

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4274 OF 2014

Panjabrao S/o Ganpatrao Borade,
Age : 38 years, Occu. : Agri.,
R/o Patoda, Tq. Mantha,
Dist. Jalna.

... PETITIONER

VERSUS

- 1] The State of Maharashtra
[Through its : Principal Secretary,
Irrigation Department,
Mantralaya, Mumbai 400 032]
- 2] Executive Engineer,
Minor Irrigation Division,
Moti Baug, Jalna.
- 3] Deputy Collector,
Land Acquisition (M.I.W.),
Jalna.
- 4] Sub Divisional Officer &
Special Land Acquisition Officer,
Partur, Dist. Jalna.
- 5] The State of Maharashtra
[Through its : Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32.

... RESPONDENTS

Miss. Pradnya S. Talekar, Advocate h/f Mr. S.B. Talekar, Advocate for
Petitioner.

Mr. Ram Apte, Senior Counsel with Mr. Aagam Doshi and Shri S.S. Tope, i/c
Government Pleader, High Court, Aurangabad No.1 & 3 to 5.

Mr. B.R. Surawase, Advocate for Respondent No.2.

**CORAM : B.P. DHARMADHIKARI
& A.M. BADAR, JJ.**

JUDGMENT RESERVED ON : 9th DECEMBER, 2014

JUDGMENT PRONOUNCED ON : 9TH MARCH, 2015.

JUDGMENT (PER A.M. BADAR, J.) :

1] Heard. Rule. With consent of parties, heard finally.

2] By this petition, the petitioner is challenging notifications dated 19.3.2014 and 13.8.2014 issued by the Deputy Secretary to the Government of Maharashtra, Revenue and Forest Department and is praying for declaring them ultra-vires Section 26 read with First Schedule to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for sake of brevity “Act of 2013”) and for quashing those notifications, as well as notice dated 6.8.2012, issued under Section 9(3)(4) of the Land Acquisition Act, 1894 (For sake of brevity “Act of 1894”). The petitioner is further praying for directing respondents to calculate market value of his land proposed to be acquired for construction of water storage tank at village Patoda by applying multiplier of two.

3] Facts in brief, are thus :-

Respondent/State Government has decided to construct a storage tank at village Patoda in Taluka Mantha of District Jalna. For construction of this storage tank, respondent Irrigation Department of the State proposed to acquire 200 Hectares of land from 204 agriculturists of village Patoda. It is case of the petitioner that village Patoda is situated in remote rural area of Mantha Taluka, which is not an urban area as there is a

Gram Panchayat. Taluka Mantha is not governed by the Maharashtra Municipalities, Nagar Panchayats and Industrial Townships Act, 1966. Nearby town Partur is 30 Kms. away from Patoda, whereas, District place Jalna is situated at a distance of 75 Kms. from village Patoda. According to the petitioner, notification under Section 4 of the Act of 1894 was published in the official Gazette on 19.5.2011, notifying Gat No. 85 admeasuring 1.91 Hectares belonging to the petitioner for acquisition for the purpose of construction of the storage tank. This notification came to be followed by service of individual notice to the petitioner under Section 4(1) of the Act of 1894. Respondent State then issued a notification under Section 9(3)(4) of the Act of 1894 for acquiring 1.91 Hectares land from Gat No. 85 of village Patoda, owned by the petitioner. However, before passing the award under Section 11 of the Act of 1894, the Act of 2013 came into force w.e.f. 1.1.2014. Section 24 of the Act of 2013, has an effect of saving the land acquisition proceedings initiated under the Act of 1894 and Section 24(a) thereof, provides that where no award under Section 11 of the Act of 1894 has been made, then, all provisions of Act of 2013 relating to determination of compensation shall apply.

4] As per provision of Section 26(1) of the Act of 2013, the Collector has to determine the market value of the land proposed to be acquired by adopting the criteria prescribed therein. Sub-section (2) of Section 26 of the Act of 2013, provides that market value so calculated by the Collector as per the provisions of Sub-section (1) of Section 26 shall be

multiplied by Factor to be specified in the First Schedule. It is appropriate to reproduce the provisions of clause (a) of sub-section (1) to Section 24, as well as subsection (2) of Section 26, for ready reference.

“Sec. 24(1).....

(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;

(b)

(c)”

“Sec. 26(1).....

(a)

(b)”

(c)”

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

.....”

5] The First schedule to the Act of 2013 provides for package of compensation for land owners. This schedule provides for components which constitute the minimum compensation package to be given to those whose land is acquired. Clause (1) of First Schedule provides that a person whose land is acquired is required to be paid market value of land as determined under Section 26 of the Act of 2013. Clause (2) of First Schedule deals with

the Factor by which the market value is to be multiplied in the case of rural areas. For ready reference, it is apposite to reproduce clause (2) of First Schedule which reads thus :-

“THE FIRST SCHEDULE

(See section 30(2))

COMPENSATION FOR LAND OWNERS

The following components shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in clause (c) of section 3 in a proportion to be decided by the appropriate Government.

Serial number	Component of compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
1.			
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (one) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government	

6] At this juncture, it is worthwhile to note that vide notification dated 27th August, 2014, the State Government in exercise of powers conferred by sub-section (1) and (2) of Section 109 of the Act of 2013, has framed the rules called, “ The right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, Resettlement (Maharashtra Rules) 2014.” (For sake of brevity “The Maharashtra Rules of 2014”). For better

understanding of the matter, it is necessary to quote Rule 2(k), (m), (p) and (v) of the said Rules, which defines the terms, “Local Bodies” “Municipal Corporation” “Rural Area” and “Urban Area”. They read thus :-

“Rule 2(k) - “local bodies” means and includes rural local bodies and urban local authorities constituted or established under the respective Acts.

Rule 2(m) - “Municipal Corporation” means a Municipal Corporation constituted or deemed to have been constituted under the provisions of the Mumbai Municipal Corporation Act (III of 1988. LIX of 1949) and the Maharashtra Municipal Corporation Act, respectively.

Rule 2(p) - “rural area” means any area in the State except the areas covered by any urban local body or a cantonment board established or constituted under any law for the time being in force.

Rule 2(v) - “urban area” means any area in the State covered by any urban local body or a cantonment board established or constituted under any law for the time being in force.”

7] Undisputedly, Respondent No.5, Revenue and Forest Department of the State has issued a notification on 19.3.2014 (Exhibit D) in terms of clause (2) of the First Schedule to the Act of 2013, prescribing therein that when the land to be acquired is situated in the rural area, the market value of the land shall be multiplied by Factor 1 (one). Thereafter, during pendency of the instant petition, respondent No.5 Revenue and Forest

Department of the State has issued another notification on 13.8.2014 (Exhibit E) in terms of clause (2) of the First Schedule by exercising the powers conferred by Section 26(2) of the Act of 2013 and thereby, amended the notification dated 19.3.2014 with effect from the date of issuance of this second notification dated 13.8.2014. The multiplier Factor 1(one) as provided by earlier notification dated 19.3.2014, then came to be substituted by multiplier Factor 1, 1.05 and 1.10 by this subsequent notification dated 13.8.2014. Relevant portion of this subsequent notification dated 13.8.2014 needs reproduction and reads thus :-

“REVENUE AND FORESTS DEPARTMENT

Madam Cama Road, Hutatma Rajguru Chowk, Mantralaya
Mumbai 400 032, dated the 13th August, 2014.

NOTIFICATION

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND
ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

No.LQN-12/2013/C.R.190/A-2(Part 15) – Whereas, sub-section (1) of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as “the said Act”), the Collector has to determine the market value of the land to be acquired;

And whereas,

And whereas,

And whereas,

And whereas,

And whereas,

Now, therefore, in exercise of the powers conferred under sub-section (1) and (2) of Section 26 read with First Schedule of the Said Act, and of all other powers enabling it in this behalf, the Government of Maharashtra hereby amends the said Notification with effect from the 13th August, 2014 as follows:

In the said Notification, in paragraph 5, for the words and figure "shall be multiplied by the factor 1 (one)" the following shall be substituted, namely :-

"the multiplier factor 1.00 (one) shall gradually rise in case of rural areas as e move away from urban location (from nearest Municipal Corporation area) to rural areas as follows:-

Sr. No. (1)	Radial distance from urban area (from nearest Municipal Corporation area) (Km.)	Multiplier factor in case of rural areas.
1.	0-10	1.00
2.	10-25	1.05
3.	Above 25	1.10."

By order and in the name of the Governor of Maharashtra,

(S.K. GAWADE)
Deputy Secretary to Government"

8] On the backdrop of this undisputed factual and legal position, Miss Talekar, learned counsel for the petitioner vehemently argued that respondent State has willfully refused the exercise the discretion conferred under Section 26(2) as well as clause (2) of the First Schedule to the Act of

2013, by earlier notifying the Factor as 1 and subsequently, by substituting the same by Factor 1, 1.05 and 1.10. By this act on the part of the respondent/State the desire of the Legislature as expressed in Section 26(2) and the First Schedule of the Act of 2013 is not implemented by the appropriate Government.

9] According to Miss Talekar, as a piece of subordinate legislation, impugned notifications ought to have been in conformity with the provisions of the Act of 2013 and by applying Factor 1, 1.05 and 1.10, as prescribed by the impugned notification, the petitioner would get very meager compensation. According to learned counsel, the purpose of providing multiplier ranging from 1 to 2 is frustrated by issuing the impugned notification by the respondent/State.

10] Miss Talekar, learned counsel for petitioner further argued that when the Legislature mandated determination of multiplier Factor ranging from 1 to 2, the same cannot be curtailed to 1.10 as done by respondent/State by issuing impugned notification dated 13.8.2014 (Exhibit E). According to him, depending upon the distance between the land from rural area proposed to be acquired and the urban area, the multiplier was required to be prescribed from the range given i.e. from 1 (One) to 2 (Two). Miss Talekar further argued that in terms of the provisions of Section 106 of the Act of 2013, even the Central Government cannot amend or alter any schedule to the Act of 2013 in order to reduce compensation or for violating

the provisions of the Act of 2013 relating to compensation. In his submission, by issuing the impugned notification, respondent/State has virtually amended/alterd clause (2) of the First Schedule to the Act of 2013, by prescribing factor by which the market value is to be multiplied in rural area. By relying on judgment of the Honourable Apex Court in *M/s. Ujagar Prints and otherse Vs. Union of India* reported in **(1989)3 SCC 488** and *M/s. Pharmacuitalcs Ltd. Vs. State of Maharashtra* reported in **(1989) 4 SCC 376**, Miss Talekar, learned counsel submitted that, the Schedule to the Act is part and parcel of the statute and State being an appropriate Government could not have prescribed maximum multiplier of 1.10 only.

11] Miss Talekar learned counsel further argued that Section 107 of the Act of 2013 empowers the State Legislature to enact any law, more beneficial than Act of 2013 in order to confer higher compensation than what is payable under the Act of 2013. As such, according to him, the State Legislature could have provided multiplier of more than 2 but could not have fixed the multiplier to 1.10. In submission of the learned counsel for the petitioner, the last Factor ought to have been 2 depending upon the distance from urban area of the project for which the land in Rural area is to be acquired.

12] Miss Talekar, learned Counsel, further argued that considering the legislative history, Statement of Objects and Reasons, as well as

Preamble to the Act of 2013, impugned notifications are unsustainable. According to him, other States like Rajasthan, Uttar Pradesh, Punjab etc. have introduced the Land Acquisition Bills in the line of Act of 2013 and provided for Factor ranging from 1.5 to 4.5 by which the market value is to be multiplied. He further argued that the State of Maharashtra has framed Rules under Section 108 and 109 of the Act of 2013 and as per the guidelines prescribed by respondent/State, multiplier of 2.01 is provided for land situated in rural area, whereas, multiplier of 1.01 is provided for the land from urban area.

13] In support of his contention, Miss Talekar, learned counsel for the petitioner has placed on record written submissions which are carefully perused and considered by us.

14] Respondents have opposed the petition by filing 3 affidavits in reply apart from written submissions. We have carefully perused those affidavits as well as written submissions. We have also heard Shri Apte, learned Senior counsel appearing for respondents alongwith Shri S.S. Tope, learned Incharge Government Pleader.

15] According to respondents, Act of 2013 gives discretion to the appropriate Government to provide for a Factor ranging from 1 to 2 and, therefore, impugned notifications are perfectly legal. Respondents further submitted that by increasing the Factor beyond one in rural areas, the land

market would be distorted. Rural areas in the State are deficient in public infrastructure like road, electricity, irrigation and hospitals. By increase in factor multiplier beyond one, the budgetary costs of the projects will increase making the State incapable of providing much needed infrastructure in rural areas.

16] According to respondent State, the Government of Maharashtra gave suggestion to Government of India over the draft bill to the effect that multiplier of 3 in rural area, as proposed, will increase the land rehabilitation cost up to 6 times. This suggestion given by the Government of Maharashtra came to be accepted and instead of 3, multiplier factor of 1 to 2 is prescribed in the First Schedule to the Act of 2013. According to respondents, the area distance from the urban area (from nearest municipal area) is considered for fixing the multiplier factor. Respondent/State has contended that there are about 1520 villages in between distance of 1 to 10 Kms. from the nearest municipal area. There are about 2593 villages in between 10 to 25 Kms. from the nearest Municipal Corporation area. Near about 20601 villages are more than 25 kms. away from the nearest Municipal Corporation area. With this, the State contended that if multiplier of 1 is applied then valuation of land acquisition project at village level would be Rs. 1608,95,35,511/- and if multiplier factor of 1 to 1.10 is applied, then, valuation of land acquisition project at award level would be at Rs. 7310,74,36,923/-. Respondent/State submitted that it has framed policy under Section 108 of the Act of 2013 and Rules under Section 109 of the said

Act. Shri Apte, learned Senior Counsel, argued that if the multiplication factor is increased beyond the notification dated 13.8.2014, then the cost of undertaking rural infrastructure will increase. Budgetary costs of the state and investment in rural areas would get discouraged.

17] Shri Apte, learned Senior Counsel, further submitted that discretion provided to the appropriate Government by First Schedule is not unguided. Distance of the project from urban areas acts as guideline for exercising such discretion. Same is not curtailed by Section 108 of the Act of 2013. Shri Apte, learned Senior Counsel further argued that Section 106 of the Act of 2013 has no application to the case in hand as the State Government has not amended the First Schedule.

18] Shri Apte further argued that market value of the land is higher in Corporation area as compared to rural area. As one goes away from urban area, the market value of the land decreases and, therefore, the appropriate Government has provided for a gradual increase in multiplication factor for lands located away from the municipal Corporation area. The State Government being the appropriate Government has considered the topography of the State of Maharashtra and the notification dated 13.8.2014 came to be issued on logical and non-discretionary basis.

19] Shri Apte, learned Senior Counsel, argued that price fixation/factor fixation is a legislative activity or a legislative function. He

contended that in case of ***“Union of India Vs. Cynamide India Ltd”*** referred in the matter of ***“Pallavi Refractories and others Vs. Singareni Collieries Co. Ltd. (2005) 5 SCC 227***, it is held that the mechanics of price fixation are the concern of the Executive and it should be left to the Executive to do so. By placing reliance on ***G.B. Modi Vs. Ahmedabad Municipality reported in 1971(1) SCC 823***, Shri Apte, learned Senior counsel pointed out that as the upper and lower limits are prescribed by the Statute itself, the notifications cannot be faulted.

20] Shri Apte, further argued that at times, a statute may confer power on the executive to modify the statute through delegated legislation. He submitted that in ***Devi Das Vs. State Of Punjab, AIR 1967 SC 1895***, law empowering the Executive to levy Sales Tax at the rate not exceeding 2% was held valid. According to him, in the case in hand, discretion to fix Factor between 1% and 2% is insignificant and did not exceed permissible limits. He further argued that direction to adopt factor of 2 is not mandatory. As per submission of the learned Senior counsel, there is no fundamental right to compel the State to bring forth a particular legislation or to exercise its discretion in a particular manner as held by the Honourable Supreme Court in the matter ***Kanhaiya Lal Sethia Vs. Union of India 1997(6) SCC 73***. According to him, policy matters of the State cannot be interfered in exercise of power of judicial review by the Court and, therefore, no mandamus can be issued to compel the Government to exercise discretion in a particular manner.

21] Shri Apte, learned Senior Counsel further argued that in judicial review, Court is not concerned with the economic policy and price fixation is not within the province of the Court. He placed reliance on ***Shri Sitaram Sugar Company Ltd. Vs. Union of India, 1990(3) SCC 223***. By placing reliance upon ***Bhavesh D. Parish Vs. Union of India, 2000(5) SCC 471***, it is submitted that unless the provision of legislation relating to economic reform is manifestly unjust or glaringly unconstitutional, the Court must show judicial restraint. According to the learned Senior counsel, the court cannot be sit as a court of appeal over the policy decision of the State. Reliance is placed on ***Tata Cellular vs. Union of India, 1994(6) SCC 651***, to demonstrate that administrative decision can be tested by application of Wednesbury's principle of reasonableness and quashing such decisions may impose heavy administrative burden and lead to increase in un-budgeted expenditure. Shri Apte relied on ***Peerless General Finance and Investment Company Vs. RBI, 1992(2) SCC 343***, to contend that the Court has to maintain delicate balance between the public interest and individual interest by taking into account the nature of individual right alleged to have been infringed.

22] Shri Apte, learned Senior Counsel further argued that judiciary cannot take over functions of the Legislature or Executive as held by the Honourable Apex Court in the matter of ***Common Cause vs. Union of India and others (2008) 5 SCC 511***. With these submissions, respondents are

praying for dismissal of the petition.

23] We have carefully considered the rival submissions and perused the pleadings of the parties, documents placed on record by them, as well as ruling relied by them.

24] At the outset, it needs to mention that, notification dtd.19.3.2014 (Exh.D) issued by the State in terms of Sec.26(2) r/w First Schedule of the Act of 2013 provides for multiplier factor of 1 for the land situated at rural area. The subsequent such notification dtd. 13.8.2014 (Exh.E) substituted multiplier of 1 by 1, 1.05 and 1.10 as per distance of the land proposed to be acquired from urban area. This amendment of the multiplier factor is brought into force w.e.f. 13.8.2014 as seen from the notification dtd.13.8.2014. Let us therefore examine whether multiplier of one or up to 1.10 only can be prescribed for multiplying the market value of the land situated in rural area or whether the welfare statutes provides guideline for provision of multiplier of 2 for the land to be acquired from the remotest rural places and then for scaling it down in case of rural areas nearer to urban area. One will have to see whether respondent state has examined the distance of the land in rural areas from urban area as well as its remoteness from urban areas while fixing the multiplier factor by the impugned notification by following the guideline prescribed by the First Schedule to the Act of 2013.

25] Administrative action of the appropriate Government, in fixing

and notifying the factor by which the market value is to be multiplied in case of rural area as 1 (one) vide notification dated 19-3-2014 (Exhibit "D") and subsequently substituting it by 1, 1.05 and 1.10, according to the distance of the project from urban area, vide notification dated 13-8-2014 (Exhibit "E") is impugned in the present petition. Judicial review of administrative decision can be undertaken when such decision is contrary to law or when relevant factors were not considered, when irrelevant factors were considered or when the decision was one which no reasonable person could have taken. The decision is to be tested on touchstone of illegality, procedural irregularity and irrationality. The learned Counsel for the petitioner relied on ***Vasudeo Singh and others Vs. union of India***, reported in **(2006) 12 SCC 753**, which outlines the grounds available for judicial review of delegated legislation. Violation of constitutional provision or violation of enabling Act are grounds for reviewing such delegated legislation. Judicial review is amenable on three grounds - discrimination, irrelevant and extraneous consideration and malafides. Respondents have relied on decision in ***Kanhaiya Lal Sethia Vs. Union of India***, reported in **1997 (6) SCC 573**, wherein it is held that unless the policy framed by the State violates the mandate of the Constitution or any statutory provision, the courts should not exercise powers of judicial review to interfere in such policy. For demonstrating limitations for exercising judicial review of administrative decisions and policy, respondents relied on ***Sitaram Sugar Company Ltd. : U.P. State Sugar Corporation Limited Vs. Union of India***, reported in **1990(3) SCC 223**; ***Pallavi Refractories Vs. Singareni Collieries***

Company Ltd. etc., reported in **2005(2) SCC 227**; and ***Tata Cellular Vs. Union of India***, reported in **1994(6) SCC 651**. Observations of the Hon'ble Apex Court, in paragraphs 46, 47, 48 and 52, in the matter of ***Sitaram Sugar Company Ltd., (supra)*** can be quoted with advantage, at this juncture :

“(46) Any arbitrary action, whether in the nature of a legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution. As stated in *E.P. Royappa Vs. State of Tamil Nadu* "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch". Unguided and unrestricted power is affected by the vice of discrimination : *Maneka Gandhi Vs. Union of India*. The principle of equality enshrined in Article 14 must guide every State action, whether it is be legislative, executive, or quasi-judicial : *Ramana Dayaram Shetty Vs. International Airport Authority of India*, *Ajay Hasia Vs. Khalid Mujib Sehravardi* and *D.S. Nakara Vs. Union of India*.

(47) Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects

of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires" : per Lord Russel of Killowen, C.J. in *Krase Vs. Johnson*.

(48) The doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. He must act reasonably and in good faith. It is not only sufficient that an instrument is intra vires the parent Act, but it must also be consistent with the constitutional principles : *Maneka Gandhi Vs. Union of India*.

(52) The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

The ratio which can be culled out from these reported rulings is to the effect that while exercising jurisdiction of the judicial review, the court does not exercise appellate powers but only examines whether the discretion was exercised with due regard to considerations provided by the statute and whether extraneous considerations have been excluded from determination. Respondent - State has also relied on ruling in the matter of *Common Cause (a Registered Society) Vs. Union of India*, reported in *2008(5) SCC 511*. However, that deals with separation of power wherein

view that the courts have to function within the established parameters of constitutional bounds, was upheld. The ratio of the ruling is not applicable to the instant case. Keeping in mind this position, let us examine whether the discretion exercised by the respondent - State in initially fixing the multiplier as 1 (one) and then substituting it by 1, 1.05 and 1.10 with effect from 13-8-2014, is with due regard to the considerations provided by the Act of 2013 and by excluding extraneous considerations from such determination.

26] Prior to adverting to the legality or otherwise of the impugned notification, let us, put on record the scheme of the Act of 2013. The Act of 2013 is enacted in order to streamline the provisions of the Act of 1894, so as to minimise the hardships of the owners of the land and other persons dependent on such land put up for acquisition. The new Act makes adequate provisions for rehabilitation and resettlement of the affected persons and their families. The Act of 2013, considers land acquisition on one hand and rehabilitation as well as resettlement on the other hand as two sides of the same coin and as a single integrated law, it deals with the issue of land acquisition and rehabilitation as well as resettlement. The Act of 2013 proposes to address the concern of the farmers and those whose livelihood are dependent on the land sought to be acquired. At the same time, it facilitates acquisition of the land for industrialization, infrastructure and urbanization projects in a transparent manner. A preamble of a statute has been said to be a good means of finding out its meaning and the same is a

key to unlock legislative intent. The Act of 2013 starts with the following paragraph :-

“An Act to ensure, in consultation with institutions of local self-Government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.”(Emphasis supplied)

27] Clause 5 and 13 of the Statement of Objects and Reasons of this Act of 2013 are very material for deciding the controversy and they read as under :-

“5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement

mechanism for the affected persons and their families. The bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.”

“13. To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent. of the total compensation. Where land is acquired for urbanization, 20 per cent. of the developed land will be offered to the affected land owners.”

In the matter of *State of Rajasthan Vs. Basant Nahata*, (2005) 12 SCC 77 relied upon by the petitioner, it is held that, when the language of the statute is capable of more than one meaning then the Preamble or the Statement of Objects and Reasons can be looked into.

28] Section 26 of the Act of 2013 provides the criteria which needs to be adopted by the Collector for assessing and determining the market value of the land on the date of notification under Section 11 of the Act. Section 26(2) provides for multiplication of that market value by a factor to be notified by the appropriate Government. Section 26(2) read with the

First Schedule to the Act of 2013 mandates that the market value of the land located in rural areas needs to be multiplied by a Factor ranging between 1 (one) to 2 (two) based on the distance of the project from urban area. Thus, the First Schedule which is titled as “ Compensation For Land Owners” contains component of compensation package and the package placed at Sr. No.2 in that schedule prescribe guiding principle which needs to be used for determination of multiplier factor in rural areas. This guiding principle, as seen from compensation package at Sr. No. 2 for the land located in rural areas is distance of the project from urban area. This makes it explicitly clear that in rural areas which are farthest from urban area, the multiplier factor is required to be two and when rural area covered under the project is closer to the urban area, such multiplier factor scales down to less than two and even up to one, when the land sought to be acquired for the project is closest to the urban area. One cannot dispute the proposition that a Schedule in an Act is not mere question of drafting and is as much a part of statute and as much an enactment, as any other part. Miss Talekar, learned counsel for petitioner has rightly relied on *M/s. Ujagar Prints and others vs. Union of India (1989)3 SCC 488* and *M/s. Pharmacuitics vs. State of Maharashtra and others (1989)4 SCC 378* to buttress this proposition.

29] The basic reason which seems to be considered for providing higher multiplier factor even up to two for lands situated in rural area sought to be acquired for the project is dependence of the people on such land for their survival and livelihood, coupled with low market price of such

remotely located land, as compared to land situated in urban area. A fair balance appears to have been achieved by making a provision of multiplication of the market value by the factor to be notified by the appropriate Government considering the distance of the land under acquisition in rural area from urban area, so as to provide for infrastructural needs and sustainability of agriculture and rural livelihood. For this reason, entry No.2 in the First Schedule provides for higher multiplier factor in respect of lands sought to be acquired from rural area based on their distance from urban area. Therefore, as the distance of land sought to be acquired from rural area increases from that of urban area, the multiplier factor is required to be increased suitably. It is seen that there was no such analogous provision regarding multiplier in the old Act i.e. Act of 1894. Similarly, it needs to be mentioned here that Section 30 of the Act of 2013 makes a provision for awarding solatium @ 100% of the total compensation which is required to be paid. The Act of 1894 was providing for solatium only @ 30% on the market value of the land.

30] The Act of 2013 and more particularly, Section 106 thereof, makes it clear that the Central Government cannot amend or alter any of the Schedules to the said Act including the First Schedule, so as to reduce the compensation payable or for diluting the provisions of the Act relating to compensation or rehabilitation and resettlement. Section 107 of the Act of 2013, empowers the State Legislature, to enact any law to enhance or add to the entitlement enumerated under the Act, which confers higher

compensation than the one payable under the Act of 2013. Thus, the State Legislature can enact any law conferring higher compensation than the one provided under the Act of 2013. Section 108 of the Act of 2013 provides an option to affected families to avail better compensation and rehabilitation and resettlement if State law or policy so provides. The thrust seems to be that the compensation cannot be lower than the one prescribed under the Act of 2013. From the affidavit of the respondent/State it is seen that vide notification dated 27.8.2014 issued by the respondent No.5 - Revenue and Forest Department, a policy under Section 108 is framed after considering all the objections and suggestions received by the State. Part 1 of the said policy framed under Section 108 by the respondent/State provides for land valuation. Clauses 2 and 3 of this policy needs reproduction. They read thus :-

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

3. Compensation of the land to be acquired in rural area : (market value x 1.20) plus (value of assets attached to land or building) plus (100 % solatium) = Land Compensation price.

Compensation of the land to be acquired in urban area :

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

31] It is well settled that a statute is to be read as a whole and every clause of a statute has to be constructed with reference to the context and other clauses of the Act. Ordinarily, the intention of the legislature is what it states to be its intention by the words employed in the statute. The Act of 2013 as seen from the provisions thereof, gives very high weightage to the provisions relating to payment of compensation. Even it makes provision for penalty for contravention of the provisions of the said Act relation to payment of compensation or rehabilitation or resettlement. Section 85 of the said Act prescribes penalty by providing that if any person contravenes any of the provisions of the Act relating to payment of compensation etc, he shall be liable to punishment for six months which may extend to 3 years or with fine or with both. If the entire scheme of the Act of 2013 is considered then it becomes crystal clear that the said Act is a social welfare legislation enacted to benefit the land owners in the event of acquisition of their land by the State. It is not a statute dealing with fiscal matter or economic policy of the State such as hiking tax liability. As such the provisions of the Act of 2013 deserve liberal construction in favour of the subject. The Act of 2013 makes provision for minimum quantum of compensation payable to land holders and simultaneously it provides for various safeguards so that provisions for compensation payable under the Act should not be diluted by adopting any tactics. It is well settled that while construing a welfare statute, the Court is required to give such statute widest operation which its language permits. In the matter of *Executive Engineer Southern Electricity Supply Company of Orissa Ltd and another*

vs. Shri Seetaram Rice Mills reported in (2012) 2 SCC 108, it is held that the legislative history and objects are important aids in constructing provisions of a statute. Similarly, the statement of objects and reasons are also considered to be an internal aid while interpreting statute as laid down by the Honourable Supreme court in ***Devachand Builders and Contractors vs. Union of India and others reported in (2012)1 SCC 201***.

32] According to respondent/State, it's suggestion over the Draft Bill came to be accepted and the proposed multiplier factor of 3 in case of rural area came to be changed as 1 (One) to 2 (Two). Respondent / State has further contended that the First Schedule empowers the appropriate Government to limit the factor to any figure between 1 (One) and 2 (Two). As such, according to respondent / State, radial distance of rural area from urban area (from nearest Municipal Corporation area) was considered for fixing multiplier factor. Respondent / State has stated that from nearest Municipal Corporation area there are about 1520 villages in distance ranging from 1 to 10 Kilometers. Similarly, according to respondent, in a distance ranging between 10 to 25 Kilometers from nearest Municipal Corporation area, there are about 2593 villages and near about 20601 villages are at a distance of more than 25 Kilometers from nearest Municipal Corporation area. What is the longest distance of the project from urban area is not clarified by the State. It is thus clear that the respondent / State has undertaken the exercise of calculating the distance to the maximum of 25 Kilometers only from the urban area. In fact, the First Schedule to the Act

of 2013 and more particularly clause 2 thereof requires fixation of multiplier in the range between 1 to 2 on the basis of distance of project in rural area from the urban area and the appropriate Government is empowered to do this job. As such, it was incumbent on the part of the respondent/State which is an appropriate Government in the instant case, to undertake the exercise of calculating the distance of farthest rural area from urban area (Municipal Corporation area) and thereafter exercise of fixing of appropriate multiplier ranging from maximum of 2 for the lands situated at remotest rural area should have been undertaken. Then, as the distance of rural area start decreasing from urban area, adoption of multiplier of less than 2 could have been thought of by the respondent/State. The respondent/State has not undertake the exercise of examination of of the distance of land situated in rural area as well as its remoteness from urban area. While fixing the multiplier factor, as seen from impugned notifications.

33] Mere providing a fixed multiplier for all land in rural area which are situated more than 25 Kilometers away from the urban area (nearest Municipal Corporation area) depicts total non application of mind while exercising the discretion provided in First Schedule to the Act of 2013 by respondent/State. Policy guideline to exercise discretion for fixing multiplier provided by the First Schedule is the distance of land under acquisition located in rural area from the urban area. Fixation of fixed multiplier of 1.10 in respect of all lands from rural area which are 25 or more kilometers away from urban area in absence of any such guideline or

policy depicts colourable exercise of discretion as well as total non-application of mind and it is contrary to the Constitutional mandate under Article 14. The exercise undertaken by respondent/State in limiting the multiplier factor to 1.10 only for all lands in rural area which are at a distance of more than 25 Kilometers from urban area, shows that the respondent/State has failed to consider the relevant factor of remoteness of land situated in rural area from urban area. The very relevant factor of remoteness from urban area seems to be kept out of consideration by the respondent/State by undertaking half-hearted exercise, concluding that near about 20601 villages are situated above the distance of 25 Kilometers from nearest Municipal Corporation area. With this reasoning, the multiplier factor is spelt out at 1.10 though the First Schedule provides that the same needs to be ranging from 1 to 2 on the basis of actual distance of the project from the urban area. Low market price of remotely located land from rural area requires provision for higher multiplier. This seems to be the object for provision of multiplier ranging from 1 (one) to 2 (two). Pegging multiplier factor at 1.10 for all rural lands located more than 25 Kilometers away from urban lands has resulted in giving discriminatory treatment to the land holders whose lands are situated at a far off place from urban area. A land holder whose land is just 25 Kilometers away from urban area will now get compensation by applying very same multiplier factor which a land holder whose land is located at a very long distance, say more than 100 Kilometers or 150 kilometers away from nearest urban area will get. By this arbitrary exercise of discretion the very object of the Act of 2013 of providing

adequate compensation to the land holders whose lands are situated at remotest place is frustrated. For judicious exercise of discretion conferred by the First Schedule to the Act of 2013, it was incumbent on the part of respondent/State to undertake survey of calculating exact distance of all lands situated in rural areas from the nearest urban area and then based upon such actual distance multiplier factor ought to have been determined by it. In a similar way, adopting method of calculating radial distance from urban area is also not in consonance with the guideline for fixation of multiplier enumerated in the First Schedule to the Act of 2013. Even in the case in hand, land of the petitioner proposed for acquisition is stated to be located in a rural area situated at a distance of about 75 Kilometers from Jalna town. Still, he will get multiplier factor of only 1.10 in view of notification dated 13.8.2014.

34] By ignoring relevant factor of undertaking exercise of assessment and calculation of actual distance of the remotest rural area from nearest urban area (nearest Municipal Corporation area) and by pegging maximum multiplier only to 1.10, respondent/State has virtually refused to exercise the discretion conferred upon it under Section 26(2) as well as clause 2 of the First Schedule to the Act of 2013. In this manner, the desire of the legislature as expressed in Section 26(2) and the First Schedule to the Act of 2013 is not implemented by respondent/State in its true letter and spirit.

35] Depending upon the distance between the land from rural area proposed to be acquired and the urban area, the multiplier factor was required to be prescribed from range given i.e. from 1 to 2 and by limiting the exercise of calculating distance and that too radial only up to 25 Kilometers from urban area, respondent/State has defeated the object and purpose of the Act of 2013. At this juncture, it is relevant to note that as per the provisions of Section 106 of the Act of 2013, even the Central Government cannot amend or alter any Schedule to the Act of 2013 in order to reduce the compensation payable or to dilute the provisions relating to compensation. By fixing the multiplier factor at 1.10 for all lands in rural area situated at a radial distance of more than 25 Kilometers from urban area, the State has virtually caused an amendment to the First Schedule of the Act of 2013 in order to reduce the amount of compensation payable to land holders. The First schedule to the Act of 2013 is part and parcel of that statute and the State Government being an appropriate Government could not have prescribed maximum multiplier factor of 1.10 only for all lands in rural area, which are more than 25 Kilometers away from the urban area. In the similar way, act of respondent/State in fixing the multiplier to 1 by earlier notification dated 19.3.2014 (Exhibit D) reflects complete refusal to exercise discretion conferred by the First Schedule by ignoring to consider the relevant factor of distance of project from urban area.

36] The State legislature is empowered to enact any law more beneficial than the Act of 2013 in view of provision of Section 107 of the said

Act. As such, the State legislature, by enacting suitable law, can provide for multiplier of more than 2 but while exercising the discretion, the appropriate Government could not have limited the multiplier to 1.10 by fixing the limit of distance to 25 Kilometers and above from the urban area. While framing the policy and fixing the multiplier by the impugned notification dated 13.8.2014, respondent/State has ignored the relevant provision of Section 106 and 107 of the Act of 2013 and acted against the letter and spirit in those sections. Even the policy framed by respondent/State under Section 108 of the Act of 2013, by notification dated 27.8.2014, relevant portion of which is reproduced in foregoing paragraph, shows that the multiplication factor by which market value of land is required to be multiplied will be 1.20 in case of rural area. In the light of this policy framed under Section 108 of the Act of 2013 by the respondent/State the impugned notification dated 13.8.2014 providing maximum multiplier factor of 1.10 only, cannot be sustained.

37] The reason for fixing the multiplier factor as 1, 1.05 and 1.10 by the impugned notification dated 13.8.2014, is reflected in the additional affidavit dated 11.11.2014 of respondent/State as well as from its written submissions. In its initial affidavit in reply dated 23.6.2014 also respondent/State has contended that by increasing factor beyond one in rural area, the land market would be distorted and increase in factor of multiplier beyond 1 will increase the budgetary cost of the project, making the State incapable of providing much needed infrastructure in rural area.

Respondent/State contended that by applying multiplier factor beyond 1 to 1.10, valuation of land acquisition project at award level will increase from Rs. 1608,95,35,511/- to Rs. 7310,74,36,923/-. Respondent/State has also contended that further increase in multiplier factor would amount to escalation of cost of acquisition and secondly, the investment in rural area would get discouraged. This, according to respondent/State, will adversely affect even the ongoing projects. Thus, consideration of inadequacy of funds and increase in budgetary cost is stated to be the reasons for fixing maximum multiplier factor at 1.10 for rural area. It is relevant to note that as per the stand taken by respondent/State, on its suggestion multiplier factor was reduced from 3 to 1 (one) to 2 (two) in respect of land in rural area while enacting the Act of 2013. Thus, the legislature has struck a balance between the conflicting interests of developmental project and high budgetary cost on one hand and property rights and interests of individuals whose lands are proposed to be acquired after considering suggestion given by respondents. After considering the suggestions and all relevant factors, the legislature has thought it fit to strike a balance by providing the multiplier factor in rural area to be determined by the appropriate Government as 1 (one) to 2 (two), depending upon distance of the rural area from urban area. The legislature has not provided for limiting the factor to peg it below 2 merely on the basis that it would escalate the cost of project and that the developmental activities would be adversely affected. However, by considering the financial implications while deciding the multiplier factor for lands in rural area, respondent/State has certainly

considered irrelevant factors and arrived at a decision to peg down the maximum multiplier at 1.10 irrespective of actual distance of land proposed to be acquired from rural area from urban area, if it is located more than 25 Kilometers away. As such, this decision can not be said to be one which a reasonable person could have taken apart from the fact that while arriving at the same, the State has acted upon irrelevant considerations.

38] Largest number of villages are thus situated beyond distance of 25 Kms. from the Municipal Corporation. Apart from this, there may be even smaller hamlets or groups of houses not recognized as village in terms of the Maharashtra Land Revenue Code. When the validity of any action is assailed, the State Government ought to have demonstrated due application of mind to support its exercise. This was all the more necessary when it itself on 13.8.2014 redetermined the factors for multiplication to be “1.00, 1.05 & 1.10” as against its earlier application of mind on 19.3.2014 when it had determined multiplier to be “1”. As per S. 26(2) of 2013 Act, market value calculated under its sub-section (1) is to be multiplied by this factor ie multiplier. If said market value is multiplied by factor “1”, the product will be same as that of multiplicand & as such, there will be no increase in that market value. If “1.05” is the multiplier, the hike will be only 5% & if factor “1.10” is used, hike will be only 10%. In this background, the stance of the State Government that if multiplier of 1 is used, valuation of land acquisition at village level would be Rs. 1608,95,35,511/- & if factors of “1 to 1.10” is used, it rises to 7310,74,36,923/- is beyond comprehension as it is possible if

factor employed for multiplication is “4.54”. Not only this, but in additional affidavit dated 24.11.2014, State Government has pleaded that “0.10” increase in multiplier factor results in cost escalation by Rs. 5,700/- crores. Even when “2” is to be used as the multiplier, said valuation of Rs. 1608,95,35,511/- becomes Rs. 3217,90,71,022/-. We therefore find some non application of mind here.

The prescription of use of factors between “1” to “2” by the Parliament as multiplier depending upon distance of subject land itself shows a need of systematic approach by the State. The law does not enable it to prescribe different factors for different urban areas or municipal corporations within the State. It can not lay down different distances & separate multipliers for lands nearer to Bombay or Poona or other well developed urban area & comparatively lower factors as multipliers or larger distances therefor, as far as Municipal Corporations of Chandrapur, Amravati, Akola or other small corporations are concerned. The yardstick has to be one & same for entire State of Maharashtra. This envisages collection of data showing market rates or ready reckoner rates in various Municipal Corporations within the State & in areas in vicinity thereof to find out the percentage of fall in market value as the distance of subject land increases from the boundary of the Municipal Corporation. In some cases, the rate may not decrease for a distance of 5 or more Kms. & lands located away from the said boundary may command same market value justifying use of “1” as multiplier. The State Government has not come up with any such explanation to justify use of

factor “1” for first 10 Kms. in this case. We have taken this as a hypothetical illustration only to evaluate the arguments advanced. We are not called upon here to find out whether “1” can be used as multiplier or not. Market values may decrease gradually as the subject land is placed more & more away from the urban areas. If such an application of mind has to be for entire State, evolution of a common formula by the experts is must. It may call for use of belting method to work out percentage of fall in market values of lands proportionate with the distance at which it is located when compared with the lands within municipal corporation or urban area. This reduction in land price may then be required to be attended to & quenched by honoring the command of Parliament & by selecting the suitable factor between “1 to 2” therefor. Thus, the selection of a particular factor as multiplier will be dictated by the outcome of this exercise. The extent of allowance possible in such matters may only be one of the relevant aspects. After such study, the State Government may come up with the justification that in respect of lands located within first 10 Kms. from the boundary of urban areas, generally there is no reduction in market value & hence, it evolved “1” as multiplier. It could have on same lines submitted that where lands are located beyond 25 Kms. of the such boundary, market values mostly remain static & hence, it has treated all lands beyond 25 Kms. similarly by providing hike of 10% on uniform basis for all such lands. It could have also pointed out how multiplier selected by it is reasonable & has some bearing on proportionate fall in market values of lands & distance at which these lands are found. Thus selection of a particular factor as multiplier will have nexus

not only with location of land but also with its market value & for that, upon the its distance from the urban area. The selection of distance for belting will also have some roots in data collected & processed by the State Government. We find that such an application of mind is conspicuously lacking in present matter.

39] This notification dated 13.8.2014 appears to be merely an attempt to show compliance of statutory mandate under the First Schedule which requires the appropriate Government to determine the factor of multiplier in rural areas between 1 to 2 based only on the distance from urban area. Financial implications and financial constraints can not be said to be relevant factor for determining the multiplier factor by which the market value of the land in rural area is required to be multiplied. Thus, extraneous consideration of inadequacy of funds and inviable increase in budgetary cost vitiates the exercise of discretion conferred upon the appropriate Government under the First Schedule to the Act of 2013 and, therefore, the impugned notifications are bad in law as they are product of extraneous considerations.

40] On behalf of respondent - State, it is contended that factor fixation is a legislative function. Reliance is placed on *Pallavi Refractories Vs. Singareni Collieries Company Ltd. etc. (supra)* wherein relevant paragraph in the matter of *Union of India Vs. Cynamide India Ltd.*, reported in *AIR 1987 SC 1802*, was quoted to contend that mechanics of price fixation are concern

of the executive and it should be left to the executive to do so. Thus, according to the State, it is for the appropriate Government to determine the multiplier factor. Reliance is placed on Principles of Administrative Law (6th Edition - 2007) by Shri M.P. Jain. As held by the Hon'ble Apex Court, in the matter of State of *Rajasthan & others Vs. Basant Nahata*, reported in (2005) 12 SCC 77, the necessity of legislature's delegating its power in favour of the executive is a part of legislative function. It is a constituent element of the legislative power as a whole under Article 245 of the Constitution. The Hon'ble Apex Court has further held therein, that such delegation of power, however, cannot be wide, uncanalised or unguided. The legislature while delegating such power is required to lay down the criteria or standard so as to enable the delegatee to act within the framework of the statute. The principle on which the power of the legislature is to be exercised is required to be disclosed. It is also trite that essential legislative functions cannot be delegated. In para 58 of the said ruling, the Hon'ble Apex Court has further held that a subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right would not be valid. In this context, if it is accepted that discretion to limit the multiplier factor to any figure between 1 and 2 is delegated to the appropriate Government by the Act of 2013, then such delegation would be arbitrary as well as violative of provisions of Article 14 of the Constitution as there is no corresponding criteria or standard so as to enable the appropriate Government to act within the framework of the statute. There is no guiding

principle or policy provided to guide the exercise of such discretion in limiting the multiplier factor in rural area to any figure between 1 and 2. As against this, the guiding principle, as seen from the First Schedule to the Act of 2013, seems to be fixing the schedule or slabs of distances of projects from urban areas wherein different multiplier factors ranging from 1 to 2 can be determined, the minimum being 1 and the maximum being 2. If absolute discretion is held to be conferred on the appropriate Government in fixing the factor, as contended by the State, then the delegation of such power will have to be construed as excessive in nature and *ultra vires* the provisions of Article 14 of the Constitution because of absence of guiding principle or policy provided in the statute for limiting the multiplier factor below 2.

41] Shri Apte, the learned Senior Counsel relied on *Gulabchand Bapalal Modi Vs. Ahmedabad Municipal Corporation*, reported in **1971(1) SCC 823**, to point out that a provision conferring power on the Municipal Corporation to levy tax on building, without fixing any maximum limit, was upheld. On this line, he contended that factor fixation falls under the realm of powers of the appropriate Government. In paragraph 19 of the said report, the Hon'ble Apex Court has referred to the case of *Liberty Cinema*, reported in **AIR 1965 SC 1107**, considered in the matter of *Devi Das Gopal Krishnan : Devgam Iron and Steel Rolling Mills, Covilidgarh : Prabhudayal Himatsingka : Punjab Cloth Mills Limited Vs. State of Punjab*, reported in **AIR 1967 SC 1895**, and particularly, the following observations :

“ The position, which emerged from the decisions so far, therefore, was that the power to fix rates can be delegated if the statute doing so contains a policy or principles furnishing guidance to the delegate in exercising such power. ”

In para 21 of the said judgment, majority view in the decision rendered in case of *Devi Das* was considered and accepted by holding that the mere fact, that an Act delegating taxing power refrains from providing a maximum rate does not by itself render the delegation invalid. Shri Apte, the learned Senior Counsel further relied on observations in para.23 in case of *Devi Das Gopal Krishnan Vs. State of Punjab (supra)*, which was referred in the matter of *Gulabchand Bapalal Modi Vs. Ahmedabad Municipal Corporation (supra)*. In para 23 of the judgment in the matter of *Devi Das Gopal Krishnan Vs. State of Punjab (supra)*, the Supreme Court has held thus :

“ Conferment of reasonable area of discretion by a fiscal statute has been approved by this court in more than (me decision : see Khandige Sham Bhat Vs. The Agricultural Income-Tax Officer (1). At the same time a larger statutory discretion placing a wide gap between the minimum and the maximum rates and thus enabling the government to fix an arbitrary rate may not be sustained. In the ultimate

analysis, the permissible discretion depends upon the facts of each case. The discretion to fix the rate between 1 pice and 2 pice in a rupee is so insignificant that it is not possible to hold that it exceeds the permissible limits. ”

42] Perusal of these rulings shows that conferment of reasonable discretion to the executive has been approved in fiscal statute. Such principle of interpretation is not applicable for interpretation of welfare legislation. Similarly, reasonable discretion can be conferred to the executive where the discretion so conferred is insignificant and such conferment is with clear guidance. However, in the instant case, the discretion cannot be said to be insignificant because even as contended by the State, change of multiplier from 1 to 1.10 result in tremendous increase in cost of acquisition. Additional affidavit of the State filed on 11-11-2014 shows that increase of multiplier factor by 0.10 result in escalation of cost by almost about Rs. 5,700 Crores. As such, the discretion to fix the multiplier factor in between 1 and 2 is very much significant. Therefore, observations of the Hon'ble Apex Court, in the matter of *Devi Das Gopal Krishnan Vs. State of Punjab (supra)* has no application to the case in hand.

43] Respondent - State has also relied on *Kanhaiya Lal Sethia Vs. Union of India*, reported in *1997 (6) SCC 573*. In that matter, it is held that the court do not in exercise of judicial review interfere in policy matters of

the State unless policy so formulated either violates the mandate of the Constitution or any statutory provision or is otherwise actuated by *mala fides*. We have already held that while issuing the impugned notification, respondent - State has ignored the relevant consideration and considered the irrelevant material such as escalation in budgetary cost. As such, the exercise undertaken by the respondent - State, as an appropriate Government, in determining the factor and pegging it down to 1.10 cannot pass test of judicial review.

44] On behalf of respondent, reliance is also placed on judgment of the Hon'ble Supreme Court in the matter of *Bhavesh D. Parish Vs. Union of India*, reported in *2000 (5) SCC 471*; *Peerless General Finance and Investment Company Limited Vs. Reserve Bank of India*, reported in *1992 (2) SCC 343*, as well as in the matter of *Pallavi Refractories Vs. Singareni Collieries Co. Limited etc. (supra)*, for contending that in the matter pertaining to economic reform or change, courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the same should not be quashed. Careful perusal of these judgments shows that they deal with showing judicial respect to the legislative judgment or verdict of administrative bodies which are aided by experts. These aspects are not relevant in the instant case. The question which falls for consideration in this case, is whether, or not, discretion can be conferred on the appropriate Government to limit the multiplier factor for rural area to any figure below 2 particularly when there is no policy or guideline prescribed by the statute for

doing this. No such discretion is provided in the Act of 2013 and, as such, these judgments are of no assistance to respondent - State.

45] It is required to be kept in mind that the notifications or rules which are examples of delegated legislation, cannot override the statutory mandate. The subordinate legislation has to supplement and not to supplant the statute. In the matter of *Vasu Dev Singh and others Vs. Union of India and others*, reported in (2006) 12 SCC 753, and particularly, in paragraph 26 of said judgment, the Hon'ble Supreme Court has held that if by a notification, the Act itself stands effaced; then such notification needs to be struck down. It is further held in para 118 of the said ruling that a statute can be amended, partially repealed or wholly repealed by the legislature - The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The benefit granted by the statute cannot be nullified by the rules framed thereunder. This aspect is clear from the judgment of the Hon'ble Supreme Court, in the matter of *State of Karnataka and others Vs. H. Ganesh Kamath and others*, reported in (1983) 2 SCC 402, and *Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala*, reported in (2006) 4 SCC 327. Viewed from this angle, perusal of Clause 2 of the First Schedule to the Act of 2013 makes it clear that the same prescribes discretion regarding determination of different slabs of multiplier factors for multiplying the market value of land in rural areas depending upon its distance from urban areas. Neither any discretion nor corresponding guideline is provided for limiting the multiplier factor to a figure below 2

and, as such, the decision of the appropriate Government reflected in the impugned notifications cannot be upheld. The same is bad in law and deserves to be quashed and set aside.

46] The petitioner is also praying for directing the respondents to calculate market value of his land sought to be acquired for the storage tank by multiplying it by factor 2. However, it is for the appropriate Government to determine the factor on the basis of distance of the project from urban area. This Court cannot determine the same. As such, this relief cannot be granted to the petitioner. Similarly there are no justifiable reasons for quashing the impugned notice dated 6.8.2012 issued under Section 9(3)(4) of the Act of 1894.

47] In the light of foregoing reasons, the petition is partly allowed. Rule is made absolute in terms of prayer clauses "A", "B", "G" and "H". Impugned notification dated 19-3-2014 fixing the multiplier factor as 1 and impugned notification dated 13-8-2014 fixing the multiplier factor as 1, 1.05 and 1.10, are quashed and set aside. There shall be no order as to costs.

[A.M. BADAR]
JUDGE

[B.P. DHARMADHIKARI]
JUDGE.

48] At this stage, learned Acting Government Pleader seeks stay of

the present order/judgment for a period of two months. Learned Counsel appearing on behalf of the petitioner is opposing the request. However, looking to the nature of controversy, we stay this judgment for a period of two months. This interim order shall cease to operate automatically thereafter.

[A.M. BADAR]
JUDGE

[B.P. DHARMADHIKARI]
JUDGE.

grt/-