REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7064 OF 2019
(ARISING OUT OF SLP (C) NO.9599 OF 2019)

Union of India & Anr. … Appellants

Versus

Tarsem Singh & Ors. … Respondents

With
CIVIL APPEAL NO.7068 OF 2019
(ARISING OUT OF SLP (C) NO.10210 OF 2019)
With
CIVIL APPEAL NO.7065 OF 2019
(ARISING OUT OF SLP (C) NO.9600 OF 2019)
With
CIVIL APPEAL NO.7066 OF 2019
(ARISING OUT OF SLP (C) NO.9602 OF 2019)
With
CIVIL APPEAL NO.7067 OF 2019
(ARISING OUT OF SLP (C) NO.9604 OF 2019)
With
CIVIL APPEAL NO.7084 OF 2019
(ARISING OUT OF SLP (C) NO.15478 OF 2019)
With
CIVIL APPEAL NO.7086 OF 2019
(ARISING OUT OF SLP (C) NO.15482 OF 2019)
With
CIVIL APPEAL NO.7081 OF 2019
(ARISING OUT OF SLP (C) NO.15472 OF 2019)
With
CIVIL APPEAL NO.7079 OF 2019
(ARISING OUT OF SLP (C) NO.15470 OF 2019)
With
CIVIL APPEAL NO.7070-7071 OF 2019
(ARISING OUT OF SLP (C) NOS.15442-15443 OF 2019)
With
CIVIL APPEAL NO.7104 OF 2019
(ARISING OUT OF SLP (C) NO.21689 OF 2019)
(D.NO.18425 OF 2019)

With

CIVIL APPEAL NO.7101 OF 2019

(ARISING OUT OF SLP (C) NO.21683 OF 2019)

(D.NO.18428 OF 2019)

With

CIVIL APPEAL NO.7090 OF 2019

(ARISING OUT OF SLP (C) NO.15488 OF 2019)

With

CIVIL APPEAL NO.7072-7073 OF 2019

(ARISING OUT OF SLP (C) NOS.15444-15445 OF 2019)

With

CIVIL APPEAL NO.7089 OF 2019

(ARISING OUT OF SLP (C) NO.15487 OF 2019)

With

CIVIL APPEAL NO.7085 OF 2019

(ARISING OUT OF SLP (C) NO.15479 OF 2019)

With

CIVIL APPEAL NO.7083 OF 2019

(ARISING OUT OF SLP (C) NO.15477OF 2019)

With

CIVIL APPEAL NO.7087 OF 2019

(ARISING OUT OF SLP (C) NO.15485 OF 2019)

With

CIVIL APPEAL NO.7082 OF 2019

(ARISING OUT OF SLP (C) NO.15474 OF 2019)

With

CIVIL APPEAL NO.7102 OF 2019

(ARISING OUT OF SLP (C) NO.21687 OF 2019)

(D.NO.18730 OF 2019)

With

CIVIL APPEAL NO.7078 OF 2019

(ARISING OUT OF SLP (C) NO.15466 OF 2019)

With

CIVIL APPEAL NO.7074 OF 2019

(ARISING OUT OF SLP (C) NO.15446 OF 2019)

With

CIVIL APPEAL NO.7075 OF 2019

(ARISING OUT OF SLP (C) NO.15447 OF 2019)

With

CIVIL APPEAL NO.7103 OF 2019

(ARISING OUT OF SLP (C) NO.21688 OF 2019)

(D.NO.19328 OF 2019)

With

CIVIL APPEAL NO.7080 OF 2019

(ARISING OUT OF SLP (C) NO.15471 OF 2019)

With

CIVIL APPEAL NO.7076 OF 2019

(ARISING OUT OF SLP (C) NO.15448 OF 2019)

With

CIVIL APPEAL NO.7077 OF 2019

(ARISING OUT OF SLP (C) NO.15450 OF 2019)

With

CIVIL APPEAL NO.7105 OF 2019

(ARISING OUT OF SLP (C) NO.21690 OF 2019)

(D.NO.19353 OF 2019)

With

CIVIL APPEAL NO.7088 OF 2019

(ARISING OUT OF SLP (C) NO.15486 OF 2019)

With

CIVIL APPEAL NO.7069 OF 2019

(ARISING OUT OF SLP (C) NO.14491 OF 2019)

With

CIVIL APPEAL NO.7092 OF 2019

(ARISING OUT OF SLP (C) NO.21662 OF 2019)

(D.NO.20552 OF 2019)

With

CIVIL APPEAL NO.7110 OF 2019

(ARISING OUT OF SLP (C) NO. 21696 OF 2019)

(D.NO.20561 OF 2019)

With

CIVIL APPEAL NO.7091 OF 2019

(ARISING OUT OF SLP (C) NO.21657 OF 2019)

(D.NO.20565 OF 2019)

With

CIVIL APPEAL NO.7094 OF 2019

(ARISING OUT OF SLP (C) NO.21664 OF 2019)

(D.NO.20573 OF 2019)

With

CIVIL APPEAL NO.7095 OF 2019

(ARISING OUT OF SLP (C) NO.21666 OF 2019)

(D.NO.20612 OF 2019)

With

CIVIL APPEAL NO.7097 OF 2019

(ARISING OUT OF SLP (C) NO.21671 OF 2019)

(D.NO.20617 OF 2019)

With

CIVIL APPEAL NO.7100 OF 2019

(ARISING OUT OF SLP (C) NO.21682 OF 2019)

(D.NO.20770 OF 2019)

With

CIVIL APPEAL NO.7099 OF 2019

(ARISING OUT OF SLP (C) NO.21675 OF 2019)

(D.NO.20775 OF 2019)

With

CIVIL APPEAL NO.7096 OF 2019

(ARISING OUT OF SLP (C) NO.21670 OF 2019)

(D.NO.20779 OF 2019)

With

CIVIL APPEAL NO.7098 OF 2019

(ARISING OUT OF SLP (C) NO.21673 OF 2019)

(D.NO.20783 OF 2019)

With

CIVIL APPEAL NO.7093 OF 2019

(ARISING OUT OF SLP (C) NO.21663 OF 2019)

(D.NO.20785 OF 2019)

With

CIVIL APPEAL NO.7109 OF 2019

(ARISING OUT OF SLP (C) NO.21695 OF 2019)

(D.NO.20817 OF 2019)

With

CIVIL APPEAL NO.7106 OF 2019

(ARISING OUT OF SLP (C) NO.21691 OF 2019)

(D.NO.20821 OF 2019)

With

CIVIL APPEAL NO.7107 OF 2019

(ARISING OUT OF SLP (C) NO.21692 OF 2019)

(D.NO.20939 OF 2019)

With

CIVIL APPEAL NO.7108 OF 2019

(ARISING OUT OF SLP (C) NO.21693 OF 2019)

(D.NO.20941 OF 2019)

JUDGMENT

R.F. NARIMAN, J.

1. Leave granted.

2. A batch of appeals before us by the Union of India question the view of the Punjab and Haryana High Court which is that the non-grant of solatium and interest to lands acquired under the National Highways Act, which is available if lands are acquired under the Land Acquisition Act, is bad in law, and consequently that Section 3J of the National Highways Act, 1956 be struck down as being violative of Article 14 of the Constitution of India to this extent.

3. The facts of one of these appeals may be taken up as illustrative of the points for consideration in all these appeals. In Union of India & Anr. v. Tarsem Singh & Ors. (Civil Appeal No. 7064 of 2019 @ SLP (C) No.9599 of 2019), a notification dated 24.12.2004 was issued under Section 3A of the National Highways Act, 1956 (hereinafter referred to as "the Act"), intending to acquire land belonging to the Respondents for the purpose of four-laning National Highway No.1-A on certain stretches of the Jalandhar-Pathankot section as well as the Pathankot-Jammu section falling within the State of Punjab. On 11th July, 2005, the said lands were declared to have vested in the State pursuant to Section 3D(2) of

the said Act. On 5th October 2006, the competent authority under the Act passed an Award in which compensation was calculated at Rs.4,219/- per marla or Rs.6.75 lakhs per acre. As this Award was disputed by the Respondents, an Arbitrator was appointed under the Act, who then arrived at a figure of Rs.1.5 lakhs per marla as compensation. It is important to note that as no solatium or interest is provided by the Act, such solatium and interest was not awarded by the learned Arbitrator. Meanwhile, a Section 34 application filed under the Arbitration Act by the Union of India was dismissed on the ground that it was hopelessly time-barred. On appeal to the Division Bench of the High Court, it was found on facts that as the amount of compensation awarded was not challenged in certain cases, the National Highways Authority of India being “State” under Article 12 of the Constitution cannot be permitted to pick and choose between persons similarly situate, as a result of which the appeal against valuation at the rate of 1.5 lakhs per marla was rejected. However, the Court deleted the grant of severance and 18% interest if the awarded amount is not paid within six months, following an earlier Division Bench judgment of the same Court. The Court then went on to state that despite the fact that no appeal has been filed against the learned Single Judge’s judgment by the owners, yet compensation for acquired land being in the nature of

beneficial legislation, they would be bound by an earlier Division Bench judgment which requires the National Highway Authority to pay solatium and, therefore, directed payment of solatium at the rate of 30%, as laid down in the said judgment.

4. Shri Shyam Divan, learned Senior Advocate appearing on behalf of the Union of India and NHAI, took us through the relevant provisions of the Land Acquisition Act, 1894 as well as the National Highways Act. According to him, the National Highways Act is a complete Code which expressly excluded the application of the provisions of the Land Acquisition Act, and this being so, it is clear that absent discrimination or manifest arbitrariness, the non-award of solatium and interest that is awardable under the Land Acquisition Act would not fall foul of Article 14 of the Constitution of India. According to the learned Senior Advocate, it is not possible to choose between one Acquisition Act and another, as the National Highways Act alone would apply when land is acquired for the purpose of National Highways. This being the case, all the judgments that are cited by the Punjab and Haryana High Court in M/s Golden Iron and Steel Forging vs. Union of India 2011 (4) RCR (*Civil*) 375, would, therefore, not apply. According to him, the Division Bench of the Rajasthan High Court in Banshilal Samariya

vs Union of India 2005-06 Supp RLW 559, correctly distinguished this line of cases and equally correctly followed a line of judgments under various state town planning Acts, the Requisitioning and Acquisition of Immovable Property Act, 1952 and the Defence of India Act, 1971 to arrive at the conclusion that solatium and interest need not be paid in cases covered under the National Highways Act. He further argued that given the fact that market value on the date of publication of the Section 3A notification was to be given at the full market rate, there could be no fundamental right violated as solatium and interest that are granted are mere statutory rights which can be awarded if the statute so enjoins, and equally need not be awarded where a separate special statute expressly excludes them. He also contended, somewhat feebly, that since only strips of land adjoining the National Highways were required to be acquired, in many cases, the landowners would have properties which would not be subject to acquisition left with them, obviating any need to pay solatium to them. Finally, he also referred to and relied upon Article 31-C of the Constitution to argue that if at all there was an infraction of Article 14, the Amendment Act of 1997 to the National Highways Act, 1956, enacting Sections 3A to 3J, being in furtherance of the Directive Principle contained in Article 39(b),

would be shielded from attack on the ground that Article 14 of the Constitution has been violated.

5. Shri Amit Sibal, learned Senior Advocate, together with Shri Neeraj Kumar Jain, defended the view of the Punjab and Haryana High Court in **M/s Golden Iron and Steel Forging** (supra) by pointing out that the object sought to be achieved by the 1997 Amendment Act to the National Highways Act, 1956 was far removed from the Directive Principle contained in Article 39(b) and, therefore, did not receive the protection of Article 31-C of the Constitution of India. They argued that the main object of the Amendment Act was the speedy implementation of Highway projects, which could only be achieved by expediting the process of land acquisition. This being the case, excluding solatium and interest that is awardable under the Land Acquisition Act results in a discrimination between persons who are similarly situate so far as lands are acquired by the Union of India from them for the purpose of national highways as opposed to other public purposes, having no rational relation to the object of the 1997 amendment. They were at pains to point out that “solatium” is awarded because of the compulsory nature of acquisition, which is present whether the land is acquired for the National Highways or for any other public

purpose. They, therefore, argued that solatium and interest are integral parts of compensation that is awardable to persons whose lands have been compulsorily expropriated. They took us through the provisions of the Requisitioning and Acquisition of the Immovable Property Act, 1952 and the Defence of India Act, 1971, and stated that the judgments that were delivered under those Acts, which upheld the non-grant of solatium, was because requisition was first made of private property for public purposes under those Acts, for which compensation was granted. Possession having been taken by the State, such properties could be handed back under those Acts once the purpose of requisitioning such properties was over. Also, it was only in very limited circumstances that such requisitioned property was to be acquired, which, therefore, obviated payment of any solatium. They, therefore, relied upon the line of authorities which struck down provisions of statutes which did not grant solatium where land was acquired without first being requisitioned. They also took us through the judgment of the Division Bench of the Rajasthan High Court and pointed out that this basic distinction between the two sets of applicable precedents was not properly appreciated, leading the High Court to follow the wrong line of authority. On merits, they argued that in some cases in the Supreme Court itself, the then Solicitor General, Shri Ranjit Kumar,

expressly stated that solatium will be paid to some of the persons who are covered by notifications under Section 3A of the National Highways Act. This apart, as was correctly observed by the Division Bench of the Punjab and Haryana High Court in the impugned judgment, the National Highway Authority being "State" under Article 12 of the Constitution of India, cannot file objections in certain cases and accept arbitration awards in others. In any case, no case has been made out under the limited jurisdiction to challenge arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996.

6. Having heard the learned counsel on both sides, it is necessary to first mention that the National Highways Act, 1956, as originally enacted, did not provide for acquisition of land. Thus, till the National Highways Laws (Amendment) Act, 1997, all acquisitions for the purpose of National Highways were made under the Land Acquisition Act, and the owners were given, in addition to market value, solatium as well as interest under the provisions of that Act.

7. Coming to the Amendment Act of 1997, it is important to set out the Objects and Reasons that led to the aforesaid amendment. They are:

“1. In order to create an environment to promote private investment in national highways, to speed up construction of highways and to remove bottlenecks in their proper management, it was considered necessary to amend the National Highways Act, 1956 and the National Highways Authority of India Act, 1988.

2. One of the impediments in the speedy implementation of highways projects has been inordinate delay in the acquisition of land. In order to expedite the process of land acquisition, it is proposed that once the Central Government declares that the land is required for public purposes for development of a highway, that land will vest in the Government and only the amount by way of compensation is to be paid and any dispute relating to compensation will be subject to adjudication through the process of arbitration.

3. It was also felt necessary to ensure continuity of the status of bypasses built through private investment. To achieve this, it is proposed to amend the National Highways Act, 1956 so as to include the highway stretches situated within any municipal area as a part of National Highway. Further, as the National Highways Act, 1956 permits participation of the private sector in the development of the National Highways, it became imperative to amend the National Highways Authority of India Act, 1988 so as to provide that the National Highway Authority of India may seek the participation of the private sector in respect of the highways vested in the Authority.

4. With a view to provide adequate capital and loans to the National Highways Authority of India by the Central Government, it is proposed to make amendment in the National Highways Authority of India Act, 1988.

5. With a view to achieve the above objectives and also as both Houses of Parliament were not in session and the President was satisfied that circumstances existed which rendered it necessary for him to take immediate

action, the National Highways Laws (Amendment) Ordinance, 1997 was promulgated by the President on the 24th day of January, 1997.

6. The Bill seeks to replace the aforesaid Ordinance."

8. Pursuant to this, the amendments that were made to the National Highways Act, 1956 with which we are directly concerned, are set out hereinbelow:

"3. Definitions. In this Act, unless the context otherwise requires,-

(a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;

(b) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

3A. Power to acquire land, etc. - (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3B. Power to enter for survey, etc.- On the issue of a notification under sub-section (1) of section 3A, it shall

be lawful for any person, authorised by the Central Government in this behalf, to—

(a) make any inspection, survey, measurement, valuation or enquiry;

(b) take levels;

(c) dig or bore into sub-soil;

(d) set out boundaries and intended lines of work;

(e) mark such levels, boundaries and lines placing marks and cutting trenches; or

(f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C. Hearing of objections - (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, it any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.--For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3D. Declaration of acquisition- (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified

therein or where the competent authority has disallowed the objection under subsection (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3E. Power to take possession.- (1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3F. Right to enter into the land where land has vested in the Central Government. - Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation.- (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent

authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(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.

3H. Deposit and payment of amount. - (1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the

provisions of sub-sections (2) to (4) shall apply to such deposit.

3-I. Competent authority to have certain powers of civil court.- The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

3J. Land Acquisition Act 1 of 1894 not to apply.- Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act."

9. Keeping in view the object of reducing delay and speedy implementation of highway projects, the amended National Highways Act does away with any "award" by way of an offer to the landowner. Post the notification under Section 3A, objections are to be heard by the competent authority, whose order is then made final. The moment the authority disallows the objections, a report is submitted to the Central Government, and on receipt of such report, the Central Government, by a declaration, states that the land should be acquired for the purpose mentioned in Section 3A. The

important innovation made by the Amendment Act is that vesting is not postponed to after an award is made by the Competent Authority. Vesting takes place as soon as the Section 3D declaration is made. One other important difference between the Amendment Act and the Land Acquisition Act is that determination of compensation is to be made by the competent authority under the Amendment Act which, if not accepted by either party, is then to be determined by an Arbitrator to be appointed by the Central Government. Such arbitrator's Award is then subject to challenge under the Arbitration and Conciliation Act, 1996. Thus, delays in references made to District Judges and appeals therefrom to the High Court and Supreme Court have been obviated. Section 3G(7) does not provide for grant of solatium, and Section 3H(5) awards interest at the rate of 9% on the excess amount determined by the arbitrator over what is determined by the competent authority without the period of one year contained in the proviso to Section 28 of the Land Acquisition Act, after which interest is only awardable at the rate of 15% per annum, if such payment is made beyond one year.

10. Before embarking on a discussion as to the constitutional validity of the Amendment Act, it is important to first understand

what is meant by the expression “solatium”. In Sunder vs Union of India (2001) 7 SCC 211, a bench of 5 judges of this Court laid down the nature of solatium as follows:

> “21. It is apposite in this context to point out that during the enquiry contemplated under Section 11 of the Act the Collector has to consider the objections which any person interested has stated pursuant to the notice given to him. It may be possible that a person so interested would advance objections for highlighting his disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide “in consideration of the compulsory nature of the acquisition”.
>
> 22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling, normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the court fixes as per the provisions of the Act. The solatium envisaged in sub-

> section (2) “in consideration of the compulsory nature of the acquisition” is thus not the same as damages on account of the disinclination to part with the land acquired.”

Thus, the solatium that is paid to a landowner is on account of the fact that a landowner, who may not be willing to part with his land, has now to do so, and that too at a value fixed legislatively and not through negotiation, by which, arguably, such land owner would get the best price for the property to be sold. Once this is understood in its correct perspective, it is clear that “solatium” is part and parcel of compensation that is payable for compulsory acquisition of land.

11. As has been stated by us hereinabove, solatium and interest were awarded to landowners for compulsory acquisition of their lands for the purpose of National Highways until the 1997 Amendment Act. Interestingly, after the Land Acquisition Act has been repealed and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into force, Section 105 of the said Act provides as under:

> “105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.- (1) Subject to sub-section (3), the provisions of this Act shall not apply

to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), 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."

12. The First Schedule to the said Act provides that solatium equivalent to 100% of the market value multiplied by various factors,

depending on whether the land is situated in a rural or urban area, constitutes minimum compensation package to be given to those whose land is acquired. The Fourth Schedule to this Act, to be read along with Section 105, expressly includes under Item 7, the National Highways Act, 1956. In Item 9, this Schedule also includes The Requisitioning and Acquisition of Immovable Property Act, 1952. By a notification dated 28th August, 2015 issued under Section 105 read with Section 113 of the 2013 Act, it is provided that the 2013 Act compensation provisions will apply to acquisitions that take place under the National Highways Act. The result is that both before the 1997 Amendment Act and after the coming into force of the 2013 Act, solatium and interest is payable to landowners whose property is compulsorily acquired for purposes of National Highways. This is one other very important circumstance to be borne in mind when judging the constitutional validity of the 1997 Amendment Act for the interregnum period from 1997 to 2015.

Article 31-C

13. Articles 31-C and 39(b) of the Constitution of India read as under:

> "31C. Saving of laws giving effect to certain directive principles.- Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:
>
> Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

> "39. Certain principles of policy to be followed by the State.– The State shall, in particular, direct its policy towards securing -
>
> xxx xxx xxx
>
> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> xxx xxx xxx"

An interesting discussion is contained in Sanjeev Coke Manufacturing Company vs Bharat Coking Coal Ltd. & Anr (1983) 1 SCR 1000 at pages 1023 to 1025, on the scope of the expression "material resources of the community" and the expression "distribute" that are used in Article 39(b). Finally, the Court held:

> "We hold that the expression 'Material resources of the community' is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned." (at page 1026)

However, we were referred to three judgments in **Property Owners' Association v. State of Maharashtra**. In the first of these judgments reported in (1996) 4 SCC 49, this Court has referred the matter to five learned Judges on the vexed question as to whether Article 31-C survived at all in view of the declaration contained in **Minerva Mills v. Union of India** 1981 (1) SCR 206 to the effect that the amended Article 31-C was constitutionally invalid. As the aforesaid declaration would not revive the original Article 31-C, the Article became a dead letter. When the same case travelled to five learned Judges reported in (2001) 4 SCC 455, this Court was of the opinion that the views expressed in **Sanjeev Coke** (supra) require reconsideration in view of the fact that **Sanjeev Coke** (supra) adopted the reasoning of Krishna Iyer, J. in State of Karnataka vs Shri Ranganatha Reddy (1977) 4 SCC 471 and not the reasoning of the majority judgment of Untwalai, J. who stated that he must not be understood to agree with all that has been said by Krishna Iyer, J. in his judgment. The Court, therefore, referred the matter to seven learned Judges. When the matter came up before the seven

learned Judges, reported in (2013) 7 SCC 522, this Court held that the statement made in **Sanjeev Coke** (supra), followed by several other judgments, that the "material resources of the community" would include privately owned resources, would be *prima facie* incorrect and hence the matter was referred to nine learned Judges of this Court, which reference is still pending. We have not deemed it necessary to refer this case to be tagged along with the reference to nine learned Judges, as we will assume for the purpose of this case that Article 31-C, as originally enacted, continues to exist and that the "material resources of the community" would include private property as well.

14. Shri Divan next referred us to State of Tamil Nadu vs L. Abu Kavur Bai (1984) 1 SCC 515, which held that the Tamil Nadu Stage Carriage and Contract Carriages (Acquisition) Act, 1973 was protected by Article 31-C of the Constitution of India. This was held on the footing that a nationalisation measure would fall within Article 39(b) as the word "distribution" is a word of extremely wide import, which would include nationalisation of transport as a distributive process for the good of the community. This situation is far removed from the Amendment Act to the National Highways Act in the present case, which is not a nationalisation measure at all, but is a measure to speed up the acquisition process. Shri Divan then

relied upon this Court's judgment in Maharashtra SEB vs Thana Electric Supply Co. (1989) 3 SCC 616, in which the Indian Electricity (Maharashtra Amendment) Act, 1976 was engrafted on to the Electricity Act, 1910, the effect of which was to substitute market value of the undertaking that was compulsorily acquired, with the concept of an "amount", which was the book value of the undertaking at the time of its delivery. Even as per this Act, by virtue of the compulsory acquisition of the undertaking, the licensee was given a solatium of 10% of such book value. Importantly, this Court, after holding that nationalisation would come within the expression "distribution" for the purposes of Article 39(b), engrafted another test when legislation claims the protection of Article 31-C. The Court held that the protection of Article 31-C is accorded only to those provisions which are basically and essentially necessary for giving effect to the objects of Article 39(b) – See paragraph 43. This case is again distinguishable for the same reason as pointed out qua State of Tamil Nadu v. L. Abu Kavur Bai (supra) as this is a nationalisation measure far removed from the object of the 1997 Amendment Act to the National Highways Act. It is interesting to note that despite the fact that a challenge under Articles 14 and 31 were bound to fail in view of the protective umbrella of Article 31-C, yet the Amendment Act had still provided for 10% solatium as the

legislature had correctly appreciated that solatium is a part of compensation given for the compulsory nature of acquisition of property.

15. Shri Divan then referred us to Tinsukhia Electric Supply Co. Ltd. vs State of Assam (1989) 3 SCC 709, in which the Indian Electricity (Assam Amendment) Act, 1973 and the Tinsukhia and Dibrugarh Electric Supply Undertakings (Acquisition) Act, 1973 were challenged. These being nationalisation measures, this Court held that these enactments were entitled to the protection of Article 31-C. This nationalisation statute, again, is very far removed from the Amendment Act, 1997 to the National Highways Act.

16. It is well-settled that in order that a law avail of the protection of Article 31-C, it is not necessary that any declaration be made in that behalf. (See State of Maharashtra vs Basantibai Mohanlal Khetan (1986) 2 SCC 516 at 530). It is also important to remember that in order that a law be shielded by Article 31-C, the said law must have a direct and rational nexus with the principles contained in Article 39(b). (See Assam Sillimanite Ltd. vs Union of India 1991 Supp 3 SCR 273 at 290)

17. An example of a law which claimed the benefit of Article 31-C, but was denied such benefit is set out in Dr K. R. Lakshmanan vs State of Tamil Nadu (1996) 2 SCC 226 as follows:

> "44. The main object for which the Club was established is to carry on the business of race-club, in particular the running of horse-races, steeplechases or races of any other kind and for any kind of athletic sports and for playing their own games of cricket, bowls, golf, lawn tennis, polo or any other kind of games or amusement, recreation, sport or entertainment etc. In the earlier part of this judgment, we have noticed the working of the Club which shows that apart from 5% commission from the totalizator and the bookmakers no part of the betting-money comes to the Club. The Club does not own or control any material resources of the community which are to be distributed in terms of Article 39(b) of the Constitution of India. There are two aspects of the functioning of the Club. One is the betting by the punters at the totalizator and with the bookies. The Club does not earn any income from the betting-money except 5% commission. There is no question whatsoever of the Club owning or controlling the material resources of the community or in any manner contributing towards the operation of the economic system resulting in the concentration of wealth and means of production to the common detriment. The second aspect is the conduct of
>
> horse-races by the Club. Horse-racing is a game of skill, the horse which wins the race is given a prize by the Club. It is a simple game of horse-racing where the winning horses are given prizes. Neither the "material resources of the community" nor "to subserve the common good" has any relevance to the twin functioning of the Club. Similarly, the operation of the Club has no relation or effect on the "operation of the economic system". There is no question whatsoever of attracting the Directive Principles contained in Article 39(b) and (c) of the Constitution. The declaration in Section 2 of the Act and the recital containing aims and objectives totally

> betray the scope and purpose of Article 39(b) and (c) of the Constitution. While Article 39(b) refers to "material resources of the community", the aims and objects of the Act refer to "the material resources of the Madras Race Club". It is difficult to understand what exactly are the material resources of the race-club which are sought to be distributed so as to subserve the common good within the meaning of the Directive Principles. Equally, the reference to Article 39(c) is wholly misplaced. While Article 39(c) relates to "the operation of the economic system … to the common detriment", the aims and objectives of the Act refer to "the economic system of the Madras Race Club". What is meant by the economic system of the Madras Race Club is not known. Even if it is assumed that betting by the punters at the totalizator and with the bookmakers is part of the economic system of the Madras Race Club, it has no relevance to the objectives specified in Article 39(b) and (c). We are, therefore, of the view that reference to Article 39(b) and (c) in the aims and objects and in Section 2 of the Act is nothing but a mechanical reproduction of constitutional provisions in a totally inappropriate context. There is no nexus so far as the provisions of the 1986 Act are concerned with the objectives contained in Article 39(b) and (c) of the Constitution. We, therefore, hold that the protection under Article 31-C of the Constitution cannot be extended to the 1986 Act."

This is despite the fact that the impugned enactment, namely, the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 contained a declaration that it was enacted to give effect to the policy of the State under Article 39(b) and (c).

18. When we examine the Objects and Reasons which led to the 1997 amendment of the National Highways Act, we do not find mentioned therein any object relating to distribution of the material

resources of the community. The object of the Amendment Act has no relationship whatsoever to the Directive Principle contained in Article 39(b), inasmuch as its limited object is to expedite the process of land acquisition by avoiding inordinate delays therein. The object of the Amendment Act was not to acquire land for the purpose of national highways as, pre-amendment, the Land Acquisition Act provided for this. The object of the Amendment Act was fulfilled by providing a scheme different from that contained in the Land Acquisition Act, making it clear that the stage of offer of an amount by way of compensation is removed altogether; vesting takes place as soon as the Section 3D notification is issued; and most importantly, the tardy Court process is replaced by arbitration. Obviously, these objects have no direct and rational nexus with the Directive Principle contained in Article 39(b). Article 31-C is, therefore, out of harm's way. Even otherwise, on the assumption that Article 31-C is attracted to the facts of this case, yet, as was held by Bhagwati, J. in **Minerva Mills Ltd. v. Union of India** 1981 (1) SCR 206,

> "…it is not every provision of a statute, which has been enacted with the dominant object of giving effect to a directive principle, that it entitled to protection, but only those provisions of the statute which are basically and essentially necessary for giving effect to the directive

> principle are protected under the amended Article 31-C" (at page 338-339)

This passage was specifically referred to in Tinsukhia Electric Supply Co. Ltd. vs State of Assam (1989) 3 SCC 709 at 735. Also, in Maharashtra State Electricity Board vs Thana Electric Supply Co. (1989) 3 SCC 616, at para 43, this Court said:

> "43. The idea of nationalisation of a material resource of the community cannot be divorced from the idea of distribution of that resource in the community in a manner which advances common good. The cognate and sequential question would be whether the provisions of the Amending Act, 1976, had a reasonable and direct nexus with the objects of Article 39(b). It is true, the protection of Article 31-C is accorded only to those provisions which are basically and essentially necessary for giving effect to the objects of Article 39(b). The High Court from the trend of its reasoning in the judgment, appears to take the view that while the provision for the takeover in the principal Act might amount to a power to acquire, however, the objects of the Amending Act of 1976, which merely sought to beat down the price could not be said to be part of that power and was, therefore, incapable of establishing any nexus with Article 39(b). There is, we say so with respect, a fallacy in this reasoning."

The test of Article 31-C's protection being accorded only to those provisions which are basically and essentially necessary for giving effect to the objects of Article 39(b) is lifted from Akadasi Padhan vs State of Orissa 1963 Supp. (2) SCR 691, where this Court held, with reference to Article 19(6), that qua laws passed creating a State

monopoly, it is only those essential and basic provisions which are protected by the latter part of Article 19(6). This Court stated the test thus:

> "17. In dealing with the question about the precise denotation of the clause "a law relating to", it is necessary to bear in mind that this clause occurs in Article 19(6) which is, in a sense, an exception to the main provision of Article 19(1)(g). Laws protected by Article 19(6) are regarded as valid even though they impinge upon the fundamental right guaranteed under Article 19(1)(g). That is the effect of the scheme contained in Article 19(1) read with Clauses (2) to (6) of the said Article. That being so, it would be unreasonable to place upon the relevant clause an unduly wide and liberal construction. "A law relating to" a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion, the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the said part and their validity must be judged under the first part of Article 19(6). In other words, the effect of the amendment made in Article 19(6) is to protect the law relating to the creation of monopoly and that means that it is only the provisions of the law which are integrally and essentially connected with the creation of the monopoly that are protected. The rest of the provisions which may be incidental do not fall under the latter part of Article 19(6) and would inevitably have to satisfy the test of the first part of Article 19(6)." (at page 707)

Even if the Amendment Act, 1997 be regarded as an Act to carry out the purposes of Article 39(b), the object of the Amendment Act is not served by removing solatium and interest from compensation to be awarded. It is obvious, therefore, that the grant of compensation without solatium and interest is not basically and essentially necessary to carry out the object of the Amendment Act, 1997, even if it is to be considered as an acquisition Act pure and simple, for the object of the said Amendment Act as we have seen is to obviate delays in the acquisition process of acquiring land for National Highways. On application of this test as well, it is clear that the grant of compensation without solatium and interest, not being basically and essentially necessary to carry out the object of the Amendment Act, would not receive the protective umbrella of Article 31-C and, therefore, any infraction of Article 14 can be inquired into by the Court.

Article 14 - Discrimination

19. The sheet anchor of the case of the Respondents is the Constitution Bench judgment in P. Vajravelu Mudaliar vs Special Deputy Collector for Land Acquisition (1965) 1 SCR 614 and Nagpur Improvement Trust vs Vithal Rao (1973) 1 SCC 500. It is,

therefore, most important to advert to these two decisions in some detail.

20. In **P. Vajravelu Mudaliar** (supra), the Madras Legislature amended the Land Acquisition Act providing for acquisition of land for housing schemes by laying down principles for fixing compensation different from those prescribed in the principal Act. These differences are set out in the judgment as follows:

> "The next question is whether the amending Act was made in contravention of Article 31(2) of the Constitution. The amending Act prescribes the principles for ascertaining the value of the property acquired. It was passed to amend the Land Acquisition Act, 1894, in the State of Madras for the purpose of enabling the State to acquire lands for housing schemes. "Housing scheme" is defined to mean "any State Government scheme the purpose of which is increasing house accommodation" and under Section 3 of the amending Act, Section 23 of the principal Act is made applicable to such acquisition with certain modifications. In Section 23 of the principal Act, in sub-section (1) for clause *first,* the following clause is substituted:
>
> > "*first*, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1) or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less."
>
> After clause *sixthly*, the following clause was added:
>
> > "*seventhly*, the use to which the land was put at the date of the publication of the notification under Section 4, sub-section (1)."

Sub-section (2) of Section 23 of the principal Act was amended by substituting the words, in respect of solatium, “fifteen per centum” by the words “five per centum”. In Section 24 of the principal Act after the clause seventhly the following clause was added:

> “*eighthly*, any increase to the value of the land acquired by reason of its suitability or adaptability for any use other than the use to which the land was put at the date of the publication of the notification under Section 4, sub-section (1).”

Under Section 4 of the amending Act, the provisions of Section 3 thereof shall apply to every case in which proceedings have been started before the commencement of the said Act and are pending. The result of the amending Act is that if the State Government acquires a land for a housing purpose, the claimant gets only the value of the land at the date of the publication of the notification under Section 4(1) of the principal Act or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less. He will get a solatium of only 5 per centum of such value instead of 15 per centum under the principal Act. He will not get any compensation by reason of the suitability of the land for any use other than the use for which it was put on the date of publication of the notification.” (at page 629 & 630)

A challenge made to the said Amendment Act on the ground that it is hit by Article 14 succeeded, the Court holding:

> “Now what are the differences between persons owning lands in the Madras city or between the lands acquired which have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences

based upon the said criteria have no relevance to the object of the Amending Act. To illustrate: the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a university or for a network of hospitals under the provisions of the principal Act and also for a housing scheme under the Amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the amending Act and the other for a hospital under the principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the principal Act and the other under the Amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the amending Act. So too, for a public purpose any such land can be acquired under the principal Act. We, therefore, hold that discrimination is writ large on the amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold

> that the amending Act clearly infringes Article 14 of the Constitution and is void." (at page 634 & 635)
>
> (Emphasis supplied)

21. In **Nagpur Improvement Trust** (supra), this Court referred to the Nagpur Improvement Trust Act, under which lands were to be acquired with reference to the Land Acquisition Act, as modified. We are concerned in this case with the modification that has to do with acquisition for the purposes of the Improvement Act, which did not provide for solatium of 15% that would have been obtained under the Land Acquisition Act. A Seven-Judge Bench of this Court examined the matter in some detail, and followed **P. Vajravelu Mudaliar** (supra) together with another judgment, Balammal vs State of Madras (1969) 1 SCR 90. The Court held:

> "27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?
>
> 28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

> 29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.
>
> 30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14."

22. Both, **P. Vajravelu Mudaliar** (supra) and **Nagpur Improvement Trust** (supra) clinch the issue in favour of the Respondents, as has been correctly held by the Punjab and

Haryana High Court in **M/s Golden Iron and Steel Forging** (supra). 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.

23. Even otherwise, in **P. Vajravelu Mudaliar** (supra), despite the fact that the object of the Amendment Act was to acquire lands for housing schemes <u>at a low price,</u> 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.

24. **Nagpur Improvement Trust** (supra) 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.

25. A contention was taken by Shri Divan in that Article 31-A second proviso would make it clear that compensation at a rate which shall not be less than the market value would be payable only in the circumstances mentioned therein and not otherwise. For this reason, the **Nagpur Improvement Trust** case is distinguishable, as one of the instances given therein is that it would not be possible to discriminate between landowners who are similarly situate by giving one landowner compensation at let us say 60% of the market value and the other owner 100% of the market value.

26. The **Nagpur Improvement Trust** case has to be read as a whole. Merely emphasising one example from the passages that have been extracted above (supra) will not make the ratio of the said judgment inapplicable. Besides, the second proviso to Article 31-A deals with persons whose lands are acquired when such person is cultivating the same personally. The reason for awarding compensation at a rate which is not less than market value is in order that a farmer, who is cultivating the land personally, gets other land of equivalent value, which he can then cultivate personally. As such farmer is at the centre of agrarian reform legislation, such

legislation would be turned on its head if lands were to be acquired without adequately compensating him instead of from absentee landlords whose lands are then to be given to the landless and to such persons if they personally cultivate lands less than the ceiling area under State Agricultural Ceiling Acts. We think that any reference to the second proviso of Article 31-A is wholly irrelevant to the question before us and cannot under any circumstance be used in order to distinguish a judgment which otherwise applies on all fours.

27. However, it was argued that a line of judgments have distinguished **P. Vajravelu Mudaliar** (supra) and **Nagpur Improvement Trust** (supra) and that this line of judgments should be followed in preference to the aforesaid two judgments.

28. In Union of India vs Hari Krishnan Khosla 1993 Supp (2) SCC 149, this Court upheld the Requisitioning and Acquisition of Immovable Property Act, 1952 and stated that non-grant of solatium and interest which were otherwise grantable under the Land Acquisition Act would not render the 1952 Act constitutionally infirm. The Court undertook a minute distinction between the Land Acquisition Act on the one hand and the 1952 Act on the other. Thus, the Court stated:

"43. Coming to dissimilarities, in the case of requisition, one of the important rights in the bundle of rights emanating from ownership, namely, the right to possession and enjoyment has been deprived of, when the property was requisitioned. It is minus that right for which, as stated above, the compensation is provided under Section 8(2), the remaining rights come to be acquired.

44. In contradistinction under the Land Acquisition Act, as stated above, the sum total of the rights, namely, the ownership itself comes to be acquired. We may usefully quote from Salmond on Jurisprudence (1966) 12th Edn., Chapter 8 at pages 246-247:

> "Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. Though in certain situations some of these rights may be absent, the normal case of ownership can be expected to exhibit the following incidents.
>
> First, the owner will have a right to possess the thing which he owns….
>
> Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it ….
>
> * * *
>
> Fifthly, ownership has a residuary character. If, for example, a landowner gives a lease of his property to A, an easement to B and some other right such as a profit to C, his ownership now consists of the residual rights, i.e., the rights remaining when all these lesser rights have been given away …."

45. Then again, under the Act, the acquisition even though it is for a public purpose is restricted to the two clauses of Section 7(3) of the Act to which we have

already made a reference. Thus two clauses of Section 7(3) constitute statutory embargo.

46. Under the Land Acquisition Act, the power of eminent domain could be exercised without any embargo so long as there is an underlying public purpose. In our considered view, these vital distinctions will have to be kept in mind while dealing with the question of violation of Article 14 of the Constitution. We may, at once, state, when examined in this light, the reasonings of the High Court to make out a case of discrimination, seem to be incorrect.

xxx xxx xxx

58. We are of the firm view that cases of acquisition of land stand on a different footing than those where such property is subject to a prior requisition before acquisition.

59. Therefore, the cases relating to acquisition like Vajravelu Mudaliar case [(1965) 1 SCR 614 : AIR 1965 SC 1017], Balammal case [(1969) 1 SCR 90 : AIR 1968 SC 1425], Nagpur Improvement Trust case [(1973) 1 SCC 500] and Peter case [(1980) 3 SCC 554] are not helpful in deciding the point in issue here. Goverdhan v. Union of India (Civil Appeal No. 3058 of 1983, allowed by this Court on January 31, 1983) no doubt was a case of acquisition under the Defence of India Act, 1962 but it contains no discussion. It has already been noticed that the award of solatium is not a must in every case as laid down in Prakash Amichand Shah case [(1986) 1 SCC 581]"

29. Similarly, in Union of India vs Chajju Ram (2003) 5 SCC 568, a case which arose under the Defence of India Act, 1971, this Court followed **Hari Krishnan Khosla** (supra), finding that the provisions of the Defence of India Act were *in pari materia* to those of the 1952 Act. The Court, therefore, held:

"25. Here it is not a case where existence of the Acquisition Act enables the State to give one owner different treatment from another equally situated owner on which ground Article 14 was sought to be invoked in First Nagpur Improvement Trust case [(1973) 1 SCC 500]. The purposes for which the provisions of the said Act can be invoked are absolutely different and distinct from which the provision of the Land Acquisition Act can be invoked for acquisition of land. In terms of the provisions of the said Act, the requisition of the land was made. During the period of requisition the owner of the land is to be compensated therefor. Section 30 of the said Act, as referred to hereinbefore, clearly postulates the circumstances which would be attracted for acquisitioning of the requisitioned land.

26. The purposes for which the requisitioning and consequent acquisition of land under the said Act can be made, are limited. Such acquisitions, inter alia, can be made only when works have been constructed during the period of requisition or where the costs to any Government of restoring the property to its condition at the time of its requisition would be excessive having regard to the value of the property at the relevant time.

27. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. In terms of the provisions of the said Act acquisition of the property would be in relation to the property which has been under requisition during which period the owner of the land would remain out of possession. The Government during the period of requisition would be in possession and full enjoyment of the property.

28. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. The formulation of the criteria for payment of compensation in terms of Section 31 of the Act was clearly made having regard to the said factor, which cannot be said to be arbitrary or unreasonable.

> Parliament while making the provisions for payment of compensation must have also taken into consideration the fact that the owner of the property would have received compensation for remaining out of possession during the period when the property was under acquisition.
>
> 29. The learned Attorney-General appears to be correct in his submission that the provision for grant of solatium was inserted in the Land Acquisition Act by Parliament having regard to the fact that the amount of compensation awarded to the owner of the land is to be determined on the basis of the value thereof as on the date of issuance of the notification under Section 4 of the Act. It has been noticed that the process takes a long time. Taking into consideration the deficiencies in the Act, the Land Acquisition Act was further amended in the year 1984. In terms of sub-section (2) of Section 23 of the Land Acquisition Act, therefore, solatium is paid in addition to the amount of market value of the land.
>
> 30. We are, therefore, of the opinion that the classification sought to be made for determination of the amount of compensation for acquisition of the land under the said Act vis-à-vis the Land Acquisition Act is a reasonable and valid one. The said classification is founded on intelligible differentia and has a rational relation with the object sought to be achieved by the legislation in question."

30. We may hasten to add that a Division Bench of this Court in H. V. Low and Company Private Ltd. vs. State of West Bengal (2016) 12 SCC 699 has found on a *prima facie* examination that the case of **Chajju Ram** (supra) requires reconsideration.

31. For our purposes, it is enough to state that the line of judgments under the 1952 Act and the Defence of India Act, 1971,

which contained a two-step process, namely, requisition which may be followed by acquisition, are wholly distinguishable for the reasons stated in those judgments. As was stated in **Chajju Ram** (supra), the object of a Requisition Act is completely different from an Acquisition Act. In a Requisition Act, private property is taken for public purposes only temporarily – when the reason for requisition ends, ordinarily the property is handed back to the owner. This being the case, in requisition statutes handing back of the property is the rule and acquisition of the property the exception, as property can only be acquired for the two reasons set out in Section 7 of the 1952 Act and Section 30 of the Defence of India Act, 1971. Also, as has been pointed out in **Hari Krishnan Khosla** (supra), what gets acquired is only rights as to ownership, possession having been taken over by requisition. In addition, the owner has already received compensation for remaining out of possession during the period when the property is under requisition. For all these reasons, the aforesaid judgments are wholly distinguishable from the acquisition measure in this case.

32. The next judgment relied upon by the learned counsel on behalf of the Appellants is Prakash Amichand Shah vs State of Gujarat (1986) 1 SCC 581. This judgment contained a challenge to

the Bombay Town Planning Act. The **Nagpur Improvement Trust** (supra) judgment was distinguished in this judgment by stating that the scheme of the Bombay Town Planning Act is wholly different from the scheme of the Land Acquisition Act. In particular, the Court held:

> "34. … Under Section 53 of the Act all rights of the private owners in the original plots would determine and certain consequential rights in favour of the owners would arise therefrom. If in the scheme, reconstituted or final plots are allotted to them they become owners of such final plots subject to the rights settled by the Town Planning Officer in the final scheme. In some cases the original plot of an owner might completely be allotted to the local authority for a public purpose. Such private owner may be paid compensation or a reconstituted plot in some other place. It may be a smaller or a bigger plot. It may be that in some cases it may not be possible to allot a final plot at all. Sections 67 to 71 of the Act provide for certain financial adjustments regarding payment of money to the local authority or to the owners of the original plots. The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. <u>It is in one sense a package deal.</u> The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust case [(1973) 1 SCC 500 : AIR 1973 SC 689 : (1973) 3 SCR 39] as laying down generally that wherever land is taken away by the government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the

> compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case. In State of Kerala v. T.M. Peter [(1980) 3 SCC 554 : AIR 1980 SC 1438 : (1980) 3 SCR 290] also Section 34 of the Cochin Town Planning Act which came up for consideration was of the same pattern as the provision in the Nagpur Improvement Trust Act, 1936 and for that reason the court followed the decision in the Nagpur Improvement Trust case [(1973) 1 SCC 500 : AIR 1973 SC 689 : (1973) 3 SCR 39] . But in that decision itself the court observed at pp. 302 and 303 thus: (SCC p. 564, para 21)
>
> > "We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our mind that under given circumstances differentiation even in the scale of compensation may comfortably comport with Article 14. No such circumstances are present here nor pressed."

33. This judgment is again distinguishable in that it was found, having regard to the Bombay Town Planning Act, that the person from whom the land was expropriated gets a package deal in that he may be allotted other lands in the final Town Planning Scheme, apart from compensation that is payable. However, it is worthy of comment that State of Kerala vs T. M. Peter (1980) 3 SCC 554, which was relied upon in this case, expressly followed **Nagpur Improvement Trust** (supra), holding:

“20. Is it rational to pay different scales of compensation, as pointed out by Sikri, C.J., in Nagpur Improvement Trust case [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500 : AIR 1973 SC 689 : (1973) 3 SCR 39], depending on whether you acquire for housing or hospital, irrigation scheme or town improvement, school building or police station? The amount of compensation payable has no bearing on this distinction, although it is conceivable that classification for purposes of compensation may exist and in such cases the statute may be good. We are unable to discern any valid discrimen in the Town Planning Act vis-a-vis the Land Acquisition Act warranting a classification in the matter of denial of solatium.

21. We uphold the Act in other respects but not when it deals invidiously between two owners based on an irrelevant criterion viz. the acquisition being for an improvement scheme. We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our minds that under given circumstances differentiation even in the scale of compensation may comfortably comport with Article 14. No such circumstances are present here nor pressed. Indeed, the State, realising the force of this facet of discrimination, offered, expiratory fashion, both before the High Court and before us, to pay 15%, solatium to obliterate the hostile distinction.

22. The core question now arises. What is the effect even if we read a discrimination design in Section 34? Is plastic surgery permissible or demolition of the section inevitable? Assuming that there is an untenable discrimination in the matter of compensation does the whole of Section 34 have to be liquidated or several portions voided? In our opinion, scuttling the section, the course the High Court has chosen, should be the last step. The court uses its writ power with a constructive design, an affirmative slant and a sustaining bent. Even when by compulsions of inseverability, a destructive stroke becomes necessary the court minimises the injury

by an intelligent containment. Law keeps alive and "operation pull down" is de mode. Viewed from this perspective, so far as we are able to see, the only discriminatory factor as between Section 34 of the Act and Section 25 of the Land Acquisition Act vis-à-vis quantification of compensation is the nonpayment of solatium in the former case because of the provision in Section 34(1) that Section 25 of the Land Acquisition Act shall have no application. Thus, to achieve the virtue of equality and to eliminate the vice of inequality what is needed is the obliteration of Section 25 of the Land Acquisition Act from Section 34(1) of the Town Planning Act. The whole of Section 34(1) does not have to be struck down. Once we exclude the discriminatory and, therefore, void part in Section 34(1) of the Act, equality is restored. The owner will then be entitled to the same compensation, including solatium, that he may be eligible for under the Land Acquisition Act. What is rendered void by Article 13 is only "to the extent of the contravention" of Article 14. The lancet of the court may remove the offending words and restore to constitutional health the rest of the provision.

23. We hold that the exclusion of Section 25 of the Land Acquisition Act from Section 34 of the Act is unconstitutional but it is severable and we sever it. The necessary consequence is that Section 34(1) will be read omitting the words "and Section 25". What follows then? Section 32 obligates the State to act under the Land Acquisition Act but we have struck down that part which excludes Section 25, of the Land Acquisition Act and so, the "modification" no longer covers Section 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34(2) provides for compensation exactly like Section 25(1) of the Land Acquisition Act and in the light of what we have just decided Section 25(2) will also apply and "in addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition".

34. One more judgment needs to be referred to, namely, Girnar Traders (3) vs State of Maharashtra (2011) 3 SCC 1, which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the 'self-contained code' argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been held in **Nagpur Improvement Trust** (supra).

35. Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the Union of India and NHAI, has stated that under Section 3G(2) of the National Highways Act, where the right of user or any right in the nature of an easement on land is acquired under the Act, there shall be paid to the owner and any other person whose right is so affected, an amount calculated at 10% of the amount that is determined as payable by the order of the competent authority. According to the learned Senior Advocate, this amount is not payable under the Land Acquisition Act, 1894, and that this being the case, it is clear that what is given by way of compensation under the National Highways Act being more than what is given under the Land Acquisition Act in certain respects, the Scheme of the Acts, therefore, being different, the non-giving of solatium and interest under the National Highways Act is justified. Even otherwise, persons should not be given compensation under Section 3G(2) as a matter of course, but would have to submit proof that a right of easement or a right of user has been acquired for which compensation ought to be paid. Shri Amit Sibal, learned Senior Advocate, on the other hand, has argued, referring to Sections 3(b), 9 and 31(1) of the Land Acquisition Act that easementary rights are compensated even under the Land Acquisition Act and in point of fact the sum of 10% payable under Section 3G(2) of the National

Highways Act is really in the nature of a cap beyond which no further compensation can be granted. Even otherwise, according to the learned Senior Advocate, granting of compensation under Section 3G(2) would have no bearing on interest and solatium that is payable under the Land Acquisition Act and not under the National Highways Act.

36. Section 3G(2) makes it clear that rights of user and rights in the nature of easement being valuable property rights, compensation must be payable therefor. It is obvious that there is no double payment to the owner on this score as the owner and/or any other person has to prove that a right in the nature of an easement has also been taken away. Obviously, the right of user being subsumed in acquisition of ownership, the owner cannot get a double benefit on this score. The right of user is, therefore, referable only to persons other than the owner, who may have tenancy rights, and other rights of license on land which is acquired under the National Highways Act.

37. Insofar as easementary rights under the Land Acquisition Act are concerned, three Sections are relevant and need to be quoted:

> "3. Definitions.— In this Act, unless there is something repugnant in the subject or context,—

xxx xxx

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

xxx xxx

9. Notice to persons interested.— (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).

> xxx xxx
>
> 31. Payment of compensation or deposit of same in Court.— (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.
>
> xxx xxx"

A reading of these Sections shows that a person who is interested in an easement affecting land can claim compensation therefor under the aforesaid provisions of the Land Acquisition Act. Under both the Land Acquisition Act and the National Highways Act, such claims have to be proved in accordance with law, the difference being that under the Land Acquisition Act actuals are payable, whereas under the National Highways Act, a fixed amount of 10% of the amount determined by the competent authority is payable. It is, therefore, wholly incorrect to state that extra amounts are payable to the owner under the National Highways Act, which are not so payable under the Land Acquisition Act. Also, both Acts contemplate payment of compensation to persons whose easementary rights have been affected by the acquisition. In any event, this contention cannot possibly answer non-payment of solatium and interest under the National Highways Act, which has been dealt with *in extenso* in this judgment.

38. It is worthy of note that even in acquisitions that take place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. In fact, with effect from 1st January, 2015, an Amendment Ordinance No.9 of 2014 was promulgated amending the 2013 Act. Section 10 of the said amendment Ordinance states as follows:

> "10. In the principal Act, in section 105,-
>
> (i) for sub-section (3), the following sub-section shall be substituted, namely:-
>
> > "(3) The provisions of this Act 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 the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";
>
> (ii) sub-section (4) shall be omitted."

It is only when this Ordinance lapsed that the notification dated 28th August, 2015 was then made under Section 113 of the 2013 Act. This notification is important and states as follows:

"MINISTRY OF RURAL DEVELOPMENT

ORDER

New Delhi, the 28th August, 2015

S.O. 2368(E).— Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of the RFCLTARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, inter-alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

As whereas, as per the provisions of article 123 of the Constitution, the RFCTLARR (Amendment) Second

Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance;

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."

It is thus clear that the Ordinance as well as the notification have applied the principle contained in **Nagpur Improvement Trust** (supra), as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of **Nagpur Improvement Trust** (supra) would apply to acquisitions which take place under the National Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and

landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore, require a re-look in the light of this development.[1] In any case, as has been pointed out hereinabove, the case of **Chajju Ram** (supra), has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court is correct, whereas the view of the Rajasthan High Court is not correct.

39. We were also referred to the judgment of a learned Single Judge of the Karnataka High Court reported as Lalita vs Union of India AIR 2003 Karnataka 165, as well as a judgment of the Division Bench of the Madras High Court in T. Chakrapani vs Union of India**,** both of which distinguished the Requisition Act cases and relied upon **Nagpur Improvement Trust** (supra) in order to reach the same conclusion as the Punjab and Haryana High Court. Both these judgments are also correct.

1 The Defence of India Act, 1971, was a temporary statute which remained in force only during the period of operation of a proclamation of emergency and for a period of six months thereafter – vide Section 1(3) of the Act. As this Act has since expired, it is not included in the Fourth Schedule of the 2013 Act.

40. One more argument was raised by learned counsel appearing on behalf of the Respondents, which is that nothing survives in these mattes in view of orders passed by this Court in **Union of India v. T. Chakrapani** – the Division Bench judgment of the Madras High Court having come before this Court. This order is quoted by us in full :

> "In view of the statement made by Shri Ranjit Kumar, learned Solicitor General of India on an earlier date of the hearing that solatium in terms of the impugned order of the High Court would be granted for the instant acquisitions made under the provisions of the National Highways Act, 1956, no subsisting issue remains in the present appeals as also in the special leave petition. The appeals as also the special leave petition are accordingly closed. The respondents – writ petitioners be paid solatium as due in terms of the impugned order(s) along with interest thereon."

We were also referred to an order in **Sunita Mehra v. Union of India** (2016) SCC OnLine 1128, in which this Court held :

> "6. The only point agitated before us by the learned Solicitor General is that in paragraph 23 of the impugned judgment of the High Court, it has been held that land-owners 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.

> 7. 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. 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 land-owner(s) in approaching the Court and may open floodgates for en masse litigation on the issue.
>
> 8. We have considered the submissions advanced. In Gurpreet Singh v. Union of India, (2006) 8 SCC 457, this Court, though in a different context, had restricted the operation of the judgment of this Court in Sunder v. Union of India, (2001) 7 SCC 211 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 & Steel Forgins v. Union of India i.e. 28.03.2008. 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 01.01.2014), 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 Act of 2013."

41. 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 Section 23(1A) 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 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed.

42. Coming to the individual appeals in the case, Shri Mukul Rohatgi has raised essentially 11 grounds, which, according to him,

require the Court's attention. We will deal with each of these grounds *seriatim* hereinbelow:

Ground 1: That the acquired land was treated as commercial land, ignoring Section 143 of The Punjab Regional and Town Planning and Development Act, 1995, due to which construction is restricted upto 50m on either side of the National Highway.

SLP (C) No. 15478/2019; SLP (C) No. 15482/2019; SLP (C) No. 15472/2019; SLP (C) No. 15470/2019; SLP (C) No. 15442-15443/2019; SLP (C) No. 15488/2019; SLP (C) No. 15444-15445/2019; SLP (C) No. 15487/2019; SLP (C) No.15479/2019; SLP (C) No. 15477/2019; SLP (C) No. 15485/2019; SLP (C) No. 15474/2019; SLP (C) No. 15466/2019; SLP (C) No. 15446/2019; SLP (C) No. 15447/2019; SLP (C) No. 15448/2019; SLP (C) No. 21690/2019; SLP (C) No. 14491/2019; SLP (C) No. 21662/2019; SLP (C) No. 21696/2019; SLP (C) No. 21657/2019; SLP (C) No. 21664/2019; SLP (C) No. 21666/2019; SLP (C) No. 21671/2019; SLP (C) No. 21670/2019; SLP (C) No. 21673/2019; SLP (C) No. 21663/2019; SLP (C) No. 21695/2019; SLP (C) No. 21692/2019; SLP (C) No. 21693/2019; SLP (C) No. 9602/2019; SLP (C) No. 9600/2019; SLP (C) No. 21687/2019; SLP (C) No. 21689/2019; SLP (C) No. 9604/2019; SLP (C) No. 10210/2019

In these matters, this ground has been raised and argued sometimes at the Section 34 stage, sometimes at the Section 37 stage, and sometimes at both stages. The burden to prove that the land in question is within 50m of the National Highway, and that it does not have commercial potentiality, is on the NHAI but, on facts, has never been discharged. This being the case in all these appeals, they stand dismissed.

SLP (C) No. 21688/2019; SLP (C) No. 15471/2019; SLP (C) No. 15450/2019; SLP (C) No. 21675/2019; SLP (C) No. 21683/2019

In these matters, this ground has not been taken or argued in the Section 34 petition. Therefore, these appeals stand dismissed.

Ground 2: That the arbitrator conducted the spot visit five years after the Section 3A notification was issued, based on which compensation was determined.

SLP (C) No. 15478/2019; SLP (C) No. 15482/2019; SLP (C) No. 15472/2019; SLP (C) No. 15470/2019; SLP (C) No. 15442-15443/2019; SLP (C) No. 15488/2019; SLP (C) No. 15444-15445/2019; SLP (C) No. 15487/2019; SLP (C) No. 15479/2019; SLP (C) No. 15477/2019; SLP (C) No. 15485/2019; SLP (C) No. 15474/2019; SLP (C) No. 15466/2019; SLP (C) No. 15446/2019;

SLP (C) No. 15447/2019; SLP (C) No. 21688/2019; SLP (C) No. 15471/2019; SLP (C) No. 15448/2019; SLP (C) No. 15450/2019; SLP (C) No. 21690/2019; SLP (C) No. 15486/2019; SLP (C) No. 14491/2019; SLP (C) No. 21662/2019; SLP (C) No. 21696/2019; SLP (C) No. 21657/2019; SLP (C) No. 21664/2019; SLP (C) No. 21666/2019; SLP (C) No. 21671/2019; SLP (C) No. 21682/2019; SLP (C) No. 21675/2019; SLP (C) No. 21670/2019; SLP (C) No. 21673/2019; SLP (C) No. 21663/2019; SLP (C) No. 21695/2019; SLP (C) No. 21691/2019; SLP (C) No. 21692/2019; SLP (C) No. 21693/2019; SLP (C) No. 10210/2019

In these matters, this ground has not been taken and argued in the Section 34 petitions filed in these cases. Further, assessment, in any case, of the land in question, relates to the date of the original notification. Therefore, these appeals stand dismissed.

Ground 3: That exemplars of faraway villages in other districts were relied upon to enhance compensation.

SLP (C) No. 15478/2019; SLP (C) No. 15482/2019; SLP (C) No. 15472/2019; SLP (C) No. 15470/2019; SLP (C) No. 15442-15443/2019; SLP (C) No. 15488/2019; SLP (C) No. 15444-15445/2019; SLP (C) No. 15487/2019; SLP (C) No. 15479/2019; SLP (C) No. 15477/2019; SLP (C) No. 15485/2019; SLP (C)

No.15474/2019; SLP (C) No. 15446/2019; SLP (C) No. 15447/2019; SLP (C) No. 21688/2019; SLP (C) No.15471/2019; SLP (C) No. 15448/2019; SLP (C) No. 15450/2019; SLP (C) No. 21690/2019; SLP (C) No. 15486/2019; SLP (C) No. 14491/2019; SLP (C) No. 21662/2019; SLP (C) No. 21696/2019; SLP (C) No. 21657/2019; SLP (C) No. 21664/2019; SLP (C) No. 21666/2019; SLP (C) No. 21671/2019; SLP (C) No. 21682/2019; SLP (C) No. 21675/2019; SLP (C) No. 21670/2019; SLP (C) No. 21673/2019; SLP (C) No. 21663/2019; SLP (C) No. 21695/2019; SLP (C) No. 21691/2019; SLP (C) No. 21692/2019; SLP (C) No. 21693/2019; SLP (C) No. 9602/2019; SLP (C) No. 9600/2019; SLP (C) No. 21687/2019; SLP (C) No. 21683/2019; SLP (C) No. 21689/2019; SLP (C) No. 9604/2019; SLP (C) No. 10210/2019

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

Ground 4: That the Arbitrator relied upon the Collector Rate of the year 2011-13/ 2012-13.

SLP (C) No. 15478/2019; SLP (C) No. 15472/2019; SLP (C) No. 15470/2019; SLP (C) No. 15488/2019; SLP (C) No. 15444-15445/2019; SLP (C) No. 15487/2019; SLP (C) No. 15479/2019;

SLP (C) No. 15477/2019; SLP (C) No. 15474/2019; SLP (C) No. 15466/2019; SLP (C) No. 15446/2019; SLP (C) No. 15447/2019; SLP (C) No. 15450/2019; SLP (C) No. 21688/2019; SLP (C) No. 15486/2019; SLP (C) No. 21696/2019; SLP (C) No. 21664/2019; SLP (C) No. 21671/2019; SLP (C) No. 21682/2019; SLP (C) No. 21675/2019; SLP (C) No. 21670/2019; SLP (C) No. 21695/2019; SLP (C) No. 21693/2019; SLP (C) No. 9604/2019; SLP (C) No. 15485/2019;

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

SLP (C) No. 15471/2019

In this matter, this ground has been taken up in the Section 34 petition, however, the High Court has rightly dismissed this appeal in terms of the Punjab & Haryana High Court order dated 15.02.17, in FAO No. 6522 of 2016, titled ‘Mangal Dass vs. Govt. of India’, wherein compensation of Rs. 7,00,000 per marla, which was calculated based on the collector rate of 2011, was held to be not justified, and was reduced to Rs. 4,50,000 per marla. Therefore, this appeal also stands dismissed.

Ground 5: That compensation on account of loss of structure was awarded.

SLP (C) No. 15470/2019; SLP (C) No. 15444-15445/2019; SLP (C) No. 15485/2019;

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

SLP (C) No. 15472/2019

In this matter, this ground has not been taken in the Section 37 appeal. Therefore, this appeal also stands dismissed.

SLP (C) No. 15478/2019

In this matter, this ground has been taken up in the Section 34 petition, and the High Court, noting that the landowner gave up his claim on loss of structure awarded at the rate of Rs. 50,000 by the Arbitrator, held that no further adjudication is necessary on this point. Therefore, no interference is required, and this appeal also stands dismissed.

SLP (C) No. 15482/2019; SLP (C) No. 15487/2019; SLP (C) No. 15479/2019; SLP (C) No. 15477/2019; SLP (C) No. 15474/2019;

SLP (C) No. 15466/2019; SLP (C) No. 15446/2019; SLP (C) No. 15447/2019; SLP (C) No. 21688/2019; SLP (C) No. 15471/2019; SLP (C) No. 15448/2019; SLP (C) No. 15450/2019; SLP (C) No. 21690/2019; SLP (C) No. 15486/2019; SLP (C) No. 21662/2019; SLP (C) No. 21691/2019

In these matters, though this ground has been argued in the Section 34 petition, as this ground is factual, no patent illegality arises. Therefore, these appeals stand dismissed.

Ground 6: That compensation for shifting expenses was granted

SLP (C) No. 15478/2019; SLP (C) No. 15477/2019

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

SLP (C) No. 15442-15443/2019; SLP (C) No. 15487/2019; SLP (C) No. 15479/2019; SLP (C) No. 21662/2019

In these matters, though this ground has been argued in the Section 34 petition, as this ground is factual, no patent illegality arises. Therefore, these appeals stand dismissed.

Ground 7: That arbitration costs were awarded

SLP (C) No. 15442-15443/2019; SLP (C) No. 15487/2019; SLP (C) No. 15477/2019; SLP (C) No. 15474/2019; SLP (C) No. 14491/2019; SLP (C) No. 21657/2019; SLP (C) No. 9600/2019; SLP (C) No. 10210/2019; SLP (C) No. 15466/2019; SLP (C) No. 21690/2019; SLP (C) No. 21662/2019; SLP (C) No. 21691/2019

In these matters, this ground has not been taken and argued in any of in the Section 34 petitions. Therefore, these appeals stand dismissed.

SLP (C) No. 15479/2019; SLP (C) No. 21682/2019; SLP (C) No. 9602/2019; SLP (C) No. 21687/2019; SLP (C) No. 21683/2019; SLP (C) No. 9604/2019; SLP (C) No. 15446/2019; SLP (C) No. 15448/2019; SLP (C) No. 15450/2019

In these matters, this ground has not been taken and argued in any of the Section 37 appeals. Therefore, these appeals also stand dismissed.

SLP (C) No. 15478/2019; SLP (C) No. 15482/2019; SLP (C) No. 15470/2019; SLP (C) No. 21675/2019; SLP (C) No. 21673/2019; SLP (C) No. 15485/2019; SLP (C) No. 15447/2019; SLP (C) No. 21692/2019

In these matters, this ground has not been taken up in any of the Special Leave Petitions. Therefore, these appeals stand dismissed.

Ground 8: That compensation was awarded based on post-notification sale deed

SLP (C) No. 15470/2019; SLP (C) No. 15444-15445/2019; SLP (C) No. 14491/2019; SLP (C) No. 21664/2019; SLP (C) No. 21671/2019; SLP (C) No. 21670/2019; SLP (C) No. 21663/2019; SLP (C) No. 21695/2019; SLP (C) No. 21693/2019; SLP (C) No. 9602/2019; SLP (C) No. 9600/2019; SLP (C) No. 21687/2019; SLP (C) No. 21683/2019; SLP (C) No. 21689/2019; SLP (C) No. 9604/2019; SLP (C) No. 21696/2019; SLP (C) No. 21666/2019

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

Ground 9: That compensation was awarded based on sale deeds of smaller plots of land

SLP (C) No. 15470/2019; SLP (C) No. 21666/2019; SLP (C) No. 21671/2019; SLP (C) No. 21670/2019; SLP (C) No. 21663/2019; SLP (C) No. 9602/2019; SLP (C) No. 21687/2019; SLP (C) No.

21683/2019; SLP (C) No. 21689/2019; SLP (C) No. 9604/2019; SLP (C) No. 21696/2019

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

Ground 10: That compensation on account of severance of land was awarded

SLP (C) No. 15470/2019; SLP (C) No. 15479/2019; SLP (C) No. 15471/2019

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

SLP (C) No. 10210/2019

In this matter, this ground has not been taken in the Special Leave Petitions. Therefore, this appeal stands dismissed.

SLP (C) No. 15485/2019; SLP (C) No. 15474/2019; SLP (C) No. 15447/2019; SLP (C) No. 15486/2019; SLP (C) No. 21691/2019

In these matters, though this ground has been taken in the Section 34 petition, no patent illegality arises. Therefore, these appeals stand dismissed.

Ground 11: That compensation on account of loss of business was awarded

SLP (C) No. 15487/2019; SLP (C) No. 21675/2019

In these matters, this ground has not been taken and argued in any of the Section 34 petitions. Therefore, these appeals stand dismissed.

SLP (C) No. 15477/2019; SLP (C) No. 15474/2019; SLP (C) No. 15466/2019; SLP (C) No. 15446/2019; SLP (C) No. 15447/2019; SLP (C) No. 21688/2019; SLP (C) No. 15471/2019; SLP (C) No. 15450/2019; SLP (C) No. 21690/2019; SLP (C) No. 21691/2019; SLP (C) No. 21692/2019

In these matters, though this ground has been argued in the Section 34 petition, no patent illegality arises. Therefore, these appeals stand dismissed.

……J.
(R.F. Nariman)

……J.
(Surya Kant)

New Delhi
September 19, 2019.