SLP(C)No.19811/2021 C.A. No.4677/2022 @ SLP(C)No.19958/2021 C.A. No.4679/2022 @ SLP(C)No.20762/2021 C.A. No.4680/2022 @ SLP(C)No.19729/2021 15:51:16 IST Reason:

A.S. Bopanna,J.

1. Leave granted.

2. The appellant – National Highways Authority of India ('NHAI' for short) is before this Court in these appeals assailing the judgment dated 26.07.2021 by the Division

Bench, High Court of Karnataka, Bengaluru in MFA No.2037/2021 (AA) and connected matters. The appeals filed by the appellant herein before the High Court were dismissed, whereby the judgment dated 26.02.2021 passed by the Principal District Sessions Judge, Ramanagara in Arbitration Suit No.22/2019 and analogous suits as also the judgment dated 27.01.2021 by the Principal and District and Sessions Judge, Bengaluru Rural District, Bengaluru filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act 1996' for short) were upheld. The said arbitration suits under Section 34 of Act, 1996 were filed by NHAI assailing the award dated 13.08.2019 and 06.01.2020 passed by the Deputy Commissioner and Arbitrator, National Highway – 275 (land acquisition), Ramanagara District, Ramanagara in Case No.LAQ(A)/NH-275/CR/137/2017-18 and Deputy Commissioner-1 and Arbitrator Bengaluru Urban District, Bengaluru in Case No.LAQ/ARB/BNG/NH-

275/CR/02/2018-19. By the said awards the respective learned Arbitrators had enhanced the compensation from Rs.2026/- per sq. mtr and Rs.17,200/- determined by the Special Land Acquisition Officer ('SLAO' for short) to Rs.15,400/- per sq. mtr and Rs.25,800/- respectively. Since the learned District Judge and the High Court have upheld the determination of the compensation based on the market value determined at Rs.15,400/- and Rs.25,800 per sq. mtr, the appellant – NHAI, claiming to be aggrieved is before this Court.

3. Considering that the description of the parties was different in the hierarchy of the proceedings, for the sake of convenience and clarity the appellant herein would be described as 'NHAI' and the private respondents herein (land losers) would be referred to as the 'claimants' hereinafter, wherever the context so requires. The claimants – (private respondents in these appeals) are the owners of the different extent of land in the various survey numbers which were all part of the same acquisition which was initiated under the preliminary notifications dated 01.02.2016 and 02.02.2016 issued under the National Highways Act ('NH Act' for short). The facts arising in the appeal relating to SLP(C) No.19775/2021 is referred as the lead case. The facts in the other cases are more or less similar, while the legal issues raised are the same.

4. The lands situated in Survey Nos. 92/1, 90/2A, 42/1 of Mayaganahalli, survey no.35/3 and 37/1 of Madapura, survey no.24 of Kallugopahalli and survey no.40/8 of Kumbalagodu, among others were notified for acquisition under the preliminary notification dated 01.02.2016 and 02.02.2016. The said acquisition was a part of the process for formation of the Bengaluru- Mysore (NH-275) Highway. The final notification was issued on 23.09.2016 and 04.10.2016. The SLAO on initiating the process for passing the award, on consideration of the material available before him, had passed the award dated 10.03.2017 and 04.01.2017 determining the compensation at Rs.2026/-and Rs.17200/- per sq. mtr respectively. The SLAO keeping in view the provisions contained under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLARR Act, 2013' for short), took note of the sale exemplars which were available before him but ultimately took note of the value provided under the notification dated 07.11.2014 issued by the Department of Stamps and Registration for the purpose of registration of the sale transactions, to award compensation.

5. The claimants being dissatisfied with the determination of the compensation awarded by SLAO, filed their respective petitions before the learned Arbitrator in terms of the provisions contained under Section 3G(7) of NH Act. The learned Arbitrator having taken into consideration the method adopted by the SLAO while determining the compensation, though has adopted the same mode of determination by reckoning the guideline value provided by the Department of Stamps and Registration for the purpose of registration of sale transactions, has however taken into consideration the subsequent notifications dated 28.03.2016 and 05.12.2018 to reckon the guideline value. In addition, the learned Arbitrator while applying the guideline dated 28.03.2016 and 05.12.2018 has taken note that the lands which were the subject matter of acquisition were converted for residential use and industrial purpose, from agricultural purpose. While adopting the guideline value of residential and industrial property, the learned Arbitrator has instead of applying the same value which was provided under the guideline to the specific survey number in the village wherein the property under acquisition is situate, has adopted the guideline value which was separately indicated in the said notification in respect of a specified residential layout which is situated in the vicinity. Accordingly, the market value was determined at Rs.15,400/- per sq. mtr. On the said basis, learned Arbitrator had taken note that the land bearing Survey No.40/8 in Kumbalagodu was converted for industrial purpose and since the guideline dated 05.12.2018 provided that an additional amount of 50% is to be added as against what had been indicated for residential property under the guideline, an amount of Rs.25,800/- per sq. mtr was determined. Having arrived at such determination of the market value, the total extent of the land acquired was considered and the compensation was awarded.

6. The NHAI claiming to be aggrieved by the method adopted by the learned Arbitrator in determining the market value and compensation, filed the arbitration suit under Section 34 of the Act, 1996 raising various contentions. It was contended that the award passed is against the provisions of law and public policy, apart from being in violation of Principles of Natural Justice. It was contended that the notification for acquisition was issued on 01.02.2016, which is the relevant date for determining the market value. The grievance put forth was that the learned Arbitrator in the first set of cases had taken into consideration the guideline value which was fixed under a subsequent notification dated 28.03.2016. The further grievance is that even under the said notification dated 28.03.2016 the guideline value in respect of the lands which are situated in the village which was the subject matter of acquisition is fixed at about Rs.8000/- per sq. mtr but the learned Arbitrator has without basis adopted the guideline value of Rs.15,400/- per sq. mtr. which was the guideline value for a different specified land. In that view, it was contended that the SLAO on the other hand had taken into consideration the sale value for which the transactions had taken place. In the said process, since the guideline value fixed under the notification dated 07.11.2014, prior to the date of preliminary notification for acquisition dated 01.02.2016 was fixed and considering the fact that Section 26 of RFCTLARR Act, 2013 provides for awarding the higher of the value, the SLAO had adopted the guideline value of Rs.2026/- per sq. mtr in respect of lands in survey nos.92/1, 90/2A of Mayaganahalli and survey no.35/3 and 37/1 of Madapura while the properties in survey no.42/1 of Mayaganahalli was awarded Rs.7833/- and the property in survey no.24 of Kallugopahalli was awarded Rs.8102/- and the property in survey no.40/8 of Kumbalagodu was awarded Rs.17,200/-.

7. The learned Principal District and Sessions Judge while taking note of the contentions as put forth has kept in view the narrow scope available in a suit/petition under Section 34 of Act, 1996 and also keeping in view the provisions contained in Section 26 and 28 of RFCTLARR Act, 2013 has arrived at the conclusion that as against the consideration made by the SLAO by reckoning the land under acquisition as agricultural land, the learned Arbitrator has taken note that the lands were converted for residential purpose and in that light had taken into consideration the guideline value fixed in respect of the residential extension known as 'city green' and 'Zunadu' for which the guideline value for registration purpose was fixed at Rs.15,400/- per sq. mtr. In that view, the learned District Judge on taking note of the decisions laying down that limited scope is available for interference under Section 34 of Act, 1996, has dismissed the suit.

8. The High Court, in an appeal under Section 37 of Act, 1996 while adverting to the very contentions put forth by NHAI in attacking the award passed by the learned Arbitrator has taken into consideration that NHAI had sufficient opportunity to put forth their contentions in the proceedings before the learned Arbitrator. The reliance placed on the guideline value notification dated 28.03.2016 was adverted to by the High Court and it was noted that the said guideline value had been notified in the official gazette which was to the knowledge of all concerned. In that light, keeping in view the fact that the SLAO though had taken note of the guideline value for the earlier period, the market value was fixed unscientifically since the lands which were converted to commercial, industrial and residential purposes had not been taken into consideration. The contention of the claimants that the acquired land was situated near to the lands in 'Zunadu' Extension and 'city greens' was held justified. In this regard, the High Court had taken into consideration that in Kallugopahalli, even under the earlier notification dated 07.11.2014 under Stamp Act, the guideline value fixed for registration was Rs.8,073/- per sq. mtr for converted land and for sites in 'Zunadu', it was Rs.13,993/- per sq. mtr. In comparison, under the guideline value notification dated 28.03.2016 the market value for 'Zunadu' is Rs.15,400/- per sq. mtr. In that light, taking note of the fact that the notification dated 28.03.2016 contained reference to a notification dated 14.09.2015 proposing the registration value which was earlier to the acquisition notification was of the opinion that reckoning of the value specified in the notification dated 28.03.2016 by the learned Arbitrator, which was upheld in the suit under Section 34 of the Act, 1996 is justified. Similar consideration is made in respect of the extent of land situate in the remaining survey numbers which have reference to the acquisition process. The issue relating to industrial land is referred separately here below. The market value determined at Rs.15,400/- per sq. mtr in respect of all the lands has accordingly been upheld by the High Court. In that view, the High Court was of the opinion that in the limited scope available in an appeal under Section 37 of Act, 1996 an examination beyond the scope provided under Section 34 of Act, 1996 is not to be undertaken and has indicated that if a plausible view is taken by the learned Arbitrator, it should not be substituted by another view of the Court under Sections 34 and 37 of Act, 1996. Accordingly, the appeals filed by NHAI have been dismissed.

9. It is in that view the NHAI claiming to be aggrieved is before this Court in these appeals.

10. We have heard Ms. Madhavi Divan, learned Additional Solicitor General for NHAI, Mr. S. Nagamuthu learned senior counsel, Mr. Naresh Kaushik and Mr. K. Parameshwar being assisted by

the advocates on record for the respective claimants. We have also perused the appeal papers in great detail.

11. From the narration of the sequence made above it would be clear that the factual aspects involved in the instant case are to be considered in the background of the legal contentions urged. While doing so, what is also to be borne in mind is that these appeals arise out of the proceedings whereunder an award had been passed by the learned Arbitrator in arbitration proceedings. In that light, the limited scope available under Act, 1996 to assail an award as provided under Section 34 of the said Act is also to be kept in view even in these appeals. While doing so, what cannot also be lost sight of is the fact that the arbitration was not initiated based on an agreement entered into between the contracting parties under a contract but is under a statutory provision which provides for such arbitration in lieu of 'reference' under the regime for acquisition of land for public purpose. One of the parties to such arbitration proceedings would also be a land loser and the adjudication in the arbitration proceedings is not based on any definite terms of the contract providing for mutual obligations determinable under the contract but for determination of 'just compensation' in respect of land which is compulsorily acquired for a public purpose. Notwithstanding the same, the broad perspective relating to the limited grounds to challenge an award under Section 34 of Act, 1996 also is to be kept in perspective since the arbitration is governed by Act, 1996.

12. In order to consider whether an award is in accordance with law, at the outset the scope of jurisdiction of an arbitrator while determining the compensation under NH Act vis-à-vis RFCTLARR Act, 2013 to which detailed reference is made by the learned Additional Solicitor General is to be noted. It is contended that the factors to determine the compensation payable to the land loser as provided in Section 3G(7)(a) of the NH Act can only be the basis. In that view, it is contended that the parameters contained in Section 28 of RFCTLARR Act, 2013 cannot be taken into consideration. The contention in that regard is that while determining the market value, the definite parameters as contained in Section 3G(7)(a) of NH Act alone would be applicable and in view of the provisions contained in Section 3J of NH Act the provisions of the Land Acquisition Act shall not be made applicable. It is therefore contended that by invoking Section 28 of RFCTLARR Act, 2013 the seventh factor stated therein, namely, the ground relating to the fixation of the market value based on equity, justice and benefit to the affected families cannot be a criteria to determine the market value. To press home the point, the learned Additional Solicitor General has referred to a comparative statement between the two provisions under the said two enactments which is taken note as hereunder:

> Section 28 of the LA Act, Section 3G (7) (a) of the NH 2013 Act
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> 28. Parameters to be 3G. Determination of amount considered by Collector in payable as compensation.

determination of award.- In determining the amount of compensation to be awarded for land acquired under this	xxx (7) The competent authority or the arbitrator while determining the amount under

Act, the Collector shall take sub-section (1) or sub-section into consideration- firstly, (5), as the case may be, shall the market value as take into consideration-

determined under Section 26 (a) the market value of the land and the award amount in on the date of publication of accordance with the First and the notification under Section Second Schedules; 3 A;

secondly, the damage (b) the damage, if any, sustained by the person sustained by the person interested, by reason of the interested at the time of taking taking of any standing crops possession of the land, by and trees which may be on reason of the severing of such the land at the time of the land from other land;

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, 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;
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 19 and the time of the Collector's taking possession of the land; and

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
(d) if, in consequences 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.

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

13. It is contended that the applicability of the provisions of the RFCTLARR Act, 2013 is limited to the provision contained in Section 26 thereof for determination of the market value by the Collector which provides the basic factors to be taken into consideration in view of notification dated 28.08.2015 and the Act cannot be made applicable beyond the same.

14. The contention on behalf of the claimants is that the determination of the compensation requires all factors to be taken into consideration for fixing the 'fair and just compensation' and as such the parameters contained in Section 28 RFCTLARR Act, 2013 are also applicable since the NH Act finds a place in the Fourth Schedule to RFCTLARR Act, 2013.

15. On this aspect, it would be appropriate to take note of the decision rendered by this Court in Union of India vs. Tarsem Singh, (2019) 9 SCC 304 relied on by both sides, wherein it has been held as hereunder:

> "51. We were also referred to an order in Sunita Mehra v. Union of India, in which this Court held:
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> "5. The only point agitated before us by the learned Solicitor General is that in para 23 of the impugned judgment of the High Court, it has been held that landowners would "henceforth" be entitled to solatium and interest as envisaged by the provisions of Sections 23 and 28 of the Land Acquisition Act, 1894. In the ultimate paragraph of the impugned judgment it has, however, been mentioned that in respect of all acquisitions made under the National Highways Act, 1956, solatium and interest in terms similar to those contained in Sections 23(2) and 28 of the Land Acquisition Act, 1894 will have to be paid.
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> 6. The learned Solicitor General has pointed out that there is an apparent inconsistency in the judgment, which needs to be clarified. It has also been submitted by the learned Solicitor General that the order of the High Court should be clarified to mean that the issue of grant of interest and solatium should not be allowed to be reopened without any restriction or reference to time. The learned Solicitor General has particularly submitted that to understand the order of the High Court in any other manner would not only seriously burden the public exchequer but would also amount to overlooking the delay that may have occurred on the part of the landowner(s) in approaching the Court and may open floodgates for en masse litigation on the issue.

7. We have considered the submissions advanced.

In Gurpreet Singh v. Union of India , this Court, though in a different context, had restricted the operation of the judgment of this Court in Sunder v. Union of India and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in Golden Iron and Steel Forging v. Union of India i.e. 28-3-2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 1-1-2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the 2013 Act."

52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed." (emphasis supplied)

16. While arriving at the conclusion that notification bearing SO No.2368(E)dated 28.8.2015 whereunder the provisions of RFCTLARR Act, 2013 are made applicable, it is noted that NH Act is also one of the enactments specified in the Fourth Schedule. The relevant portion of the notification dated 28.08.2015 reads as hereunder:

> "And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners; Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely;-

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

[F.No. 13011/01/2014-LRD] K. P. KRISHNAN, Addl. Secy."

17. The observations contained also in para 29, 30 and 31 in Tarsem Singh (supra) will make it more than evident that this Court was concerned about discrimination in determination of compensation under different enactments though in that case the issue was limited to solatium and interest. The said paras read as hereunder:-

"29. Both, P. Vajravelu Mudaliar and Nagpur Improvement Trust clinch the issue in favour of the Respondents, as has been correctly held by the Punjab and Haryana High Court in Golden Iron and Steel Forging. First and foremost, it is important to note that, as has been seen hereinabove, the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved in the manner set out hereinabove. It will be noticed that the awarding of solatium and interest has nothing to do with achieving this object, as it is nobody's case that land acquisition for the purpose of national highways slows down as a result of award of solatium and interest. Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act, i.e. speedy acquisition of lands for the purpose of National Highways. On this ground alone, the Amendment Act falls foul of Article 14.

30. Even otherwise, in P. Vajravelu Mudaliar, despite the fact that the object of the Amendment Act was to acquire lands for housing schemes at a low price, yet the Amendment Act was struck down when it provided for solatium at the rate of 5% instead of 15%, that was provided in the Land Acquisition Act, the Court holding that whether adjacent lands of the same quality and value are acquired for a housing scheme or some other public purpose such as a hospital is a differentiation between two sets of landowners having no reasonable relation to the object sought to be

achieved. More pertinently, another example is given – out of two adjacent plots belonging to the same individual one may be acquired under the principal Act for a particular public purpose and one acquired under the Amending Act for a housing scheme, which, when looked at from the point of view of the landowner, would be discriminatory, having no rational relation to the object sought to be achieved, which is compulsory acquisition of property for public purposes.

31. Nagpur Improvement Trust has clearly held that ordinarily a classification based on public purpose is not permissible under Article 14 for the purpose of determining compensation. Also, in para 30, the Seven-Judge Bench unequivocally states that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired, as, if the existence of these two Acts would enable the State to give one owner different treatment from another who is similarly situated, Article 14 would be infracted. In the facts of these cases, it is clear that from the point of view of the landowner it is immaterial that his land is acquired under the National Highways Act and not the Land Acquisition Act, as solatium cannot be denied on account of this fact alone."

18. In that view of the matter, though Section 3G(7)(a) of the NH Act provides the parameters to be taken into consideration, it only provides the basic parameters to be taken note of, for determining the amount payable as compensation. While applying the said parameters for determination of compensation, since RFCTLARR Act, 2013 is also applicable as NH Act is contained in Fourth Schedule, the factors as provided under Section 26 and 28 RFCTLARR Act, 2013 including the seventh factor will also be applicable in appropriate cases for the determination of the market value as fair compensation for the acquired land. When land is acquired from a citizen, Articles 300A and 31A of the Constitution will have to be borne in mind since the deprivation of property should be with authority of law, after being duly compensated. Such law should provide for adequately compensating the land loser keeping in view the market value. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired. In that light, if Section 28 of RFCTLARR Act, 2013 is held not applicable in view of Section 3J of NH Act, the same will be violative of Article 14 of the Constitution. In that circumstance, the observation in Tarsem Singh (supra) that Section 3J of NH Act is unconstitutional to that extent though declared so while on the aspect of solatium and interest, it is held so on all aspects relating to determination of compensation. In any event, the extracted portion of the notification dated 28.08.2015 is explicit that the benefits available to the land owners under RFCTLARR Act is to be also available to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, among which NH Act is one. Hence all aspects contained in Section 26 to 28 of RFCTLARR Act for determination of compensation

will be applicable notwithstanding Section 3J and 3G(7)(a) of NH Act.

19. In that background, the award passed by the Arbitrator is to be examined keeping in view the limited scope available under Section 34 of Act, 1996 to interfere with an award. The learned Additional Solicitor General while attacking the award has sought to contend that the award suffers from patent illegality which is a ground to interfere with an award as provided under Section 34(2A) of Act, 1996, yet the District Judge and High Court has failed to interfere. To contend with regard to the facets which could be considered as patent illegality, reliance is placed on the decision in the State of Chhattisgarh vs. Sale Udyog Private Ltd. (2022) 2 SCC 275 with specific reference to paragraphs 14,15, 16 and 24 therein. The same is as hereunder:

"14. The law on interference in matters of awards under the 1996 Act has been circumscribed with the object of minimising interference by courts in arbitration matters. One of the grounds on which an award may be set aside is "patent illegality". What would constitute "patent illegality" has been elaborated in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204], where "patent illegality" that broadly falls under the head of "Public Policy", has been divided into three sub-heads in the following words:

"42. In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three sub-heads:

42.1 (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

28. Rules applicable to substance of dispute – (1) Where the place of arbitration is situated in India,-

(a) In an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;' 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3 (c) Equally, the third sub-head of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

'28. Rules applicable to substance of dispute- (1)- (2) * * * (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.' This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance

> with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground.

Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair- minded or reasonable person could do."

15. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI (Ssanguyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213], speaking for the Bench, R.F. Nariman, J. has spelt out the contours of the limited scope of judicial interference in reviewing the arbitral awards under the 1996 Act and observed thus :

> xxx
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> 37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.
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> 38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.
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> 39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 :
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> (2015) 2 SCC (Civ) 204], namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31 (3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28 (3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34

(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders {Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

16. In Delhi airport Metro Express (P) Ltd. [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131] referring to the facets of patent illegality, this Court has held as under :

> 29. Patent Illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality".

Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34 (2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair- minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

24. The patent illegality committed by the arbitrator was to apply the 2016 Guidelines which came into force after the issuance of the Section 3A notification, contrary to the mandate of Section 3G(7)(a) of the NH Act read with the proviso to Section 26(1) and Section 11 of the LA Act, 2013. In the seventh SLP bearing SLP(C) No.2503/2022, the 2018 Guidelines have been applied showing complete arbitrariness and whimsicality on the part of the arbitrators, resulting in wide inconsistency and uncertainty in the process relating to a common acquisition."

20. The learned Additional Solicitor General in order to contend with regard to the patent illegality has also relied on the decision in the case of NHAI vs. M. Hakeem & Anr. (2021) 9 SCC 1 and in Ssangyong Engineering & Construction Co. Ltd., V/ s. NHAI (2019) 15 SCC 131 holding that the

patent illegality appearing on the face of the award goes to the root of the matter. It is contended that if an Arbitrator gives no reasons for an award and contravenes Section 31(3) of Act 1996, the same would amount to patent illegality on the face of the award. In that light, it is contended that in the instant case there is no reason whatsoever given by the Arbitrator to rely upon the guideline value fixed in respect of another property for which value is indicated in a different serial number, instead of relying on the value for the same survey number. Without indicating reasons to draw a comparison with the land under acquisition, the same is applied though value of the very same lands containing same survey number was provided for in the same notification. Further, no opportunity was given to rebut the same.

21. On the aspect relating to the scope of examination of an award within the limited power to interfere provided under Section 34 of Act 1996, the learned senior counsel and other counsel for the claimants in order to contend that the award passed by the Arbitrator is sustainable in the instant case where the Arbitrator is none other than the Deputy Commissioner who has taken note of the market value in the vicinity, has relied on the decision of this Court in NHAI vs. M. Hakeem & Anr., (2021) 9 SCC

1. The decision in Emkay Global Financial Services Ltd. vs. Girdhar Sondhi (2018) 9 SCC 49 is relied to contend that the proceedings under Section 34 of Act, 1996 is summary in nature. Proceedings does not require framing of issues and leading evidence. The expression 'furnishes proof' in Section 34 is only to examine the record. However, what is to be noted by us is the manner in which the proceedings was conducted by the learned Arbitrator and whether that aspect has been properly appreciated in the proceedings under Section 34 and 37 of Act, 1996.

Reliance is placed on MMTC Ltd. vs-Vedanta Ltd. (2019) 4 SCC 163, wherein it is held that the jurisdiction under Section 34 is not as an appeal. Supreme Court should be slow to interfere with concurrent finding and the interference on merits is on limited grounds under Section34(2)(b)(ii). Patent illegality would mean contravention of 1996 Act and of terms of contract and illegality appearing on the face of the award but not by re-appreciation of evidence. In Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49 it is held that none of the grounds under Section 34 (2)(a) deal with merits of the decision rendered by an arbitral award. Interference is permissible only when findings of an arbitrator is arbitrary, capricious or perverse or when conscience of Court is shocked or when illegality is not trivial but goes to the root of the matter.

22. The case in Ssangyong Engineering and Construction Company Ltd. (supra) relied on by the learned Additional Solicitor General is also relied by the learned counsel for claimants to contend regarding limited scope. This Court, in that context has referred to the requirement to be complied in the proceedings before the arbitrator, which if not complied will be ground of challenge under Section 34(2)(a)(iii). We deem it appropriate to note the relevant observation which read as hereunder:-

> "51. Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a full opportunity to present its case. Under Section 24(3), all

> statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties. Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue.
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> 52. Under the rubric of a party being otherwise unable to present its case, the standard textbooks on the subject have stated that where materials are taken behind the back of the parties by the Tribunal, on which the parties have had no opportunity to comment, the ground under Section 34(2)(a)(iii) would be made out." Permissibility of interference is on specific grounds of (i) arbitrator not adopting judicial approach (ii) breach of principles of natural justice (iii) contravention of statute not linked to public policy or public interest, as being patent illegality under Section 34(2A) and (iv) most basic notions of justice.

The decision in Delhi Airport Metro Express Pvt. Ltd. vs. Delhi Metro Rail Corporation Ltd. (2022) 1 SCC 131 is relied upon to indicate that there should be minimal interference in arbitral awards, save, it suffers from patent illegality. What is patent illegality is delineated in para 29 which is as hereunder: -

> "29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorized as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

23. Having taken note of the rival contentions and while examining the scope available under Section 34 of Act 1996 in the backdrop of the precedents, what is also to be kept in perspective is the decision referred to in the case of NHAI vs. Sayedabad Tea Company Ltd. (2020) 15 SCC 16. In the said case, this Court while examining the question as to whether the land loser can seek the appointment of an Arbitrator in terms of Section 11 of Act, 1996, it was noted that such power would not be available in view of the provisions contained in Section 3G(5) of NH Act since Arbitrator is to be appointed by the Central Government to discharge its functions as per the provisions of the Arbitration and Conciliation Act. Having taken note of the said decision, though it is seen that it was held so while considering the maintainability of petition under Section 11 of the Act, 1996 to exclude the right of the land loser to seek the appointment of an Arbitrator keeping in view the statutory provision in the NH Act, the larger perspective of such limited right to the land loser in the process of arbitration is also to be kept in view. Unlike the arbitration in a contractual matter where the parties from the very inception at the stage of entering into a contract would mutually agree to refer any future dispute to an arbitrator, at that very stage are aware that in the event of any dispute arising between the parties the contours of the right, remedy, and scope from the commencement of the arbitration up to the conclusion through the judicial process. The terms of arbitration and the rights and obligations will also be a part of the agreement and a reference to the same in the award will constitute sufficient reasons for sustaining the award in terms of Section 31(3) of Act, 1996. Whereas, in the arbitration proceedings relating to NH Act, the parties are not governed by an agreement to regulate the process of arbitration. However, in the process of determination of just and fair compensation, the provisions in Section 26 to 28 of RFCTLARR Act, 2013 will be the guiding factor. The requirement therein being adverted to, should be demonstrated in the award to satisfy that Section 28(2) and 31(3) of Act, 1996 is complied. Therefore, what is also to be kept in perspective while noticing the validity or otherwise of an award regarding which the non-furnishing of reasons is contended as patent illegality is the reason assigned for determining just compensation in terms thereof. The situation which may arise in cases when a lesser compensation is determined in the arbitration proceedings and the land loser is complaining of the award is also to be kept in perspective since the requirement of reasons to be given by the learned Arbitrator in cases for determination of market value and compensation should indicate reasons since the same will have to be arrived at on a comparative analysis for which the reasons should be recorded and Section 26 to 28 of RFCTLARR Act will be relevant. Neither the land loser nor the exchequer should suffer in the matter of just and fair compensation. Hence the reasons under Section 31(3) is to be expected in that manner, the absence of which will call for interference under Section 34 of Act, 1996.

24. Leaving aside the facts in the instant case for a while, if in a matter as against the determination of the market value by the SLAO, the land loser had referred to the exemplar sale deeds and seeks higher compensation than prescribed in the guidance value, and in that circumstance, if no reasons are assigned by the learned Arbitrator for such determination and either approves the SLAO award or awards a lesser amount than the actual entitlement, in such circumstance the arbitration process which is thrust on the land loser should not be an impediment and limited interference should not be a reason to deny the just and fair compensation. In such cases while examining the award in the limited scope under Section 34 of Act, 1996, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of Section 31(3) and amount to

patent illegality. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013.

25. In that context it will be apposite to note the decision relied on by the learned Additional Solicitor General in Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd. (2019) 20 SCC 1 wherein inter alia it is held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
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> 35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award.

Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

36. At this juncture it must be noted that the legislative intention of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.

42. From the facts, we can only state that from a perusal of the award, in the facts and circumstances of the case, it has been rendered without reasons. However, the muddled and confused form of the award has invited the High Court to state that the arbitrator has merely restated the contentions of both parties. From a perusal of the award, the inadequate reasoning and basing the award on the approval of the respondent herein cannot be stated to be appropriate considering the complexity of the issue involved herein, and accordingly the award is unintelligible and cannot be sustained."

26. Under the scheme of the Act 1996 it would not be permissible to modify the award passed by the learned Arbitrator to enhance or reduce the compensation based on the material available on record in proceeding emanating from Section 34 of Act, 1996. The option would be to set aside the award and remand the matter. In this regard it would be apposite to take note of the observation in M. Hakeem (supra), as hereunder:-

> "42. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

27. In the above backdrop, the contention relating to 'patent illegality' in an award in terms of Section 34(2A) of Act 1996 as put forth by the learned Additional Solicitor General needs consideration. On such consideration, only if the award passed in the instant case falls foul of any such requirement so as to bring it within the power of review under Section 34 of Act 1996, the interference would be warranted. As noted, strong reliance is placed by the learned Additional Solicitor General to the decision in the case of State of Chhattisgarh (supra) to contend with regard to the different facets of patent illegality in an award including violation of requirement under Section 28(2) and 31(3) of Act 1996.

28. In order to demonstrate that the award passed in the instant case suffers from such patent illegality, the learned Additional Solicitor General has contended that the compensation determined by the SLAO is not just an offer as was the case under the Land Acquisition Act in view of the provision contained in Section 3G (5) of NH Act. In that regard, it is contended that Section 3G (5) is explicit that either of the parties if dissatisfied with the amount determined by the competent authority under sub-section (1) or sub-section (2) of Section 3G of NH Act are entitled to file an application to the Arbitrator appointed by the Central Government for determination. Hence, it is contended that unlike Section 18 of the Land Acquisition Act wherein the land loser alone could seek reference for enhancement of the compensation, under NH Act the acquiring authority is also granted the liberty of filing an application before the learned Arbitrator if the compensation determined by the SLAO is excessive. In that view, it is contended that when there is determination made by the SLAO based on the material available before him with opportunity to both the parties, such determination cannot be disturbed by the learned Arbitrator in a mechanical manner unless the award passed by SLAO is pointed out to be erroneous in law. In that regard, it is contended that in the instant case, the SLAO has taken into consideration the various sale deeds as exemplars to note the sale value of the property in different transactions relating to certain other properties situate in the area. Having thus assessed the average value, the SLAO has taken into consideration the guideline value of 2014 which was prior to the date of the acquisition notification and on finding that the guideline value of the property fixed for registration is more than the value for which sale transactions have been made, has adopted the guideline value as provided under Section 26(1)(a) of the RFCTLARR Act, 2013.

29. The learned senior counsel for the claimants however, sought to contend that even under the provisions of the Land Acquisition Act the determination of market value if was excessive, it was open for the Acquiring Authority to seek reference to determine the just compensation, wherein it was open to the reference court to determine the just compensation. In this regard, reliance is placed on the judgment of this Court in Abdul Karim Alarakha vs. State (1982) 3 SCC 227. In that light, a perusal of the said judgment would indicate that this Court while taking note of the facts therein under Section 18 of Rajasthan Land Acquisition Act held that the government also can seek reference as the scope was wider.

30. Be that as it may, in our opinion the mere provision as contemplated under Section 3G(5) of NH Act providing for either of the parties to assail the determination made by the SLAO by itself does not provide a better status to the award passed by the SLAO. Even the award passed by the SLAO under the provisions of NH Act would still continue to remain as an offer of compensation by the

Acquiring Authority to the land loser and the materials relied on by the SLAO even if discussed in detail does not provide the status of a judicially considered order so as to interfere with the same only if error is pointed out. It is not necessary to critically examine the award made by SLAO before considering enhancement. Notwithstanding the documents relied upon by the SLAO it would still be open for the learned Arbitrator to rely upon any additional material that may be brought before the learned Arbitrator not necessarily to point out an error in the consideration made by SLAO but such material could be considered despite the consideration made by the SLAO if such material aids in deciding just and fair compensation. Though, as contended by the learned Additional Solicitor General it is seen that in Tarsem Singh (supra) it is held that there is a regime change and the stage to offer an amount by way of compensation is removed, it only means that the process of award notice etc. from Section 9 to 15A, before possession under Section 16 of L.A. Act is removed, which only alters the procedure and enables immediate vesting of the land with the acquiring authority but does not take away the character of the SLAO award from being an offer of compensation. Hence, in the present case, though the SLAO has taken note of the guideline dated 07.11.2014 it would be open for the learned Arbitrator to take note of any other evidence that would be more relevant than the said guideline to re-determine the compensation in terms of the parameters under Sections 26 and 28 of RFCTLARR Act, 2013.

31. The further contention of the learned Additional Solicitor General is that the award passed by the learned Arbitrator is ex-facie erroneous amounting to patent illegality since the learned Arbitrator while re- determining the compensation has taken into consideration the guideline value as provided under the notification dated 28.03.2016. In that regard, it is contended that the notification under Section3A of NH Act was issued on 01.02.2016. The provision in Section 3G (7) of NH Act provides that the competent authority or the Arbitrator while determining the amount under sub-section (1) or sub-section (5) shall take into consideration the market value of the land as on the date of publication of the notification under Section 3A. It is contended, despite the said provision to consider the market value as on the date of the acquisition notification, the entire basis on which the learned Arbitrator has re-determined the compensation is based on a notification dated 28.03.2016 issued by the Department of Stamps and Registration which is notably the market value fixed on a date subsequent to the acquisition notification dated 01.02.2016. It is therefore, contended that the award passed by the learned Arbitrator would not be sustainable. That apart, a reference is made to para 49 and 50 in the case of M. Hakeem (supra) to contend that in fact this Court has indicated that the reliance placed on the guideline determining the market value for registration would not be justified. On that aspect it is necessary for us to clarify at this stage itself that such observation as contained in M. Hakeem (supra) is not made with reference to any provision of the Act. In contrast, a reference to Section 26(1)(a) of the RFCTLARR Act, 2013 indicates that the statutory provision itself provides for the market value specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreement to sell, in the area where the land is situated to be adopted by the Collector for assessing and determining the market value of the acquired land. In view of the said provision, it is open for the SLAO as well as the learned Arbitrator to rely upon the guideline and if the value provided therein is higher than the value of the property indicated from the other documents, it would be open to place reliance on the guideline issued for the purpose of the registration under the Stamp Act to determine the market value to be tendered as compensation for acquisition.

32. In that view, the question that would arise for consideration in the case on hand is as to whether the award passed by the learned Arbitrator would stand vitiated merely because the guideline dated 28.03.2016 which is marginally subsequent in point of time is reckoned, when the acquisition notification under Section 3A of NH Act was prior to the same i.e. on 01.02.2016. As already noted, Section 3G(7)(a) of NH Act provides for determination of the market value on the date of publication of the acquisition notification under Section 3A. In a normal circumstance, for the determination of the market value, the rate prevailing prior to the date of the notification shall be the basis more particularly when the determination is made based on sale exemplars, as otherwise there is a likelihood of manipulation with escalated price being dishonestly indicated in the subsequent transactions. While taking note of the documents relied on for the purpose of determination of the market value, the existence of appropriate documents in the facts of each case would also become relevant. In circumstances where a document which is proximal to the date of acquisition is not available, it would be open to rely on a document which is much prior in point of time and if the time gap is more, determination could be made by providing for reasonable escalation depending on the area wherein the acquired property is situate and nature of property. Similarly, in a circumstance where no document which is prior to the date of the acquisition notification is available and the exemplars are subsequent to the date of acquisition notification, the value therein could be noted and reasonable de-escalation be considered to determine the appropriate value. Needless to mention that no strait-jacket formula can be applicable to all cases with arithmetical precision in the matter of determination of compensation.

33. In that backdrop, in the instant case it is no doubt true that the notification issued by the Department of Stamps and Registration on 07.11.2014 is prior to the acquisition notification dated 01.02.2016. It is also to be noted that there was a time gap of more than one year between the two. In a normal circumstance, even if the notification dated 07.11.2014 was taken into consideration it would be open for the learned Arbitrator to consider certain amount of escalation to determine the market value. The said process could have been adopted if there was no other document. At this juncture, it is necessary to note that the SLAO in fact had relied on the said notification dated 07.11.2014 and determined the market value but had ignored the fact that the lands regarding which the market value was to be determined had been converted for purposes other than agriculture. The SLAO had therefore taken into consideration the registration value which had been fixed in respect of the agricultural property. In that light, firstly it would have been open for the learned Arbitrator to take note of the value fixed for the commercial/industrial lands under that notification itself and provide certain amount of escalation.

34. Notwithstanding such option of providing escalation to the already existing guideline value being available to the learned Arbitrator, what cannot be lost sight in the instant case is that, as evident from the notification dated 28.03.2016 the process for redetermining the guideline value had commenced through the notification bearing No.CBC-25/2014-15 dated 14.09.2015 and proceedings of the committee were also held during 2015-2016 which ultimately led to the notification dated 28.03.2016. Further, though the preliminary notification for acquisition was issued on 01.02.2016, the final notification under Section 3D of NH Act was issued on 23.09.2016. During the intervening period the guideline value notification dated 28.03.2016, the process for which had commenced through the notification dated 14.09.2015, was already published.

Furthermore, when all these proceedings were in close proximity to the date of the preliminary notification for acquisition and the revision of the market value by the Department of Stamps and Registration itself was within a period of one year and 4 months from the earlier guideline value published on 07.11.2014, it would indicate that the escalation which was otherwise open for being worked out and applied by the learned Arbitrator on taking note of the notification dated 07.11.2014 was undertaken by the Department of Stamps and Registration and the benefit of considering such escalation was available to the learned Arbitrator by taking note of the guideline dated 28.03.2016, though technically published on a date subsequent to the preliminary notification dated 01.02.2016. In that view of the matter, in the present facts and circumstances, the reliance placed on the guideline value notification dated 28.03.2016 for reckoning the market value of the property acquired under the preliminary notification dated 01.02.2016, by itself cannot be accepted to be a patent illegality committed by the learned Arbitrator.

35. It is also to be noted that though the notification is dated 01.02.2016 the award notice is dated 03.07.2017 by which time the guideline value notification dated 28.03.2016 was already in vogue.

36. Having arrived at the conclusion that the learned Arbitrator had not committed any illegality much less patent illegality in reckoning the guideline value notification dated 28.03.2016, the issue that would still remain for further consideration is as to whether an appropriate consideration has been made by the learned Arbitrator in the matter of applying the market value notified as a guideline value under the notification dated 28.03.2016 and as to whether the manner in which the said guideline was taken into consideration amounts to denial of opportunity to NHAI amounting to violation of principles of natural justice violating Section 28(2). The further aspect which requires consideration is also as to whether the guideline value fixed in respect of 'City Greens' and 'Zunadu' being applied automatically to the land in question was justified and as to whether the learned Arbitrator has indicated sufficient reasons to place such reliance since the non-assignment of reasons or discussion would also amount to patent illegality being contrary to Section 31(3) of Act, 1996.

37. To consider this aspect of the matter what is necessary to be taken note is that the SLAO had determined the compensation by taking note of the market value assigned to agricultural property under the notification dated 07.11.2014. The claimants were before the learned Arbitrator in terms of Section 3G(5) of the NH Act, a copy of which is available at Annexure-P6 to the appeal papers. The grievance essentially put forth in the claim petition is that the preliminary notification is dated 01.02.2016 and the notice of award for fixing the amount of compensation for the acquired land has been issued on 03.07.2017. In that light, it was contended that the market value of the non-agricultural lands adjoining the Bengaluru Mysuru National Highway such as the one owned by the claimant has increased considerably after the acquisition of the schedule land and accordingly the Registration Department has revised the guideline value. However, there is no reference to any specific notification relating to the guideline value much less the notification dated 28.03.2016. Further, there is no other indication to the manner in which the notification dated 28.03.2016 was brought on record though the said notification is published in the gazette. Comparison with lands in 'Zunadu' and 'City Greens' is also not pleaded. Further, as pointed out by the learned Additional Solicitor General the land situate in Madhapura and Mayaganahalli have been notified at serial Nos.

519, 524 and 525 respectively with reference the same survey number as that of the acquired land. The land value for 'Zunadu' and 'City Greens' are notified separately at Serial Nos.250 and 529. In that circumstance not just to place reliance on the notification dated 28.03.2016 but also to apply the value notified for 'Zunadu' and 'City Greens' to the acquired lands, necessary pleading in claim petition and evidence with opportunity to NHAI to rebut the same should have been placed before the learned Arbitrator. Based on the same a consideration in that regard was required to be made by the learned Arbitrator to arrive at a conclusion with regard to the applicability of the guideline value fixed under notification dated 28.03.2016 for the lands that had been converted to purposes other than agriculture. Further while applying the guideline value fixed for 'Zunadu' and 'City Greens' to the acquired lands by discarding guideline value for the same survey number, necessary evidence to derive comparison between the lands so as to apply the value fixed in respect of another item of land in the same notification was necessary to be brought on record and was to be considered by the learned Arbitrator by assigning reasons.

38. In that background a perusal of the award passed by the learned Arbitrator would indicate that the only discussion worth noting, after narration of the facts is contained in para 8 of the award which reads as hereunder:

> "8. On perusal of the written statement and documents produced by the applicant as well as the written statement and documents produced by the respondents, it is seen that the land in dispute has been acquired for the purpose of expansion of National Highway-275 and while rendering the Award, the price of the land in question has been arrived at, by considering it as dry land. However, since the land in question, even prior to the issue of 3(A) Land Acquisition Notification, has been converted for residential purpose as per Official Memorandum No.BDS/ALN/SR/89/91-92 dated 20.06.1992 of the Sub-Divisional Officer, Ramanagara Sub- Division, proper price has to be fixed by considering the lands in question as residential lands. This procedure has not been adopted. Further, by revising the market price, the Stamps and Registration Department has issued a Notification dated 28.03.2016 in respect of the lands belonging to City Greens situated in the Sy.Nos. coming under the said Mayaganahalli village wherein, the price of converted sites/sites of layouts approved by competent authority, has been fixed at Rs.15,400/- per Sq.Mtr. That their lands are more developed than the lands of Green City and has hence prayed for grant of compensation at a higher rate than the same. On perusal of the said Notification of the Stamps and Registration Department, it is seen that the price of the applicant's converted lands situated in the survey numbers of Mayaganahalli village is fixed at Rs.8,000/- per Sq. Mtr. and the price of the converted lands of Green City in the same village has been fixed at Rs.15,400/- per Sq. Mtr. Section 26 of the said Act clearly defines the procedure for fixing the market price. Even then, it could be seen that the applicant has not been given the fair price. Therefore, it is opined that instead of the present price fixed for the lands in question, its price has to be fixed on par with the rates fixed by the Stamps and Registration Department on the basis of land conversion value in respect of the similarly situated lands of the same village and that compensation be awarded accordingly.

Further, since the Award has been passed by fixing the value of the assets and structures existing on the lands in question as per the assessment of the concerned officers, the prayer of the applicant to enhance compensation for the same has been rejected and the following order is passed."

39. The above extracted portion of the award would demonstrate, prior to said finding being recorded, the learned Arbitrator has not referred to the manner in which the notification dated 28.03.2016 was brought on record and relied upon in the proceedings. The award, except for recording that the notification indicates the value fixed at Rs.8,000/- per sq.mtr in respect of converted land situate in the survey numbers of Mayaganahalli village and stating that the price of the converted lands of the Green City in the same village has been fixed at Rs.15,400/- per sq.mtr has not referred to any evidence relating to the comparability with that land despite noting the guideline value of Rs.8000/- fixed for claimant's land. The very fact that the layout is named as 'City Greens' and 'Zunadu' appears to be that the lands therein are situate in a self-contained and developed lay out with all civic amenities due to which it is separately indicated in the notification for specifically fixing the guideline value. Even if the lands belonging to the claimants is converted for residential purposes, value for the same was fixed in the notification by specifying the survey number. If the value as fixed under the guideline for 'City Greens' and 'Zunadu' was to be adopted as comparable land to the acquired land, necessary reasons ought to have been indicated in the award with reference to the evidence brought on record, with opportunity to NHAI to have their say on that aspect and reasons justifying such comparison should have been recorded. Further the manner in which the notification dated 28.03.2016 has been relied upon and the value fixed under the said notification in respect of two distinct layouts has been automatically made applicable to the lands in question despite noting the guideline value notified for the same survey number would indicate that the said exercise has been undertaken without sufficient opportunity to NHAI. Further, appropriate reasons have not been indicated by the learned Arbitrator to arrive at the conclusion to uniformly adopt the value of Rs.15,400/- per sq.mtr fixed in respect of lands in a layout which was separately indicated in the notification. As stated above, if there is evidence brought on record in the manner known to law with opportunity to the opposite side, it certainly would be open for the learned Arbitrator to adopt the said value. However, from the pleading in the claim petition and from the portion extracted from the award which is the only basis for the ultimate order made by the learned Arbitrator, it would indicate that the NHAI did not have sufficient opportunity before the learned Arbitrator to controvert the material sought to be relied upon by the learned Arbitrator nor has the learned Arbitrator indicated sufficient reasons which to that extent would indicate patent illegality in the award passed by the learned Arbitrator being contrary to Section28(2) and 31(3) of Act, 1996.

40. That being the fact situation and also the position of law being clear that it would not be open for the court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter to the learned Arbitrator in terms of Section 34(4) to keep in view these aspects of the matter and even if the notification dated 28.03.2016 relied upon is justified since we have indicated that the same could be relied upon, the further aspects with regard to the appropriate market value fixed under the said notification for the lands which is the subject matter of the acquisition or comparable lands is to be made based on appropriate evidence available before it and on assigning reasons for the conclusion to be reached by the learned Arbitrator. In that regard, all contentions of the parties are

left open to be put forth before the learned Arbitrator.

C.A. No.4681/2022 @ SLP(C)No.2503/2022 Leave granted.

41. In the instant case the land acquired is in Survey No.40/8, Kumbalagodu Village, Bengaluru, South Taluk, Bengaluru District, measuring 121 sq. mtr. The purpose of acquisition is the same as in the earlier cases and the consideration relating to determination of market value and award of compensation is also similar to those cases. However, in the instant case the acquisition is under a different preliminary notification dated 02.02.2016 and the final notification is dated 04.10.2016.

42. Insofar as determination of the market value, both by the SLAO and the learned Arbitrator, it is based on the guideline value notification dated 27.10.2014 published by the Department of Stamps and Registration as per which it is fixed at Rs.17,200/- sq. mtr. The guideline value notification relied upon in this case is prior to the acquisition notification and as such there is no grievance in that regard. Irrespective of the contentions put forth on behalf of the NHAI at this juncture, the award passed by the learned Arbitrator would disclose that the NHAI while opposing further enhancement by the learned Arbitrator had contended to sustain the determination of market value at Rs.17,200/- per sq. ft. made by the SLAO by contending that the market value determined is in accordance with law.

43. Hence, the issue that arises for consideration herein is only as to whether the course adopted by the learned Arbitrator to apply the subsequent notification dated 05.12.2018 issued by the Department of Stamps and Registration to reckon the special instructions contained in that notification so as to enhance the market value by 50% of the guidance value which is provided in the notification dated 27.10.2014 and thus arrive at the market value of Rs.25,800/- per sq. mtr. with the aid of two different guideline value notifications is justified.

44. The learned Additional Solicitor General has highlighted this aspect of the matter as patent illegality in passing the award in this case. It is contended that the learned Arbitrator has chosen to apply the Notification dated 05.12.2018 to consider enhancement by 50% for industrial land since it was not specifically provided for in the guideline, by relying on the special instruction in guideline of 2018. In such event, the guideline value which was much lesser in the notification of 2018 itself should have been taken into consideration. It is pointed out that the guideline value for residential land in the 2018 Notification works out to Rs.11,900/- per sq. mtr. If 50% of the same is added to derive the value for industrial land, it will be Rs.16,680/- per sq. mtr. But the learned Arbitrator has chosen to sustain Rs.17,200/- awarded by SLAO based on the guideline value of 2014 notification but relied on the 2018 notification to apply the 50% value addition of the same to determine market value for industrial land, which is not sustainable. It is contended that if Clause 6 of special instruction was applied the market value will work out to Rs.12,900/- i.e. 75% of Rs.17,200/-.

45. The learned counsel for the claimant contended, the fact remains that the industrial land belonging to the claimant has been acquired. It is contended, in the notification dated 27.10.2014 although Kumbalagodu Industrial Area is mentioned, the categories of land for which value has been indicated does not include industrial plot. As such the value for industrial plot is to be

determined by applying the provision made in special instructions. It is contended, though the learned Arbitrator has noted the special instruction under 2018 Notification, even under the 2014 Notification, the special instruction provides for addition of 50% to arrive at the value of industrial plot. Hence the enhancement to the tune of Rs.8600/- per sq. mtr. is justified.

46. Insofar as the learned Arbitrator having adopted the guideline issued in 2014, the same is prior to the date of the notification for acquisition and the aspects considered relating to date of notification in the earlier set of cases does not arise. Hence, it is justified. The value indicated at serial no.51 in the notification is for Kumbalagodu Industrial Area, but the value stated therein is for residential sites, the approval for which was obtained from the different authorities. Though reference is to Kumbalagodu Industrial Area, the value of the industrial plot has not been specified. It cannot also be assumed that the value indicated therein itself is for industrial site, since in the same entry in Serial No.51, the value of residential buildings is also indicated. Hence, in the absence of the SLAO undertaking the exercise for determining the market value of the industrial land which was acquired, the learned Arbitrator was required to do so.

47. The learned Arbitrator, however, while undertaking the said exercise, as evident from the award has relied on the market value at Rs.17,200/- sq. mtr. based on the guideline value Notification dated 27.10.2014. But for determining the market value, the special instructions in the notification dated 05.12.2018 is relied upon. Such procedure adopted is not justified and amounts to material irregularity on the face of the award. The learned counsel for the claimant contended that the learned Arbitrator though relied on 2018 notification, the Special Instruction No.3 in the 2014 notification also provides for adding 50% of the rates applicable if the acquired land is adjoining the National Highway.

48. Firstly, when we are of the opinion that the learned Arbitrator has committed patent illegality in applying two different notifications in determining the market value, keeping in view the scope available under Section 34 of Act, 1996 it would not be open for this Court to substitute our view to that of the learned Arbitrator and modify the award. Further, the learned Additional Solicitor General sought to refer to Special Instruction No.6 in the notification of 2014 to arrive at the market value even if it is accepted that the value of industrial land is not indicated in the notification. These are aspects to which the learned Arbitrator is required to advert so as to arrive at the conclusion. In the circumstance where we have opined that the award passed by the learned Arbitrator suffers from patent illegality and appropriate consideration is necessary, the only course open is to set aside the award and allow the learned Arbitrator to reconsider the matter on that aspect.

49. From the conclusion reached above, in both the set of cases it is evident that awards passed by the learned Arbitrator is to be set aside and the matters be remanded in terms of Section 34(4) of Act, 1996 so as to enable the learned Arbitrators to assign reasons to arrive at their conclusion. In this regard, it is made clear that we have approved the guideline value notification dated 28.03.2016 being reckoned for determining the market value. Hence, the claimants in any event would be entitled to determination of market value at the guideline value indicated vide notification dated 28.03.2016 for the respective properties in Madhapura, Mayaganahalli etc. as against what is awarded by SLAO if there is no other evidence indicating higher market value. The consideration to

be made by the learned Arbitrator however is as to the material and evidence if any available to treat the acquired land as comparable to the lands situate in 'City Greens' and 'Zunadu' layout and award the compensation based on the guidance value indicated for the lands in the said layout if found comparable. The reason for not applying the guideline value indicated for the lands in the very survey number of the acquired lands is to be disclosed on such consideration. Needless to mention that any other sale transaction if higher than the guideline value can also be considered to arrive at just and fair compensation. Since in any event the claimants would be entitled to higher amount than what was awarded by SLAO, the part of the amount awarded by the learned Arbitrator which was deposited before this Court and disbursed to the claimants will be subject to adjustment based on the quantum of compensation that would ultimately be decided by the learned Arbitrator. In the matter arising out of SLP No.2503/2022 the applicability of the appropriate special instruction, if any, is to be considered.

50. For all the aforesaid reasons, (i) the judgment dated 26.07.2021 in MFA. No.2040/2021(AA) and connected matters approving the Order dated 26.02.2021 in suits under Section 34 of Act, 1996 and in MFA No.2041/2021 (AA) approving order dated 27.01.2021 are set aside. Consequently, the awards dated 13.08.2019 and connected awards, and the award dated 06.01.2020 which are the subject matter in these appeals are set aside. (ii) The arbitration proceedings bearing Case Nos.:

> LAQ(A)/NH-275/CR/137/2017-18, LAQ(A)/NH-275/CR/134/2017-18, LAQ(A)/NH-275/CR/135/2017-18, LAQ(A)/NH-275/CR/132/2017-18, LAQ(A)/NH-275/CR/139/2017-18, LAQ(A)/NH-275/CR/41/2019-20 are remanded to the Deputy Commissioner and Arbitrator, NH-275, Ramanagar District, Ramanagar and Case No.LAQ/ARB/BNG/NH-275/CR-02/2/2018-19 is remanded to Deputy Commissioner and Arbitrator, Bangalore Rural District.
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> 51. The appeals accordingly are allowed in part with no order as to costs.
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> 52. The pending applications, if any, stand disposed of.

.....J. (INDIRA BANERJEE) .....J. (A.S. BOPANNA) New Delhi, July 11, 2022