

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.1467, 1468, 1469, 1477, 2236 OF 2015,

AND W.P.No.21621 OF 2014

COMMON ORDER:

The facts in issue and the prayers in these writ petitions are substantially same and similar.

The issues of law centre round construction/ interpretation of the words “an award under Section 11 (of the Land Acquisition Act) has been made” in Section 24(1)(b) of Act 30 of 2013.

The issues for consideration arise under the Land Acquisition Act, 1894 (for short ‘Act 1 of 1894’) and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ‘Act 30 of 2013’)

For convenience, the dates, events and array of parties in W.P.Nos.1467, 1468, 1469 and 1477 of 2015 are referred in detail.

A portion of following properties is the subject matter of acquisition in these writ petitions.

W.P.No.1467 of 2015	5-8-225/12 & 5-8-225/1 to 11, Nampally, Hyderabad
W.P.No.1469 of 2015	5-8-230/4 & 5-8-230/3,5,6,7, Nampally, Hyderabad.
W.P. No.1477 of 2015	5-8-230/4/A & Shop Nos.5-8-230/A,B,C 1 & 2, Nampally, Hyderabad.
W.P. No.1468 of 2015	5-4-405 to 408, Nampally, Hyderabad.
W.P. No.2366 of 2015	5-8-223, Nampally, Hyderabad
W.P. No.21621 of 2014	1-11-251/19/A2/A3 (132 square yards) Bholakpur, Secunderabad.

The petitioners pray for Mandamus declaring the action of 2nd respondent in acquiring a portion of subject properties situated at Nampally,

Hyderabad under the provisions of Act 1 of 1894 by paying compensation under Act 1 of 1894, as illegal, unconstitutional and contrary to the provisions of Section 24 (1) of Act 30 of 2013 and consequently pray for a direction to the 2nd respondent to pass an award under Section 24 (1) (a) of Act 30 of 2013.

FACTUAL BACKGROUND:

The 3rd respondent is implementing Hyderabad Metro Rail Project under a P.P.P with the State Government/GHMC. Through the Mass Rapid Transit System (MRTS), rail based mass transit connectivity is made available to ease pressure on the existing roads and MMTS means of transportation in a few corridors of twin cities. The subject properties are located at Nampally, Hyderabad and Bholakpur, Secunderabad. These properties were notified for acquisition under Act 1 of 1894 for road widening in Corridor-I for establishment/construction of MRTS. The Greater Hyderabad Municipal Corporation is the requisitioning department. Hyderabad Metro Rail Limited/3rd respondent is the implementing/operating agency of the rail project. The Special Deputy Collector/ 2nd respondent is the Land Acquisition Officer.

The cause of action for filing the writ petitions is the communication of award dated 23.12.2013 through notice dated 30.12.2014 under Section 12(2) of Act 1 of 1894.

The following dates and events are admitted by parties.

On 25.04.2013, notification under Section 4 (1) of Act 1 of 1894 was issued for acquiring the properties covered by writ petition Nos.1467, 1469 and 1477 of 2015. On 27.04.2013, notice under Section 5-A of Act 1 of 1894 was issued to interested persons in the acquisition proceedings. On 19.07.2013, draft declaration under Section 6 of Act 1 of 1894 was gazetted in Hyderabad District Gazette and on 24.07.2013, the draft declaration was published in the local newspapers. Notices in Form 6 under Sections 9 (1) and 10 and in Form 7 under Sections 9(3) and 10 of Act 1 of 1894 dated 24.07.2013 have been issued calling for claims in award enquiry. The award enquiry was fixed on 07.08.2013. There are no disputes between the

parties as regards the events up to the date of issuance of notices under Sections 9 and 10 of Act 1 of 1894. Admittedly, the notice dated 30.12.2014 under Section 12(2) of Act 1 of 1894 is served on 13.01.2015 on petitioners. Through the instant notice, the petitioners have knowledge of award dated 23.12.2013. The controversy, in fact, between the parties is on the very making of award on 23.12.2013 under Act 1 of 1894 and the legal effect of non-communication of award before Act 1 of 1894 is repealed. Secondly, legal effect of notice dated 30.12.2014 under Section 12 (2) of Act 1 of 1894 with the advent of Act 30 of 2013.

The case of petitioners is that there is no enquiry and no award was passed on 23.12.2013. The 2nd respondent before pronouncing the award has not issued notice to the claimants, as required by Act 1 of 1894. The notice dated 30.12.2014 under Section 12(2) of Act 1 of 1894 is illegal and unsustainable. Further, from 01.01.2014, the compensation payable for pending acquisition where no award is made, should be under Section 24 (1) (a) of Act 30 of 2013. Now, to defeat the payment of compensation under Section 24(1)(a) of Act 30 of 2013, the award is alleged to have been made on 23.12.2013.

The petitioners state illustratively from the actual details in W.P.No.1468 of 2015 and contend that the 2nd respondent through draft declaration dated 24.07.2013 decided to acquire an extent of 109.07 square yards from premises bearing Nos.5-4-405 to 408. The 2nd respondent claims to have passed an award on 23.12.2013 for the notified extent i.e., 109.07 square yards for house bearing Nos.5-4-405 to 408. The 2nd respondent issued notice in Form 9 in File No.C/260/2013 dated 30.12.2014 for a lesser extent of 49.46 square yards and offered to pay corresponding compensation. The 2nd respondent issued Form 9 notices to petitioners for lesser extent than what is notified in the proceedings. From this circumstance, the case of petitioners is that making of award, as a matter of fact, on 23.12.2013 is doubtful and secondly, the notice dated 30.12.2014 issued in Form 9 under Section 12(2) of Act 1 of 1894 is not in conformity with the alleged award dated 23.12.2013. In effect, the petitioners contend that the compensation for acquisition of the subject properties should be under Section 24(1) (a) of Act 30 of

2013 and not covered by Section 24(1)(b) of Act 30 of 2013.

The 2nd respondent filed counter affidavit and there is no dispute on the dates and events referred to above, except on the date of making award, on 23.12.2013. According to 2nd respondent, award was passed on 23.12.2013. The compensation was rightly awarded as per the provisions of Act 1 of 1894. The reasons for delay in communication are that after the award was passed on 23.12.2013, the road development plan in this stretch has been considered for revision by the requisitioning department/GHMC. Through revised road development, less extent is sought to be acquired than what is already notified. On account of consideration of revised road development plan, discrepancies occasioned in the extents shown in the award dated 23.12.2013. It is admitted that these discrepancies resulted in delay in issuing notices under Section 12(2) of Act 1 of 1894. The notice under Section 12(2) dated 30.12.2014 has been issued for the revised extents and notices are served on petitioners on 13.01.2015.

The legal grounds and contentions of petitioners are replied by 2nd respondent that the award has been passed on 23.12.2013 and the compensation has been awarded accordingly. Further, with the passing of award on 23.12.2013, determining compensation under Section 24(1)(b) of Act 30 of 2013 is applicable, but not Section 24(1)(a) of Act 30 of 2013. The 2nd respondent by referring to the passing of award on 23.12.2013 contends that payment of compensation is under Act 1 of 1894, but not under the provisions of Act 30 of 2013. In short, the reply of 2nd respondent is that making award prior to 31.12.2013 would suffice the requirement of Section 24(1)(b) and communication is not required. The claim for compensation under Section 24(1) (a) of Act 30 of 2013 is unavailable to petitioners.

The 3rd respondent has not filed separate counter, but in all material particulars supports the stand taken by the 2nd respondent.

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The petitioner in W.P.No.2236 of 2015 prays for Mandamus declaring the action of respondents in issuing notice in Form Nos.9 and 10 under Section 12(2) of Act 1 of 1894 dated 30.12.2014, stating to have passed award on 23.12.2013 in

respect of petitioner's property bearing Municipal Door No.5-8-223, in an extent of 240.28 square yards in T.S.No.2, Ward-51, Block-M of Nampally Village and Mandal, Hyderabad, as illegal, unconstitutional and violative of principles of natural justice. 4(1) notification was issued on 25.04.2013 and 6 declaration was published on 19.07.2013.

This Court directed production of records and note File No.C/260/2013. The original file is made available for perusal of the Court. I propose to refer to the contents of original file while dealing with the issue of passing award on 23.12.2013.

The learned counsel appearing for the petitioners contend that there is no award enquiry on 07.08.2013 and no further date of enquiry is intimated to the petitioners. The alleged making of award on 23.12.2013 is unsustainable and the 2nd respondent did not issue notice under Section 12(2) of Act 1 of 1894 before pronouncing the award or immediately thereafter. The 2nd respondent had taken approval of the draft award on 18.12.2013 and the approval stated to have been taken from the District Collector is again illegal, inasmuch as before conclusion of award enquiry, the approval is taken. Admittedly, as on that date, a proposal for reduced extents was pending with the requisitioning department, without final word from the requisitioning department, it is improbable that an award could be made on 23.12.2013, more particularly for notified extents.

The making of the award must conform to the requirements of Section 11 of Act 1 of 1894. The award is in the nature of an offer to the owner/claimant and having regard to the nature of award, the law does not recognize uncommunicated/mere file noting as making an award, affecting the rights of 3rd parties. The award dated 23.12.2013 denies to the claimants the fair compensation payable under Act 30 of 2013. Therefore, the alleged making of award must be construed in the context of payment of compensation and unless award is made known to claimants, it cannot be contended that an award is made for purpose of Section 24 (1)(b) of Act 30 of 2013 and compensation can be paid under Act 1 of 1894. The making of award in the context of Section 11 read with Section 11-A of Act 1 of 1894 is interpreted in the context of lapse of proceedings. But, the consequence of an award and the period of limitation for reference under Section 18

has been distinct and is dependant on knowledge and communication of award. With the repeal of Act 1 of 1894, Section 24(1)(b) envisages compensation as determined by making award, and further proceedings are continued under Act 1 of 1894. Alternatively, without an award made, the compensation is payable under Section 24(1)(a) of Act 30 of 2013. The accrual of right or obligation is determinative of making award.

It is further contended that the 2nd respondent failed to discharge the burden cast on him to show that the award was, in fact, passed on 23.12.2013. Award was not even forwarded to the District Collector, requisitioning department and at least to the claimants. In the absence of any of these steps having been taken by the 2nd respondent at the earlier point of time, the making of award on 23.12.2013 does not affect the rights of petitioners to receive fair compensation under Act 30 of 2013. The affected party can have knowledge of award if one or the other circumstances stated in **PREMJI NATHU v. STATE OF GUJARAT AND ANOTHER** are attracted. Act 1 of 1894 being ex-proprietary legislation must be construed strictly. The object and scope of Act 30 of 2013 provide for fair compensation and transparency in land acquisition.

It is further contended that Section 114 of Act 30 of 2013 provides for repeal and savings. Section 24 of Act 30 of 2013 is a transitory provision and the saving clause in Section 114 of Act 30 of 2013 is subject to the other explicit provisions in the repealing enactment i.e. Act 30 of 2013. Section 24 (1) commences with the words “notwithstanding anything contained in this Act” and the words in clause (a) of Section 24(1)” where an award under Section 11 has been made under the Land Acquisition Act, 1894,” are to be construed in the light of the effect of repeal of Act 1 of 1894. The savings provided in Section 114 of the Act 30 of 2013 and the transitory provision in Section 24 (1) provides for continuation of the land acquisition proceedings under Act 1 of 1894, subject to making of award on or before 31.12.2013 and if no award is made by 31.12.2013 compensation under Section 24 (1) (a) Act 30 of 2013 is payable.

The learned counsel contend that the scope or object of Section 24(1) centres round payment of compensation and the making of award should be accordingly construed. The learned counsel for the petitioners contend that the interpretation or construction of the words referred to above must be in the context of payment of compensation and ought not to be in the context of Sections 11 and 11-A of Act 1 of 1894. So, the making of award under Section 11 should conform to the requirement of Sections 11, 12 and 18 of the Act and must accrue a right and liability on the parties. The mere file noting or alleged signing will not deny to petitioners fair compensation under Act 30 of 2013. The learned counsel in support of these submissions places reliance on the following decisions:

1. RAJA HARISH CHANDRA RAJ SINGH VS. THE DEPUTY LAND ACQUISITION OFFICER AND ANOTHER

2. BISHAMBHAR NATH KOHLI V. STATE OF UTTAR PRADESH

3. G.KRISHNA PRASAD v. STATE OF ANDHRA PRADESH AND OTHERS

4. K. PEDA VENKATAIAH VS GOVERNMENT OF ANDHRA PRADESH

On the contrary, the learned Government Pleader contends firstly that the 2nd respondent passed award dated 23.12.2013. It is admitted that on account of consideration of revised road development plan by the requisitioning department, the

2nd respondent did not proceed to forward the copy of award to the Collector for record or issue notices to the requisitioning department or the 3rd respondent, much less to the persons interested in the award. The non-communication of award in view of clear words viz., “award made” used in Section 24 of Act 30 of 2013 do not vitiate the award. For all purposes, with the signing of award on 23.12.2013, it is to be held that the making of award is prior to 31.12.2013 and would suffice the requirement of Section 24(1)(b) of Act 30 of 2013.

Further, the communication of award is not mandatory under Section 11 of Act 1 of 1894. The communication can be at a later point. No communication of

award is intended in Section 11 of Act 1 of 1894 and the same cannot be read into Section 24 (1) of Act 30 of 2013 to call in question the award dated 23.12.2013. Had it been the intention of the Parliament to make communication of award as mandatory for determining what are concluded acts, the Parliament would have certainly included Section 12 of Act 1 of 1894 after the words “Section 11” in Section 24 of Act 30 of 2013.

In the absence of same, the requirement of Section 12 of Act 1 of 1894 is inapplicable in construing the making of award occurring in Section 24(1) of Act 30 of 2013. It is contended that mere making of award is sufficient for paying compensation under Act 1 of 1894. The non-communication to parties or to the Collector vitiates the award in any manner. It is contended that if the argument of petitioners is accepted, then it amounts to legislation by the Court, which is impermissible.

The learned counsel for the respondents do not join issue with the propositions that the award is an offer, the non-communication does not accrue a right or create a liability etc., on the stakeholders or on the interested parties in the context of Section 18 of Act 1 of 1894, but they contend that this Court has to interpret the words “an award has been made under L.A. Act” in Section 24 of Act 30 of 2013 with the plain requirement of Section 11 of Act 1 of 1894 and nothing else. The learned counsel for the respondents places strong reliance upon the decision reported in **KALIYAPPAN v. STATE OF KERALA & ORS.**

The learned counsel for respondent No.3 contends that the edifice of petitioners’ case is that an award is made with the communication and mere signing by the Land Acquisition Officer does not amount to an award and not supported by the scheme under Act 1 of 1894. The learned counsel tries to meet this argument by contending that a plain reading of Section 11 of Act 1 of 1894 does not require communication of award. With the determination of area of land acquired, compensation payable and approval of Government, the award is made by Land Acquisition Officer under Section 11 of Act 1 of 1894. The purposive construction or plain reading of Section 24 of Act 30 of 2013 does not advance the case of petitioners. Lapsing of proceedings require express authorisation or sanction of Act. Proviso to Section 24(2) does not apply to instant case and the interpretation advanced by petitioners amounts to re-aligning the text of

Section 24 of Act 30 of 2013. The writ petition under Article 226 of the Constitution of India is not maintainable in view of inbuilt mechanism provided under Section 24 of Act 30 of 2013. He relies upon the decisions reported in **SANJAY SINGH AND ANOTHER V. U.P. U.P. PUBLIC SERVICE COMMISSION, ALLAHABAD, SUPREME PAPER MILLS LIMITED v. ASSISTANT COMMISSIONER, COMMERCIAL TAXES, CALCUTTA AND OTHERS, KALIYAPPAN'S case (6 supra), CHANDIGARH HOUSING BOARD AND ANOTHER V. GURMIT SINGH, THE SALES TAX OFFICER, CIRCLE 1 v. HANUMAN PRASAD and THE STATE OF RAJASTHAN v. LLELA JAIN AND OTHERS** for the above proposition.

The counsel appearing for all the parties made submissions on proviso to Section 24(2) of Act 30 of 2013. I am not persuaded to refer to these submissions, for a decision on construction of words making award in Section 24 (1) of Act 30 of 2013 would suffice the consideration.

From the above pleadings and contentions, the following points are framed for consideration:

- i. Whether from the material available on record, can it be said that on 23.12.2013 an award was made by the 2nd respondent?
- ii. What is the meaning of words "making of an award in Section 24 (1) of Act 30 of 2013 and effect of non-communication of award before 31.12.2013?
- iii. Whether and what relief can be granted to petitioners in the circumstances of the case?

POINT No.I:

The averments on this issue are that the notice dated 24.07.2013 under Sections 9(3) and 10 of Act 1 of 1894 was issued by the 2nd respondent for the scheduled award enquiry on 07.08.2013. The petitioners claim to have filed the claim statement

for compensation before 2nd respondent within time. It is averred that the petitioners have been pursuing the proceedings regularly and giving timely replies to 2nd respondent. One of the parties in these writ petitions approached the 2nd respondent under the Right to Information Act for copies of the record of subject acquisition from M.J.Market to Ravindra Bharathi, which are made available by respondent No.2 and basing upon this information, it is the definite case of petitioner that no award was passed by 23.12.2013 and the land acquisition proceedings was just pending finalization of the award. The 2nd respondent after lapse of one year issued notice dated 30.12.2014 under Section 12(2) in Form 9 and on 13.01.2015 the said notice was served on petitioners. The award notice dated 30.12.2014 refers to lesser extent and payment of corresponding compensation than what was notified under Section 6 declaration dated 24.02.2013. The petitioners complain that the award was not, in fact, passed before 31.12.2013 and the award was passed with date 23.12.2013 as making of award to deny to petitioners fair compensation under Act 30 of 2013. The non-issue of notice under Section 12(2) of Act 1 of 1894 renders the award illegal and communication dated 30.12.2014 cannot deny the compensation payable under Section 24 (1)(a) of Act 30 of 2013.

The petitioners filed reply and additional documents received under the Right to Information Act. The petitioners, at the time of hearing, by relying upon these documents contend that the award dated 23.12.2013, in fact, was not made on 23.12.2013 and the award now served through notice dated 30.12.2014 is not in conformity with the alleged award dated 23.12.2013 made by respondent No.2. It is the further case of petitioners that the requisitioning department was petitioned by the aggrieved persons for reduction of extents and the request was under active consideration with the requisitioning department. Before a final decision is taken on the exact extents of acquisition, the award could not have been passed by the 2nd respondent on 23.12.2013. It is further contended that no enquiry is held and the copy of award now served through notice dated 30.12.2014 does not have the approval of the competent authority. Therefore, it is contended that the award is ante-dated only to deny fair compensation under Section 24(1) (a) of Act 30 of 2013.

On the contrary, the case of 2nd respondent is that notices in Form 6 under

Section 9(1) and Form 7 under Sections 9(3) and 10 of the Land Acquisition Act have been issued in File No.C/260/2013 dated 24.07.2013. The 2nd respondent called for claim statement from the interested parties. Award enquiry was fixed on 07.08.2013. The petitioners filed claim statement and supporting documents. The definite case of 2nd respondent is that **after completion of award enquiry**, the award has been passed on 23.12.2013. It is noted that the conduct and completion of award enquiry is one of the relevant considerations for a decision on this point. Further, it is not the case of 2nd respondent that notice of pronouncement of award on 23.12.2013 was given to petitioners. It is pointed out that the compensation determined through award dated 23.12.2013 is Rs.87,91,043/-. It is admitted that through the notice dated 30.12.2014 under Section 12(2), compensation amounting to Rs.40,71,564/- for an extent of 49.46 sq. yards is served (W.P.No.1468 of 2015). Likewise, in other writ petitions, the extents and amounts were correspondingly reduced and notices dated 30.12.2014 have been issued.

Therefore, the issue for consideration in this background is whether the award dated 23.12.2013 could be stated to have been passed as contended by the 2nd respondent or not. As noted earlier, the original file in C/260/2013 is placed before the Court for perusal. The relevant file notings from 24.07.2013 are important and extracted hereunder:

Submitted:

It is submitted that notice u/s 9(1) and 10 of L.A Act, in Form-6 and Notice u/2 9(3) and 10 of L.A Act in Form-7 fixing award enquiry on 07.08.2013 is placed below for kind perusal and approval please.

Sd/- 24.7.13 Sd/- 24.7.13

D.T S.G.D.C

Submitted:

It is submitted that, the owners of the property bearing No. 5-8-165, 5-8-165/A, 165/1 to 5, situated at Nampally, Hyderabad has submitted objection petition in reply to the notice in Form-3 issued. In which, they are ready to handover the property under private negotiations.

If agreed, we may send the same to the Assistant City Planner, Circle-VII, GHMC, Hyderabad for taking the property under private negotiations.

Accordingly, draft letter addressed to the Asst.City Planner, Circle-VIII, GHMC, Hyderabad is placed before for kind perusal and approval please.

Sd/- 30.7.13 Sd/- 30.7.13

D.T S.G.D.C

Submitted:

It is submitted that, the structural value of the properties are not received from the concerned Executive Engineer.

In view of the above draft reminder is place below for kind approval please.

Sd/- 5.9.13 Sd/- 5.9.13

D.T S.G.D.C

Submitted:

It is submitted that the claims and title documents from the owners/interested persons of the notified properties have not received.

If agreed notices to the concerned may be issued. Accordingly, draft notices is placed below for kind perusal and approval please.

Sd/- 8.10.13 Sd/- 8.10.13

D.T S.G.D.C

Submitted:

It is submitted that the owners/interested persons of the properties have not filed any documents.

If agreed, we may once again send notices to the concerned.

Accordingly, draft notices are placed below for kind perusal and approval please.

Sd/- 6.11.13 Sd/- 6.11.13

D.T S.G.D.C

Submitted:

Draft final notices to the concerned are below for approval please.

Sd/- 22.11.13 Sd/- 22.11.13

D.T S.G.D.C

Submitted:

It is submitted that some of the owners are refused to take notices.

If agreed, we may send the same by post. If agreed draft notices are approved please.

Sd/- 27.11.13 Sd/- 27.11.13

D.T S.G.D.C

Submitted:-

That after concluding the 5-A enquiry on 10.5.2013, Draft Declaration u/s 6 of the L.A. Act has been approved by the District Collector, Hyderabad and was published in the prescribed manner i.e., in District Gazette No.130 dated 19.7.2013 and in (2) news papers, Praja Shakthi Telugu daily and The Hindu English daily on 24.7.2013.

The sale transaction taken place during the preceding (3) years have been called for from the Sub-Registrars office for fixing the land value of the properties covered by acquisition. The Joint Sub-Registrar-I, Regional Office, Hyderabad vide Ir.No.297/RO/13 dated 26.9.2013 informed that most of the properties are not registered during the year 2010-13 and informed the basic (land) value of commercial properties in the area as Rs.52,000/- per sq.yard. Since no sale transactions available with the Sub-Registrars office the land value for the proposed properties is proposed as Rs.52,000/- per sq. yard as per the basic value (unit rate).

The structure values for the structures existing in the lands covered by the acquisition have been furnished by the E.E. P.D.III, G.H.M.C. and were adopted in the PV.

If pleases the P.V statements, proposing the land value @ Rs.52,000/- per sq. yard may be submitted to the Collector for approval.

Draft P.V statements accordingly submitted for approval.

I'll inspect on 4.12.13

Sd/- 30.11.13 Sd/- 03.12.13

Spl.Gr.Dy.Collector & Joint Collector, Land Acquisition Officer,
Hyderabad Dist.

(G.H.M.C.), H.M.R, Hyderabad

Inspected the lands and rate proposed by LAO is accepted.

Sd/- 04.12.13

Submitted:

That the Award enquiry has been completed and the P.V Statements were approved
by the Joint Collector.

Draft Award accordingly submitted for approval.

Sd/- 16.12.13 Sd/- 18.12

S.G.D.C.L.A HMR Joint Collector

Award pronounced today the 23rd day of December, 2013

Sd/- 23.12.13

From the above, it is clear that there is no record evidencing award enquiry which allegedly took place on 07.08.2013. There is no mention of award enquiry in note file or enclosures, except on 16.12.2013. The final notices are stated to be dated 22.11.2013. On 22.11.2013, a request for sending notices by registered post was mooted. The note file suggestion was approved on 27.11.2013. On 03.12.2013, the Joint Collector, Hyderabad noted to inspect the subject land on 04.12.2013. On 16.12.2013, it is noted that award enquiry has been completed and award is stated to have been passed on 23.12.2013. There is no material to indicate that the claimants have been put on notice of pronouncing the award on 23.12.2013. Had it been a case where the 2nd respondent firstly had sent a copy of the award to the

Collector for file or a copy of award to the requisitioning department for making available the compensation amount, the presumption available to official acts that such award was pronounced as passed can be extended. The Apex Court while considering the legal obligation to communicate award, more particularly timely communication held in **THE STATE OF U.P., THROUGH THE COLLECTOR, NAINITAL V. SHRI ABDUL KARIM** as follows:

“How the respondent when making his application under S.18 for reference filed an affidavit saying that he did not receive any information about the decision of the case from the court and that it was for the first time in the second week of July, 1951 that he came to know that such an Award has been made. The Collector in his written statement before the Additional District Judge did not state what was the date of his award nor did he give any reason why reference was made by him when on the face of it it had been made beyond time. As has been observed by the full bench it was implicit in the pleadings of the Collector that the respondent was not present nor was he represented before him at the time when he made the award. Section 12 as noticed before, provides that not only the award should be filed in the Collector’s office but the Collector should also give immediate notice of his award to such persons who are not present personally or by their representatives when the award is made. The purpose underlying S.12 is obvious. It is meant for giving intimation or timely notice to the person who may be affected by the award that such an award has been duly made by the Collector. No such notice has been proved to have been given. The provisions as to limitation contained in S.18(2) have to be read in the light of S.12. When the reference application was heard by the Collector he was seized of all the facts and he made the reference which showed that in his opinion the application was not barred by time. In the absence of all the essential and necessary facts which have not been placed before the court by the appellant it would not be possible to decide whether the application was barred by time or not even if we assume, without giving any decision on the point, that it was open to the court to determine the question of limitation. In this view of the matter, any decision of limitation on the main question on which there appears to be a good deal of controversy between the various High Courts, would be purely academic.”

In the absence of communication to any of the interested parties at the earliest point of time, it is difficult to presume that the award dated 23.12.2013 is passed from the noting dated 23.12.2013. The new award for reduced extent/amount is communicated on 30.12.2014 to the petitioners. In such cases, the presumption is that the 2nd respondent failed to pass an award in the manner and mode prescribed by the statute. The non-communication of the alleged award till 13.01.2015 certainly attracts the observation of the Apex Court in **STATE OF ANDHRA PRADESH Vs**

KHETMAL PAREK, wherein it is held as under:

“An assessment order passed in September, 1969, was sought to be revised by the Deputy Commissioner under Section 20(2) of the Andhra Pradesh General Sales Tax Act, 1957. He passed an order prejudicial to the assessee. The order was said to have been made on January 6, 1973, but it was served after the expiry of four years from the date of the assessment order, on the assessee on November 21, 1973, 10½ months later. There was no explanation by the Deputy Commissioner why the service of the order was so delayed.

In the absence of any explanation whatsoever, the court must presume that the order was not made on the date it purported to have been made and that it could have been made after the expiry of the period of four years prescribed for passing such an order in revision. The order was bad.”

Further, the revised road development plan was in the active consideration of all the stakeholders of the MRTS and it is difficult to presume that the award was passed on 23.12.2013 for notified extents. With the non-communication in a case which has bearing on the payment of compensation at the earliest point of time, the making of an award on 23.12.2013 cannot be concluded in favour of respondents.

Without getting into the other circumstances, this Court from the above considerations is of the opinion that the note file endorsement on 23.12.2013 cannot be treated as a legal and binding Award and the averment of petitioners that it is ante-dated, lends support. Yet another anomalous situation in their behalf is whether the award now relied upon by the respondents has the approval by the competent authority. Admittedly, the award which is stated to have been approved is not communicated through notice dated 30.12.2014. Therefore, the point is answered in favour of petitioners in W.P. Nos. 1467, 1468, 1469, 1477 and 2236 of 2015 and against respondents.

POINTS II AND III:

At the first blush, the contentions of Sri Vivek Reddy on these issues are attractive and appear to be conclusive on the interpretation of the words “making award” under Section 11 of Act 1 of 1894. Strong reliance was placed on **Kaliyappan’s** case (6 supra) to contend that making or signing of award is sufficient and non-communication of award by Land Acquisition Officer is not relevant under Section 11 of Act 1 of 1894 and Section 24(1) of Act 30 of 2013. These contentions are substantially based on the ratio laid down in **Kaliyappan’s** case (6 supra).

The words “making award” under Section 11 of Act 1 of 1894 have to be interpreted in the context of the change of statutory regime from Act 1 of 1894 to Act 30 of 2013. Therefore the interpretation of these words must be with reference to repeal, savings, effect of Section 6 of the General Clauses Act and the scope of transitory provision with a *non obstante* clauses. At the outset, it is noticed that the ratio in **Kaliyappan’s** case (6 supra) is in the context of Sections 11 and 11-A of Act 1 of 1894 and from the categorical observations of the Hon’ble Supreme Court in drawing distinction between Section 11-A and Section 18 of Act 1 of 1894, make the principle distinguishable to the changed legislative regime.

The provisions which have bearing on the consideration of above points are as under:

Section 11 of Act 1 of 1894:

Enquiry and award by Collector. —

[\(1\)](#)] On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

[\(i\)](#) the true area of the land;

[\(ii\)](#) the compensation which in his opinion should be allowed for the land; and

[\(iii\)](#) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has

information, whether or not they have respectively appeared before him, Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

[Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.]

40 [(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land also appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in any way effect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

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Sections 24 and ,114 of Act 30 of 2013:

Section 24: Land acquisition process under Land acquisition Act, 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).-
 - b. 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
 - a. 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 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 the Act.

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

Section 114: Repeal and saving:-

1. The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.
2. **Save as otherwise provided in this Act** the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

(emphasis added)

Section 6 of General Clauses Act, 1897:

Effect of repeal. Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

[\(a\)](#) revive anything not in force or existing at the time at which the repeal takes effect; or

[\(b\)](#) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

[\(c\)](#) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

[\(d\)](#) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

[\(e\)](#) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as

aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

The following decisions on the concept of repeal, savings, transitory provision etc., and referred to:

In **113 OGDEN INDUSTRIES PTY. LTD. APPELLANTS V. HEATHER DOREEN LUCAS RESPONDENT (PRIVY COUNCIL)**, it is held thus:

Per curiam: In a common law system of jurisprudence depending largely on judicial precedent and the earlier pronouncements of judgments, the greatest possible care must be taken to relate the observation of a judge to the precise issues before him and to confine such observations to the general compass of the facts before him. Judicial statements as to the construction and intention of an Act must never be allowed to supplant or supersede its proper construction and courts must beware of falling into the error of treating the law to be that laid down by the judge in construing the Act rather than found in the words of the Act itself.

These general principles are particularly important when questions of construction of statutes are in issue.

It is quite clear that judicial statements as to the construction and intention of an Act must never be allowed to supplant or supersede its proper construction and courts must beware of falling into the error of treating the law to be that laid down by the judge in construing the Act rather than found in the words of the Act itself.

In **1778 CHIEF ADJUDICATION OFFICER AND ANOTHER V MAGUIRE**, it is held thus:

“As Lord Evershed put it in *Free Lanka Insurance Co. Ltd. v. Ranasinghe* (1964) A.C. 541, 552: **“The distinction between what is and what is not ‘a right’ must often be one of great fineness”**. It is surely far better for the statute to state clearly what rights are to survive and what rights are

not, so that fine distinctions and the costs of endless debate as to whether a particular alleged right has been acquired or not can be avoided.”

(emphasis added)

In **901 DIRECTOR OF PUBLIC WORKS AND ANOTHER APPELLANTS v. HO PO SANG AND OTHERS RESPONDENTS**, it is held thus:

“It is to be observed that under section 10 (2) a repeal is not to affect any investigation, legal proceeding or remedy “in respect of any such right. The right referred to is the right mentioned in Section 10 (c), i.e., a right acquired or accrued under a repealed enactment. This part of the provisions in paragraph (d) of section 10 does not and cannot operate unless there is a right as contemplated in paragraph (c). It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. Upon a repeal the former is preserved by the Interpretation act. The latter is not. Their Lordships agree with the observation of Blair-Kerr J. that: “It is one thing to invoke a law for the adjudication of rights which have already accrued prior to the repeal of that law; it is quite another matter to say that, irrespective of whether any rights exist at the date of the repeal, if any procedural step is taken prior to the repeal, then, even after the repeal the applicant is entitled to have that procedure continued in order to determine whether he shall be given a right which he did not have when the procedure was set in motion.”

In **198 REGINA V SECRETARY OF STATE FOR SOCIAL SECURITY**, it is held thus:

“As Staughton L.J. observed in the Court of Appeal, it is not possible to give a definitive description of what constitutes a transitional provision. In Thornton on Legislative Drafting, 3rd ed.(1987), p.319, it is said:

“The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.”

(emphasis added)

One feature of a transitional provision is that its operation is expected to be temporary, in that it becomes spent when all the past circumstances with which it is designed to deal have been dealt with, while the primary legislation continues to deal indefinitely with the new circumstances which arise after its passage.”

In **KOLHAPUR CANESUGAR WORKS LTD. v. UNION OF INDIA**, the Apex Court held thus:

“At common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision. (Para 38)

It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the Court is not to look for a provision in the newly added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the Court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari-material provision in the statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule.

In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceeding was initiated being deleted/omitted. It is relevant to note here that in the present case the question of divesting the Revenue of a vested right does not arise since no order directing refund of the amount had been passed on the date when Rule 10 was omitted. (Para 35)

In GAJARAJ SINGH ETC., V. THE STATE TRANSPORT APPELLATE TRIBUNAL AND OTHERS ETC., the Apex Court held thus:

24. In *Crawfords Interpretation of Law* (1989) at page 626, it is stated that " (A) n express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation. At page 627, it is stated that "Moreover, where a repealing clause expressly refers to a portion of a prior Act, the remainder of such Act will not usually be repealed, as a presumption is raised that no further repeal is necessary, unless there is irreconcilable inconsistency between them. In like manner, if the repealing clause is by its terms confined to a particular Act, quoted by title, it will not be extended to an act upon a different subject. Section 6 of the GC Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed of anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. In *India Tobacco Co. Ltd. v. The Commercial Tax Officer, Bhavanipore*, ((1975) 3 SCC 512 at 517) : AIR 1975 SC 155 at p. 158), in paras 16 and 17, a Bench of three Judges had held that repeal connotes abrogation and obliteration of one statute by another from the statute book as completely as if it had never been passed. When an Act is repealed, it must be considered, except as to transactions past and closed, as if had never existed. Repeal is not a matter of mere form but is of substance, depending on the intention of the Legislature. If the intention indicate either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or pro tanto repeal.

25. When there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repealing Act. Section 6 would be applicable in such cases

unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the new Act. Therefore, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.

26. On "Saving of rights acquired, in the Principles of Statutory Interpretation by G.P. Singh ((Sixth Edition) - 1961) at page 413, 413, the learned author has stated that the effect of clauses (c) to (e) of Section 6 of GC Act is, speaking briefly, to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities. At page 418, the learned author has stated that the privilege to get an extension of a licence under an enactment is not an accrued right and no application can be filed after the repeal of the enactment for renewal of the licence. In Legislation and Interpretation by Jagdish Swarup (1974 Ed.) at page 539, it is stated that the power to take advantage of an enactment may without impropriety be termed as a "right", but the question is whether it is a "right accrued". A mere right (assuming it to be properly so called) existing in the members of the community or any of them to take advantage of an amendment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued".

27. In Bishambhar Nath Kohli v. State of Uttar Pradesh, AIR 1966 SC 573, a Constitution Bench of this Court was to consider application of Section 6 of the GC Act to Section 27 of the Administration saving of rights accrued thereunder by operation of Section 6 of the GC Act this Court, after an elaborate consideration, had held that by Section 58 (3) of the Administration of Evacuee Property Act the Legislature had not expressed any reservation in the application of that section and none can be implied. The order of the Deputy Custodian was declared final by operation of Section 30 (6) of Ordinance 1 of 1949, but the liability was subject to the provisions of sub-sections (1) to (5) of Section 30. If fictionally order is deemed to have been passed under Act 31 of 1950 (Administration of Evacuee Property Act) as if the Act were in operation on October 12, 1949, it is difficult to escape the conclusion that the order would be subject to the appellate or revisional jurisdiction of the authorities who have the appellate or revisional power by virtue of provisions conferring those powers and which must also be deemed to have been in force on the date when the impugned order was passed. It

was held that Section 6 was inapplicable to revive the Act that became final.

28. The question, therefore, is : what rights were preserved by saving provisions in Section 217(2) of the Act? In *Crawford's Statutory Interpretation* it is stated under Section 322 at page 657 thus :

"Often the legislature instead of simply amending a pre-existing statute, will repeal the old statute in its entirety and by the same enactment reenact all or certain portions of the pre-existing law. Of course, the problem created by this sort of legislative action involves mainly the effect of the repeal upon rights and liabilities which accrued under the original statute. Are those rights and liabilities destroyed or preserved? The authorities are divided as to the effect of simultaneous repeals and reenactments, some adhere to the view that the rights and liabilities accruing under the repealed act are destroyed, since the statute from which they sprung has actually terminated, even though for only a very short period of time. Others, and they seem to be in the majority, refuse to accept this view of the situation, and consequently maintain that all rights and liabilities which have accrued under the original statute are preserved and may be enforced, since the reenactment neutralizes the repeal, thereby continuing the law in force without interruption. Logically, the former attitude is correct, for the old statute does cease to exist as an independent enactment, but all practical considerations favour the majority view. This is so even where the statute involved is a penal act."

29. In *Maxwell on the Interpretation of Statutes* (12th Ed.), it is stated at page 17 that the effect of repealing Act passed after August 30, 1889, is now dealt with by Section 38(2) of the Interpretation Act. Such repealing Acts are, unless the contrary intention appears, not to....." (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid".

30. In *Sutherland Statutory Construction* (3rd Edition) Vol. I by Horack, in

paras 2043 to 2045, it is stated that :

"Under common law principles of construction and interpretation all rights, liabilities penalties, forfeitures and offences which are of purely statutory derivation and unknown to be common law are effaced by the repeal of the statute which granted them, irrespective of their accrual. Likewise, where a common law principle is abrogated, its effective existence is destroyed both as to past actions and to pending proceedings. However, a right of a common law nature which is further embodied in statutory terms exists as an enforceable right exclusive of the statute declaratory of it, and therefore the right is not expunged by the repeal of the statute.

Since the effect of a repeal is to obliterate the statute and to destroy its effective operation in futuro, or to suspend the operation of the common law when it is common law principle which is abrogated, any proceedings which have not culminated in a final judgment prior to the repeal are abated at the consummation of the repeal. When, however, the repeal does not contemplate either a substantive common law or statutory right, but merely the procedure prescribed to secure the enforcement of the right, the right itself is not annulled but remains in existence enforced by applying the new procedure.

Effect on vested rights

Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceeding not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.

In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a

contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition.

Effect upon inchoate rights.

Rights of action which are dependent upon a statute, and which are still inchoate and not reduced to possession or perfected by final judgment, are lost by the repeal of the statute from which they stem. This rule of construction is simply a restatement of the common law principle of construction that the repeal of a statute operates to divest all rights accruing under the repealed statute and all proceedings not concluded prior to the repeal, since inchoate rights are by definition not vested rights such as to escape the common law rule of effacement. The inchoate rights are but an incident to the statute and fall with its repeal."

31. In Francis Bennions Statutory Interpretation (Second Edition) It is stated at page 210 thus

"Where an Act passed after 1978 repeals and re-enacts an enactment (with or without modification) then, unless the contrary intention appears, anything done, or having effect as if done, under the enactment repealed, in so far as it could have been done under the provision re-enacted, has effect as if done under that provision."

32. In Cardinal Rules of Legal Interpretation (3rd Edition) by Randall, A.E., 1924, it is stated at pages 531-32 thus :

"Their lordships..... conceive that, in dealing with a statute which professes merely to repeal a former statute of limited operation, and to re-enact its provisions in an amended form, they are not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shown, but that, they are to determine on a fair construction of the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed." *Brown v. Mc Lachlan* (1872) LR 4 PC 543, at p. 550; 42 LJPC 18, at p. 23 Sir W. Colville, delivering the judgment of the Judicial Committee.

"Where you have a repeal, and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two? And in those cases the judges, in holding that there was a saving clause large enough to annul the repeal, said that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as *protanto* wiped out. That is settled by the cases of *In re Busfield* (1886) 32 Ch D 123; 55 LJ Ch 467; and *Hume v. Somerton* (1890) 25 QBD 239; 59 LJ QB 420". *In re R.* (1906) 1 Ch 730, at p. 736; 75 LJ Ch 421, at p. 423, Collins, M.R."

In **STATE OF PUNJAB APPELLANT V. MOHAR SINGH PRATAP SINGH**, the Apex Court held thus:

"...Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case".....

In **BANSIDHAR AND OTHERS V. STATE OF RAJASTHAN AND OTHERS**, the Apex Court held thus:

"It was submitted that the two laws--the old and the new--envisaged two totally different sets of values and policies and were so disparate in their context and effect as to yield the inevitable inference that the policy and scheme of the later law, by reason alone of the peculiarities and distinction of its prescriptions, should be held to manifest an intention contrary to the

saving of the old law even respective pending cases. The ceiling laws, it was submitted, envisage and provide an integrated and inter-connected set of provisions and the marked distinctions in the vital provisions in the two sets of laws rendered the continued applicability of the old law to any case, not already finally concluded thereunder, as impermissible in law as unreasonable in its consequences if permitted. It was urged that Section 3 of the 1973 Act was a clinching indicator in this behalf when it provided that the provisions of the later law "shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force, or any custom, usage, or contract or decree or order of a Court or other authority" (underlining supplied) and that the old Act, even if it was, otherwise, held to be in force in relation to pending cases, was clearly overborne by Section 3 of the new law.

When there is a repeal of a statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Sec. 6 of the General Clauses Act ensued or not--Sec.6 would indeed be attracted unless the new legislation manifests a contrary intention--but only for the purpose of determining whether the provisions in the new statute indicate a different intention. Referring to the way in which such incompatibility with the preservation of old rights and liabilities is to be ascertained this Court in [State of Punjab v. Mohar Singh](#), [1955] 1 SCR 893 said:

" Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Law and the mere absence of a saving clause is by itself not material. The provision of Sec. 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed....."

In **ISHVERLAL THAKORELAL ALMAULA VS MOTIBHAI NAGJIBHAI**, the Apex Court held as under:

"The alternative contention of counsel for the appellant that by virtue of s. 7 of the Bombay General Clauses Act 1 of 1904 also legal proceedings to enforce rights acquired before Act 13 of 1956 was passed were saved, has no force. By s. 7 of the General Clauses Act the repeal of an enactment shall not inter alia affect any right, privilege, or liability acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability etc. and any such investigation, legal proceeding or remedy may be instituted or continued or enforced as if the repealing Act had not been passed. Act 13 of 1956 may in so far as it seeks to substitute the new

sections 88 and 88A to 88D for the old section 88 be regarded as a repealing enactment. Section 7 of the Bombay General Clauses Act, however, applies only if a different intention does not appear, and a different intention clearly appears from the terms of the proviso to s. 43C which state that the rights acquired by a person as a tenant under Act 67 of 1948 on or after December 28, 1948 are not to be deemed affected by Act 33 of 1952. The proviso therefore by express enactment saves the rights acquired under Act 67 of 1948 before Act 33 of 1952 was enacted”.

In **G.H.GRANT (Dr.) v. STATE OF BIHAR**, the Apex Court has held that an award by the Collector is strictly speaking an offer made to the person in the land notified for acquisition; the latter may accept the offer, but is not bound to accept it. He may ask for reference to the Court for adjudication of his claim for adequate compensation. The person interested may even accept the compensation under protest as to the sufficiency of the amount and ask for a reference.

In **PUNE MUNICIPAL CORPORATION VS. HARAK CHAND MISRIMAN SOLANKY**, it is held that the Collector while making payment of compensation only can act in manner so provided, since where power is given to do certain thing, in certain way, it should be done in that way or not at all. Other methods of performance are necessarily forbidden. It is further held that Act 30 of 2013 puts in place an entirely new regime for acquisition of land and provides for fair compensation, rehabilitation and resettlement to the affected families whose land has been acquired or proposed to be acquired, or affected by such acquisition . It is held that Section 24(1) begins with *non obstante* clause. By this, the Parliament has given overriding effect to this provision, over all other provisions of Act 2013. It is provided in Clause (a) that where the land acquisition proceedings have been initiated under 1894 Act, but no award under Section 11 is made, then the provisions of Act, 30 of 2013 shall apply to the determination of compensation. Clause (b) of Section 24(1) provides for continuation of proceedings under Act 1 of 1894 where an award is made. Finally, it is held in the reported case that, 1894 Act being an ex-proprietary legislation, has to be strictly construed.

The procedure, mode and manner of payment of compensation are prescribed in Act 1 of 1894 and that where a power is given to do a certain thing in

certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden (classic statement of Lord Roach in Nazeer Ahmed's case).

In **RAJA HARISH CHANDRA RAJ SINGH's** case(2 supra), the Apex Court, while dealing with the importance of communication of award to constitute an offer, observed as under:

“Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

“So, the knowledge of the party affected by the award made by the Collector under S.12 of the Land Acquisition Act, 1894, either actual or constructive is an essential requirement of fair-play and natural justice. Therefore, the expression "the date of the award" used in the proviso (b) to S.18 (2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It will 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.”

“The award made by the Collector under S. 12 is, in a sense a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings concluded.”

A three Judge Bench in **STATE OF PUNJAB v. MST.QAISAR JEHAN BEGUM AND ANOTHER** followed **Raja Harish Chandra Raj Singh's Case** (25 supra) and held as follows:

“Now, knowledge of the award does not mean a mere knowledge of

the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under S.12 (2) of the Act, the party -must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. “

The Apex Court in **MADAN AND ANOTHER v. STATE OF MAHARASHTRA**, while dealing with the effect of an award in the context of Sections 18 and 30 of Act 1 of 1894, held as follows:

“What transpires from the above is that it is for the first time on 4.9.1991 (date of the order under Section 30 of the Act) that the appellants came to know that they were entitled to compensation and the quantum thereof. It is not in dispute that the Reference under Section 18 was made within 6 weeks from the said date i.e. 4.9.1991. In the above facts, it is difficult to subscribe to the view taken by the High Court to hold that the Reference under Section 18 was barred by limitation.

A cursory glance of the provisions of Sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the Court. But, a closer scrutiny would indicate that the two Sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the Award is objected to by a beneficiary thereunder, Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the Court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the Award would crystallize after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the Court in the reference under Section 30 or in the civil suit, as may be.

The decision of this Court in *Dr. G.H. Grant Vs. The State of Bihar* (supra) would also support the above conclusion. In the aforesaid case, an Award was made by the Collector on 25.3.1952. On 5.5.1952, the owner applied under Section 18 for a Reference to the court for enhancement of the compensation payable to him. While the matter was so situated, by

notification dated 22.5.1952 issued under Section 3 of the Bihar Land Reforms Act, 30 of 1950, the estate of the owner vested in the State. The possession of the land was taken over on 21.08.1952 under Section 16 of the Act. On 15.10.1952, a Reference under Section 30 was sought on behalf of the State. After noticing the different situations in which the provisions of Sections 18 and 30 of the Act would apply, this Court proceeded to hold the Reference sought by the State of Bihar under Section 30 of the Act to be competent in law on the ground that after the award was passed by the Collector the land had vested in the State by virtue of the notification dated 22.5.1952 under Section 3 of the Bihar Land Reforms Act, 1950. On a logical extension of the principle laid down in Dr. G.H. Grant Vs. The State of Bihar (supra) the State would have been entitled in law to claim enhanced compensation under Section 18 of the Act once its entitlement to receive such compensation is to be decided in its favour under Section 30. This is what has happened in the present case”.

On 29.08.2013, Act 30 of 2013 was enacted by the Parliament and on 26.09.2013 received the assent of the President of India. Under Section 3(1) of Act 30 of 2013, Gazette dated 19.12.2013 was issued. The new statutory regime is effective from 01.01.2014. The repealing enactment provides *inter alia* for transparency in land acquisition and fair compensation to the owners. The law makers are alive to pending land acquisition proceedings under the repealed enactment.

The Repealing Act is made operational from 01.01.2014. Firstly, the time gap of a few months is provided for completion of pending land acquisition proceedings on or before 31.12.2013 and secondly for any reason, the award is not made by 31.12.2013, the proceedings are not lapsed under Section 24(1) of Act, but determination of compensation changes. So, the making of award under Section 11 of Act 1 of 1894 has effect on payment of compensation Section 24(1) of Act 30 of 2013. Further, to ensure continuance of land acquisition proceedings already initiated, repeal and savings are enacted under Section 114 of Act 30 of 2013. Section 24 of Act 30 of 2013 is in the nature of a transitory provision. At any rate, Section 24(1) of Act 30 of 2013 in its application does not provide for lapse of pending land acquisition proceedings, but provides for continuation under Act 1 of 1894 where an award is made. Secondly, where no award under Section 11 of Act 1 of 1894 is made, Section 24(1) (a) of Act 30 of 2013 provides for determination of compensation under Act 30 of 2013.

Before construing the words “an award made” under Section 24 (1) of Act 30 of 2013, it is useful to keep in mind the concept of repeal, saving and transitory provision and ratio in the cited cases. The consequences of repeal are drastic and the repeal completely obliterates as if the Act had never been enacted. The repeal does not, however, affect transactions, past and closed. Section 6 of the General Clauses Act applies to all the repeals. The Repealing Act may provide for transitory provision to deal with situations existing as on the date of repeal coming into force and continuation in the new regime.

A transitory provision facilitates change from one statutory regime to another statutory regime. The construction of a transitory provision depends on its own terms and Section 6 of the General Clauses Act is subject to a transitory provision in an enactment.

From the consideration of the binding precedents on Sections 11, 11-A, 12 of the Act 1 of 1894, it is to be held that an award is in the nature of an offer. An award is required to be made in the presence of the party or award communicated to interested parties at the earliest point of time. The distinction in determining the period for the purpose of Section 11-A and Section 18 of Act 1 of 1894 is no more *res integra*. (See Kaliyappan (6 supra) and Premji Nathu’s (1 supra)).

In **Kaliyappan’s** case (6 supra), it is held that “to make an award” in this section (section 11 of Act 1 of 1894) means **signing** the award. That is the ordinary meaning to be ascribed to the words “to make an award”. An extended or a different meaning assigned to the words ‘the date of award’ by this Court in **Raja Harsih Chandra’s Case** (2 supra) cannot be applied in this case since such an extended or different meaning is neither warranted by equity nor will it advance the object of the statute. Similarly, under the proviso to Section 11-A of the Act, **the Collector is empowered to make an award within two years from the date of commencement of the Land Acquisition (Amendment) Act, 1894, irrespective of the date on which the notice of award is served on the persons concerned. We do not find any analogy between Section 11-A and Section 18 of the Act in**

so far as the above question is concerned.

(Emphasis added)

Therefore, for the purpose of Section 24(1) of Act 30 of 2013, the making of award is construed and interpreted in the context of rights against an award in the matter of receiving compensation. Section 24(1)(b) provides for continuation of proceedings under Act 1 of 1894 against the award made by the Land Acquisition Officer.

In this background, the making of award even in plain understanding has reference to the determination of rights etc., by the Land Acquisition Officer under Section 11 of Act 1 of 1894. The continuation of land acquisition proceeding is possible if the award is made known to the claimant. If award is not communicated to the claimants, by operation of Section 24 (1)(b) of Act 30 of 2013, one cannot envisage continuation of such un-communicated award under the provisions of Act 1 of 1894. Such interpretation or construction of award made under Section 11 of the Act in the considered view of this Court is against the literal construction of Section 24(1) of the Act, scheme of repeal, scope of transitory provision and the object of Act 30 of 2013. As observed supra, Section 24(1) is in the nature of a transitory provision. The transitory provision is to be construed on its own terms. The transitory provision facilitates continuation of old statutory regime in spite of repeal of old Act and must be strictly construed. In the opinion of this Court, the Parliament never intended to save un-communicated award and continuation of proceedings against such award under Act 1 of 1894. If such is the intention of Parliament, the continuation of proceedings could have been provided with the issue of notifications under Sections 4 of 6 Act 1 of 1894. The accrual of right or obligation is determinative not on the mere making of award but communication to the claimants etc., Further, from the date of enactment till the coming into force of Act 30 of 2013, sufficient time is provided for making award under Act 1 of 1894 and communicating to the claimants in on form or other. Therefore, if the words “award has been made” are interpreted in the manner suggested by the respondents, the same will not be in line with the golden rule of construction of a statute. As already noted, the change is in an ex-proprietary legislation from Act 1 of 1894 to Act 30 of 2013. Act 30 of 2013 which confers beneficial or fair compensation in matters of compulsory acquisition.

To accept the construction of words “award made” as contended by the

respondents and deny benefits of fair compensation to owners of land in pending acquisition, something more should be read into Section 24(1) of Act 30 of 2013.

The Apex Court in **Kaliyappan**'s case (6 supra) has refused to draw any analogy between Section 11-A and Section 18 of Act 1 of 1894 and held that "no analogy between Section 11-A and Section 18" could be found. Therefore in the same analogy in the matter of payment of compensation Kaliyappan is distinguishable and Raja Harsh Chandra case Mst Qaiser Jehan Begum case cannot be excluded from consideration. From the authoritative pronouncements referred to above, the accrual of right or cause of action under Section 18 or lapse of a proceeding under Section 11 of Act 1 of 1894 is distinctly interpreted and applied. The reasons to provide for different criteria under Section 11-A and Section 18 Act 1 of 1894 are plain. For unless one has knowledge of award/determination of rights in one or the other forms of communication, the mere signing of award does not affect the right of an interested party. It is both legal and logical to preface the construction of words "award made" in Section 24 (1) of Act 30 of 2013 with the reasoning that w.e.f., 01.01.2014, the Parliament intended payment of fair compensation to owners in pending acquisition as well.

The accrual of right or extinguishment of right for compensation under an award should be in the scheme of Section 18 of Act 1 of 1894, but not with reference to Section 11-A of Act 1 of 1894. For determining knowledge of award, several alternative situations are provided in the cases referred to above.

The un-communicated award should not affect the right or entitlement to fair compensation under Section 24(1) (a) of Act 30 of 2013. The contrary construction of words "award made" would be against basic principles of rule of law and object of Act 30 of 2013.

In this context, reference to **161 CARDSHOPS LTD. V JOWN LEWIS PROPERTIES LTD., (1983 Q.B. 161)**, is apt:

“If the unamended law was not achieving fairness I do not see that the landlord suffers injustice by having to pay what Parliament views as proper compensation.”

This Court cannot agree with the construction of words “award is made” advanced by the respondents, for such construction deprives to the claimants benefits of fair compensation due to various exigencies. The benefit conferred by Parliament cannot be denied through a restrictive interpretation. No one can be condemned unheard and likewise no right can be stated as affected without communication of the Award.

From the above consideration, this Court is of the view that the principle laid down in **Kaliyappan**’s case (6 supra) is distinguishable and confined to Sections 11 and 11-A of Act 1 of 1894. While interpreting a transitory provision, the said ratio does not assist the respondents. The file noting on 23.12.2013 cannot be treated as an award made under Section 11 of Act 1 of 1894 as it is not communicated as late as 31.12.2014.

Further, Section 12(2) of Act 1 of 1894 mandates expeditious communication of award. So, to continue proceedings under Act 1 of 1894, the communication of award is necessary. Unless and until the rights are crystallized and accrued, the same cannot be put against a party. Therefore, the communication of award dated 23.12.2013 through notice dated 31.12.2014 under Section 12(2) of Act 1 of 1894, is illegal and contrary to Section 24 (1) of Act 30 of 2013. The same is liable to be set aside and is accordingly set aside. Consequently, it is further held that the determination of compensation is under Act 30 of 2013 by passing a fresh award.

The submission of learned counsel for the respondents that the grievances canvassed in the writ petition can effectively be canvassed under Section 64 of Act 30 of 2013 and writ is not maintainable, is untenable. On a plain reading of Section 64 of Act 30 of 2013, it is clear this objection is unsustainable as Section 64 is

available, if the award is made under Act 30 of 2013. In the opinion of this Court, the remedy under Section 64 is not effective and is a substitute to the right under Article 226 of the Constitution of India. The real issue for decision is entitlement to compensation under Act 1 of 1894 or Act 30 of 2013. The authority under Section 64 of Act 30 of 2013 cannot consider the award made under Section 11 of Act 1 of 1894.

The respective impugned notices issued under Section 12 of the Act 1 of 1894 are set aside.

The writ petitions are allowed as indicated above. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

S.V.BHATT, J

02nd March, 2015

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