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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgement Reserved: 26th July, 2019

Judgement Pronounced: 25 November, 2019

+ **W.P.(C) 2130/2014**

TATA COMMUNICATIONS LTD ... Petitioner

Through : Mr.Dhruv Mehta, Sr.Adv. with
Mr.Ajit Warriar, Mr.Aditya Nayyar
and Mr.Varun Byreddy, Advs.

versus

UOI AND ORS. ... Respondents

Through : Mr.Jaswinder Singh, Adv. for R-1 and
R-6.
Mr.Yeeshu Jain, Advocate for
LAC/L&B.
Mr.Sanjay Poddar, Sr.Adv. with
Mr.B.L.Wali, Adv. for DMRC/R-5.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J.

1. The present writ petition had been originally filed by the Petitioner under Articles 226 and 227 of the Constitution of India primarily seeking the following reliefs:

“a. Issue a writ of certiorari or any other appropriate writ, order, or direction in the nature of, striking down and quashing the Notification bearing no.F9/11/L&B/LA/MRTS/9786, dated 13.09.2013 issued under Section 4 read with Section 17(1) and 17(4) of the 1894 Act, the purported declaration under Section 6, the purported declaration under Section 17(1) and Award bearing no.5/2013-2014 and any and all steps taken or proposed to be taken by the Respondents in pursuance thereof or in furtherance thereof;

b. issue a declaration declaring that the present acquisition

proceedings suffer from malafide, arbitrariness and is a colourable exercise of power;

c. Issue a writ of mandamus or any other appropriate writ, or direction in the nature thereof, directing the Respondents to commence and hold fresh proceedings for acquisition of the acquired property in compliance with the applicable law;”

2. During the pendency of the petition, the petitioner filed CM 46888/2017 in order to incorporate an additional relief and ancillary amendments to the petition based upon the judgment of a coordinate bench of this Court in ***Tarun Pal Singh v. Lt.Governor, Govt. of NCT of Delhi & Ors., 2015 SCC OnLine Del 9789*** whereby the proviso under Sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter '*the 2013 Act*') was held to be applicable to Section 24(1)(b). Accordingly, the petitioner had sought to amend the petition seeking determination of the compensation in terms of the 2013 Act. The said application was allowed on 21.12.2017. However, during the pendency of the petition, the said judgment of this Court was reversed by the Supreme Court in ***Delhi Metro Rail Corporate Ltd. v. Tarun Pal Singh & Ors., (2018) 14 SCC 161*** and accordingly, the learned senior counsel appearing for the petitioner on 07.02.2018, fairly conceded that the new grounds raised would not be open to the petitioner.
3. The case arises from the acquisition of the land measuring 10,489.18 sq.mtrs. belonging to the petitioner at Village Bahapur, District Kalkaji, New Delhi for the purpose of the construction of Delhi MRTS Project, Phase-III.
4. As per the petitioner, a piece of land measuring 127.4 acres was

acquired by the Delhi State Government for the construction of the Radio Transmission Station in the year 1953 and handed over to the predecessor entity of the petitioner, i.e. Overseas Communication Services. Subsequently, its operations were handed over to Videsh Sanchar Nigam Ltd. ('VSNL'). In 1999, the Government of India diluted its share in VSNL to 52% and thereafter, in February, 2002, further sold 25% stake in VSNL to Tata Group. It is stated that Tata Group further acquired shares from an open offer and the market. The name of VSNL was changed to 'Tata Communications Ltd.' in the year 2008.

5. It is further stated that on 01.07.2011, the respondent no.5/DMRC issued a letter to the Secretary-cum-Commissioner, Transport Department, Government of NCT of Delhi *inter alia* requesting for acquisition of two pockets of land at Greater Kailash Enclave on permanent basis for the construction of the Janakpuri-Kalindi Kunj Corridor of Delhi MRTS Project Phase-III. Thereafter, on 11.08.2011, a part of the corridor was approved by the Empowered Group of Ministers, Government of India. The request of DMRC was then forwarded to the respondent no.4/LAC through the Land and Building Department on 04.08.2011.
6. The case of the petitioner is that after a substantial delay, the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter '*the 1894 Act*') was issued. The notification categorically stated that the Lt. Governor of Delhi was satisfied that section 17(1) was applicable to the land in question. The notification was followed by a declaration under Section 6 and notification under Section 17(1)

of the 1894 Act on 19.09.2013. Subsequently, the LAC issued a notice dated 04.10.2013 under Section 9 and 10 of the Act calling upon all interested persons to attend at the office of the LAC on 14.10.2013 at 11 AM. Thereafter, the petitioner participated in the proceedings before the LAC and as a part thereof, had given a detailed representation on 20.11.2013. It is alleged that without any response to the said representation, the officials of the Land and Building Department, Government of NCT of Delhi/respondent no.2 and DMRC visited the acquired premises for taking over its possession. It is further stated that on 25.11.2013, the representatives of DMRC entered the acquired property without adhering to the provisions of Section 17(3A)(a) of the 1894 Act.

7. While the acquisition proceedings were ongoing, the Parliament passed the 2013 Act, which was to come into force on 01.01.2014. Prior to its commencement, the award was passed on 30.12.2013. The case of the petitioner is that the passing of the same was only informed on 03.01.2014 under Section 12(2) of the 1894 Act. On 08.01.2014, the LAC advised the petitioner to apply for payment of compensation. The award is stated to be made available to the petitioner only on 07.02.2014 wherein the market value of the land was assessed at Rs.1,37,37,239/-. It is averred that as the six weeks limitation time was about to expire, the petitioner filed a reference petition under Section 18 of the 1894 Act.
8. In this background, the petitioner had filed the present petition on 28.03.2014 impugning the very basis of the award, i.e. the notifications and declarations under Sections 4, 6 and 17 of the 1894 Act.

9. Mr.Mehta, learned senior counsel for the Petitioner first contended that Section 17(4) of the 1894 Act have been incorrectly invoked resulting in depriving the Petitioner of the hearing stipulated under Section 5-A of the 1894 Act. The submissions in this regard are threefold: *first*, the appropriate authority (Lt.Governor of Delhi) failed to apply his mind to all the relevant factors; *second*, non-compliance with provisions of Section 17(3A) of the 1894 Act; *third*, the official records show that there was no urgency in the matter; and legal malice. He relied upon the decision in ***Radhey Shyam v. State of Uttar Pradesh*, (2011) 5 SCC 553** (para 77) to support his contention as to when urgency provision ought to be invoked.
10. Elaborating his arguments, learned senior counsel submitted that the appropriate authority failed to properly apply his mind prior to the invocation of Section 17(4) of the 1894 Act. He submitted that the word ‘*may*’ in Section 17(4) is clearly instructive of the fact that the provision is merely an enabling provision and need not be necessarily invoked. In support of the contention that the decisions under Section 17(1) and 17(4) can be impugned as having been vitiated by *malafide*, non-application of mind on relevant factors and records, learned senior counsel relied upon the decisions in ***Union of India v. Krishan Lal Aneja*, (2004) 8 SCC 453** (paras 16 and 31); ***Chatro Devi v. Union of India*, 2007 (3) DRJ 738** (para 48); ***Devendra Singh v. State of Uttar Pradesh*, (2011) 9 SCC 551** (paras 21 and 22); and ***Darshan Lal Nagpal v. Government of NCT of Delhi*, (2012) 2 SCC 327** (paras 26, 28, 29, 35 and 36). Mr.Mehta submitted that there has been a delay of over 2 and a half years in the initiation of the proposal for

acquisition to the issuance of the notification under Section 4. He drew the attention of the Court to the fact that even as late as 13.03.2013 and 26.06.2013, the draft notification being circulated provided for a hearing under Section 5-A of the 1894 Act. He submitted that the records of the respondent no.4/LAC also show that when the matter was placed before the Lt.Governor, neither any reference was made in the note necessitating urgency nor any such material was placed before the Lt.Governor.

11. Mr.Mehta also contended that the mandate of sub-section (3A) of Section 17 was not complied with as admittedly 80% of the compensation was not tendered prior to the taking of possession of the land. Reliance was placed on ***Laxmi Devi v. State of Bihar, (2015) 10 SCC 241*** (para 18) to submit that tender of compensation is *sine qua non* for the Government to take possession and ***Khub Chand v. State of Rajasthan, AIR 1967 SC 1074*** (para 7) to submit that when an act has to be done in a particular manner, it has to be done in such manner or not at all.
12. The third ground of challenge urged by the learned senior counsel for the petitioner is that urgency provision has been invoked in the absence of any urgency. He submitted that the first request for acquisition was received by the Secretary, Transport Department from the DMRC on 01.07.2011. The said request was forwarded to the respondent no.4/LAC on 04.08.2011. In the meantime, DMRC wrote to the Department of Telecommunications seeking transfer of land in question. The Department of Telecommunications informed that the land belonged to the petitioner and thereafter, DMRC issued letter

dated 03.07.2012 to the respondent no.4/LAC requesting him to expedite the process. Ultimately, the notification under Section 4 of 1894 Act was issued on 13.09.2013, i.e. after a delay of about 2 years and 2 months from the first request of the DMRC. As per Mr.Mehta the said facts clearly belies any urgency as shown by the respondents. Reliance was placed on ***Devendra Singh (Supra)*** (paras 21 and 22) and ***Krishan Lal Aneja (Supra)*** (para 31).

13. The final contention of the petitioner pertains to legal malice. Mr.Mehta submitted that the invocation of urgency provisions and dispensing with hearing under Section 5-A shows legal malice on the part of the respondents. In support of the said argument, Mr.Mehta again relied upon the communication dated 26.06.2013 to submit that even as late as June, 2013, there was no proposal to dispense with hearing under Section 5-A nor any such proposal was ever mooted. He contended that the respondents have acted with alacrity to deprive the petitioner of the benefits under the provisions of the 2013 Act. He submitted that the 2013 Act received the assent of the President on 27.09.2013 and was to come into force on 01.01.2014, in the meantime, the respondents completed the acquisition proceedings within a short span of 3 and a half months on 30.12.2013. According to him, the fact that 7 awards were passed within a span of 10 minutes on 30.12.2013, i.e. one day prior to the coming into force of the 2013 Act. Reliance was placed on ***Kalabharti Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437*** (paras 25 and 26); and ***Rameshwar v. State of Haryana, 2018 SCC OnLine 210*** (para 43).
14. Mr.Mehta further submitted that the award passed by the respondent

no.4 is plagued by non-application of mind, non-consideration of relevant factors and wrongful consideration of irrelevant factors. He submitted that the respondent no.4 has treated the land as agricultural land opining that the same had about 700 trees. He contended that the initial 80% estimated compensation was assessed at about 247 crores, which was subsequently reduced to 1.88 crores without any reason. Learned senior counsel submitted that none of the representations of the petitioner to the effect of the land use of the acquired land, its utility, potentiality and market as well as the applicable circle rate and multiplier formula were not considered by the respondent no.4.

15. *Per contra* Mr.Jain, learned counsel for the respondent no.4/LAC, contended that the present petition is liable to be dismissed as the petitioner is guilty of sitting on the fence as having waited until the final award to challenge the notification under Section 4 of the 1894 Act. To this end, he relied upon the decisions in ***Aflatoon v. Lt.Governor of Delhi*, (1975) 4 SCC 285** (para 11) and ***Radhey Shyam Gupta v. Union of India*, 2003 (71) DRJ 608 (DB)** (para 53).
16. It was next contended that any grievance against the compensation or the computation thereof has to be urged in accordance with Section 18 of the 1894 Act and the petitioner cannot resort to the present proceedings. Reliance was placed on an order dated 12.05.2011 rendered by a coordinate bench of this Hon'ble Court in ***Jai Kishan Gupta & Ors. v. Govt. of NCT of Delhi*, W.P. (C) 5480/2008**.
17. In response to the contention that the 80% of the compensation was not paid prior to taking of possession, Mr.Jain submitted that the same is squarely covered by the decision of the Supreme Court in ***Satendra***

***Prasad Jain v. State of U.P.*, (1993) 4 SCC 369** (paras 6-8 and 15) and any bench of inferior strength could not have taken a contrary view.

18. Learned counsel for the respondent no.4/LAC next contended that the public notice envisaged under Section 9(1) was duly made on 04.10.2013 and even otherwise, any irregularity therein would not vitiate the award. Reliance was placed on ***State of Tamil Nadu v. Mahalakshmi Ammal*, AIR 1996 SC 866** (para 9).
19. Relying upon ***Kaliyappan v. State of Kerala*, (1989) 1 SCC 113** (paras 3-5); and ***Roshnara Begum v. Union of India*, AIR 1996 Del 206** (paras 131-134), Mr.Jain submitted that the date of signing of the award amounts to making of the award and communication of the award is not a necessary. It was submitted that the petitioner is not aggrieved by the acquisition of the land, but had preferred the present proceeding belatedly finding the compensation to be inadequate. To this end, he drew the attention of this Court to a Letter dated 25.11.2013 addressed to the LAC wherein the petitioner stated that it was awaiting the 80% compensation.
20. Learned counsel submitted that the present petition was filed much after the taking of possession as well as the passing of the award. The petitioner had duly participated in the award making process and nowhere disclosed that existence of any alternate suitable land. In such a scenario, the purpose of enquiry under Section 5-A would become academic and futile. Reliance was placed on ***General Manager, Telecommunication v. Madan Mohan Pradhan*, 1995 Supp (4) SCC 268** (para 4).

21. In response to the invocation of the urgency provision, Mr.Jain submitted that delay itself accelerates the urgency. Even assuming there was no urgency, according to the learned counsel, it was not open to this Court to sit as an appellate forum and should only intervene if this Court finds *mala fide* exercise of power.
22. Supporting the contentions of the respondent no.4, Mr.Poddar, learned senior counsel for the respondent no.5/DMRC, submitted that the petitioner has participated in the award proceedings and as the petitioner had not accepted the compensation awarded to it, a reference under Section 18 of the 1894 Act has been made to the Reference Court and registered as LAC No.14/2014. Further, there was a dispute as to the entitlement of the petitioner to the compensation and accordingly, a reference under Section 30 of the 1894 Act has also been made.
23. Learned senior counsel submitted that the urgency in the need and requirement of the metro project has been taken into judicial notice. He submitted that the expeditious construction was required for the decongestion of the traffic and for reducing air pollution in Delhi. Reliance was placed on *Shanta Talwar v. Union of India*, (2011) 5 SCC 287 (para 10); *Rajender Kishan Gupta v. Lt.Governor, Govt. of NCT of Delhi*, 2010 (166) DLT 278 (para 34); *Rajinder Kishan Gupta v. Union of India*, (2010) 9 SCC 46; and *Summit Imports Services Ltd. v. Delhi Metro Rail Corporation*, 2008 (103) DRJ 263.
24. Mr.Poddar next contended that the satisfaction recorded by the competent authority under Section 6(3) of the 1894 Act is conclusive evidence and incapable of being dislodged only on the ground of pre-

notification delay. He submitted that similar contentions have been rejected by this Court in ***Rajender Kishan Gupta (Supra)*** (paras 20, 22-27, 29-32 and 34-35); and ***Summit Imports Services Ltd. (Supra)*** (paras 11-14) and categorically rejected. He submitted that in both the decisions, the Court considered ***Krishan Lal Aneja (Supra)*** and differentiated the same in respect to the metro project. Mr.Poddar also submitted that none of the judgments relied upon by the petitioner advance its case. Learned senior counsel relied upon the decision in ***DDA v. Muni Lal, 2018(3) SCALE 319*** (para 9) to submit that each case has to be decided on its own facts.

25. Supporting the contention of the respondent no.4 that the petitioner is actually aggrieved by the determination of compensation, learned senior counsel submitted that the petitioner having failed to challenge the declaration under Section 6 and having participated in the reference proceedings, cannot challenge the same at this stage. He relied upon the decision in ***Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria, (1996) 4 SCC 579*** (paras 8, 9, 12 and 13); and ***Aflatoon (Supra)*** (paras 9-11). Controverting the submission of the petitioner that the ground cannot be urged in the absence of pleadings, Mr.Poddar relied upon the decision of the Supreme Court in ***Banda Development Authority v. Moti Lal Agarwal, (2011) 5 SCC 394*** (paras 13-19).
26. It was next contended that the petitioner is prosecuting two inconsistent proceedings being before the Reference Court seeking enhancement of compensation and before this Court. Mr.Poddar submitted that the petitioner having elected to prosecute an efficacious

alternative remedy is now precluded from challenging the acquisition proceedings before this Court. According to him, the same amounted to approbating and reprobating at the same time.

27. In response to the contention of the petitioner that the acquisition proceedings had been initiated to deny the petitioner of the benefit of the 2013 Act, Mr. Poddar submitted that the same is baseless. Mr. Poddar submits that the 2013 Act was passed in the Lok Sabha on 29.08.2013 and the Rajya Sabha on 05.09.2013, by the time, the request for acquisition had already been made and even 80% compensation had been deposited by the respondent no.5. Similarly, the notification under Section 4 was issued prior to the new Act getting the assent of the President on 26.09.2013.
28. Learned senior counsel contended that the contention pertaining to legal malice and colourable exercise of power have been raised without any basis. He submitted that admittedly the land has been used for the purpose it was acquired and the judgments relied upon by the petitioner in this regard are not applicable.
29. Mr. Poddar next submitted that even if it is taken that there was failure to tender 80% of the estimated compensation, it would not vitiate the acquisition proceedings. He submitted that the consequences of non-payment have been provided for in Section 34 of the 1894 Act being the payment of interest. Mr. Poddar submitted that in view of the binding precedent of the Full Bench decision of the Supreme Court in ***Indore Development Authority v. Shailendra*, 2018 (2) SCALE 1** (paras 71-76); and of the Division Bench in ***Tika Ram v. State of U.P.*, (2009) 10 SCC 689** (paras 87, 91-95); ***State of Uttarakhand v.***

Rajiv Berry, (2016) 15 SCC 1 (paras 5, 16, 19-20); and *Collector of Land Acquisition v. Andaman Timbers Industries*, (2014) 16 SCC 780 (paras 7-9), the decision in *Laxmi Devi (Supra)* does not aid the case of the petitioner.

30. It was finally contended that the petitioner has not been able to show any case for the moulding of relief. Learned senior counsel submitted that such relief can only be granted in case declaration under Section 6 of the 1894 Act is quashed. If the pleas impugning the challenge to the said declaration are rejected, no such relief can be granted, especially in view of the fact that the reference under Section 18 is pending.
31. Rebutting the contentions of the respondents, Mr.Mehta submitted that the ground of delay and laches cannot be urged as (1) the respondent no.4/LAC has not pleaded the same in its counter affidavit; and (2) the respondent no.5/DMRC is barred from raising the plea in view of Section 50(2) of the 1894 Act. Even otherwise, learned senior counsel submitted that there was no delay on the part of the petitioner. He submitted that the award was passed on 30.12.2013 and notice under Section 12(2) was received on 03.01.2014, however, a copy of the award was not supplied. Subsequently, the petitioner had filed applications under the Right to Information Act and the responses were received only on 15.01.2014 and 03.02.2014 and thereafter, the writ petition was filed on 28.03.2014, i.e. without any unnecessary delay. He submitted that there is no stipulated limitation period for filing a writ petition and various factors have to be considered, including the conduct of the petitioner and the creation of third party

rights. According to him, the fact that the respondent no.5 continued with the construction despite an order directing *status quo* would not create any equities in favour of the respondent no.5. Reliance was placed on *Anil Kumar Gupta v. State of Bihar*, (2012) 12 SCC 443 (para 15); *Vyalikaval Housebuilding Coop. Society v. V.Chandrappa*, (2007) 9 SCC 304 (para 9); and *Babu Ram v. State of Haryana*, (2009) 10 SCC 115 (para 32). Learned senior counsel submitted that the decision in *Banda Development Authority (Supra)* would not assist the petitioner as there the delay was more than 10 years between the issuance of the Section 4 notification and the filing of the writ petition.

32. Learned senior counsel further submitted that no cogent explanation is forthcoming in respect of the pre-notification delay from the respondents. He submitted that the stand that there was confusion regarding the ownership of the land is contrary to the correspondences exchanged between the respondents no.4 and 5 and the Department of Telecommunications (briefly 'DoT'). He submitted that on 17.02.2012, the respondent no.5 had requested the DoT to transfer the land as per the prevailing inter-departmental land transfer rates. In April, 2012, the DoT had clarified that the land belonged to the petitioner and thereafter, the respondent no.5 wrote to the respondent no.4/LAC to expedite the process of acquisition. According to Mr.Mehta, the respondent no.5 had accepted the position of the DoT and even the subsequent notifications, declaration and award mentioned the petitioner as the owner. Learned senior counsel contended that the argument of the respondent no.5 is without any

locus and is *estopped* in view of the conduct of the respondent no.4. In any case, such a stand is impermissible in view of the provisions of Section 50(2) of the 1894 Act. In case the land belonged to DoT, there was no occasion for initiation of acquisition proceedings. Reliance was placed on ***Sharda Devi v. State of Bihar*, (2003) 3 SCC 128** (para 36) and ***Ahad Brothers v. State of M.P.*, AIR 2005 SC 355** (paras 7-8). He contended that the judgments relied upon by the respondents do not further their case. The *onus* to justify pre-notification delay was upon the respondent no.4/LAC and it has failed to discharge the same. As regards the placing of relevant material before the Lt.Governor, Mr.Mehta submitted that the respondents were to show that the relevant material was placed before him especially in view of Section 106 of the Indian Evidence Act. Reliance was placed on ***Union of India v. Mukesh Hans*, (2004) 8 SCC 14** (paras 35-36) and ***Darshan Lal Nagpal (Supra)*** (paras 26, 28, 29 and 35).

33. Mr.Mehta reiterated his contentions regarding the incorrect deprivation of the petitioner of his right under Section 5-A without complying with the provisions of sub-sections (1), (3A) and (4) of section 17 of the 1894 Act. He contended that once application on principles of natural justice is made mandatory by a statutory provision, the infraction of the legal provision is enough and prejudice need not be demonstrated. Reliance was placed on ***Chatro Devi (Supra)*** (para 48); and ***Union of India v. Shiv Raj*, (2014) 6 SCC 564** (paras 34-36 and 38). Mr.Mehta also contended that there was no waiver of the said right as to constitute waiver there should be an

intentional relinquishment of a known legal right. Reliance was placed on *P. John Chandy and Co. (P) Ltd. v. John P. Thomas*, (2002) 5 SCC 90 (para 11) and *State of Punjab v. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770 (paras 39-40). Relying on *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471 (para 16); *Om Prakash v. State of U.P.*, (1998) 6 SCC 1 (para 21) and *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627 (paras 9-11), it was submitted that enquiry under Section 5-A is not a statutory right, but also has a flavour of fundamental rights. Being a fundamental right, the same cannot be waived. Reliance was placed on *Basheshar Nath v. The Commissioner of Income Tax, Delhi*, AIR 1959 SC 149 (paras 11, 15, 50 and 78) and *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 (paras 28-29).

34. Learned senior counsel submitted that the projects undertaken by the respondent no.5/DMRC do not stand on a higher pedestal and the acquisition mechanism remains the same. He submitted that similar arguments were accepted by a coordinate bench of this Court in *Darshan Lal Nagpal v. Government of NCT of Delhi*, 2011 (121) DRJ 678 (DB), the view was subsequently rejected by the Supreme Court in *Darshan Lal Nagpal (Supra)* (SC) (paras 28, 29, 35 and 36). It was submitted that there are no pleadings or material to show that the project was to be completed within a specified time frame.
35. Mr.Mehta reiterated his contention regarding legal malice by submitting that the urgency provisions were only invoked to deprive the petitioner the benefit of the 2013 Act. He submitted that the urgency provisions were invoked in September, 2013 only and by the

time, the 2013 Act had been passed by both the Houses of the Parliament and was within public knowledge.

36. Learned senior counsel submitted that the preferring of a reference under Section 18 would not disentitle the petitioner from maintaining the present petition. He submitted that (1) the reference was made without prejudice to other rights; (2) reference was initiated in view of the limitation prescribed; and (3) the subject matter and the remedies are different and thus, the doctrine of election would not apply. Reliance was placed on ***A.P. State Financial Corporation v. Gar Roller Mills*, (1994) 2 SCC 647** (para 15). He contended that the decision in ***Jai Kishan Gupta (Supra)*** is not applicable as therein, the only grievance pertained to inadequate compensation, which is not the same in the present case.
37. Mr.Mehta finally contented that even if this Court does not find the quashing of the notification under Section 4 in public interest, it may consider moulding the relief by providing suitable succour to the petitioner by quashing the invocation of the urgency provision which dispensed with the hearing under Section 5-A of the 1894 Act. The sequitur of the same being that a fresh award would have to be passed by the respondent no.4 on the basis of the notification under Section 4. Reliance was placed on ***K.B. Ramachandra Raje v. State of Karnataka*, (2016) 3 SCC 422** (paras 35 and 38); ***Special Agricultural Produce Market Committee for Fruits and Vegetables v. N. Krishnappa*, (2017) 13 SCC 239** (paras 2, 7 and 8); ***Competent Authority v. Bangalore Jute Factory*, (2005) 13 SCC 477** (para 11); ***Gauri Shankar Gaur v. State of U.P.*, AIR 1994 SC 169** (para 50);

Ujjain Vikas Pradhikaran v. Raj Kumar Johri, (1992) 1 SCC 328 (para 4) and *Haji Saeed Khan v. State of U.P.*, (2001) 9 SCC 513 (paras 11, 12 and 14).

38. We have heard the learned counsel for the parties and perused the record before us.
39. Prior to dealing with the rival contentions between the parties, we may take note of a contention raised by the learned senior counsel for the respondent no.5/DMRC that the petitioner is not the owner of the land in question and such disputed questions of fact cannot be decided in these proceedings. Mr.Mehta submits that the objection sought to be raised is highly misplaced which is evident from the fact that in case, the land belonged to the DoT there would have been no necessity for acquiring the land. Mr.Mehta had drawn the attention of the Court to the letter addressed by the Ministry of Communications and I.T., DoT to Sh.P.S.Chauhan, Chief Engineer/General, Delhi Metro Rail Corporation Limited (DMRC), which reads as under:

“Subject: Requirement of land at G.K.Enclave for Delhi MRTS Project Phase III.

This is with reference to your letter No.DMRC/Land/15/OG/JP-BG/1444/159 dated 17.2.2012, addressed to the Secretary, Department of Telecommunications, Sanchar Bhavan, New Delhi on the above cited subject.

In this regard, I would like to inform you that the land stands transferred in the name of M/s Videsh Sanchar Nigam Ltd. (M/s VSNL) as per records available in this office. M/s VSNL became Private Limited Company on disinvestment of 25% government equity as per Cabinet decision, M/s VSNL changed its name to M/s Tata Communications Limited (m/s TCL) subsequently.

We have advised M/s TCL to further correspond with DMRC on this issue.

This is issued with the approval of Secretary (Telecom)."

(Emphasis Supplied)

40. Attention has also been drawn to the letter dated 21.01.2015 addressed by the Ministry of Communication and I.T., DoT to the Company Secretary and Chief Legal Officer, Tata Communication Limited, which reads as under:

"Sub: Acquisition notice received by the M/s TCL from Land Acquisition Collector, Delhi for DMRC.

Kindly refer to M/s TCL's letter No. HQ/CS/MIN.6/15547 dated 16th January, 2015 on the subject cited above regarding developments in case of Tata Communications Ltd. Vs. UOI & Ors [W.P (C) No.2130/2014].

2. The undersigned is directed to state that as per the records available in this Section, the surplus land is in ownership of M/s TCL as a custodian and shall be demerged into the resulting company i.e. M/s Hemishpere Properties India Limited (HPIL). Cabinet in its meeting dated 19th July, 2012 has approved the proposal regarding acquisition of 51.12% shares by Government into a resulting company namely HPIL and that this section adheres to the Implementation of Cabinet decision related to the disposal of the Surplus Land within the mandate of SHA. Further, as per provisions of Appendix I to the Articles of Association of TCL (Clause 4.7 specifically), DoT should not be impleaded separately in W.P.(C) No.2130 of 2014 as long as the Strategic Partner (i.e. PFL) and TCL agree to abide by their respective obligations (if any) with respect to the land."

(Emphasis Supplied)

41. Our attention was drawn to an affidavit verified on 21.05.2015 of

Sh.K.W.Sherpa, Under Secretary, DoT wherein a complete background has been given as to how Indian Railway Telegraph Company Limited ('IRT') was established on 23.10.1923. On 01.07.1932, upon acquiring operating rights on the cables land in Bombay and Madras from the Eastern Telegraph Co. Ltd. ('ETC'), the name has been changed to Indian Radio and Cable Communications Co. Ltd. ('IRCC'). IRCC was taken over by Government of India on 31.12.1946. On 01.01.1947, Overseas Communication Service ('OCS') was constituted under DoT, Government of India and on 19.03.1986, VSNL, a wholly owned government company was incorporated. On 01.04.1986, Government of India transferred all its assets and liabilities of the Overseas Communication Service to VSNL, then a 100% Government of India owned company. During the disinvestment, VSNL became a private limited company and as per Cabinet Committee on disinvestments' decision dated 01.02.2001, 25% of government equity in VSNL was decided to be disinvested towards strategic partner and thereafter the name of VSNL was changed to M/s Tata Communications Limited (TCL) subsequently.

42. On 04.04.2018, Mr.Mehta, learned senior counsel, on instructions, had submitted that the compensation which would be received by the petitioner would be shared as per the arrangement and understanding between the petitioner and the DoT and there is no dispute between the petitioner and the DoT.
43. In view of the foregoing submissions and the statement made by learned senior counsel for the petitioner, we do not deem it necessary to examine the ownership of the petitioner and proceed to decide the

matter on merits. In view of the various submissions made by the parties, the following issues arise for our consideration:

- (i) Whether the petition suffers from delay and latches?
 - (ii) Whether invocation of urgency provisions is vitiated by non-application of mind and pre-notification delay?
 - (iii) Whether there was legal malice in initiating the acquisition proceedings?
 - (iv) Whether failure to pay 80% of the estimated compensation in terms of Section 17(3A) of the 1894 Act vitiates the acquisition proceedings?
 - (v) Whether the award is liable to be set-aside owing to non-application of mind and wrongful consideration of relevant factors?
 - (vi) Whether the petitioner has been able to make out a case for ‘moulding the relief’ in its favour?
44. Accordingly, we proceed to deal with the issues under separate heads below:

Issue (i): Delay and Latches

45. The prime bone of contention between the parties pertains to whether the petitioner has approached this Court within time. The respondents have contended that the petitioner is guilty of sitting on the fence and it was only when it found the compensation awarded to be inadequate, that the present proceedings were initiated. On the other hand, the petitioner has controverted by submitting that there is no delay in approaching this Court. The sole explanation for approaching this Court after the passing of the award is that certain information under the Right to Information Act was sought and it was only after the same was made available that the present petition could be filed.

46. Mr.Mehta has raised two preliminary objections to the contention premised in the absence of pleadings on the part of the respondent no.4 and bar of Section 50(2) applying to respondent no.5/DMRC. In response to the contention, Mr.Poddar has relied upon the decision of the Supreme Court in ***Banda Development Authority (Supra)***. In the said decision, the Supreme Court was dealing with a situation where a writ petition was filed after nine years from the date of the declaration under Section 6 of the 1894 Act and yet, the High Court had nullified the acquisition process. In such a background, though the objection of delay and laches was not raised, the Supreme Court held that the High Court could and was obligated to look into the aspect. The relevant portion reads as under:

“16. In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of BDA and the State Government, the High Court was duty-bound to take cognizance of the long time gap of nine years between the issue of declaration under Section 6(1) and filing of the writ petition, and declined relief to Respondent 1 on the ground that he was guilty of laches because the acquired land had been utilised for implementing the residential scheme and third-party rights had been created. The unexplained delay of about six years between the passing of award and filing of the writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the

petitioner on merits.”

(Emphasis Supplied)

47. Mr.Mehta had tried to distinguish the decision contending that the delay there was of 9 years, which is not the same in the present case. Indubitably, the period of delay in the present case is not 9 years, however, the same would not impede the applicability of the decision so far as it holds that this Court is obligated to look into delay, if any. Accordingly, we find that the absence of such a ground having been taken in the pleading by the respondent no.4/LAC would not be of any consequence.
48. As regards the bar under the proviso to Section 50(2) of the 1894 Act, the same prohibits the respondent no.5/DMRC from seeking a reference under Section 18 of the 1894 Act. The said proviso does not in any way inhibit the respondent no.5 from bringing to the attention of this Court any fact which may lead to this Court showing restraint in the matter. Even otherwise, once we have held that the absence of pleadings on the part of the respondent no.4 is not of any consequence, the issue pales into insignificance.
49. The undisputed facts of the case are that on 13.09.2013, the notification under Section 4 was issued. This was followed by a declaration under Section 6 and 17(1) of the 1894 Act on 19.09.2013. Notice under Sections 9 and 10 was issued on 04.10.2013. Pursuant thereto, the petitioner participated in the proceedings before the LAC and gave a detailed representation on 20.11.2013. In the said proceedings, there is not even a whisper about any challenge to the acquisition proceedings. The possession of the land was taken over by

respondent no.5/DMRC on 22.11.2013. Thereafter, the award was passed on 30.12.2013. Notice under Section 12(2) was received by the petitioner on 03.01.2014.

50. As per Mr.Mehta, the petitioner thereafter applied two applications under the Right to Information Act, the first on 06.01.2014 with the respondent no.5 and the other on 15.01.2014 with the respondent no.4; the replies to which were received on 30.01.2014 and 03.02.2014 respectively. It was only after examining the replies that the present petition was filed on 28.03.2014. In the meantime, the petitioner sought a reference under Section 18 of the 1894 Act on 10.02.2014 and the matter was referred and registered as LAC No.14/2014.
51. On the aspect of delay and laches, which has been described by the Supreme Court as the act of sitting on the fence and letting the proceedings play out, the judgment in *Aflatoon (Supra)* has become the *locus classicus*. In the said case, the notification under Section 4 was issued in the year 1959 specifying the purpose as the “*planned development of Delhi*” and declaration under Section 6 was issued in 1966. Thereafter, in the years 1970 and 1972, writ petitions were filed alleging that the purpose specified was vague. In this background, the Supreme Court held as under:

“11 ...To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110 : (1969) 2 SCR

824] and *Rabindranath Base v. Union of India* [(1970) 1 SCC 84 : (1970) 2 SCR 697]).”

52. We may also notice the decision of the Supreme Court in *State of Haryana v. Dewan Singh*, (1996) 7 SCC 394 wherein notification was issued on 22.01.1981 and after conducting enquiry, the award was made on 19.04.1984. The writ petition was filed on 13.05.1985 alleging that dispensing with an enquiry under Section 5-A exercising power under Section 17(4) of the Act was bad in law as there was no urgency. The High Court had allowed the writ petition. The State appealed before the Supreme Court, which in turn, reversed the decision holding as under:

“5. The question for consideration is whether the High Court was justified in interfering with the award dated April 19, 1984 made by the Collector and the notification under Section 4(1). It is seen that the notification under Section 4(1) and the declaration were not challenged till May 13, 1985 while the award came to be made on April 13, 1984. The respondents in fact received the amount under protest but that fact was not brought to the notice of the High Court. It is also not in dispute that at that point of time an application for reference under Section 18 was made within the limitation provided therein. It would appear that after the writ petition was allowed the application was withdrawn. After the award was made, the Court would not be justified to quash the notification under Section 4(1) and declaration under Section 6 for dispensing with the enquiry under Section 5-A.”

(Emphasis Supplied)

53. A coordinate bench of this Court in *Radhey Shyam Gupta* (Supra) was faced with a scenario where the writ petition was filed almost 2 and a half years from the date of publication of declaration under Section 6 of the 1894 Act. The bench had, after extensively analysing

the decisions of the Supreme Court held that once the award has been passed, no writ petition can be filed challenging the acquisition notice or any proceedings thereafter. We deem it appropriate to extract the judgment *in extenso* below:

“53. It is clear that the petition is filed after an award was made by the Land Acquisition Collector. The petitioners did not bother to approach the Court after issuance of notification under Section 4, notification under Section 17(1) or also soon after declaration under Section 6 was made. The petitioners did not approach soon after the notice under Section 9 was issued but have approached as someone else approached the Court after award was made. In view of this, on behalf of the respondent it was submitted that the petitioners had allowed the machinery to complete the acquisition proceedings and therefore they have no right to challenge the proceedings.

54. In our opinion, in a case like this the Court must decline to grant relief and extraordinary jurisdiction should not be exercised. In the case of State of Haryana v. Dewan Singh, AIR 1996 SC 675 , notification under Section 4 of the Act was published on 22.1.1981. The Collector after conducting the enquiry made an award and allegedly took possession of the land on even date. The respondent asserted that they were in possession. Writ petition was filed on 13.5.85 challenging the notification on the grounds that dispensing with enquiry under Section 5-A, and exercising power under Section 17(4) were bad in law, as there was no urgency and the award was bad on the face of the case. High Court allowed the petition. The Apex Court pointed out that High Court was not justified in interfering with the award dated 19.4.84 made by the Collector and the notification under Section 4 of the Act. The Apex Court pointed out that the notification under Section 4(1) and the declaration were not challenged till 13.5.85, while the award was made on 13.4.84. The Apex Court pointed out that after the award was made the Court would not be justified in quashing the notification under Section 4(1) declaration under Section 6 and for dispensation of an enquiry under Section 5-A. In view of this, in our view, the respondent has rightly

submitted that it is too late to interfere with the acquisition proceedings.

55. *In the case of Municipal Council, Ahmednagar v. Shah Hyder Beig, AIR 2000 SC 671, the Apex Court pointed out in para 14 as under:*

14...It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Art. 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defeats equity' has its fullest application in the matter of grant of relief under Art. 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favors a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

56. *In para 17, the Apex Court pointed out that in any event after the award is passed, no writ petition can be filed challenging the acquisition notice or any proceedings therein. This has been the consistent view taken by the Apex Court. The Apex Court in the case of Municipal Corporation of Greater Bombay vs Industrial Development Investment Co. Pvt. Ltd. AIR 1997 SC 482 , pointed out in para 29 as under:*

It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt,

discretionary powers under Art. 226 of the Constitution to quash the notification under S. 4(1) and declaration under S. 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Art. 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

57. In the case of *Larsen and Toubro*, (supra), the Apex Court in para 21 pointed out as under :

21. This Court has repeatedly held that writ petition challenging the notification issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting premium on dilatory tactics. Writ petition (SCA 5149/89) is thus barred by laches as well.

58. The contention of the petitioners regarding delay is also required to be rejected on the ground that the award has been made and possession has been taken and land vested in the Government free from all encumbrances. ...”

(Emphasis Supplied)

54. Mr.Poddar had also relied upon the decision in ***Reliance Petroleum Ltd. (Supra)***. In the said case, the notification under Section 4 was

issued on 15.02.1993 and thereafter, the declaration was published on 18.05.1994. The award was passed on 12.12.1994 and thereafter, possession was taken on 19.12.1994. On 20.12.1994, the acquisition proceedings were challenged contending violation of provisions of Section 5-A as no hearing was afforded. The High Court quashed the proceedings, which decision was reversed by the Supreme Court holding as under:

“12. From the above facts which cannot be disputed as they were taken from records, it would be clear that Respondents 1 to 3 (writ petitioners before the High Court) took their chance in the award proceedings and finding that the compensation as claimed by them was not given have moved the High Court. If really their intention was to challenge the acquisition as such they could have done so immediately at least after the publication of declaration under Section 6 or immediately after they received notices under Section 9 of the Land Acquisition Act. This shows that the only object of the writ petitioners was to get the maximum price for the land acquired. No doubt they are entitled to the compensation as provided under the Land Acquisition Act. For that there is a separate procedure under the Act itself. ...

13. Taking note of all these facts we have come to the conclusion that the High Court was not justified in entertaining the writ petition and also in exercising the discretionary jurisdiction to quash the Section 4(1) notification, Section 6 declaration and award made under the Land Acquisition Act.”

(Emphasis Supplied)

55. In the case before us, the notification under Section 4, declaration under Section 6 and notification of Section 17(1) were all issued in the month of September, 2013. Under Section 17(4), the hearing under Section 5-A of the 1894 Act was dispensed with. Notice under Sections 9 and 10 was issued and petitioner participated in the

proceedings without any protest to the acquisition proceedings. The award was passed and the petitioner was informed of the same on 03.01.2014. In the meantime, the possession of the land had been taken over on 22.11.2013 (on 25.11.2013 as per the petitioner).

56. The only explanation forthcoming as to why the petitioner waited until the passing of the award to impugn the acquisition proceedings is that the petitioner had sought information under the Right to Information Act. We are unable to agree with the submission. It was only after the award had been passed, possession already taken over and land having been vested with the Government that the petitioner sprang into action and started seeking information under the Right to Information Act.
57. It is only after passing of the award was intimated to the petitioner, that the petitioner started filing applications, seeking information and trying to fish for something to help it to assail the notifications and declaration issued in September, 2013. The time of filing of the applications leaves no room for doubt that the petitioner was actually aggrieved by the award and not by the acquisition proceedings themselves. This is also evident from the fact that the petitioner participated in the proceedings before the LAC without any protest or demur.
58. If, actually, it was the intention of the petitioner to impugn the acquisition proceedings and it did not possess the relevant information, the applications under the RTI Act ought to have been filed immediately after the notification under Section 4 or declaration under Section 6 and at least when notices under Sections 9 and 10

were received. We fail to understand that had the petitioner been aggrieved by the acquisition proceedings, why were the applications under RTI Act only filed after the passing of the award was intimated to it. Thus, we find no cogent explanation forthcoming from the petitioner for the delay.

59. The decisions cited by Mr.Mehta also do not aid the case of the petitioner. In **Anil Kumar Gupta (Supra)**, the appellant had been prosecuting its cause for securing possession of land since prior to the acquisition proceedings were even initiated. The respondents had taken possession of the land under Section 35 of the 1894 Act and continued with the same for decades altogether leading to the Supreme Court to hold that the possession of the land was *per se* illegal and the land did not vest with the Government. In this background, the Supreme Court held that the writ petition filed within one month and eleven days of the award was not belated. In the case before us, the petitioner never agitated any rights *qua* the acquisition proceedings barring the calculation of compensation nor the possession taken by the respondents can be said to be illegal. Thus, the decision does not help the petitioner.
60. The writ petition was held to be maintainable in **Vyalikaval Housebuilding Coop. Society (Supra)** even after an inordinate delay of 14 years as the entire acquisition proceedings were held to be vitiated by *mala fides* and fraud in another proceeding affirmed upto the Supreme Court of India. The housebuilding cooperative society for which the land was acquired was held to have used its 'influence' for getting the land acquired when in fact the same was done for the

sale of sites in the guise of allotment. Neither any such *mala fides* or fraud has been alleged by the petitioner nor there is anything on record to suggest so. Admittedly, the land has been used for the purpose acquired.

61. Similar to *Anil Kumar Gupta (Supra)*, in *Babu Ram (Supra)*, the petitioner was agitating his rights well before the passing of the award. In the said case, a suit had been filed prior to the passing of the award where interim orders were obtained. After the passing of the award, the suit was withdrawn and writ petition filed. The possession of the land was not taken and the land remained unutilized. In such a scenario, the Supreme Court reversed the decision of the High Court and allowed the appellants to file objections under Section 5-A of the 1894 Act. In the present case, we have already found that the petitioner was clearly satisfied by the acquisition and it was only when the award was passed under the provisions of the 1894 Act that the petitioner started looking for information to impugn the proceedings.
62. Accordingly, in view of the decisions in *Dewan Singh (Supra)*, *Radhey Shyam Gupta (Supra)*, and *Reliance Petroleum Ltd. (Supra)*, we decline to entertain the present petition as being barred by delay and latches.
63. In view of the said finding, we are not inclined to hear the petitioner on any grievance against the notification under Section 4, declaration under Section 6 or invocation of provisions of Section 17 of the 1894 Act. As such, issue (ii) need not detain us any further. Any grievance thereto ought to have been urged at the relevant time. Though issues (iii) and (iv) would also fall for the same reason, we deem it

appropriate to look into the same owing to the decision in *Vyalikaval Housebuilding Coop. Society (Supra)*.

Issue (iii): Legal malice

64. Learned senior counsel has laboured hard to submit that owing to the proximity and alacrity of the acquisition proceedings with the introduction of the 2013 Act, the proceedings are vitiated owing to legal malice. The same have been refuted by the learned senior counsel for the respondent no.5.
65. We had recently analysed the contours of ‘legal malice’ or ‘malice in law’ in *V.K. Sasikala v. Election Commission of India, 2019 SCC OnLine Del 7365* and observed as follows:

“102. To constitute ‘legal malice’ or ‘malice in law’, something must be done without lawful excuse, i.e. without reasonable or probable cause. The act is done with an indirect or oblique motive. [See Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 (paragraphs 25-26) and Ravi Yashwant Bhoir v. District Collector, Raigad, (2012) 4 SCC 407 (paragraphs 47-48)]. It has been described as incident or ‘dimension’ of fair play in action. [See Mahabir Auto Stores v. Indian Oil Corpn., (1990) 3 SCC 752 (paragraph 13) and RDS Projects Ltd. v. Ratangiri Gas And Power Pvt. Ltd., 2012 (1) ILR Del 490 (paragraphs 33-33.2)]. Simply put, it is the exercise of power for an ulterior motive targeted to prejudice someone. ...”

66. The said decision has been upheld by the Supreme Court in *T.T.V. Dhinakaran v. Election Commission of India & Ors., CA 3205/2019* and thus, has attained finality. The decisions cited by Mr.Mehta also reiterate the same.
67. Coming to the facts of the case before us, we are unable to accept the

arguments put forth by the learned counsel for the petitioner. The 2013 Act was introduced in 2011 and remained on the cards for 2 years before it was finally passed by the Rajya Sabha on 04.09.2013 and Lok Sabha on 05.09.2013. The Act received the assent of the President on 26.09.2013 and was to come into force on such date as notified by the Central Government in the Official Gazette. Such notification only came on 19.12.2013 and the Act was enforced with effect from 01.01.2014.

68. The notifications and declarations in the present case were all issued in September, 2013. At which time, though the 2013 Act was yet to receive the assent of the President or its enforcement be notified in the Gazette. If we are to subscribe the view of Mr.Mehta, whenever any new law is in vogue, the previous enactment to be repealed by it would be in a limbo. It would not be possible to take any action under the prior enactment, as any such action may be vitiated by legal malice. Section 6 of the General Clauses Act, 1897 read with Section 114(2) of the 2013 Act are incorporated in the statute books for the very purpose.

69. Hence, the contention must be rejected.

Issue (iv): Non-compliance with Section 17(3A)

70. This issue involves a close examination of the decisions of the Supreme Court. Admittedly, in the present case, the provisions of Section 17(3A)(a) were not complied with inasmuch as the possession had been taken over without tendering 80% of the estimated compensation. As per Mr.Mehta, relying upon the decision of the Supreme Court in ***Laxmi Devi (Supra)***, the failure of the LAC was

fatal to the acquisition proceedings. On the other hand, Mr.Poddar and Mr.Jain had impressed upon this Court that the decision is *per incurium* in view of other decisions of the Supreme Court. However, none of the decisions cited have set-aside or overruled the decision in ***Laxmi Devi (Supra)***.

71. At the outset, it is not open to us to hold the judgment in ***Laxmi Devi (Supra)*** to be incorrect [See ***South Central Railway Employees Coop. Credit Society Employees Union v. B. Yashodabai***, (2015) 2 SCC 727 (Paras 14-17)]. At the same time, it is settled law that every decision must be read in the context of the questions arising therein [See ***Krishena Kumar v. Union of India***, (1990) 4 SCC 207; ***Commissioner of Income Tax v. Sun Engineering Works (P) Ltd.***, (1992) 4 SCC 363; and ***Vidur Impex and Traders Pvt. Ltd. v. Pradeep Kumar Khanna***, 241 (2017) DLT 481]. We proceed to analyse the decisions cited before us.

72. The decision in ***Laxmi Devi (Supra)*** was rendered by a Division Bench of the Supreme Court, which was seized of the following question:

“The legal nodus that we are called upon to unravel in this appeal is whether the Land Acquisition Act, 1894 (“the LA Act”, for brevity) as amended from time to time, requires an award to be passed even in respect of lands expropriated by the State pursuant to the exercise of special powers in cases of urgency contained in Section 17 thereof.”

73. As the factual matrix of the case would disclose, in the present case, as many as four notifications were issued by the Government for acquiring the land. All of which lapsed with the efflux of time. Thereafter, the Government started contending that the acquisition

stood completed. Pursuant to one of the notifications, a notice under Section 17(1) was issued. However, no award was passed despite decades passing and directions having been issued by the High Court. In this background, the Division Bench gave an overview of the 1894 Act in paragraphs 7 to 18 of the reported judgment. As a part of the same, the scheme of Section 17(3A) was discussed before the Court reverted to the question before it, being:

“19. We shall revert to the question of whether the constraints contained in Section 11-A will also apply to acquisitions in which Section 17 has been resorted to.”

74. The Court ultimately went on to answer the question in the affirmative. The observations relied upon by Mr.Mehta in paragraphs 18 to 18.5 of the report are general observations of the Court not essential to the decision. They can be said to have been made ‘by the way’. As such, the same are mere *orbitur* and not the *ratio* of the judgment [See *Arun Kumar Aggarwal v. State of MP and Ors.*, (2014) 13 SCC 707 (paras 24-34)].
75. It is also settled law that generally, the *orbitur* of the Supreme Court is also binding on this Court. However, the same is only in the absence of any direct pronouncement of the Supreme Court [See *Oriental Insurance Co. Ltd. v. Meena Variyal and Ors.*, (2007) 5 SCC 428 (paragraph 26); and *National Insurance Company Limited v. Geeta Bhat and Ors.*, (2008) 12 SCC 426].
76. In respect of the issue at hand, we find that there are numerous direct pronouncements of the Supreme Court as cited by the learned counsel for the respondents no.4 and 5. In *Satendra Prasad Jain (Supra)*, the Supreme Court was dealing with a situation where the Government

itself was contending that the acquisition stood vitiated owing to non-compliance with Section 17(3A). The same was declined by the Full Bench of the Supreme Court holding as under:

17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. ...”

77. The reverse situation was faced by the Supreme Court in ***Tika Ram (Supra)*** (paras 91-95) where the land owners were contending that the failure to comply with Section 17(3A) was fatal to the acquisition process. The situation is similar before us. The contention was rejected by the Supreme Court holding that the same would not set the acquisition at naught. It was further observed that “[t]he only result that may follow by the non-payment would be the payment of interest, as contemplated in Section 34 and the proviso added thereto by the 1984 Act.” The said decision has been followed by the Supreme Court in ***Rajiv Berry (Supra)*** (para 20) and a similar view has been taken in ***Andaman Timber Industries (Supra)*** (paras 7-9). As there are direct pronouncements of the Supreme Court, the decision in ***Khub Chand (Supra)*** also does not come to the aid of the petitioner.
78. In view of the foregoing discussion, we find that the failure to comply with Section 17(3A) does not vitiate the acquisition proceedings, however, petitioner would be entitled to interest in accordance with Section 34 of the 1894 Act.

Issue (v): Challenge to the award

79. The next issue before us pertains to the challenge laid by the petitioner to the inadequacy of the award passed by the respondent no.4/LAC. Learned senior counsel for the petitioner has impugned the award on numerous counts recorded by us in paragraph 15 foregoing. On the other hand, Mr.Poddar and Mr.Jain have contended that *firstly*, any grievance thereto is to be vented in the proceedings under Section 18 of the 1894 Act; and *secondly*, the petitioner cannot be allowed to prosecute two inconsistent remedies. In rejoinder, Mr.Mehta submitted that the reference proceedings would not disentitle the petitioner to approach this Court.
80. We are unable to agree with the submissions of the learned counsel for the petitioner. The petitioner cannot be permitted to avail and pursue two remedies simultaneously. Assuming it was open to the petitioner to avail either seeking a reference under Section 18 of the 1894 Act or approaching this Court, the petitioner cannot be allowed to pursue both at the same time.
81. Even the decision relied upon by the petitioner does not come to its aid and rescue. The Supreme Court in ***A.P. State Financial Corporation (Supra)*** was dealing with the issue whether a state financial corporation is entitled to resort to Section 29 of the State Financial Corporations Act after availing the remedy under Section 31 of the said Act. Both were held to be independent remedies to be elected at the option of the financial corporation. The decision does not even remotely deal with the invocation of jurisdiction under Article 226 of the Constitution when effective remedy is provided under the statute and has already been availed. Assuming the decision

to be applicable, the Supreme Court has categorically held that financial corporation cannot simultaneously have recourse to both the proceedings.

82. The other explanations rendered for prosecuting two remedies are *first*, the reference was made without prejudice to other rights and *second*, it was initiated owing to the limitation prescribed. We are unable to accept the same. Merely because the petitioner had preferred the reference stating it is without prejudice to other rights, would not entitle the petitioner to urge the very same case before this Court. As regards the other explanation, we find that it was open to the petitioner to elect to either approach this Court under Article 226 or seek reference to vent its grievances against the award. Having chosen the latter, it cannot avail the former under the pretext that the limitation to seek reference was expiring.
83. Hence, we find that the petitioner having preferred a reference under Section 18 of the 1894 Act cannot urge any grievance against the award in the present proceedings.
84. Even otherwise, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition under Article 226 should not be entertained ignoring the statutory dispensation [See ***Commissioner of Income Tax v. Chhabil Dass Agrawal*, (2014) 1 SCC 603**]. None of the exceptions to the rule have been urged before us. In our opinion, no ground has been urged before us which cannot be urged before the reference court under Section 18 of the 1894 Act. Thus, any grievance against the award *qua* the amount of compensation is to be taken up in reference proceedings under Section

18 of the 1894 Act.

85. We are fortified in our view by the observation of the Supreme Court in ***Reliance Petroleum Ltd. (Supra)*** that “[n]o doubt they are entitled to the compensation as provided under the Land Acquisition Act. For that there is a separate procedure under the Act itself.”
86. A Coordinate Bench of this Court in an unreported order dated 12.05.2011 had, while disposing of ***Jai Kishan Gupta (Supra)*** and ***Ajay Kumar v. Government of NCT of Delhi, W.P.(C) 2109/2008***, also taken a similar view. By the said order, the Bench disposed of the aforesaid petition holding as under:

“Learned senior counsel for the petitioners submits that in the present cases since the perversity in fixation of the land rate is writ large on the face of the award, the award itself should be quashed and the LAC asked to re-determine the compensation.

On the other hand, learned counsel for LAC submits that the own transactions carried out by the petitioners show the land being purchased at rates much lower than the circle rates and thus the petitioners should not be able to take advantage of the notification.

On examination of the matter, we do not consider it prudent to quash the award itself as the legislature in its wisdom as provided for a remedy for enhancement of compensation by a reference under Section 18(1) of the said Act. Thus, even if the perversity in the determination of value of the land is writ large on its face, the remedy is by way of adjudication of the dispute in a reference.”

(Emphasis Supplied)

87. We may note that the order was sought to be impugned before the Supreme Court in SLP (C) 34253/2012 and the same was dismissed on 28.04.2014.
88. Learned senior counsel had tried to differentiate the decision

contending that therein the only grievance pertained to inadequate compensation. We are unable to agree with the same. The issue before the Coordinate Bench ‘primarily’ pertained to the “*question of adequate compensation to the land owners*” as recorded therein. The use of the term ‘primarily’ clearly denotes that it was not the only issue before the Bench. Even otherwise, the same would not in our view impede the applicability of the decision on the present case.

89. We are in complete agreement with the view and any grievance against the award can only be made out by way of adjudication of the dispute in a reference and not under Article 226 of the Constitution.

Issue (vi): Moulding of Relief

90. Learned senior counsel for the petitioner had contended that even if the bench is not inclined to quash the acquisition proceedings, we may quash the invocation of the urgency provision which dispensed with the hearing under Section 5-A of the 1894 Act. On the other hand, Mr.Poddar contended that the same is only permissible once this Court comes to a conclusion that the declaration is liable to be quashed and not otherwise.
91. We have already upheld the acquisition proceedings in the foregoing paragraphs. In such a scenario, we find merit in the contention of Mr.Poddar that having sustained the acquisition proceedings, it is not open to us to grant any relief to the petitioner, let alone mould the relief in its favour. The decisions cited before us also support the submission of the learned counsel for respondent no.5. In ***K.B. Ramachandra Raje (Supra); N. Krishnappa (Supra); Bangalore Jute Factory (Supra); and Gauri Shankar Gaur (Supra)***, the

Supreme Court had only moulded the relief after finding an infirmity with the acquisition proceedings; while in *Ujjain Vikas Pradhikaran* (*supra*), the same was done with the consent of the parties.

92. Hence, the petitioner has failed to make out any case for this Court to ‘mould the relief’ in its favour.
93. Consequently, the petitioner has failed to make out any ground to invoke the jurisdiction of this Court under Article 226 of the Constitution. The writ petition is, accordingly, dismissed.
94. We further clarify that nothing stated herein should be read to prejudice the claims or contentions of the parties in the pending references under Section 18 and 30 of the 1894 Act.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 25, 2019

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