

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WA.NO. 2041 OF 2015 () IN WP(C).11476/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 11476/2011
OF HIGH COURT OF KERALA DATED 29-07-2015

APPELLANT(S)/PETITIONERS:

1. M.M.JEEVAN AGED 63 YEARS
S/O.P.K.MADHAVAN, RESIDING AT ARUNA (H)
PERUMBAYIKKAD PO, NEELIMANAGALAM, KOTTAYAM 28

2. SUSHMA JEEVAN AGED 55 YEARS
W/O.JEEVAN, RESIDING AT ARUNA (H), PERUMBAYIKKAD PO
NEELIMANAGALAM, KOTTAYAM 28

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
CHIEF SECRETARY, TO GOVERNMENT OF KERALA
THIRUVANANTHAPURAM-695001.

2. THE DISTRICT COLLECTOR
KOTTAYAM 686002

3. SPECIAL TAHASILDAR
LAND ACQUISITION, KOTTAYAM 686002

4. THE ASSISTANT EXECUTIVE ENGINEER,
BRIDGES SUB DIVISION, PWD, KOTTAYAM-686002

R BY SENIOR GOVERNMENT PLEADER SHRI C.S. MANILAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD 05.10.2015,
THE COURT ON 14.10.2015 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.2041 of 2015

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Dated this the 14th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed by the Writ Petitioners against the judgment dated 29.07.2015 by which judgment, the Writ Petition filed by the petitioners challenging the proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) has been dismissed. Parties shall be referred to as described in the Writ Petition.

2. Brief facts giving rise to the Writ Petition are: Petitioners, who are husband and wife, are owners of 7 cents and 1.16 Ares of lands in Perumbavyikkad Village, Kottayam District. In the property a factory building and a workshop was existing. Notification under Section 4(1) of the 1894 Act dated 05.02.2011 was issued proposing to acquire land of the petitioners for public purpose, namely, for construction of

the Vattamoodu bridge. Section 17(4) of the 1894 Act was invoked dispensing the enquiry under Section 5A. Declaration under Section 6 was issued which was published in the Official Gazette on 13.10.2011. Petitioners filed the Writ Petition immediately after the issuance of the Notification under Section 4(1) and this Court vide its interim order dated 08.04.2011 stayed dispossession of the petitioners. Award under Section 11 of the 1894 Act was also passed on 10.12.2012. Although petitioners filed Interlocutory Application in the Writ Petition for staying the entire land acquisition proceedings, no order was passed by the learned Single Judge. Petitioners' case in the Writ Petition is that there were other existing nearby bypass roads and it was not necessary to acquire petitioners' lands. Referring to plan Ext.P3, it was pleaded that other alternative alignments have not been chosen to benefit private persons. It was further pleaded that there was no such urgency so as to invoke Section 17(4) dispensing with the enquiry under Section 5A.

3. Counter affidavit was filed on behalf of the

respondents in the Writ Petition pleading that since lands were to be acquired for constructing the bridge and the approach roads connecting the Medical College Road and Eranjal Thiruvanchoor Road, urgency clause was invoked under orders of the Land Revenue Commissioner. Vattamoodu being in a remote area the proposed bridge was a long standing demand of the local people, the bridge was to reduce the traffic congestion in Kottayam town considerably. It was further pleaded that three proposals were examined by the PWD authorities in detail, namely, ABCD, LMND and PQRD. The first and second alignments involved acquisition of large number of buildings and structures, hence the Chief Engineer approved the third alignment which is most feasible one having least disturbance and loss. Learned Single Judge by interim order dated 24.07.2014 directed the respondents to grant opportunity to the petitioners to raise their objection and allow them to put forth their suggestions in the matter of alignment. In pursuance of the order of the learned Single Judge, petitioners submitted representation with alternative

proposals for change of alignment. Request submitted by the petitioners along with plan was considered and it was not approved since it involved formation of a sharp curve at immediate approach and is not allowable as per the IRC standards. Report dated 12.08.2014 was submitted in the Writ Petition by the Assistant Executive Engineer bringing on record the proposed alternative proposals submitted by the petitioners and reasons for not accepting the said proposals. Award dated 10.12.2012 was also produced before the learned Single Judge along with affidavit dated 21.02.2014. The learned Single Judge after considering the submissions of the learned counsel for the petitioners and respondents dismissed the Writ Petition by judgment dated 29.07.2015. Aggrieved by the said judgment, petitioners have come up in the Writ Appeal.

4. We heard Shri K.Jagadeesachandan Nair, learned counsel appearing for the petitioners. Shri C.S.Manilal, learned Senior Government Pleader appeared for the respondents.

5. Learned counsel for the petitioners very fairly

submitted that in view of the public purpose and the fact that land was acquired for construction of approach roads and bridge which proceedings were not stayed by the learned Single Judge, the steps cannot be reversed at this distance of time. He however, emphatically submitted that in view of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act"), petitioners are entitled to computation of compensation in accordance with the 2013 Act. He submitted that petitioners were neither paid compensation nor dispossession took place till the learned Single Judge modified the interim order on 09.06.2015, hence this is a fit case where the respondents be directed to compute the compensation payable to the petitioners under the 2013 Act. He further submitted that majority of land holders have not received compensation before enforcement of the 2013 Act, i.e., before 01.01.2014. He submitted that proviso appended to the Section 24(2) of the 2013 Act shows the last intention of the Legislature which

have to be given its full play. Referring to Maxwell on the Interpretation of Statutes, it has been contended by the learned counsel for the petitioners that last word of the legislation has to be followed. It is submitted that the Court should adopt a dynamic interpretation of law to advance the purpose and object of the 2013 Act which has been enacted to extend the benefit of liberal compensation. He submitted that although award in the petitioners' case has not been made five years prior to the enforcement of the 2013 Act, that should not desist the petitioners from claiming compensation under the 2013 Act. Learned counsel further submitted that invocation of the urgency clause under Section 17(4) of the 1894 Act was not justified. Learned counsel lastly submitted that in any event this Court may permit the petitioners to file application under Section 18 of the 1894 Act for enhancement of compensation which could not be filed by the petitioners since award was never communicated to the petitioners.

6. Shri C.S.Manilal, learned Senior Government Pleader refuting the submissions of the learned counsel for

the petitioners contended that the award having been issued on 10.12.2012, i.e., before the enforcement of the 2013 Act, Section 24(2) is not attracted. He submitted that the proviso relied on by the learned counsel for the petitioners is proviso to Section 24(2) and the proviso can be applicable only when the conditions precedent as mentioned in Section 24(2) are present. He submitted that the award having not been declared 5 years prior to the enforcement of the 2013 Act, no benefit of the proviso can be availed by the petitioners. He further submitted that present was a case of urgency which was duly considered and permitted by the Land Revenue Commissioner since construction of bridge and approach roads was required to reach the bridge. It is submitted that under orders of the learned Single Judge dated 24.07.2014, petitioners' alternative proposal was duly considered and a report has been submitted. It is pleaded that the learned Single Judge has rightly dismissed the Writ Petitioner after due consideration of all the submissions made by the learned counsel for the petitioners.

7. Learned counsel for the parties have placed

reliance on various judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

8. We have considered the submissions of the learned counsel for the parties and perused the records. From the submissions made by the learned counsel for the parties and the materials on record, the following are the issues which arose for consideration:

(i) Whether the petitioners are entitled to claim payment of compensation for acquisition of their property in accordance with the 2013 Act on the strength of the proviso to Section 24(2) of the 2013 Act?

(ii) Whether the proviso appended after Section 24(2) can be treated as separate and independent legislation not controlled by Section 24(2) and is applicable in all cases where award is made prior to the enforcement of the 2013 Act?

(iii) Whether sufficient grounds were made out in the Writ Petition to quash the entire land acquisition proceedings

**initiated by Notification under Section 4(1)
dated 05.02.2011?**

All the issues being interconnected are taken together.

9. The 2013 Act was enacted by the Parliament providing for a humane, participative, informed and transparent process for land acquisition and to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired. Rehabilitation and resettlement issues have also been provided for in the legislation. With regard to land acquisition proceedings which were initiated prior to enforcement of the 2013 Act, i.e., prior to 01.01.2014 provisions were made in Section 24. Section 24 contains the heading "Land acquisition process under Act No.1 shall be deemed to have lapsed in certain cases". Section 24 which is up for consideration in the present case is quoted below:

**"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 1894), 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 Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

Section 24 has two sub-sections. Sub-section (1) provides two situations, i.e., clause (a) where no award under section 11 of the 1894 Act has been made, then all provisions of this Act relating to the determination of compensation shall apply and (b) where an award under Section 11 has been made, then such proceedings shall continue under the provisions of

the 1894 Act as if the said Act has not been repealed. Section 24(2) begins with a non obstante clause, i.e., “notwithstanding anything contained in sub-section (1)”. Thus what was provided in sub-section (2) of Section 24 was to override anything mentioned in sub-section (1). Sub-section (2) provided for legal fiction whereby the land acquisition proceedings which were initiated under the 1894 Act shall be deemed to be lapsed. The deeming clause was to apply on fulfillment of the following conditions: (i) where in the proceedings initiated under the 1894 Act an award under Section 11 has been made five years or more prior to the commencement of the 2013 Act, i.e., where an award is made on or before 01.01.2009 and (ii) either physical possession of the land has not been taken or compensation has not been paid.

10. Section 24(1) and (2) had come up for consideration before the Apex Court in a large number of cases. In **Pune Municipal Corporation and Another v. Harakchand Misirimal Solanki and Others** ([2014] 3 SCC 183), it was contended before the Apex Court that

compensation for acquisition made by the Municipal Commissioner, Pune although was deposited in the Treasury, was not paid to the land owners, hence Section 24(2) shall be applicable and acquisition shall stand lapsed. Accepting the submission, the following was laid down by the Supreme Court in paragraphs 17, 18 and 19:

“17. While enacting S.24(2), Parliament definitely had in its view S.31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners / persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of S.24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in S.31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of S.24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the Court where reference under S.18 can be made on happening of any of the contingencies contemplated under S.31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of S.24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that

amount available to the interested person to be dealt with as provided in S.32 and S.33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (S.31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad, AIR 1936 Privy Council 253 (2) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31/01/2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners / persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes, 2011 KHC 4411 : 2011 (11) SCC 506 : 2011 (3) KLT SN 13, relying upon the earlier decision in Prem Nath Kapur, 1996 KHC 1460 : 1996 (2) SCC 71 : JT 1995 (9) SC 23 : 1995 (7) SCALE 109 : 1995 Supp (5) SCR 790 has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in Court."

11. Submission which has been pressed by the learned counsel for the petitioner is that in the facts and

circumstances of the present case where award was not passed prior to the enforcement of the 2013 Act, the benefit of the proviso is to be extended to the petitioners.

12. What is the object and intend of the proviso appended to Section 24(2) is the core question to be answered. Whether the proviso is applicable even in cases where although award was made prior to the enforcement of the 2013 Act it was not made prior to five years or more of the commencement of the 2013 Act as required by Section 24(2). As noted above under Section 24(1)(b) it is provided that where an award under Section 11 of the 1894 Act has been made, then such proceedings shall be continued under the provisions of the 1894 Act as the said Act has not been repealed. In event the Legislature wanted to extend the benefit of the proviso to all cases where award has been made prior to enforcement of the 2013 Act, proviso could have been very well appended to Section 24(1). What is the object of appending the proviso to Section 24(2) is to be found out. In a case where award has been made five years or more prior to the commencement of the 2013 Act and

physical possession of the land has not been taken or compensation has not been paid, the acquisition proceedings are deemed to be lapsed. In the present case it is not disputed that petitioners were not paid compensation prior to enforcement of the 2013 Act and physical possession was also taken subsequent to the enforcement of the 2013 Act but the conditions enumerated in Section 24(2) that award has to be made five years or more before the enforcement of the 2013 Act is not satisfied. Thus the present case does not fall in the condition precedent prescribed in Section 24(2) for lapsing the proceedings.

13. A plain reading of the proviso indicate that the proviso contemplates that when award has been made and compensation in respect of majority of land holdings was not deposited in the account of the beneficiaries then all beneficiaries under Section 4(1) notification shall be entitled to compensation in accordance with the provisions of the 2013 Act. The proviso contemplates a situation in which although award has been made, but in majority of the cases compensation has not been deposited, then all

beneficiaries are to be given the benefit of the 2013 Act including those with regard to whom compensation has not been deposited and those who have received the compensation covered by the same notification. Thus in the normal circumstance when compensation has not been deposited in respect of majority of land holdings, the acquisition is deemed to be lapsed as per Section 24(2) but proviso provides that even in those cases compensation is to be paid in accordance with the 2013 Act, an exception has been carved out in the proviso where the acquisition is not to be lapsed.

14. We may now look into certain principles which have been well established while interpreting a proviso. Justice G.P.Singh in Principles of Statutory Interpretation, 13th Edn., while interpreting the principles of statutory interpretation of a proviso has stated as follows:

“The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by LUSCH J. “when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the Section would have included the subject -

matter of the proviso.” In the words of LORD MACMILLAN: “the proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case”. The proviso may, as LORD MACNAGHTEN laid down, be “a qualification of the preceding enactment which is expressed in terms too general to be quite accurate”. The general rule as been stated by HIDAYATULLAH, J., in the following words: “As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule”. And in the words of KAPUR, J., “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 proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment”. Further, a proviso is not normally construed as nullifying the enactment or as taking away completely a right conferred by the enactment. As a consequence of the aforesaid function of a true proviso certain rules follow.”

15. Maxwell on Interpretation of Statutes, 12th Edn.,
has stated as follows:

“Construction of provisos

Difficulties sometimes arising in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken “absolutely in their strict literal sense,” but that a proviso

is “of necessity”.. limited in its operation to the ambit of the section which it qualifies.” and, so far as that section itself is concerned, the proviso again receives a restricted construction: where the section confers powers. “It would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond that compliance with the proviso renders necessary.”

16. The Apex Court in **Ram Narain Sons Ltd and Others v. Assistant Commissioner of Sales Tax and Others** (AIR 1955 SC 765) stated the following in paragraph 10:

“It is a cardinal rule of interpretation that a proviso in a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.”

Justice V.R. Krishna Iyer speaking for a Four Judge Bench in **Dwarka Prasad v. Dwarka Das Saraf** ([1976] 1 SCC 128 held as follows:

“The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' (1912 A-C. 544) If

the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.”

One more judgment of the Apex Court which is relevant to be noted is **Tribhovandas H.Tamboli v. Gujarat Revenue Tribunal** ([1991] 3 SCC 442) where the following was stated in paragraph 6:

“6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a provision is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the

language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.”

17. A proviso thus appended to a provision has to be interpreted in the manner so as to embrace the field which is covered by the main proviso. The proviso is only an exception to the main provision to which it has been enacted and no other. A proviso deals with the situation which takes something out of the main enactment to provide a particular course of action which course of action could not have been adopted in the absence of the proviso.

18. Proviso appended to Section 24(2) indicates that it carves out an exception for a situation where the land acquisition proceedings shall not be deemed to lapse. Thus for applicability of the proviso a case has to be covered by Section 24(2), i.e., (i) award has been made five years or more prior to the enforcement of the 2013 Act and (2) either physical possession of the land has not been taken or compensation has not been paid.

19. Proviso contemplates a situation where majority of the land holders were not paid compensation nor compensation is deposited in their accounts meaning thereby that for majority of land holders acquisition has to lapse but for the proviso. The proviso in fact extend the benefit even to those land holders who have received compensation as per the 1894 Act. Thus all land holders are to receive benefit of higher and liberal compensation under Section 2013 Act. This situation is one where land acquisition proceedings shall not lapse and are saved.

20. Learned counsel appearing for the appellants submitted that in the facts of the present case where award was made on 10.12.2012, prior to the enforcement of the 2013 Act and compensation has not been paid, benefit of the proviso to Section 24(2) be extended to the petitioners for compensation under the 2013 Act. He submitted that proviso is the last part of Section 24 and last words of the Legislature have to be given effect despite any contrary intendment in the main provision. Learned counsel has relied on the following statement made by Maxwell on

Interpretation of Statutes:

“If however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect.

If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that “it speaks the last intention of the makers.”

As noted above the cardinal rule for interpretation of a proviso is to hold that proviso to a particular provision to a statute only embrace the field which is covered by the main provision. However, in view of the above statement relied on by the learned counsel for the petitioners that if the proviso makes it clear that it is intended to have more extensive operation than that of the provision, it should be given wider effect since on the principle that “it speaks the last intention of the makers”. The above statement on principles of statutory interpretation needs no departure for the purpose of the present case. But in the present case purpose and object of the proviso is to give benefit of computation of compensation to land holders and to save acquisition proceedings despite as per the main proviso

acquisition is to be treated as lapsed. The proviso carves out an exception and is to operate even when under the main provision the acquisition is to lapse. Present is not a case where the proviso is not being given effect to rather proviso to Section 24(2) is being given its full effect for the benefit of the land holders.

21. In event we accept the contention of the learned counsel for the petitioners that in the facts and circumstances of the present case, benefit of compensation under the 2013 Act is to be extended to the petitioners and proviso was to cover all cases of award made prior to the enforcement of the 2013 Act, the proviso ought to have been appended to Section 24(1) (b). The proviso does not militate against the conditions which are mentioned in Section 24(2) rather it intends that in spite of the conditions under Section 24(2) being satisfied acquisition in such cases shall not lapse and compensation be determined according to the 2013 Act. The proviso has been added to save the acquisition from lapsing as would otherwise followed under Section 24(2) and further the intend of the proviso is to give benefit to all land holders

including the minority land holders who have received compensation under the 1894 Act. Section 24(2) applies where award was made more than five years or more prior to the enforcement of the 2013 Act. Thus in a case where even after lapse of five years compensation of majority of land holders could not be deposited, both minority and majority land holders should get compensation under the 2013 Act. The 2013 Act is a beneficial piece of legislation to the land holders whose lands have been acquired. Proviso is a proviso of Section 24(2) and not of Section 24(1) which is reinforced from the subsequent legislative exercise pertaining to the 2013 Act.

22. The President of India has promulgated two Ordinances, i.e., Ordinance Nos.9 of 2014 and 5 of 2015 namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015. By the Ordinances, one more proviso has been added in sub-section 24(2). It is useful to quote clause 6 of Ordinance No.5/2015 which is to the following effect:

“6. In the principal Act, in section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely.-

Provided further than in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the 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 out the compensation is lying deposited in a court or in any designated account maintained for this purpose, shall be excluded.”

In the Ordinance, existing proviso has been referred to as a proviso to Section 24(2) and one more proviso has been added which makes it clear that proviso under consideration is proviso to Section 24(2) and not under Section 24(1).

23. The Apex Court had occasion to consider the proviso to Section 24(2) in **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Others** ([2015] 3 SCC 353). In the above case, land acquisition proceedings were initiated by notification under Section 4 on 02.02.2005 and award was made on 30.11.2006. In a challenge to the acquisition proceedings interim order was passed protecting the land holders from being dispossessed. The Apex Court, when the matter was pending, directed the respondents to

submit a revised comprehensive plan which was submitted and when the matter was pending, the 2013 Act was enacted. Appellant filed application before the Apex Court stating that appeals be allowed in terms of Section 24(2) of the 2013 Act by holding that the proceedings have lapsed. The Apex Court in the above circumstances considered Section 24(2). One of the submissions which raised by the Additional Advocate General was that in view of the proviso to Section 24(2), acquisition has not lapsed since payment of compensation has been made to only some of the land holders and all beneficiaries are entitled to compensation under the 2013 Act. The said submission was not accepted by the Apex Court and while considering the said submission, it was observed by the Apex Court that the proviso which prima facie appears to be for the benefit of all the landholders 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. The Apex Court further held that applying the principle of statutory interpretation

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. The following was laid down in paragraph 13:

“13. From the discussions made above, it is amply clear that though there is lack of clarity on the issue whether compensation has been paid for majority of land holdings under acquisition or not, there is no dispute that physical possession of the lands belonging to the appellants under consideration in these appeals has not been taken by the State or any other authority on its behalf and more than five years have elapsed since the making of the award dated 30/11/2006 and 01/01/2014 when the 2013 Act came into force. Therefore, the conditions mentioned in S.24(2) of the 2013 Act are satisfied for allowing the plea of the appellants that the land acquisition proceedings must be deemed to have lapsed in terms of S.24(2) of the 2013 Act. The appeals are disposed of accordingly. It goes without saying that the Government of Tamil Nadu shall be free, if it so chooses to initiate proceedings of such land acquisition afresh in accordance with the provisions of 2013 Act. In the facts and circumstances of the case there shall be no order as to costs.”

The Apex Court itself has observed that the contention raised by the Additional Advocate General would have been considered with some seriousness if physical possession of the land has been taken, since that has not been done, provision was not helpful to the State. The Apex Court

further observed that it is not required to go into the deeper effect of the implication of the proviso.

24. We thus observe that whether the benefit of the proviso is to be extended in a particular case depends on various factors which need to be examined in each and every case and then only it can be pronounced whether the proviso to Section 24(2) is applicable.

25. Although learned counsel for the petitioners contended that majority of land holders have not been paid compensation, the said contention is denied by the learned Senior Government Pleader. According to learned Senior Government Pleader majority of land holders have already received compensation.

26. Thus in the facts of the present case, we are of the opinion that petitioners cannot claim any benefit on the strength of the proviso to Section 24(2) nor they are entitled to claim computation of compensation in accordance with the 2013 Act.

27. Submission was also raised by the learned counsel for the petitioners that in view of dispensation of enquiry

under Section 5A of the 1894 Act, the entire proceedings have to be set aside. In the counter affidavit filed on behalf of the State detailed facts have been pleaded including the request of the requisitioning authority to have the acquisition of land by invoking Section 17. Invocation of urgency clause was duly sanctioned by the Department. There was also recommendation of the Land Revenue Commissioner. As per the notification issued under Section 4(1) of the 1894 Act, land was proposed to be acquired for the following purpose:

“The land described in the schedule attached hereto is needed or likely to be needed for a public purpose namely for constructing the Vattamoodu bridge.”

There being material before the authorities to come to a satisfaction that land was urgently required and the land being required for construction of approach roads and bridge, we do not find any illegality in the invocation of Section 17(4).

28. Learned counsel for the petitioners submitted that in view of the pendency of the Writ Petition, petitioners could not get opportunity to make a reference under Section 18 of the 1894 Act. It is submitted that no notice of award was

given to the petitioners nor copy of the award was communicated to them. Learned counsel for the petitioners relying on the judgment of the Apex Court in **Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and Another** (1961 KHC 721) contended that limitation for submitting application under Section 18 shall take effect only from the date when the award is communicated to the petitioner. There cannot be any dispute to the proposition of law laid down by the Apex Court. The following was laid down in paragraphs 6 and 7:

“6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect person, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot, consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector : it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose

rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to S. 18 in a literal or mechanical way.

7. In this connection it is material to recall the fact that under S. 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under S. 11 followed by its filing under S. 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of

the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to S. 18. It is because communication of the order is regarded by the Legislature as necessary that S. 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under S. 12(2) should directly tend to make ineffective the right of the party to make an application under S. 18, and this result could not possibly have been intended by the Legislature."

In the present case along with the affidavit 21.02.2014 filed by the State copy of the award dated 10.12.2012 of the Assistant Executive Engineer has been brought on record. The award having been brought on record, at least the petitioners shall have constructive knowledge of the said award from the date of service of the copy of the counter affidavit. Learned counsel for the petitioners further fairly stated that this Court even in exercise of the jurisdiction under Article 226 of the Constitution of India cannot extend the limitation under Section 18 of the 1894 Act. Thus the submission of the learned counsel for the petitioners with

regard to opportunity to make a reference at this stage under Section 18 cannot be accepted.

29. Learned counsel for the petitioners relied on three decisions of the Travancore-Cochin High Court, **Jacob Syriac Nidhri and Others v. Narendra Prabhu Krishna Prabhu and Others** (1951 TravCochin 226), **Ouseph Ouseph v. Minister of Food** (1951 Trav-Cochin 226) and **P.J. Joseph v. Assistant Excise Commissioner** (1953 Trav-Cochin 146). Learned counsel for the petitioners contended that in the present case petitioners have filed application for stay of the land acquisition proceedings and despite pendency of the application, possession of the land was taken, hence this Court under Article 226 of the Constitution of India as laid down in the above cases can restore the status quo ante. In the present case as noted above, learned Single Judge himself has modified the interim order vide his order dated 15.06.2015 and possession was taken thereafter after modification of the interim order. The law laid down in the aforesaid cases has no application to the facts of the present case.

30. In view of the foregoing discussion we are of the view that no relief can be granted to the petitioners.

31. Before we part, we record our deep appreciation for the lucid, elaborate and substantial submissions made by Shri Jagadeesachandran Nair, the learned counsel for the petitioners.

Writ Appeal is dismissed.

Parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**