

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2390 OF 2015

01 Dilip Narayan Chaudhari,
age: 61 years, Occ: Agril.,
R/o Asoda, Tq. & District
Jalgaon.

02 Madhukar Rajaram Khadke,
age: 60 years, Occ: Agril.,
R/o Vitthal Peth, Old Jalgaon,
District Jalgaon.

03 Harish Durgadas Bhole,
age: 42 years, Occ: Agril.,
R/o Asoda, Tq. & District
Jalgaon.

Petitioners

Versus

01 The State of Maharashtra,
Water Resources Department,
Mantralaya, Mumbai.

02 Land Acquisition Officer,
Sub Divisional Officer,
Jalgaon, Division Jalgaon.

03 Executive Engineer,
Waghur Project, Jalgaon,
District Jalgaon.

04 Collector, Jalgaon.

Respondents

Mr.Girish V. Wani, advocate for petitioners.
Mrs.M.A.Deshpande, A.G.P. for Respondents No.1, 2 and 4.
Mr.S.D.Dhongade, advocate for Respondent No.3.

WITH
WRIT PETITION NO.610 OF 2014

- 01 Shankar Sonu Bharambe,
age: 65 years, Occ: Agriculture,
R/o Vithal Peth, Old Jalgaon,
Bahelpura, Jalgaon.
- 02 Madhukar Tukaram Kale,
age: 60 years, Occ: Agriculture,
R/o Near Lathi School,
Ganesh Wadi, Jalgaon,
Tq. & District Jalgaon.
- 03 Pralhad Barsu Kale,
age: 72 years, Occ: Agriculture,
R/o Gandhi Nagar, Jilha Peth,
Jalgaon, Tq. & Dist. Jalgaon.
- 04 Rajendra Pralhad Kale,
age: 40 years, Occ: Agriculture,
R/o Gandhi Nagar, Jilha Peth,
Jalgaon, Tq. & Dist. Jalgaon.
- 05 Ankush Shravan Kolhe,
age: 70 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 06 Damu Chavdas Kale,
age: 65 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 07 Vasant Shrawan Kolhe,
age: 60 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 08 Vishnu Ragho Khadke,
age: 62 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 09 Jayant Nivruti Kale,
age: 55 years, Occ: Agriculture,

R/o Prabhat Colony, Jalgaon,
Tq. & District Jalgaon.

- 10 Anil Namdeo Khadke,
age: 45 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 11 Shantaram Hari Khadke,
age: 64 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 12 Purushottam Hari Khadke,
age: 72 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 13 Punjo Nerji Chirmade,
age: 70 years, Occ: Agriculture,
R/o Asoda, Tq. & District Jalgaon.
- 14 Rajesh Dagdu Chirmade,
age: 42 years, Occ: Agriculture,
R/o Asoda, Tq. & District Jalgaon.
- 15 Vaibhav Govinda Chirmade,
age: 44 years, Occ: Agriculture,
R/o Asoda, Tq. & District Jalgaon.
- 16 Narendra Govinda Chirmade,
age: 44 years, Occ: Agriculture,
R/o Asoda, Tq. & District Jalgaon.
- 17 Dattu Chintaman Kolhe,
age: 70 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 18 Yamunabai Bhaskar Kolhe,
age: 60 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.

- 19 Hemraj Murlidhar Kolhe,
age: 45 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 20 Anant Pandurang Kale,
age: 75 years, Occ: Agriculture,
R/o Ring Road, Shikshak Wadi,
Jalgaon, Tq. & District Jalgaon.
- 21 Harshada Surendra Khadke,
age: 30 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 22 Sunil Vithal Khadke,
age: 45 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.
- 23 Pundlik Sitaram Chaudhari,
age: 25 years, Occ: Agriculture,
R/o Joshi Peth, Jalgaon,
Tq. & District Jalgaon.
- 24 Revanand Madhav Dhake,
age: 45 years, Occ: Agriculture,
R/o Mampurabad, Tq. & District
Jalgaon.
- 25 Vijay Panditrao Kolhe,
age: 60 years, Occ: Agriculture,
R/o Kolhe Nagar, Jalgaon,
Tq. & District Jalgaon.
- 26 Madhukar Rajaram Khadke,
age: 55 years, Occ: Agriculture,
R/o House No.253, Vitthal Peth,
Jalgaon, Tq. & District Jalgaon.
- 27 Purushottam Trambak Kolhe,
age: 55 years, Occ: Agriculture,
R/o Vitthal Peth, Jalgaon,
Tq. & District Jalgaon.

28 Gokul Madhukar Khadke,
age: 38 years, Occ: Agriculture,
R/o House No.332, Vitthal Peth,
Jalgaon, Tq. & District Jalgaon.

Petitioners

Versus

01 State of Maharashtra,
(Water Resources Department),
Mantralaya Extension,
Mumbai.

02 The Special Land Acquisition
Officer, Upper Tapi Project-1,
at Jalgaon.

03 The Executive Engineer,
Waghur Project, Jalgaon.

04 The Collector, Jalgaon,
Collector Office, Jalgaon.

Respondents

Mr.Girish V. Wani, advocate for petitioners.
Mrs.M.A.Deshpande, A.G.P. for Respondents No.1, 2 and 4.
Mr.S.D.Dhongade, advocate for Respondent No.3.
Mr.P.M.Shah, Senior Counsel (appointed as *amicus curiae*)

**CORAM : R.M.BORDE &
V.K.JADHAV, JJ.**

Reserved on : 15th September, 2015

Pronounced on : 21st September, 2015.

JUDGMENT (Per R.M.Borde, J.):

1 Heard Mr. Girish V. Wani, learned Counsel appearing for petitioners, Mrs.M.A.Deshpande, learned A.G.P. for Respondents No.1, 2 and 4; Mr.S.D.Dhongade, learned Counsel for Respondent No.4 and Shri P.M.Shah, learned Senior Counsel was requested to assist the Court in disposal of the petitions.

2 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 Petitioners are the agriculturists whose lands are sought to be acquired for construction of a branch canal for Waghur Irrigation Project. Petitioners are objecting to the Notification issued under Section 4 of the Land Acquisition Act on 21.02.2012 as well as notice of possession issued on 16.06.2014.

4 It has been brought on record that award has been passed in the matter, determining amount of compensation, on 17.07.2013. It is the contention of petitioners that possession of the subject lands has not been taken over by the acquiring body. Petitioners contend that they have not been paid amount of compensation and as such, in view of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "Act of 2013"), acquisition proceedings shall be deemed to have lapsed and it would be open for the State Government to initiate fresh acquisition proceedings and determine amount of compensation. It is also alternatively contended that even if it is assumed that some of the claimants, whose lands have been acquired, have received amount of compensation under the award, however, since majority of the land holdings have not been paid amount of compensation, amount of compensation shall have to be determined in accordance with the proviso to sub-section (2) of Section 24 of the Act of 2013.

5 That, so far as challenge raised by petitioners to the notification issued under Section 4 of the Land Acquisition Act, 1894, (for short, "Act of 1894"), is concerned, considering reply tendered on record, we do not find any reason to accept the said contention. However, argument advanced on behalf of petitioners that they are entitled to claim benefits under the provisions of Act of 2013, deserves consideration.

6 Petitioners contend that though award is declared on 17.07.2013, until the date of enforcement of provisions of Act of 2013 i.e. 01.01.2014, amount of compensation has not been paid to the petitioners. As such, according to them, in view of sub-section (2) of Section 24 of the Act of 2013, proceedings of acquisition shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate proceedings of such land acquisition afresh in accordance with provisions of Act of 2013.

7 It would be apt to refer to the relevant statutory provisions of the Act of 2013, which reads thus:

24 Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases:-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1984), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act :

Provided that where an 'award' has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

8 The contention of petitioners that since amount of compensation has not been paid, the proceedings shall be deemed to have lapsed in view of sub-section (2) of Section 24, same does not deserve acceptance in view of the interpretation put by the Supreme Court in respect of provisions of Section 24 of the Act of 2013.

9 Learned Assistant Government Pleader appearing for the State, vehemently contends that in order to attract deeming provision of lapsing of proceedings of acquisition under sub-section (2) of Section 24, it is imperative that the award shall have to be made five years or more prior to the commencement of the Act, however, if the physical possession of the land has not been taken over or the compensation has not been paid, then only the proceedings shall be deemed to have lapsed. It is contended that even if it is assumed that compensation has not been paid to the claimants in respect of the lands under acquisition, the first condition that award shall have to be made five years or more prior to the commencement of the Act i.e. Act of 2013, is not satisfied and as such, argument advanced by the petitioners does not deserve acceptance.

10 In the matter of **Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others**, reported in 2014(3) SCC 183, in paragraphs no.10 and 11 of the judgment, it is observed thus:

10 Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of 2013 act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated

under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

11 On reading the interpretation put to the provisions by the Supreme Court, it is thus clear that where the award has been made five years or more prior to the commencement of Act of 2013, and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. Thus, the two contingencies mentioned above do have relation with declaration of award five years or more prior to

commencement of Act of 2013 and unless the award is within stipulation of Section 24(2), the situation, covered by two contingencies specified hereinabove, is not attracted. The judgment of the Supreme Court in the matter of **Pune Municipal Corporation** (*supra*) has been followed in the matters of **Union of India and others Vs. Shiv Raj and others**, reported in 2014(6) SCC 564; **Rajiv Chowdhrie HUF Vs. Union of India and others**, reported in (2015) 3 SCC 541; **Karnail Kaur and others Vs. State of Punjab and others**, reported in (2015) 3 SCC 206; **Bimla Devi and others Vs. State of Haryana and others**, reported in (2014) 6 SCC 583; and **Government of NCT of Delhi & others Vs. Jagjit Singh and others** {Civil Appeal No.2592 of 2015, decided on 27th February, 2015}.

12 In the matter of **Karnail Kaur and others** (*supra*), second proviso to sub-section (2) of Section 24, which provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for the purpose shall be excluded, was taken up for consideration and the Court has observed that the said proviso is prospective in application.

13 In the instant matter, since the award has been passed in the year 2013 and the contingency provided under sub-section (2) of Section 24 has not arisen and as such, proceedings in

respect of acquisition cannot be said to have lapsed.

14 The second contention raised by the petitioners that the amount of compensation shall have to be determined in accordance with Act of 2013, as has been provided in proviso to sub-section (2) of Section 24, deserves consideration.

15 In order to find out whether majority of the land holdings have received amount of compensation, this Court called upon the State to place on record a report in that regard. It is pointed out that in respect of proceedings of acquisition bearing No.2 of 2008, notices under Section 12(2) have been issued on 30.08.2014 and consequent upon receipt of such notices, out of 63 persons, 22 have accepted payment and balance amount was not deposited in the Reference Court till November 2014. So far as Award No.14 of 2008 is concerned, out of 117 beneficiaries, only 32 have received payment. It is, thus, clear that majority of the land holdings, specified in the award, have not received amount of compensation.

16 Learned Assistant Government Pleader, appearing for the State, vehemently opposes contention raised by petitioners that in view of proviso to sub-section (2) of Section 24, amount of compensation shall have to be determined in accordance with Act of 2013. Learned A.G.P. strenuously urges that even for attracting the proviso, due regard shall have to be made to the conditions specified in sub-section (2) of Section 24 and only in the event of fulfillment of requirement under sub-section (2), compensation needs to be determined and claimants would be entitled to

compensation in accordance with provisions of Act of 2013. It is contended that the proviso cannot traverse beyond the substantive provision and, therefore, conditions specified in sub-section (2), that the award under Section 11 has been made five years or more prior to the commencement of the Act, shall have to be read while interpreting the proviso. It is contended that if interpretation put by the petitioners is accepted, the proviso would carve out a separate category and would apply to a different situation, which is not contemplated under the substantive provision i.e. sub-section (2) of Section 24, the proviso would traverse beyond the substantive provision, which, according to the learned A.G.P., is impermissible.

17 It is contended that normal function of the proviso is to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its express terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope.

18 It is further pointed out that the proviso to a particular provision of a statute, only embraces the field which is covered by the main provision, by carving out an exception to the said main provision. In a normal course, proviso can be extinguished from an exception for the reason that exception is intended to restrain the enacting clause to a particular class of cases while the proviso is used to remove special cases from the general enactment provided for them specially.

19 Referring to a judgment in the matter of **Commissioner of Income Tax, Mysore, Travancore, Cochin and Coorg, Bangalore, Vs. Indo Mercantile Bank Limited**, reported in 1959 AIR (SC) 713 = 1959 DGLS (Soft.) 23, it is pointed out that the proper function of a proviso is that it qualifies the generality of the main enactment, by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as proviso. Therefore it is to be construed harmoniously with the main enactment. Similar proposition has been laid down by Lord Macmillan in **Madras & Southern Mahratta Railway Co. Vs. Bezwada Municipality**.

20 It would be apt to refer to the observations of the

Supreme Court in para 22 of the judgment in the matter of **Rohitash Kumar & others Vs. Om Prakash Sharma & others**, reported in 2013 AIR (SC) 30 = in 2012 DGLS (Soft) 546, which reads as under:

22 The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim *A Verbis Legis Non Est Recedendum* means from the words of law, there must be no departure. A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which has been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result. (Vide *Nalinakhya Bysack v. Shyam Sunder Haldar & Os.*, AIR 1953 SC 148; *Sri Ram Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459; *M. Pentiah & Ors. v. Muddala Veeramallappa & Ors.*, AIR 1961 SC 1107; *The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors.*, AIR 1987 SC 849; and *Dadi Jagannadham v. jammulu Ramulu & Ors.*, (2001) 7 SCC 71)

Calcutta Vs. National Taj Traders, reported in 1980 AIR (SC) 482 = 1979 DGLS (Soft.) 494, the Hon'ble Supreme Court in para 10 of the judgment, observed thus:

10. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. In regard to the former the following statement of law appears in Maxwell on Interpretation of Statutes (12th Ed.) at page 33:

“Omissions not to be inferred - “It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Morsay said; It is a strong thing to read into an Act of parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do. We are not entitled, said Lord Loreburn L.C., to read words in an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional.”

In regard to the latter principle the following statement of law appears in Max-well at page 47:

A statute is to be read as a whole - “It was resolved in the case of Lincoln colleges case (1595) 3 Co Rep. 58B, at page 59b that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself. Every clause of a statute is to be construed with reference to the

context and other clauses of the act, so as, as far as possible, to make a consistent enactment of the whole statute. (Per Lord Davey in *Canada Sugar Refining Co. Ltd. v. R.* 1898 Act 735 (Canada).”

In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. “An intention to produce an unreasonable result”, said Danckwerts L.J. In *Artemiou v. Procopiou* (1966) 1 QB 878, “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result” we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction, (per Lord Reid in *Luke v. I.R.C.*, 1963 AC 557 where at p. 577 he also observed : “this is not a new problem, though our standard of drafting is such that it rarely emerges”. In the light of these principles we will have to construe sub-sec. (2)(b) with reference to the context and other clauses of S. 33-B.

22 In the instant matter, acceptance of proposition of the learned A.G.P., that the proviso to sub-section (2) of Section 24

would be attracted in the cases wherein award has been made under Section 11 of the Land Acquisition Act five years or more prior to the commencement of the Act of 2013, would lead to absurd situation. Sub-section (2) of Section 24 explains conditions prerequisite for deemed lapsing of the proceedings of acquisition. In the event of declaration of an award under Section 11 of Act of 1894, five years or more prior to the commencement of the Act of 2013, subject to the conditions that physical possession of the land has not been taken or compensation has not been paid. Whereas, proviso to sub-section (2) deals with holding the claimants entitled to compensation in accordance with the provisions of Act of 2013 in the event of failure of the State or the acquiring body in making payment of compensation to the majority of land holders. The consequences specified in the proviso as well as sub-section (2) are different, whereas, contingencies specified for lapsing under sub-section (2) are also different. In a way, proviso to sub-section (2) deals with a totally different situation which is not contemplated under sub-section (2). Under sub-section (2) of Section 24, even if a single claimant satisfies the requirement i.e. declaring of an award under Section 11 of the Act of 1894, five years or more prior to the commencement of Act of 2013 together with fulfillment of requirement of failure of the acquiring body or the State to take possession of the land or payment of compensation, consequence of lapsing of acquisition shall follow. Whereas, proviso to sub-section (2) deals with cases not of a single individual but cases where majority of the land holders have not been paid compensation or the amount has not been deposited in the account of the beneficiaries and consequences thereof would be entitlement of those claimants to receive compensation in

accordance with provisions of the Act of 2013.

23 On bare perusal of the provisions of the Act, it cannot be inferred that the proviso makes any exception or carves out something out of the substantive provision. Putting an interpretation, as has been canvassed by the learned A.G.P., would lead to making valiance to substantive provision, which is not within intendment of the provision and not expectation of the law makers. It is well settled that it would be impermissible to add or subtract even a single word while interpreting provisions of the statute. From the words of law, there must be no departure. The Section is to be interpreted by reading all its parts together and it is not permissible to omit any part thereof. The Court can not proceed with the assumption that the legislature, while enacting the Statue has committed a mistake; it must proceed on the footing that the legislature intended what it has said. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven.

24 It is, thus, clear, as has been stated above, the proviso to sub-section (2) operates in different situations and contingencies and in fact does not subtract or except anything from sub-section (2) of Section 24. It is true that normal function of the proviso is to provide for an exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment.

25 In the matter of **Sundaram Pillai Vs. Pattabiraman**, reported in (1985) 1 SCC 591, the Supreme Court has observed that, by and large, a proviso is provided for different purposes:

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

26 Dealing with the effect of the use of the term 'provided', the Supreme Court of United States pointed out: "But a proviso is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used. Little, if any, significance is to be given to the use of the word 'provided'. In Acts of Congress, that word is employed for many purposes. Sometimes, it is used merely to safeguard against misinterpretation or to distinguish different paragraphs or sentences. For the proper construction of the provision in question, consideration need not be limited to the sub-division in which it is found: the general purpose of the section may be taken

into account.” (*D.M. Macdonald Vs. United States of America*, 279 US 12).

27 The Madras High Court, in the matter of **Besant Vs. A.G. Of Madras**, ILR 43 Mad 146, has observed that:

“It is well settled that there is no magic in the words of a proviso, and that the plain meaning must be given to the words of the Legislature.”

28 Therefore, where the language used in a proviso is quite clear and no alternative view is possible, it is futile to go into the question whether the proviso operates as a substantive provision or only by way of exception and the plain meaning must be adopted. (*CIT, UP Vs. Jagannath Mahadeo Prasad*, AIR 1969 SC 209).

29 In the matter of **Pune Municipal Corporation** (*supra*), the Supreme Court has observed that, the proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

30 In the instant matter, it is not a matter of dispute that majority of the beneficiaries have not been paid compensation and as such, by virtue of proviso to sub-section (2) of Section 24, all the

beneficiaries covered by Section 4 notification, shall be deemed to be entitled to receive amount of compensation in accordance with Act of 2013. It needs to be clarified that the proceedings conducted under the Act of 1894, until declaration of award, are not initiated, however, only amount of compensation shall have to be determined in accordance with Act of 2013.

31 In the recent judgment delivered by the Hon'ble Supreme Court, in the matter of **Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu and others**, reported in 2015 (5) Mh.L.J. 20, the Hon'ble Supreme Court has an occasion to consider effect of the proviso to sub-section (2) of Section 24 in reference to the substantive provision i.e. sub-section (2) of Section 24. The argument before the Hon'ble Supreme Court was that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to compensation in accordance with the provisions of 2013 Act. The Hon'ble Supreme Court refused to consider the submission on the ground that in the reported mater, proceedings had lapsed and as such, there is no scope to invoke the proviso. It is observed in paragraph 11 of the judgment, thus:

11 It was faintly suggested by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to compensation in accordance

with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the proviso dealing only with compensation cannot be of any help to the State. Therefore, we are not required to go deeper into the effect and implications of the proviso which prima facie appears to be for the benefit of all the land holders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the proviso to restrict the meaning of the words used in section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years' old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of *Madras and Southern Maharashtra Railway Co. Ltd. vs. Bezwada Municipality*, AIR 1944 PC 71 and by this Court in the case of *C.I.T. vs. Indo mercantile Bank Ltd.*, AIR 1959 SC 713.

32 In view of the recent pronouncement of the Hon'ble Supreme Court, as quoted above, the argument advanced by learned Assistant Government Pleader that the scope of proviso shall have to be read in the context of sub-section (2) of Section 24; and that it applies only in a case where award has been declared five years or more prior to the enforcement of Act of 2013, is not a sound proposition. As has been held by the Hon'ble the Supreme Court, the proviso has no effect so as to exclude from main enactment by implication, which clearly falls within its express terms and as such, contention of the State that the proviso shall have to be read as excepting something out of the provisions of

sub-section (2) of Section 24, does not deserve acceptance. Considering the language of the proviso, it has to be construed as a stand alone provision independent of sub-section (2) of Section 24 of the Act of 2013.

33 In view of the reasons set out above, both the writ petitions are partly allowed. Respondent-State authorities are directed to determine amount of compensation payable to the claimants covered by Section 4 notification in respect of the award/s in both the petitions, in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The exercise of determination of amount of compensation, as directed above and payment thereof, shall be completed within a period of six months from today.

34 Rule is made absolute to the extent specified above. In the facts and circumstances of the case, there shall be no order as to costs.

35 Shri P.M.Shah, learned Senior Counsel, appointed as *amicus curiae*, has rendered able assistance to us for disposal of instant petitions. We place on record our appreciation for his valuable contribution.

V.K.JADHAV
JUDGE

adb/wp239015

R.M.BORDE
JUDGE