IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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WRIT PETITION No.26134 of 2015

BETWEEN

Nawajish Sultan Ali Virani.

... PETITIONER

AND

The State of Telangana, Rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 22.12.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals?	No
3.	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	No

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ORDER:

The present writ petition questions the notification issued under Section 11(1) of the Right to Fair Compensation and Tranparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Central Act 30 of 2013') dated 12.06.2015 and the notification as well as notice issued dated 12.06.2015 under Section 15(2) of the Central Act 30 of 2013 proposing to acquire premises No.5-1912, Putli Bowli, Hyderabad admeasuring 1371 sq. yards as illegal and violative of Chapter II of the Central Act 30 of 2013 and the Constitution of India.

2. Petitioners states that a dealership agreement was entered into by and between the Hindustan Petroleum Corporation Limited (HPCL) with the petitioner, as a partner, on 23.10.2012 for sale of petroleum and diesel products. Even before the petitioner entered in the said business, the said petroleum outlet is stated to be running from 15.01.1964 and the income generated is stated to be the only livelihood of the petitioner. Petitioner also claims to have spent huge amount towards development of the outlet. Petitioner states that earlier an extent of 284.55 sq. yards was acquired in April 2013 for laying a road from Putli Bowli to Sultan Bazar Rehabilitation Complex. The objections of the petitioner, having been rejected, the writ petition was earlier filed, being WP.No.21503 of 2013, which was allowed on 24.07.2013 and the order of the District Collector rejecting the objections dated 26.06.2013 was set aside directing the Collector to hear the objections after notice to all the parties including the petitioner and pass a fresh order. Petitioner states that while no further order was passed, the impugned notice dated 12.06.2015 was issued by the fifth respondent proposing to conduct enquiry by the Collector.

3. Meanwhile, in the Telangana State Extraordinary Gazette dated 10.06.2015, Section 6 notification was also published that the subject land is

needed for public purpose viz. Hyderabad Metro Rail Project Limited and the Social Impact Survey was stated to be exempted as small extent is acquired and no rehabilitation and no livelihood is affected. Petitioner questions the said notification on the ground that under Chapter II of the Central Act 30 of 2013 compliance with Chapter II is mandatory whereupon the minimum extent intended for the project can be considered for acquisition. While placing reliance upon various provisions of the Central Act 30 of 2013, particularly, Chapter II thereof, it is contended that neither the Social Impact Survey has been done nor any steps are taken towards rehabilitation and resettlement and it is contended that merely because the project was envisaged prior to the Central Act 30 of 2013, the said project cannot be exempted from the requirement of the Central Act 30 of 2013. Petitioner also states that consent of 70% of affected families had not been taken and though reliance in the impugned notification is made on the Central Ordinance dated 30.05.2015, the said ordnance, having been lapsed, it is not open for the respondents to claim exemption from Chapter II. Reliance is also placed upon newspaper reports referring to State Government's attempt to realign the Hyderabad Metro Rail so as to alter the originally aligned route going through Sultan Bazar.

4. Initially, when the writ petition came up for admission on 19.08.2015, while admitting the writ petition, I had passed an interim order, relevant portion whereof is as follows:

> "...So far as interim application is concerned, admittedly, only notice under Section 15 of the Act is issued calling for objections and it appears that the objections have been filed on behalf of the owners as well as by HPCL and the objections are stated to be under consideration.
>
> In view of that, as long as no order under Section 15 of the Act is passed, after duly considering objections, petitioner, who is stated to be carrying on business as petroleum outlet dealer at the premises in question, shall be allowed to continue to do his business unaffected by the proposed acquisition and the business of the petitioner shall not be disturbed pending passing of appropriate orders under Section 15 of the Act, as referred to above.
>
> List WPMP after two (2) weeks for counter."

A further order was passed thereafter on 10.09.2015,

the relevant portion whereof is as follows:

> "… The interim order permits the petitioner to carry on his business pending passing of an order under Section 15 of the Act. In view of the passing of the further order under Section 15 of the Act, petitioner's existing business will be not affected in terms of Section 38 of the Act since the acquisition proceedings have not reached Section 38 stage as yet. Petitioner, therefore, shall be allowed to carry on his business on the proposed acquisition site as already directed on 19.08.2015 till the stage when Section 38 becomes applicable.
>
> Let the counter affidavit be filed.
>
> List the writ petition on 23.09.2015."

A further modification thereof was made on 07.10.2015 as follows:

> "Already an interim order was passed on 19.08.2015 and further extended on 10.09.2015 as the acquisition proceedings had not yet reached the stage up of Section 38 of the Act 30 of 2013. Even now the proceedings are stated to be pending and the award is likely to be passed in the next ten to fifteen days.
>
> Since the said period would come during Dasara Vacation,
> it is appropriate to direct this Writ Petition be listed on 27.10.2015 for hearing, as learned Advocate General for respondents states that there is urgency in hearing and disposal of the matter.
>
> All other proceedings up to the stage of Section 38 of the Act 30 of 2013 be continued by the respondents. However, the petitioner shall not be dispossessed till 30.10.2015."

The said stay of dispossession continues to be in force.

5. Mr. R. Raghunandan, learned senior counsel appearing for the petitioner, has raised a primary contention based upon the provisions of Chapter II, V, VI and VII of the Central Act 30 of 2013. Learned senior counsel contends that notification dated 10.06.2015 by the State of Telangana merely records that the Social Impact Survey is exempted because the project is an infrastructure project and as small extent is involved, no rehabilitation and no livelihood is affected.

6. While placing reliance upon Central Ordinance 5 of 2015 dated

30.05.2015, learned senior counsel contends that the said ordnance, admittedly, lapsed after six months and except mentioning exemption of social impact survey, no reasons are mentioned. Learned senior counsel submits that the justification and reasons given in the counter affidavit by respondents 3 and 5 cannot, thus, be looked into in view of the ratio of the Supreme Court in **MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER**[1]**.** Learned senior counsel submits that the State Government issued a G.O by exercising power under sub-section (1) of Section 10 of the Central Act 30 of 2013, as amended by ordinanceNo.4 of 2015, under G.O.Ms.No.69 Revenue (JA&LA) Department dated 29.05.2015 wherein the Government of Telangana in public interest exempted certain projects from application of the provisions of Chapter II and III of the Central Act 30 of 2013. Clause (e), which is the bone of contention, is as follows:

> "(e) infrastructure projects including projects under public-private partnership where the ownership of land continues to vest with the Government."

7. According to the learned senior counsel, the said ordinance having been lapsed, Section 6 of the General Clauses Act applies to the fact situation and the exemption is not any more available after expiry of the ordinance. Strong reliance is placed upon decisions of the Supreme Court in **S. KRISHNAN v. STATE OF MADRAS**[2]; **STATE OF ORISSA v. BHUPENDRA KUMAR BOSE**[3]; **T. VENKAT ERDDY v. STATE OF ANDHRA PRADESH**[4] and **D.C. WADHWA v. STATE OF BIHAR**[5], a detailed reference to which will be made hereinafter. Learned senior counsel, therefore, states that only such completed events are saved and since the acquisition in the present case having not been completed, petitioner's vested right cannot be affected.

8. Per contra, Mr. K. Vivek Reddy, learned standing counsel for respondents contends and doubts the very *locus standi* of the petitioner. The

counter affidavit filed by respondents 3 and 5 is relied upon to contend that the petitioner is only a partner dealer of HPCL and he is neither a lessee nor owner of the land and that the owner of the land having given his consent for acquisition; the lessee, HPCL, having filed objections, which were already rejected and they have not ventilated any further grievance, the petitioner, who is a complete stranger to the land acquisition proceedings, has no *locus standi* to question the acquisition proceedings. To the extent of the claim of the petitioner on the basis of the ordnance, having being lapsed, is concerned, it is stated that the Central Ordinance was published in the Extraordinary Gazette of India No.28 dated 30.05.2015 inserting Section 10(A) in Chapter III-A and the powers whereunder were delegated to the appropriate Governments to exempt certain projects from the applicability of Chapters II and III of the Central Act 30 of 2013. Accordingly, it is stated that the State of Telangana published notification under G.O.Ms.No.69 dated 25.09.2015, referred to above and exempted the present infrastructure project.

9. It is stated with reference to earlier WP.No.21503 of 2013 that though the District Collector personally inspected and conducted a fresh enquiry and passed orders under Section 5-A on 24.03.2014,
the said land acquisition proceedings lapsed on different grounds.
It is submitted that on receiving request from the fourth respondent on 27.02.2015, the present land acquisition process is initiated and the owners have given written consent by recording their sworn statement and after conducting enquiry and considering the objections of HPCL, lessee, on 27.08.2015, final notification under Section 19 of the Central Act 30 of 2013 is published. The contention of the petitioner with regard to the necessity of conducting social impact survey was, accordingly, denied and it is stated that the present acquisition proposal is for the project of the Government under Public Private Partnership (PPP) mode and the property under acquisition vests with the Government of Telangana.

10. Learned standing counsel apart from highlighting the issue of *locus standi* of the petitioner also contended that it cannot be said that his livelihood is affected, as he is only one of the partners of the dealer. Learned counsel placed reliance upon the decisions of the Supreme Court in **LIC OF INDIA v. CONSUMER EDUCATION & RESEARCH CENTRE**[6]; **CENTRE FOR ENVIRONMENT AND FOOD SECURITY v. UNION OF INDIA**[7] and **NARPAT SINGH v. JAIPUR DEVELOPMENT AUTHORITY**[8] to contend that the term livelihood would only mean bare minimum source for sustenance and merely because profits arising out of petroleum business are deprived, it cannot be said that the livelihood of the petitioner is affected. Learned counsel also contends that even the HPCL like all other oil companies have the policy of resitement where the affected petroleum outlet could be relocated elsewhere. Hence, it is not as if the even lessee or the dealer is affected by the acquisition. To the extent of criticism of the learned senior counsel for the petitioner on the notification not giving any details, it is contended that the notification in the statutory form is published and it is not by itself a quasi-judicial order to attract the ratio of **MOHINDER SINGH GILL's** case (1 supra) relied upon by the learned senior counsel for the petitioner.

11. Learned counsel also pointed out that G.O.Ms.No.69 dated 29.05.2015 issued by the State of Telangana is not questioned and he states that all actions taken under the ordinance are valid and that merely because the ordinance lapsed, the acquisition initiated is not affected. Learned counsel placed reliance upon the following decisions of the Supreme Court:

GOODERHAM AND WORTS LTD. v. CANADIAN BROADCASTING CORPORATION[9]; **THE COMMISSIONER OF INCOME-TAX v. GODAVARI SUGAR MILLS LTD.**[10]; **STATE OF HARYANA v. AMARNATH BANSAL**[11] and **KRISHNA KUMAR SINGH**

v. STATE OF BIHAR[12]

12. After hearing the learned senior counsel for the petitioner and learned counsel for the respondents at length, the following points arise for consideration:

1. Whether the petitioner has *locus standi* to question the acquisition proceedings?
2. Whether the impugned notification is affected on account of lapse of Central Ordinance 5 of 2015?

POINT No.1:

13. Petitioner, undoubtedly, is neither owner nor lessee of the petroleum outlet, in question, which is under acquisition.

Even according to the averments in the affidavit, the petitioner entered into partnership agreement with one of the owners and he is one of the partners. Since the owners have given consent for acquisition (which is not in dispute) and since the lessee viz. HPCL has not taken any further proceedings after rejection of their objections to the preliminary notification, it has to be held that neither the owner nor the lessee objects to the acquisition.

14. In law, a dealer of a petroleum outlet appointed by the lessee viz. by the oil company is merely that of the licensee, as held by the Supreme Court in **MD. SALIM v. MD. ALI**[13] para 2 thereof is extracted hereunder:

> "**2**. One of the attesting witness to the .said agreement was Md. Ali, the respondent herein, who was at the relevant time landlord and is now represented by his legal representatives to this application. On a construction of the different clauses of the aforesaid document we are of the opinion that this was an agreement for management of the business of the tenant.
> It was not and cannot be construed as an agreement of sub-tenancy. There was no exclusive possession with the respondent. There was no parting of possession of the premises, there was only a right to "manage" the business, looking after the existing business with fixed monthly payments and this cannot be construed as an agreement of sub-tenancy. Therefore, though the landlord had knowledge of the document and as such can be said to have consented to the bargain it cannot be said to be consent to an agreement of sub-tenancy."

The aforesaid legal position is reiterated in a decision earlier rendered by me in **MUMMANA SURYA RAO v. HINDUSTAN PETROLEUM CORPORATION LIMITED**[14] wherein it was held as under:

> "**12**. I am unable to see any legal right vested in the petitioner to sustain the prayer sought for in this writ petition as, even according to the petitioner, he was appointed as an Operator/Contractor for a period of one year only. It is well settled that the Dealers of Petroleum Outlets leased to a Petroleum Company are merely Licensees and cannot be equated to the status of a Lessee. In the present case, the petitioner does not fall in the capacity of either a Lessee or a Licensee and is only a Contractor/Operator of Lessee. Hence, the petitioner is not entitled for continuation of the contract beyond the period for which he was appointed and contrary to the 1st respondent's right to appoint any contractor of its choice to run the Outlet. The legal position on such question is already settled by a decision of Supreme Court in
> MD. SALIM v. MD. ALI"

Applying the said principle, the petitioner at best, being partner of the dealer, it has to be held that he has no *locus standi* to question the acquisition proceedings.

Point No.1 is accordingly answered against the petitioner.

POINT No.2:

15. Though learned senior counsel for the petitioner placed strong reliance upon **S. KRISHNAN's** case (2 supra), the relevant portion of the decision holds in para 10 as follows:

> "**10**. … The general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will *ipso facto* terminate as soon as the statute expires (Craies on Statutes, Edn.4, p.347). Preventive detention which would but for the Act authorising it, be a continuing wrong, cannot, therefore, be continued beyond the expiry of the Act itself.
> The new Act thus in Sub-stance prescribes a maximum period of detention under it by providing that it shall cease to have effect on a specified date. It seems to me, therefore, that S.9 (2) (a) and S.12(1)

of the new Act substantially satisfy the requirements of sub-Cl.(b) of Cl.(4) of Art. 22, and cannot be declared unconstitutional and void."

Another decision in **BHUPENDRA KUMAR BOSE's** case (3 supra) relied upon by the learned senior counsel for the petitioner, holds in para 18 to 21 as follows:

"**18**. We must now turn to the main argument urged before us by Mr. Chetty that the Ordinance having lapsed on April 1st 1959, the appeals themselves have become infructuous. He contends that the Ordinance was a temporary statute which was bound to lapse after the expiration of the prescribed period and so, as soon as it lapsed, the invalidity in the Cuttack Municipal elections which had been cured by it revived and so there is no point in the appellants challenging the correctness of the High Court's decision. Indeed, it was this point which Mr. Chetty strenuously stressed before us in the present Appeals.

If the true legal position be that after the expiration of the Ordinance the validation of the elections effected by it comes to an end, then Mr. Chetty would be right in contending that the appeals are infructuous. But is it the true legal position?-that is the question which calls for our decision.

19. It is true that the provisions of Section 6 of the General Clauses Act in relation to the effect of repeal do not apply to a temporary Act. As observed by Patanjali Sastri, J., as he then was, in *S. Krishnan v. The State of Madras* [AIR 1951 SC 301] the general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. That is why the Legislature can and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of s. 6 of the General Clauses Act. Incidentally, we ought to add that it may not be open to the Ordinance making authority to adopt such a course because of the obvious limitation imposed on the said authority by Art. 213(2) (a).

20. *Wicks v. Director of Public Prosecutions* [(1947) AC 362] is an illustration in point. The Emergency Powers (Defence) Act, 1939, Section 11, sub-section 3, with which that case was concerned, provided that the expiry of the Act shall not affect the operation thereof as respects things previously done or omitted to be done. The appellant Wicks was convicted in May, 1946, of offences committed in 1943 and 1944, contrary to Regulation 2A of the Defence (General) Regulations 1939, made pursuant to the Act. Both the Act and the Regulation expired on February 24, 1946. It was as a result of this specific saving provision contained in Section 11(3) of the Act that

the House of Lords held that, although regulation 2A had expired before the trial of the appellant, he was properly convicted after the expiration of the Act, since Section 11(3) did not expire with the rest of the Act, being designed to preserve the right to prosecute after the date of expiry. Mr. Chetty contends that there is and can be, no corresponding saving provision made by the Ordinance in question and so, the invalidity of the Cuttack Municipal Elections would revive as soon as the Ordinance expired by lapse of time. This contention is based on the general rule thus stated by Craies: "that unless a temporary Act contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. That is why offences committed against temporary Acts must be prosecuted and punished before the act expires, and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate."

21. In our opinion, it would not be reasonable to hold that the general rule about the effect of the expiration of a temporary Act on which Mr. Chetty relies is inflexible and admits of no exceptions. It is true for instance that offences committed against temporary Acts must be prosecuted and punished before the act expires. If a prosecution has not ended before that day, as a result of the termination of the Act, it will ipso facto terminate. But is that an inflexible and universal rule?

In our opinion, what the effect of the expiration of a temporary Act would be must depend upon the nature of the right or obligation resulting from the provisions of the temporary Act and upon their character whether the said right and liability are enduring or not. As observed by Parker, B. in the case of *Steavenson v. Oliver*, "there is a difference between temporary statutes and statutes which are repealed the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions, are matters of construction." In this connection, it would be useful and interesting to consider the decision in the case of Steavenson itself. That case related to 6th Geo. 4, c. 133, Section 4 which provided that every person who held a commission or warrant as surgeon or assistant surgeon in His Majesty's Navy or Army, should be entitled to practise as an apothecary without having passed the usual examination. The statute itself was temporary and it expired on August 1, 1826. It was urged that a person who was entitled to practise as an apothecary under the Act would lose his right after August 1, 1826, because there was no saving provision in the statute and its expiration would bring to an end all the rights and liabilities created by it. The Court rejected this contention and held that the person who had acquired a right to practise as an apothecary, without having passed the usual examination, by virtue of the provision of the temporary Act, would not be deprived of his right after its expiration. In dealing with the question about the effect of the expiration of the temporary statute,

Lord Abinger, C. B. observed that

"it is by no means a consequence of an act of Parliament's expiring, that rights acquired under it should likewise expire. Take the case of a penalty imposed by an act of Parliament; would not a person who had been guilty of the offence upon which the legislature had imposed the penalty while the Act was in force, be liable to pay it after its expiration ? The case of a right acquired under the Act is stronger. The 6 Geo. 4 c. 133, provides that parties who hold such warrants shall be entitled to practise as apothecaries; and we cannot engraft on the statute a new qualification, limiting that enactment." It is in support of the same conclusion that Parker, B. made the observations which we have already cited. "We must look at this act", observed Parker, B., "and see whether the restriction in the 11th clause, that the provisions of the statute are only to last for a limited time, is applicable to this privilege, in question. It seems to me that the meaning of the legislature was that all assistant-surgeons, who were such before the 1st of August, 1826, should be entitled to the same privileges of practising as apothecaries, as if they had been in actual practice as such on the 1st of August, 1815, and that their privileges, as such was of an executory nature, capable of being carried into effect after the 1st of August, 1826." Take the case of a penalty imposed by a temporary statute for offences created by it. If a person is tried and convicted under the relevant provisions of the temporary statute and sentenced to undergo imprisonment, could it be said that as soon as the temporary statute expires by efflux of time, the detention of the offender in jail by virtue of the order of sentence imposed upon him would cease to be valid and legal? In our opinion,

the answer to this question has to be in the negative. Therefore, in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter. “

Accordingly, it is evident that the effect of expiration of temporary Statute is not subject to any inflexible rule and it depends upon whether a right created in the Statue is of enuring character, which is vested in the person.

16. The other two decisions in **T. VENKAT ERDDY’s** case (4 supra) and **D.C. WADHWA’s** case (5 supra) relied upon by the learned senior counsel

for the petitioner, in my view, are not relevant on the point inasmuch **D.C. WADHWA's** case (5 supra) dealt with practice of promulgation of large number of ordnances repeated in a routine manner. Similarly, the decision in **T. VENKAT ERDDY's** case (4 supra) did not consider the question posed in this case.

17. Mr. K. Vivek Reddy, learned counsel for the respondents contended that all actions done during the life of ordinance are valid and the same continues to remain in force as an act of Legislature. Learned counsel also submitted that the object of the Central Ordinance dated 30.05.2015 was to exempt the properties from conducting social impact survey and during the validity of the said ordinance exemption was granted, thus, the acquisition proceedings initiated during the validity of the ordinance has acquired finality and the same cannot be nullified merely because the ordinance lapsed.

The notification under Section 11(1) was published on 12.06.2015 and notification under Section 19 was published on 27.08.2015 during the validity of the Central Ordinance and hence, was not affected.

In support of his contentions, learned counsel relied upon a decision of the Supreme Court in **GOODERHAM AND WORTS LTD.'s** case

(9 supra). To appreciate the said decision, it is appropriate to extract paras 15 and 16 thereof as under:

> "**15**. This argument, at first sight attractive as a point of pleading, is, in their Lordships' opinion untenable on a sound appreciation of the structure and terms of the Act of 5th July 1935, above quoted. The first temporary amending Act of 1933 repealed certain provisions of the principal Act of 1932 and substituted other provisions in their place. The operation of this amending Act was continued down to 30th June 1935, by two further Acts. Then by the Act of 5th July 1935, its operation was further extended to 31st March 1936, but only till then.
>
> The sections of the three temporary Acts prescribing successive dates of expiry of this temporary legislation were repealed.
>
> The result is that on 31st March 1936, the temporary legislation contained in the first Act of 1933 repealing provision of the principal Act of 1932 and substituting other provisions came to an end not by repeal of the temporary legislation but by the efflux of the prescribed time. No question as to revival of the temporarily repealed provisions

of the principal Act of 1932 by the repeal of repealing legislation arises. The repeal effected by the temporary legislation was only a temporary repeal. When by fiat of Parliament the temporary repeal expired the original legislation automatically resumed its full force. No re-enactment of it was required. This is what sub-section (3) of the Act of

5th July 1935, was designed to make clear. The principal statute of 1932 is to be read on and after 1st April 1936, as if the temporary legislation had never been enacted; it is to be in force as if there had been no temporary legislation affecting its provisions. Sub-section (3) does not say that the temporary Acts are for all purposes to be treated as if they had never been enacted. If the temporarily repealed provisions of the principal Act had not on 1st April 1936, came into operation again, freed of the modifications substituted by the temporary legislation, the Commission would have been left without powers essential for the conduct of their business until 2nd November 1936, when the Canadian Broadcasting Act of 23rd June 1936, came into operation incorporating their successors, the present Corporation, and providing them with a complete code of revised powers.

16. Accordingly, in their Lordships' opinion, the respondents are not precluded by the terms of the Act of 5th July 1935, from now maintaining that under the temporary Act of 23rd May 1933, the approval of the Governor in Council was essential when the lease in question was signed. The appellants are not entitled to say that the Court has been enjoined by Parliament to disregard the temporary Act of 23rd May 1933, as if it had never been enacted."

18. The decision in **S. KRISHNAN's** case (2 supra) is distinguished by the learned counsel by contending that the acquisition in the present case has been under Central Act and not under the ordnance, hence, remains unaffected. Learned counsel also relied upon **GODAVARI SUGAR MILLS LTD.'s** case (10 supra) to contend that the validity, on the date of notification, is relevant to be considered and para 4 of the said decision is extracted hereunder:

"**4.** We proceed to consider the next contention of the appellant that S.13 of the 1949 Act repealed the Ordinance completely and the effect of this section was that the Ordinance was obliterated from the Statute Book as if it never existed and, therefore, there was no bar in the way of the Income- tax Officer to make the order on March 11, 1955. Section 13 of the 1949 Act provides as follows :

"13(1). The Public Companies (Limitation of Dividends)

Ordinance 1948 (XXIX of 1948) is hereby repealed.

(2) Notwithstanding such repeal, any rules made, action taken or thing done in exercise of any power conferred by or under the said ordinance shall be deemed to have been made, taken or done in exercise of the powers conferred by or under this Act as if this Act had come into force on the 29th day of October 1948."

We are unable to accept this argument as correct. In the first place, the repeal of the Ordinance under s. 13 of the 1949 Act is immaterial, for, as we have already stated, s. 23A has created a fiction of distribution of the undistributed income as dividend and the section further states that it would be deemed as if it was distributed on the date of the Annual General Meeting. Since the notional distribution contemplated by s. 23A of the Act is as if the notional distribution took place at the date of the Annual General Meeting it is the law which prevailed as on the date of the Annual General Meeting which has to be taken into account in considering the issue as to the legal validity of the order made by the Income-tax Officer. In the second place, Mr. S. T. Desai is not right in his contention that the effect of s. 13 of the 1949 Act is to obliterate the Ordinance completely from the Statute Book. Section 6 of the General Clauses Act (Act 10 of 1897) states as follows:

"6. Where this Act, or any 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 reason for enacting S. 6 of the General Clauses Act has been described by this Court in State of Punjab v. Mohar Singh [(1955) 1 SCR 893 as follows:

"Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law. A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time -of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. Later on, to dispense with the necessity of having to insert a saving .clause on each occasion, section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as section 38(2) of the Interpretation Act of England."

Section 13 of the 1949 Act is almost identical in language with S.11 of Punjab Act XII of 1948 which was the subject- matter of consideration in State of Punjab v. Mohar Singh [(1955) 1 SCR 893] and for the reason given by this Court in that case the provisions of s. 6 (c), (d) and (e) of the General Clauses Act are applicable to this case since there is no contrary intention appearing in the repealing statute. Mr. S. T. Desai is, therefore, unable to make good his submission on this aspect of the case."

19. Learned counsel placed reliance upon **AMARNATH BANSAL's** case (11 supra) to contend that the object of the proviso is essential to be kept in mind. Para 19 of the said decision is, therefore, necessary to be extracted hereunder:

"**19.** If the provisions of Section 3 of Ordinance No. 1 of S. 2005 and Section 3(1) of Ordinance No. 16 of S. 2005 are construed in the light of the principles laid down by this Court in *Bhupendra Kumar Bose* (supra), it must be held that the object underlying said provisions was to exclude the applicability of the laws of other covenanting States in the territory of PEPSU by repealing them absolutely and to apply the laws applicable in Patiala State in the entire territory of PEPSU. Since the repeal of the laws of other

> Covenanting States by Ordinances Nos. 1 and 16 of S. 2005 was intended to be for all time, the expiration of the said Ordinances would not mean that the effect of the said Ordinances regarding on-applicability of the laws of other Convenanting States in the territory of PEPSU was nullified on the expiration of Ordinance No. 16 of S. 2005. In view of the express terms used in the said Ordinances it must be held that Jind State Civil Service Regulations, 1945 stood repealed absolutely and ceased to have any application after the Raj Pramukh of PEPSU took over the administration of Jind State on 20-08-1948."

20. After considering the law laid down in the decisions referred to above, in my view, for answering point No.2, few relevant circumstances have to be kept in mind viz. (1) The main acquisition is under the Central Act 30 of 2013 and not under the Central Ordnance; (2) As per the ratio of the decision in **GODAVARI SUGAR MILLS LTD.'s** case (10 supra) the validity of the notification, as on the date issued, is required to be seen; (3) Section 11 notification and Section 19 notification dated 12.06.2015 and 27.08.2015 respectively were published during the validity of the ordinance and (4) Whether it can be said that the object of ordinance was of enduring character or a temporary one. The Legislature is deemed to be aware that the process of acquisition when initiated cannot be completed in a fixed time frame and various statutory steps have to be taken before the acquisition is completed. When the acquisition for infrastructure project was exempted by virtue of Section 10(A) of the Central Act 30 of 2013 read with G.O.Ms.No.69 dated 29.05.2015 issued by the State Government, it has to be held that the acquisition contemplated thereunder would necessarily require minimum period for completion of acquisition process and within the validity of ordinance it could never have been envisaged to be completed. Hence, in my view,

the exemption granted under the ordinance was, undoubtedly,

of an enduring character.

21. In my view, the answer to point No.2 is found in para 23 of the decision i n **BHUPENDRA KUMAR BOSE's** case (3 supra) which is extracted

hereunder:

> "**23**. Now, turning to the facts in the present case,
> the Ordinance purported to validate the elections to the Cuttack Municipality which had been declared to be invalid by the High Court by its earlier judgment so that as a result of the Ordinance, the elections to the Cuttack Municipality must be held to have been valid. Can it be said that the validation was intended to be temporary in character and was to last only during the life-time of the Ordinance? In our opinion, having regard to the object of the ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived. The rights created by this Ordinance are, in our opinion, very similar to the rights with which the court was dealing in the case of Steavenson and they must be held to endure and last even after the expiry of the Ordinance. The Ordinance has in terms provided that the Order of Court declaring the elections to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would not come to an end as soon as the Ordinance expires. Therefore, we do not think that the preliminary objection raised by
> Mr. Chetty against the competence of the appeals can be upheld."

22. Applying the test aforesaid, I am unable to agree with the learned senior counsel for the petitioner that even if the exemption granted was valid, the same does not survive the expiration of the ordinance, as such, the acquisition, in question, remains unaffected notwithstanding the expiry of the ordinance. Accordingly, point No.2 is answered against the petitioner.

Consequently, the writ petition is liable to be dismissed and is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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VILAS V. AFZULPURKAR, J

December 22, 2015
DSK

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[1] (1978) 1 SCC 405

[2] AIR 1951 SC 301

[3] ARI 1962 SC 945

[4] (1985) 3 SCC 198

[5] (1987) 1 SCC 378

[6] (1995) 5 SCC 482

[7] (2011) 5 SCC 676

[8] (2002) 4 SCC 666

[9] AIR 1949 PC 90

[10] AIR 1967 SC 556

[11] (1997) 10 SCC 700

[12] (2005) 13 SCC 375

[13] AIR 1987 SC 2173

[14] 2015 (6) ALD 521