

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 28th August, 2020

+ W.P. (C) 2733/2019, CM Nos.50728/2019 (for vacation of stay) & 6263/2020(for permission to urge additional facts, grounds and prayers and modification of earlier facts, grounds and prayers)

PURSHOTAM BEHL

..... Petitioner

Through: Mr. Gaurav Mitra, Mr. Dhruv Kapur,
Mr. Vijayender Kumar & Mr.
Maharshi Kaler, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R. Digpaul, Advocate for UOI.
Mr. Sanjay Poddar, Sr. Advocate with
Mr. Dhruv Nayar, Ms. Padma Priya &
Mr. Shivam Goel, Advocates for R-2
NHAI.
Mr. Yeeshu Jain, Standing Counsel
for CALA.

AND

+ W.P. (C) 2741/2019, CM Nos.50732/2019 (for vacation of stay), 3405/2020 (for taking on record the counter affidavit) & 6264/2020 (for permission to urge additional facts, grounds and prayers and modification of earlier facts, grounds and prayers)

DALVINDER SINGH SODHI

..... Petitioner

Through: Mr. Gaurav Mitra, Mr. Dhruv Kapur,
Mr. Vijayender Kumar & Mr.
Maharshi Kaler, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R. Digpaul, Advocate for UOI.

Mr. Sanjay Poddar, Sr. Advocate with
Mr. Dhruv Nayar, Ms. Padma Priya &
Mr. Shivam Goel, Advocates for R-2
NHAI.

Mr. Yeeshu Jain, Standing Counsel
for CALA.

AND

+ **W.P. (C) 2743/2019, CM Nos.50731/2019 (for vacation of stay),
3406/2020 (for taking on record the counter affidavit), 4349/2020
(for impleadment of the applicant as a party to the present
petition) & 6265/2020 (for permission to urge additional facts,
grounds and prayers and modification of earlier facts, grounds
and prayers)**

**DEVENDER K. SHARMA AND
ASSOCIATES AND ANR.**

..... Petitioners

Through: Mr. Gaurav Mitra, Mr. Dhruv Kapur,
Mr. Vijayender Kumar & Mr.
Maharshi Kaler, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R. Digpaul, Advocate for UOI.
Mr. Sanjay Poddar, Sr. Advocate with
Mr. Dhruv Nayar, Ms. Padma Priya &
Mr. Shivam Goel, Advocates for R-2
NHAI.
Mr. Yeeshu Jain, Standing Counsel
for CALA.

AND

+ **W.P. (C) 3096/2019, CM Nos.3404/2020 (for vacation of stay) and 3408/2020 (for taking on record the counter affidavit)**

FERRARI ESTATES LLP

..... Petitioner

Through: Mr. Sanjay Sarin, Mr. Roopansh Purohit, Mr. Deepanshu Jain & Mr. Shaantanu Jain, Advocates.

Versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Vikrant N. Goyal, Advocate for R-1.
Mr. Sanjay Poddar, Sr. Advocate with
Mr. Dhruv Nayar, Ms. Padma Priya &
Mr. Shivam Goel, Advocates for R-2
NHAI.
Mr. Yeeshu Jain, Standing Counsel
for CALA.

AND

+ **W.P. (C) 3632/2019**

ZILE SINGH

..... Petitioner

Through: Mr. Parvinder Kumar, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Poddar, Sr. Advocate with
Mr. Sumit Gupta, Ms. Aanchal Seth &
Mr. Anil Kumar Goyal, Advocates for
R-2 NHAI.
Mr. Yeeshu Jain, Standing Counsel
for CALA.

AND

+ **W.P. (C) 4781/2019 & CM No.50727/2019 (for vacation of stay)**

RAJ SINGH RANA @ RAJ SINGH & ORS. Petitioners

Through: Mr. Gaurav Mitra, Mr. Dhruv Kapur,
Mr. Vijayender Kumar & Mr.
Maharshi Kaler, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R. Digpaul, Advocate for UOI.
Mr. Sanjay Poddar, Sr. Advocate with
Mr. Dhruv Nayar, Ms. Padma Priya &
Mr. Shivam Goel, Advocates for R-2
NHAI.
Mr. Yeeshu Jain, Standing Counsel for
CALA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The challenge in all these petitions, by different/some of the owners of land, total ad-measuring 5.6204 hectares or 13.89 acres, in the revenue estate of village Malikpur Kohi @ Rangpuri, Notification of intention of acquisition *inter alia* whereof, under Section 3A of the National Highway Act, 1956 (NH Act) was issued on 12th January, 2018, is with respect to the determination dated 16th January, 2019, under Section 3G of the NH Act, of the amount payable as compensation for acquisition and calling upon the petitioners to deliver possession of the land within 60 days, failing which

physical possession was threatened to be taken with assistance of police force.

2. It was the contention of the counsel for the petitioner on 19th March, 2019 when W.P.(C) No.2733/2019 came up before the Court for admission / consideration, that the determination under Section 3G of the NH Act was not a final determination, as required to be under the NH Act, inasmuch as the said determination was for land only and with respect to the determination of the claim of the petitioner for structures over the said land, it was stated in the determination dated 16th January, 2019, that another determination shall be done. It was further the contention of the counsel for the petitioner that till there is final determination of the claims of the petitioner, both for land and structure and till the amount so determined is not deposited, possession of the land, under Section 3E of the NH Act could not be taken. Finding *prima facie* merit therein, while issuing notice of the petition, status quo qua possession of the land and structures thereon was ordered to be maintained. Subsequently, on other petitions being listed, the same order followed.

3. Pleadings in the petitions stood completed but the hearing of the petitions was being deferred on account of prevalent Covid-19 pandemic. The respondents National Highway Authority of India (NHAI) filed applications for early virtual hearing of the petitions contending that owing to the interim order of this Court in these petitions, construction / completion of the proposed Dwarka Expressway Highway was held up and further informing that supplementary declaration with respect to compensation for superstructures also stood published on 4th October, 2019. The said

applications for early hearing were allowed and the petitions posted for hearing on 7th August, 2020.

4. The counsel for the petitioner in W.P.(C) No.3096/2019, the counsel for the petitioners in W.P.(C) No.2733/2019, 2741/2019, 2743/2019 & 4781/2019, the counsel for the petitioner in W.P.(C) No.3632/2019 and the senior counsel for the respondents NHAI were heard on 7th August, 2020; the counsel for the Competent Authority, Land Acquisition of the NHAI (CALA) supported the arguments of the senior counsel for the NHAI, and orders/judgments on the petitions were reserved.

5. Though the counsels for the petitioner in W.P.(C) No.3096/2019 and the petitioner in W.P.(C) No.3632/2019 argued with reference to the facts of their respective petitions but since the undisputed facts are the same, it is expedient to hereinafter refer to the pages, annexures and dates from the lead petition, being W.P.(C) No.2733/2019.

6. As aforesaid, Notification dated 12th January, 2018 under Section 3A of the NH Act, stating that the land mentioned in the schedule thereto was required for building, maintenance, management and operation of proposed Dwarka Expressway on stretch of land from Km.0.000 to Km.1.500 in the district New Delhi in the State of Delhi and declaring intention to acquire such land, and inviting objections from persons interested in the said land, was issued. The petitioners filed their objections before CALA, under Section 3C of the NH Act. Dealing with the said objections, a detailed report dated 28th March, 2018 was submitted by CALA to the Central Government.

7. The petitioners in W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019 & 4781/2019, in or about April, 2018 filed writ petitions before this Court seeking quashing and setting aside of the Notification dated 12th January,

2018 under Section 3A of the NH Act. During the pendency of the said petitions, Notification dated 5th June, 2018 under Section 3D of the NH Act, declaring that the land specified in the schedule thereto should be acquired for the purpose mentioned in Section 3A of the NH Act and shall vest absolutely in the Central Government, free from all encumbrances, was issued. Vide judgment dated 1st October, 2018, the said writ petitions were dismissed and the Special Leave Petitions (SLPs) preferred thereagainst were also dismissed.

8. The petitioners filed their respective claims, seeking compensation in respect of land, built up structure, loss of business etc. and also contending that neither any proper demarcation of the land of each of the petitioners had been done nor certified report from valuation surveyor, of the built up structures, had been given to the petitioners.

9. Ultimately, on 18th December, 2018, the impugned declaration under Section 3G of the NH Act was published and whereafter these petitions were filed and interim orders aforesaid granted.

10. For proper appreciation of the arguments of the counsels, it is apposite to set out herein below, the relevant provisions of the NH Act:

“3. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b) “land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) *The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.*

3B. Power to enter for survey, etc.—*On the issue of a notification under sub-section (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to—*

- (a) make any inspection, survey, measurement, valuation or enquiry;*
- (b) take levels;*
- (c) dig or bore into sub-soil;*
- (d) set out boundaries and intended lines of work;*
- (e) mark such levels, boundaries and lines placing marks and cutting trenches; or*
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.*

3C. Hearing of objections.—*(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.*

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3D. Declaration of acquisition.—*(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall*

declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3E. Power to take possession.—(1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3F. Right to enter into the land where land has vested in the Central Government.—Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central

Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation.—(1) *Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.*

(2) *Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.*

(3) *Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.*

(4) *Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.*

(5) *If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.*

(6) *Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.*

(7) *The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—*

(a) *the market value of the land on the date of publication of the notification under section 3A;*

(b) *the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount.—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

3I. Competent authority to have certain powers of civil court.—

.....

3J. Land Acquisition Act 1 of 1894 not to apply.—Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.”

11. The impugned declaration dated 18th December, 2018 under Section 3G of the NH Act determines the market value of land “as per Sub-Section (1) of Section 26 read with Sub-Section (3) of Sections 26 and 28 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” (RTFC Act) acquired, at Rs.8,95,09,632/- at the rate of Rs.64,44,178/- per acre and applying multiplication factor (for rural area) of 2 “in the light of Sub-Section (2) of Section 26” of the RTFC Act and after addition of solatium and additional amount “as per provision of Sub-Section (3) of Section 30” of the RTFC Act, makes a total award of Rs.36,80,73,416/- and directs that the payment of compensation awarded shall be paid to the respective land owners / bhumidhars as per their entitlement given in the revenue records and if any dispute regarding apportionment of compensation arises, it shall be decided as per the procedure laid down under the NH Act. The said declaration under Section 3G of the NH Act, under the head “Other Benefits” *inter alia* states as under:

“OTHER BENEFITS:

Besides market value of the land, the land owner is also entitled to get certain other benefits as per the provisions of NH Act, 1956, vis-à-vis in the light of guidelines framed and approved by NHAI.

(I) VALUE OF STRUCTURES:

There is specific provision i.e. Section 29 of the RFCTLARRA, 2013, which deals with the determination of value of the structures attached to the land and the same is also incorporated with the market value of the land to determine the amount of compensation payable to the land owner. This specific provision i.e. section 29 of the RFCTLARRA, 2013 is also incorporated and adopted by the NHAI as mentioned in the guidelines discussed above for the determination of compensation amount.

The valuation of structures has been done as per the provisions of section 29(1) and 29(2) of the RFCTLARRA, 2013 by the authorized valuer i.e M/s A. Khanna & Associates appointed by the NHAI in this regard.

The valuation assessed by M/s A. Khanna & Associates is not yet authenticated by the PWD till the date of passing of this award and therefore, the value of structures submitted by M/s A. Khanna is not included in this Award. A separate supplementary award will be passed in this regard and compensation amount for structures will be paid separately vide supplementary award.”

and also directs that “physical possession of the land will be taken immediately after the announcement of award as per procedure laid down under Section 3E of the NH Act”.

12. All counsels, during the hearing, though referred to the declaration/determination under Section 3G of the NH Act as an “award”, taking colour from the Land Acquisition Act, 1894, but informing that the said word is not used in the NH Act.

13. It was the contention of Mr. Sanjay Sarin, Advocate for the petitioner in W.P.(C) No.3096/2019, who opened the arguments on behalf of the petitioners in all the petitions, that (i) under the NH Act there can be no piecemeal award, as has been done; (ii) this Court in the order dated 19th March, 2019, while issuing notice of the petition, had *prima facie* observed that (a) the award did not specifically answer the question, whether the claim of the petitioner as mentioned in the award itself, was admissible or not; and, (b) the award for the compensation payable for structures could not be deferred, to be announced by way of a supplementary award and till there is a final determination of the claims of the petitioner, both for land and structures and till the amount so determined is not deposited, there was no power to take possession of the land and the structures; (iii) though in some of these petitions, a supplementary award with respect to the structures has

been made on 4th October, 2019 but there is till date no supplementary award with respect to the structures on the land of the petitioner in W.P.(C) No.3096/2016; (iv) the definition of land in Section 3(b) of the NH Act includes superstructures on the land; (v) the Scheme of Section 3A, 3B, 3C, 3D and 3E of the NH Act is, that possession of the land can be taken only after there has been a determination of compensation payable for land (and which would include structures constructed thereon, trees etc.) and till the said compensation is deposited; (vi) possession cannot be taken after making part award only; (vii) Section 3G of the NH Act also does not provide for part determination / award; (viii) Section 3G(7) of the NH Act also requires CALA to take into consideration all the factors prescribed therein, for determining the amount of compensation; and, (ix) Section 3G(5) provides that if the compensation determined is not acceptable to the owner of the land, the amount, on an application of the owner of the land shall be determined by the arbitrator to be appointed by the Central Government.

14. We enquired from the counsel for the petitioner in W.P.(C) No.3096/2019, (i) that since Land Acquisition Act existed for acquisition of land for public purpose and which would include, for construction of highways, what was the need for the Legislature to, by way of amendment with effect from 24th January, 1997, incorporate the provisions of acquisition of land for building, maintenance, management and operation of a national highway, in the NH Act; (ii) whether not such act of the legislature is indicative of the provisions of the Land Acquisition Act having proved to be ineffective for purposes of acquisition of land for national highway which stand on a different pedestal; (iii) whether not there was a difference in the Scheme of acquisition under the Land Acquisition Act and under the NH

Act; (iv) whether not ultimately it was a question of money only and for which, the remedy is by way of arbitration under Section 3G(5) of the NH Act and why should the public work of national highway be stalled; attention was invited to the amendment of the year 2018 to the Specific Relief Act, 1963, inserting therein Section 20A, prohibiting grant of injunction by a Court in a suit under the said Act involving a contract relating to infrastructure project specified in the Schedule and which injunction would cause impediment or delay in the progress or completion of such infrastructure project and which includes highways; (v) whether not under the provisions of the NH Act, taking over of possession could not be interfered with, even if the land owner was dissatisfied with the determination of compensation under Section 3G of the NH Act; (vi) whether not non inclusion of compensation for structures over the land, in the determination done, was at best an error / fault / lacuna in the determination and the remedy whereagainst was of arbitration and not to hold up the delivery of possession; (vii) whether not the challenge if any had to be made to the vesting of the land in the Central Government and which had already taken place under Section 3D of the NH Act on issuance of the declaration thereunder on 5th June 2018 and once there was no challenge to the vesting of the land in the Central Government, how could taking over of possession of land be objected to; (viii) whether not power / right vested in CALA, under Section 3G, to determine compensation, included a right to determine it wrongly or even if contended to be, wrongly; and, (ix) whether not once the land stood vested under Section 3D of the NH Act in the Central Government, free from all encumbrances, the land owners stood divested of

their title to the land and for this reason also could not claim to continue in possession.

15. Mr. Sanjay Sarin, Advocate contended that, (a) only some of the land owners had filed petitions challenging the Notification under Section 3A of the Act and the petitioners in the other petitions had not made any challenge; (b) though no challenge was made to the Notification under Section 3D of the NH Act but before the pronouncement of the judgment in the petitions challenging the Notification under Section 3A of the NH Act, the Notification under Section 3D of the NH Act was published and was taken note of in the judgment; (c) the present is not a case of CALA determining the compensation at less than that claimed by the land owners or making any error in determination, but a case of CALA expressly in the award recording that the determination / award was not complete and deferring part of the determination to be published by a supplementary award; (d) once CALA itself has done so, the direction to deliver possession of the land is bad on the face of it; (e) it is the settled principle of law that once a particular thing is prescribed to be done in a particular manner, it has to be done in that manner only and not in any other manner; (f) thus once Section 3G provides, what all is to be taken into consideration for determining compensation, any determination admittedly leaving any of the said factors, is bad on the face of it and is liable to be set aside; (g) though in the other petitions, the relief of quashing of the determination under Section 3G of the NH Act has not been claimed but the petitioner in W.P.(C) No.3096/2019 had expressly sought quashing of the Notification under Section 3G of the NH Act; (h) once the Notification under Section 3G of the NH Act is quashed, the possession of the land, as per the Scheme of the Act, cannot be taken and

deposit made of part of compensation is of no avail; (i) had Section 3G declaration / award not stated that a supplementary award shall be made, may be the petitioners would not have had any case; (j) it cannot be forgotten that compulsory acquisition of land is an infringement of right to property, which though has ceased to be a fundamental right but continues to be a constitutional right and property cannot be acquired by the State save by due process of law; (k) the legislature, while incorporating provisions for acquisition of land for development of Highways in the NH Act, though has provided for vesting of the land in the Central Government immediately on dismissal of the objections preferred to the acquisition but under Section 3E protects the possession of the owner of the land which has so vested in the Central Government, till the determination and deposit of the compensation so determined; thus, vesting of the land in the Central Government under Section 3D cannot be treated as making the possession of erstwhile owner of the land illegal or unauthorized and the said owner is legally entitled to restrain the State from taking possession of the land till the entire determination as provided in the statute has been done and the amount determined deposited; once CALA itself admits determination to be in part, based on such part determination and deposit of amount thereunder, possession cannot be taken; and, (l) to interpret the statute otherwise, would be a violation of the constitutional right of the petitioners to property.

16. We drew the attention of Mr. Sanjay Sarin, Advocate to Sub-section (7) of Section 3G of NH Act laying down the factors to be taken into consideration by CALA while determining the amount of compensation and enquired, whether not the same requires only the market value of the land to be assessed and does not provide for valuation of anything else. It was

further enquired, whether not the same indicates that the NH Act does not envisage determination and payment of compensation of superstructures, as distinct from the Land Acquisition Act, Section 23(1) thereof dealing with determination of payment of compensation, expressly provides for determination of compensation of the superstructures also. [However while penning this judgment we find Section 23(1) also to be not mentioning the superstructure and being *pari materia* to Section 3G(7)] It was further enquired, whether not the definition of 'land' in Land Acquisition Act was the same as that of land in the NH Act.

17. Mr. Sanjay Sarin, Advocate contended that since 'land' in Section 3(b) of NH Act has been defined as including things attached to the earth or permanently fastened to anything attached to the earth and superstructures in law have been held to be permanently attached to the land, the provisions in Section 3G(7), of assessment of market value of the land would include assessment of market value of the superstructures on the land.

18. Mr. Gaurav Mitra, Advocate for the petitioners in W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019 and 4781/2019, in addition argued, that (i) though Section 3J of the NH Act provides that nothing in the Land Acquisition Act shall apply to an acquisition under the NH Act but the Land Acquisition Act stands repealed and substituted by the RTFC Act; (ii) Sections 26 to 30 of the RTFC Act deal with determination of market value of land, determination of amount of compensation, parameters to be considered in determination of award, determination of value of things attached to land or building and award of solatium, respectively; (iii) Section 26 of the RTFC Act deals with valuation, only of market value of land and is equivalent to Section 3G(7)(a) of the NH Act; (iv) Section 27 of the RTFC

W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019, 3096/2019, 3632/2019&4781/2019 *Page 18 of 58*

Act requires calculation of the total amount of compensation, after determination of the market value of the land; (v) Section 28 of the RTFC Act lays down the parameters to be considered for determination of amount of compensation to be awarded and is equivalent to Section 3G(7)(b) to (d) of the NH Act; (vi) Section 29 of the RTFC Act, as distinct from the NH Act, expressly provides for determination of value of things attached to land or building as well as of the trees, plants and standing crops attached to the land; (vii) Section 30 of the RTFC Act provides for award of solatium and interest and there is no equivalent thereof also in the NH Act; (viii) however, Section 105 of the RTFC Act provides as under:

“105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.—(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be,

shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.”;

(ix) the Central Government has issued a notification under Section 105(3) of the Act, directing that Sections 26 to 30 of the RTFC Act relating to determination of compensation and rehabilitation and resettlement shall apply to acquisition of land under NH Act also; (x) it is for this reason only that the Supreme Court (we find, in ***Union of India Vs. Tarsem Singh*** (2019) 9 SCC 304) has held that with respect to acquisitions under the NH Act also, solatium and additional amount under Section 30 of the RTFC Act has to be paid; (xi) the aforesaid provisions of the RTFC Act also contemplate a single award with respect to all the four elements i.e. market value of land, value of things attached to land or building, solatium and additional amount; (xii) though NH Act is mentioned in the Fourth Schedule of RTFC Act but owing to the Notification dated 1st January, 2005 under Section 105(3) of NH Act, Sections 26 to 30 thereof are applicable to acquisition under the NH Act also; (xiii) inspite of having not determined the entire compensation payable, the respondents have directed the petitioners to deliver physical possession within 60 days; (xiv) the award is not complete and is bad; (xv) though there is a supplementary award now with respect to W.P.(C) Nos.2733/2019, 2743/2019 and 4781/2019 but there is no supplementary award till now, with respect to the trees, crops and structures on land subject matter of W.P.(C) No.2741/2019; (xvi) the act of the respondents of taking over possession, after part award, is contrary to the scheme of the NH Act; (xvii) this is not a dispute qua quantum of compensation but of the award, on the face of it, being bad as under the law

no piecemeal award is envisaged; and, (xviii) thus the determination under Section 3G has to be quashed.

19. At this stage, it was enquired from Mr. Gaurav Mitra, Advocate, whether not there is no prayer in W.P.(C) No.2733/2019, for quashing of the determination under Section 3G of the NH Act. The prayer paragraph of W.P.(C) No.2733/2019 is as under:

- “(A) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing Respondent No.3 to demarcate the land bearing Khasra No.428, Rangpuri, New Delhi 110037 as well as built-up structures to enable the Petitioner to comply with section 3E of National Highways Act, 1956;*
- (B) *In the alternative to prayer (A), Issue a Writ of Certiorari or any other appropriate Writ or Direction to produce the demarcation report already made, if any for land bearing Khasra No.428, Rangpuri, New Delhi 110037;*
- (C) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the respondents to provide the details as to which part of land bearing Khasra No.428, Rangpuri, New Delhi 110037 and built-up structures thereon is to be handed over by the Petitioner;*
- (D) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondent No.3, to pass a supplementary award with respect to the built-up structures on land bearing Khasra No.428, Rangpuri, New Delhi 110037 8;*
- (E) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondent No.3 to pass a supplementary award with respect to the built-up structures on land bearing Khasra No. 428, Rangpuri, New Delhi 110037 8 and till the time the supplementary award is passed or till pendency of the present Petition, Respondents not to take possession of land bearing Khasra No. 428, Rangpuri, New Delhi 110037 from the Petitioner;*
- (F) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondents not to demolish the built-up structures as standing on land bearing Khasra No. 428, Rangpuri, New Delhi 110037 till determination of supplementary award or till pendency of the present Petition;*

- (G) *Issue a Writ of Certiorari or any other appropriate Writ or Direction thereby calling for the records of the present case from the Respondents before this Hon'ble Court;*
- (H) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondent to provide the Petitioner with valuation of the built-up structures assessed by M/s A. Khanna and Associates;*
- (I) *Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondents to provide the Petitioner with alternate land/plot in lieu of acquisition of land bearing Khasra No. 428, Rangpuri, New Delhi 110037;*
- (J) *Cost of the writ petition be allowed to the petitioner;*
- (K) *Pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of the Petitioners and against the Respondent."*

20. Mr. Gaurav Mitra, Advocate contended that, notwithstanding there being no prayer for quashing of the award, this Court, in the order dated 19th March, 2019 when W.P.(C) No.2733/2019 had come up for admission, has treated the petition as challenging Section 3G determination. It is also stated that taking clue therefrom, the petitioner has filed CM No.6263/2020 for amendment of the petition; though no notice of the said application has been issued but the respondents, on receiving advance copy thereof have already filed a reply thereto. It is pointed out that in the amended prayer clause, the following additional prayers are made:

- “(A1) Issue a Writ in the nature of Certiorari or any other Writ, Order or direction quashing the Award No.02/2018 dated 18.12.2018 passed by the Respondent No.3 under section 3G being illegal, arbitrary and contrary to law;*
- (A2) Issue a Writ in the nature of Certiorari or any other Writ, Order or direction quashing the Supplementary Award being Award No.2-A (Supplementary) 2018/NHAI dated 04.10.2019 being illegal, arbitrary and contrary to law;*
- (A3) Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondents not to take possession till the time an Award is passed in strict compliance of the provisions of Section*

3 (g) and 3 (h) of National Highway Act, 1956 by the Respondents, in their letter and spirit;

(A4) Issue a Writ of Mandamus or any other appropriate Writ or Direction thereby directing the Respondents not to take possession till the time the provisions of Section 3 (g) and 3 (h) of National Highway Act, 1956 are complied with by the Respondents, in their letter and spirit.”

It is further contended that this is a purely legal question and even without the amendment, the petitioners are entitled to contend that Section 3G determination is bad and once it is found to be bad, this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, has no option but to quash the same.

21. Mr. Gaurav Mitra, Advocate further argued, (a) that Section 3G determination/award is bad, also because it does not deal with all the claims made by the petitioners, as also recorded in the impugned 3G determination / award; (b) that Section 30 of the RTFC Act as under:

“30. Award of solatium.—(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a “Solatium” amount equivalent to one hundred per cent of the compensation amount.

Explanation.—For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

and which is applicable to acquisition under the NH Act also, by using the words “individual awards” in Sub-Section (2) thereof requires separate awards to be issued with respect to each of the land owners; however, CALA has made a composite award with respect to the entire land acquired and separate portions whereof belong to different persons some of whom have filed these petitions; thus, the impugned award is bad and illegal on this ground also; (c) that from the impugned award, it cannot be gauged, how much compensation has been determined qua individual petitioners; (d) that the petitioner in W.P.(C) No.2733/2019 is the owner of land measuring 0.4284 hectares in Khasra No.428 along with one Mr. Yadav who has not filed any petition; from the award, it cannot be known what is the compensation awarded to the petitioner in W.P.(C) No.2733/2019 and what is the compensation awarded to the said Mr. Yadav; (e) that though the notification under Section 3A of the NH Act was with respect to entire 0.4285 hectares but the notification under Section 3D is with respect to 0.3624 hectares only in Khasra No.428 and thus does not show, whether the land out of the share of land of petitioner in W.P.(C) No.2733/2019 or from the share of land of Mr. Yadav has been acquired (however, on enquiry, it was stated that the petitioner and Mr. Yadav have 1/2 undivided share each in the entire 0.4285 hectares); (f) that though Section 3D notification is with respect to 0.3624 hectares only of land in Khasra No.428 but before this Court, during the hearing of W.P.(C) No.4521/2018 earlier filed, it was conveyed that the entire 0.4285 hectares of land was acquired; (g) reference was made to ***Competent Authority Vs. Barangore Jute Factory*** (2005) 13 SCC 477 (paras 7 & 13) to contend that once Section 3G notification is quashed, vesting of the land in Central Government under Section 3D also

has to necessarily go (however, on enquiry, it is reiterated that though W.P.(C) No.4521/2018 was filed impugning Section 3A notification but prior to pronouncement of judgment dated 1st October, 2018 therein, Section 3D notification dated 5th June, 2018 had been issued and the judgment deals with Section 3D notification also); and, (h) that all the steps of acquisition under Sections 3A to 3H under the NH Act are interlinked; thus, if Section 3G notification is bad, there can be no deposit or taking over of possession under Section 3H.

22. Having perused the judgment dated 1st October, 2018 in W.P.(C) No.4521/2018 earlier filed, particularly the paragraphs referred to by the counsel, we do not find any statement made by the respondents to have been recorded therein, of acquisition with respect to Khasra No.428 being with respect to the entire land admeasuring 0.4285 hectares and the observation, even if any made by the Court on its own, cannot be of any benefit to the counsel for the petitioner. We also find, this Court to have in the said judgment, negated the arguments then as well as now urged, with respect to demarcation and the said judgment having attained finality, it is now not open to the petitioners to urge the same ground again.

23. Mr. Gaurav Mitra, Advocate further contended that though the Supreme Court in **Competent Authority** supra, in paragraphs 16 & 17 thereof, for the sake of public interest, directed additional compensation due in that case to be deposited but that does not take away the findings in paragraphs 7 and 13 pointed out earlier, of Section 3G notification, without being for the entire compensation, being bad. It is further pointed out that in the said case, the direction as contained in paragraphs 16&17, for deposit of

additional compensation was made because possession of the land already stood taken which is not so in the present cases. In the present case thus, once it is held that the determination under Section 3G is bad, the notification dated 18th December, 2018 under Section 3G is liable to be quashed.

24. We enquired from Mr. Gaurav Mitra, Advocate, whether not even if the said determination is quashed, CALA would be entitled to again notify the determination earlier done and now done by way of supplementary award.

25. Mr. Gaurav Mitra, Advocate contended that the valuation already done, has been done of as on the date of publication of the notification under Section 3A and once the notification under Section 3G is found to be invalid, the entire proceedings commenced by the notification dated 12th January, 2018 under Section 3A would be liable to be set aside. It is contended that though the respondents would be entitled to issue a fresh notification under Section 3A but the valuation then will have to be done on the basis of the valuation of the Section 3A notification to be issued.

26. We however enquired, whether not owing to the prevalent pandemic and otherwise, there has been a massive decline in the value of real estate and whether not the valuation as of this day or of soon hereafter, of land as well as superstructure would be less than the valuation as done on the date of Section 3A notification i.e. 12th January, 2018.

27. Mr. Gaurav Mitra, Advocate, though during his arguments agreed that the prices today would be lower than that on 12th January, 2018 but post lunch, during his rejoinder argument stated that on enquiry he has learnt that

the prices today are more. It was thus contended that the petitioners, pursuant to the fresh acquisition proceedings if any, would be entitled to higher compensation.

28. Mr. Gaurav Mitra, Advocate lastly, (i) relied on ***R.B. Dealers Pvt. Ltd. Vs. Metro Railway, Kolkata*** 2019 SCC OnLine SC 871 (paragraph 4) relating to the acquisition for Metro Rail Corporation, provisions whereof were stated to be the same as acquisition for National Highways, to contend that it has been observed therein also that there has to be one composite award (however on it being pointed out that the said question was not for adjudication in the said case and a judgment cannot be a precedent on what was not for adjudication, he did not press more); (ii) relied on ***J. Siluvairajan Vs. District Collector, Kanyakumari*** MANU/TN/1659/2020 in support his contention that the provisions of RTFC Act apply to NH Act; and, (iii) reiterated that in W.P.(C) No.2741/2019, there is still no supplementary award with respect to building/structure on land subject matter thereof.

29. Mr. Parvinder Kumar, Advocate for the petitioner in W.P.(C) No.3632/2019, besides supporting the arguments of the other two counsels contended, (a) that the name of the petitioner Zile Singh does not even find mention in the award under Section 3G and the Section 3G determination is bad for this reason also; (b) that the petitioner therein is the owner of land in Khasra No.422/2; (c) that the land under the said Khasra which was sought to be acquired vide notification dated 12th January, 2018 under Section 3A, was mentioned as 0.2710 sq. mtrs.; (d) that in the notification dated 5th June, 2018 under Section 3D also, the area of the land was described as 0.2710 sq.

mtrs.; (e) however in the determination of compensation notification under Section 3G, compensation with respect to only 0.2466 sq. mtrs. has been awarded; and, (f) thus the 3G notification though required to be in terms of notification under Section 3D, is bad on this account also.

30. The senior counsel for NHAI contended, (i) that supplementary award with respect to trees, crops, buildings and structures on the entire land acquired, including the land of the petitioners has been made; (ii) attention was drawn to the supplementary award Annexure R-1 to the counter affidavit and it is contended (a) that the Serial No.7 in Table-I at internal page 3 of the supplementary award pertains to W.P.(C) No.2733/2019; (b) that Serial Nos.22&23 in Table-I pertain to W.P.(C) No.2741/2019; the reference to D.S.S. Hotels therein is to Dalvinder Singh Sodhi, petitioner in W.P.(C) No.2741/2019; (c) that Serial Nos.6&12 in the said Table-I pertain to W.P.(C) No.2743/2019; mention of Khasra No.489 therein is a typographical error and the correct Khasra Number to be read is '429'; (d) that the award at Serial Nos.22 & 23 is with respect to W.P.(C) No.3096/2019 also as Ferrari Estates LLP has given its land to D.S.S. Hotels as admitted in this petition as well as the Claim Petition preferred before CALA filed as Annexure P-6 to the said petition; (e) that the award at Serial Nos.10,11&16 of Table-I pertain to W.P.(C) No.3632/2019; and, (f) that the petitioners in W.P.(C) No.4781/2019 have already lifted the compensation deposited for land as well as the structures; however Serial Nos.8&9 in Table-I pertain to the said petition; (iii) that Table-II in the supplementary award relates to the compensation for trees and crops on the land; and, (a) Serial No.10 therein pertains to W.P.(C) No.2733/2019; (b) there were no trees with respect to land subject matter of W.P.(C) No.2741/2019 and thus W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019, 3096/2019, 3632/2019&4781/2019

the same does not find mention in Table-II; (c) Serial No.4 in the said table pertains to land subject matter of W.P.(C) No.2743/2019; (d) the land subject matter of W.P.(C) No.3096/2019 also did not have any trees and thus does not find mention; (e) Serial No.9 in Table-II pertains to W.P.(C) No.3632/2019; and, (f) Serial Nos.2&3 in Table-II pertain to land subject matter of W.P.(C) No.4781/2019; (iv) that thus determination/award with respect to all components i.e. land, structures, trees and solatium stands made and the respondents are entitled to possession; (v) that the petitioners, in prayer paragraph of the petitions also have only sought mandamus for publication of the supplementary award, which by then had not been published but which now stands published; (vi) that this Court protected possession of the petitioners only because the supplementary award had not been published and which now stands published; (vii) that the stand of the petitioners also in the petitions is that the structures on their land should not be demolished till the supplementary award; (viii) that the entire case of the petitioners was of the respondents being not entitled to possession till publication of supplementary award and the petitioners cannot now turn turtle; (ix) attention is invited to the part of the award recording the claims preferred by each of the petitioners before CALA and all the said claims have been dealt with in the award and the supplementary award; (x) the award with respect to the land contains reasons, why sale deeds relied upon by the petitioners in proof of prevalent rate of land were not taken into account as well as for valuation done of land; (xi) that no time limit has been fixed under the statutory scheme of NH Act for a Section 3G determination to be made, though time limit of one year from the date of notification under Section 3A had been fixed for the notification under Section 3D of the Act;

(xii) that this is a change from the Land Acquisition Act in which, by amendment of the year 1984, time period of two years from the date of the publication of the declaration of intended acquisition under Section 6 was fixed for making the award; notwithstanding the same, while incorporating acquisition provisions in the NH Act in the year 1997, no such time limit for making the award was fixed; (xiii) attention is invited to Section 16 of the Land Acquisition Act to contend that though thereunder land vests in the Government and possession thereof can be taken only once an award has been made but under Section 3D of the NH Act, the land vests in the Central Government on the date of the notification thereunder, without waiting for the determination of compensation/award under Section 3G to be made; (xiv) that the claim of the petitioner in W.P.(C) No.3096/2019 for enhanced compensation under Section 3G(5) of the NH Act is already subject matter of arbitration; (xv) that while under the Land Acquisition Act, acquisition proceedings lapse, if no award is made within two years of the date of the publication of the declaration of intended acquisition, there is no provision for lapsing of acquisition under the NH Act; (xvi) reliance is placed on **Mohanji Vs. State of U.P.** MANU/SC/2206/1995 (paragraphs 3,4&5) to contend that it is no longer *res integra* that even if the entire determination within the meaning of Section 3G had not been made, it is to be construed as entire determination; (xvii) that the same view was followed in **State of Punjab Vs. Sharan Pal Singh** (1996) 11 SCC 683; (xviii) that Section 105 of the RTFC Act only provides that parameters of Sections 26 to 30 thereof have to be followed in acquisition under NH Act; (xix) attention was drawn to page 113 of the counter affidavit, reproducing the Guidelines laid down with respect to acquisition under the NH Act; (xx) that acquisition under the

NH Act is not concerned with payment of compensation; (xxi) reliance is placed on *Amar Nath Vs. Union of India* 56 (1994) DLT 356 (paragraphs 23 to 28) to contend that even the general law of acquisition does not mandate one award only; it is contended that the petitioners also understood the law so and therefore in the petitions sought the prayer of writ of mandamus for making the supplementary award; (xxii) that the challenge by the petitioners to the notification under Section 3A and the notification under Section 3D already stands dismissed; (xxiii) that out of the land measuring 0.2710 sq. mtrs. in Khasra No.422/2, subject matter of W.P.(C) No.3632/2019, only land measuring 0.2466 sq. mtrs. belonged to private land owners and the remaining land already belonged to the Government and it is for this reason only that in the determination/award under Section 3G, compensation with respect to 0.2466 sq. mtrs. only has been awarded; and, (xxiv) that the name of Zile Singh, petitioner in W.P.(C) No.3632/2019 does not find mention in Section 3G award since the land in the revenue records is recorded in the name of Dharmbir and others and the petitioner Zile Singh admits Dharmbir to be his brother; Section 3G award mentions Dharmbir etc.

31. Ms. Padma Priya, Advocate for NHAI, answering our queries as herein above recorded, has drawn attention to Section 3F of the NH Act which permits the Central Government to, after the land has vested in it under Section 3D, enter upon the land and do all acts necessary for the purpose of the acquisition i.e. construction of National Highways.

32. Mr. Yeeshu Jain, Advocate for CALA also has contended that Section 3E uses the word “may” and not “shall”; that the Government can thus invoke, either of the provisions i.e. Section 3F or Section 3G of NH Act.

33. Mr. Sanjay Sarin, Advocate for the petitioner in W.P.(C) No.3096/2019 in his rejoinder arguments has contended (i) that the name of the petitioner therein Ferrari Estates LLP does not find mention in the supplementary award and thus the supplementary award cannot be said to be with respect to the superstructures and trees on the land of the petitioner therein; (ii) that in the notification under Section 3D, name of both D.S.S. Hotels and Ferrari Estates LLP were contained against Khasra Nos.427, 430 and 431; (iii) that there is no supplementary award with respect to Khasra No.427; (iv) that in the Claim Petition made by the petitioner (Annexure P-6 to the petition), claims were made with respect to trees also but no compensation for trees has been awarded with respect to Khasra Nos.430 and 431 also; (v) that writ petition in this case contains a prayer as on the date of filing thereof, for quashing of Section 3G notification and grounds ‘N’ and ‘O’ in W.P.(C) No.3096/2019 pertain thereto; (vi) that the provisions of the Land Acquisition Act, vide Section 3J of the NH Act do not apply to the NH Act; and, (vii) that it is the duty of the Government to not infringe the constitutional rights of its citizens.

34. Mr. Gaurav Mitra, Advocate for the petitioners in W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019 and 4781/2019 in his rejoinder argument has contended (a) that **Amar Nath** supra stands superseded by **Mohanji** supra; thus **Amar Nath** supra cannot be cited as a precedent for making a piecemeal award; (b) that though **Mohanji** supra pertains to

Section 11 of the Land Acquisition Act and this matter is concerned with NH Act and RTFC Act but since compensation under the said Acts also is for land plus structures plus trees plus solatium, there can be no piecemeal determination and **Mohanji** supra supports the petitioners; (c) as far as the reference by Ms. Padma Priya, Advocate to Section 3F is concerned, the same is to be read harmoniously with the other provisions and so as not to make Section 3E and the provisions of the RTFC Act otiose; Section 3F is in the nature of emergent provision; (d) that since there is no limitation for making determination/award under Section 3G, it is all the more reason that there should be one determination/award only and not multiple determinations; (e) that arbitration is contemplated only with respect to quantum and not with respect to non-inclusion of any of the components of compensation as prescribed under the NH Act and RTFC Act; (f) that the petitioner Dalvinder Singh Sodhi in W.P.(C) No.2741/2019 has got nothing to do with D.S.S. Hotels; (g) that the supplementary award wrongly records that there was only a boundary wall on the land subject matter of W.P.(C) No.2741/2019; it is mentioned in the claim petition that there was a full house; and, (h) that there is no supplementary award with respect to the house.

35. Mr. Sanjay Poddar, Senior Advocate contended that Section 3G determination uses the words “boundary wall etc.” and thus the determination done is for whatever is existing on the land. He has also drawn attention to CM No.3407/2020 in W.P.(C) No.3632/2019 for correction of the order dated 17th October, 2019 which *inter alia* failed to record the presence of Mr. Sumit Gupta and Ms. Anchal Seth, Advocates for NHAI who were present in that hearing and had made submissions.

36. The order dated 17th October, 2019 in W.P.(C) No.3632/2019 be read as also recording the presence of Mr. Sumit Gupta and Ms. Anchal Seth, Advocates for NHAI. CM No.3407/2020 stands disposed of.

37. We have perused the different provisions, pleadings, annexures and considered the submissions aforesaid.

38. A perusal of Section 3D and Section 3E of the NH Act shows that while on a declaration under Section 3D, that the land shall be acquired for the purposes mentioned in Section 3A of the NH Act, being notified, the land “shall vest absolutely in the Central Government free from all encumbrances” but post such vesting, compensation payable for the land is to be determined by CALA and only on deposit of such compensation by the Central Government with CALA, is CALA entitled to call upon persons in possession of the land to deliver possession thereof within 60 days and on their failure to so deliver possession, to take over possession of the land. As aforesaid, we have wondered whether not on vesting of the land with the Central Government, the owner of the land stands divested of his title and having so stood divested of title, has no right to possession even of the land and the Central Government in which the land has vested, notwithstanding Section 3E of the NH Act, is entitled to possession of the land and / or to carry out the works in relation to highways over the said land. However that would amount to making Section 3E(1) qua possession, post determination of compensation and deposit of such compensation, void. We have thus proceeded to research, how the word ‘vested’ / ‘vests’ has been interpreted by the Courts.

39. We find the Supreme Court, as far back as in ***Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust*** AIR 1957 SC 344, while negating the argument that the word ‘vests’ necessarily signifies transfer of title in the person in whom the property is vested, to have held as under:

“25. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, Section 56 of the Provincial Insolvency Act (V of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in the receiver." The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possessions.

The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.

It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them.”

40. Again, in ***Municipal Corporation of Greater Bombay Vs. Hindustan Petroleum Corporation*** (2001) 8 SCC 143, it was held that the word ‘vest’ means vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. In the context of Mumbai Municipal Corporation Act, 1988, it was

held that what was vested in the Corporation, necessarily may not be owned by the Corporation and vesting of government water channel or drain in the Corporation also have different effects and consequences. It was further held that the water channel and drains belonging to the government vested in the Corporation only for the purposes of management. In ***The National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad*** (2011) 12 SCC 695, in the context of the Textile Undertakings (Taking over of Management) Act, 1983, it was held that though ‘vesting’ is ordinarily understood as meaning having obtained an absolute and indefeasible right and of transfer or conveyance with possession but in law ‘vesting’ does not necessarily and always mean possession but includes vesting of interest as well; ‘vesting’ may mean vesting in title, vesting in possession or vesting in a limited sense; word ‘vest’ has different shades, taking colour from the context in which it is used; it does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration; thus, the word ‘vest’ clothes varied colours from the context and situation in which the word came to be used in the statute. Yet again, in ***V. Chandrasekaran Vs. The Administrative Officer*** (2012) 12 SCC 133, in the context of the Land Acquisition Act, it was held to be settled proposition that once the land vested in the State, free from all encumbrances, under Section 16 of the said Act, it would not be divested and proceedings under the Act would not lapse even if an award is not made within the statutorily stipulated period – the said land, once acquired, cannot be restored to the tenure holders / persons interested, even if it is not used for the purpose for which it was so acquired or for any other purpose either; the proceedings cannot be withdrawn / abandoned under the

provisions of Section 48 of the Act or under Section 21 of the General Clauses Act, 1897, once the possession of the land has been taken and the land vests in the State, free from all encumbrances; the land owner then becomes the persona non-grata with a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged; the State neither has the requisite power to re-convey the land to the person interested nor can such person claim any right of restitution on any ground whatsoever unless there is some statutory amendment to this effect. Again, in ***State of U.P. Vs. Hari Ram*** (2013) 4 SCC 280, in the context of the Urban Land (Ceiling and Regulation) Act, 1976, it was held that (i) the legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist; (ii) in interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction; (iii) thus the words “deemed to have acquired” in Section 10(3) can only mean acquisition of title or acquisition of interests because till that time the land may be either in the ownership of the person who held the vacant land or to possess such land as owner or as a tenant or as a mortgagee; (iv) the word “absolutely vested” deems only acquisition and nothing more; (v) ‘vests’/‘vested’, therefor may or may not include transfer of possession, depending on the context; (vi) ‘vesting absolutely’ means deemed to have been acquired; (vii) there must be express words of utmost clarity to persuade a Court to hold that the legislature intended to divest possession also; and, (viii) ‘vesting’ means vacant land is not actually

acquired but deemed to have been acquired and acquisition does not take possession unless there is an indication to the contrary.

41. Applying the aforesaid law, it follows that when Section 3D of the NH Act provides, 'that on publication of the declaration thereunder that the land shall be acquired, the land shall vest absolutely in the Central Government free from all encumbrances', it only signifies acquisition of the title in the land, leaving only the ministerial task of determination and deposit of compensation and taking over possession of the land and otherwise does not vest possession of the land in the Central Government. The erstwhile owner / holder of the land, upon such vesting, is not left with any right of ownership or otherwise or any transferable title in the land, save right to remain in possession of the land, till determination and deposit of compensation but which right of possession also is subject to Section 3F of the NH Act. Applying the aforesaid law it also follows that post Section 3D declaration, the acquisition of the land is concluded and thereafter acquisition cannot be challenged or lapse on any ground and only taking over of possession of land remains. This also follows from Section 3E of the NH Act which empowers taking over of possession by issuing a 60 days notice and empowers forcible taking over of possession only on failure of the persons in occupation / possession to so deliver possession. It thus follows that notwithstanding the vesting of the land in Central Government on making of declaration under Section 3D of the NH Act, the possession of the land remains of whosoever may be in possession thereof and possession does not stand transferred to the Central Government. This interpretation also follows from Section 3F of the NH Act which empowers the Central Government to, notwithstanding possession of the land having not been

taken, enter upon the land and do all acts, deeds and things thereon to fulfill the purpose of acquisition, without any limitation. Though on Section 3F powers being exercised the de facto possession of the land would be of Central Government / NHAI / any other person authorized but de jure possession of the land remain with the erstwhile owner / holder of the land, till determination and deposit of compensation. Any other interpretation of Section 3D of the NH Act would make the provisions of Section 3E of the NH Act for taking over of possession and of Section 3F of the NH Act empowering the Central Government to notwithstanding not being in possession carryout the prescribe works over the land, otiose.

42. That brings us to the next question for adjudication i.e. at what stage of acquisition under the NH Act, does CALA become entitled to take possession of the land acquired.

43. Once, on an interpretation of Section 3D of the NH Act, it has been held that vesting of the land in the Central Government does not put CALA into and does not entitle CALA to seek possession of land, the said question, on a plain/literal reading/interpretation of the statute, permits of no two interpretations or of any ambiguity. Neither counsel also has suggested to the contrary. Under Section 3E of the NH Act, “Where any land has vested in the Central Government and the amount determined by the competent authority under Section 3G with respect to such land has been deposited under sub-section (1) of Section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the

competent authority..... within sixty days of the service of the notice.” Section 3H(1) of the NH Act also provides that “The amount determined under Section 3G shall be deposited by the Central Governmentwith the competent authority before taking over possession of the land.” Thus under Section 3E(1) read with Section 3H(1), the right to demand possession of the acquired land which has vested in the Central Government accrues to CALA only on determination of compensation under Section 3G of the NH Act and deposit thereof with CALA and which CALA under Section 3H(2) is mandated to pay to the persons entitled thereto “as soon as may be after the amount has been deposited”.

44. Though neither the senior counsel / counsel for the NHA nor the counsel for CALA in their arguments before us have expressly contended that Central Government, under the aforesaid provisions, becomes entitled to demand possession, on part determination under Section 3G of the NH Act and/or on deposit of the amount so determined but the action impugned in these writ petitions and which has been defended, is such. It thus becomes necessary to adjudicate the same.

45. We may at this stage notice that though all the counsels for the petitioners during the hearing conveyed an impression that the demand made of possession within 60 days is contained in the Section 3G determination / notification dated 18th December, 2018 and which determination / notification itself admits that “besides market value of the land.....” determined thereunder “the land owner is also entitled to get certain other benefits as per the provisions of NH Act, 1956 i.e. value of structures, solatium and additional amount” and that “a separate supplementary award

will be passed in this regard and compensation amount for structures will be paid separately vide supplementary award”, but a close reading of Section 3G determination / declaration dated 18th December, 2018 impugned in these petitions shows the same to, under the head “Physical Possession of Land” stating “the physical possession of the land will be taken immediately after the announcement of award as per procedure laid down under Section 3E of NH Act, 1956”. It will thus be seen that the demand for possession within 60 days is not contained in the impugned notification dated 18th December, 2018 under Section 3G of the Act and the challenge thereto on this ground is misconceived. Rather it is found that the petitioners, as Annexure P-10 to the petition, have filed a public notice stated to have been published in the newspapers on 16th January, 2019, informing of the announcement of the award dated 18th December, 2018 and deposit of the determined amount and calling upon the concerned land owners / interested persons entitled to receive the compensation, to collect the same within 60 days of the said notice. It is the said public notice which thereafter calls upon all the owners / interested persons / any other person who may be in possession of awarded land, to surrender or deliver physical possession of the land within 60 days of the notice, failing which physical possession was threatened to be taken with the assistance of police force. The defect if any, in so demanding possession, is thus not in Section 3G declaration / determination but in the public notice and which is non-statutory in nature. Section 3G declaration / determination merely states that physical possession shall be taken “as per procedure laid down under Section 3E of the NH Act” and which can only mean, in accordance with law and no fault can be found therewith.

46. Section 3E(1) and Section 3H(1) defer possession, only till determination by CALA under Section 3G and deposit of the amount so determined under Section 3G. We have thus next examined Section 3G, to adjudge whether determination thereunder is only of valuation of land and not of superstructure, solatium and additional amount, for CALA, in the public notice dated 16th January, 2019 to claim that it is entitled to demand possession on determination of value of land and deposit thereof by Central Government with CALA, even if the entitlement in law of the land owners be also to valuation of superstructures, solatium and additional amount, but under some other provisions. In this context, we may notice that Section 3G does not provide for payment of solatium or additional amount and only provides for determination of the value of land. The liability for payment of solatium and additional amount for acquisitions under the NH Act is not under any provision of the NH Act, as held by the Supreme Court also in **Tarsem Singh** supra but by virtue of the notification dated 1st January, 2005 under Section 105(3) of the RTFC Act. Thus it cannot be said that determination of solatium and additional amount and deposit thereof by Central Government with CALA, is under Section 3G, for CALA to await the same before demanding possession.

47. That leaves the question, whether determination of valuation of superstructures, trees and standing crop, is under Section 3G or not. We had as aforesaid, during the hearing, observed that Section 3G(7), while listing the factors to be taken into consideration while making the determination thereunder, does not expressly list the market value of superstructures, trees or standing crop. Though at the time of hearing it was felt that Section 3G(7) was different from the provisions of the Land Acquisition Act

W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019, 3096/2019, 3632/2019&4781/2019 *Page 42 of 58*

pertaining to compensation but a perusal of Sections 11,15,23 and 24 of the Land Acquisition Act showed the same also to be not providing expressly for valuation of superstructures, tree and crops. However both NH Act and Land Acquisition Act define 'land' as inclusive of things attached to the earth and permanently fastened to anything attached to the earth and which words in ***Chaturbhuj Panda Vs. Collector, Raigarh*** AIR 1969 SC 255, ***Union of India Vs. Ram Mehar*** (1973) 1 SCC 109, ***Bai Malimabu Vs. State of Gujarat*** (1978) 2 SCC 373, ***Mrinalini Roy Ratna Prova Mondal Vs. State of West Bengal*** (1997) 9 SCC 113, ***Ambya Kalya Mhatre Vs. The State of Maharashtra*** 2011 (10) SCALE 296, have been held to include superstructures, trees, standing crop etc. It has been held that determination of compensation under the provisions of Land Acquisition Act has to necessarily include determination of compensation for structures, trees, standing crop existing on the land on the date of the acquisition. There is no reason why, when the legislature, while incorporating the acquisition provisions in the NH Act, used the same language as in Land Acquisition Act, for defining 'land', any different interpretation should be given thereto. It thus has to necessarily follow that determination of compensation for superstructures, trees, standing crop on the land is under Section 3G of the NH Act. We may however notice that of Sections 26 to 30 of the RTFC Act, application whereof has been extended to the NH Act as aforesaid, Section 29 expressly mandates the Collector to determine the market value of the building or other immovable property and assets attached to the land or building which are to be acquired. An interpretation is thus possible that the determination of valuation of superstructures/buildings, trees, standing crop on the land, is not under Section 3G but by application of provisions of

Sections 26 to 30 of the RTFC Act vide notification dated 1st January, 2005 under Section 105(3) supra and thus it is not mandatory for CALA, to before demanding possession under Section 3E(1) and 3H(1) of the NH Act, determine and await deposit by Central Government, compensation for buildings, superstructures, trees, standing crop on the land acquired. However we prefer to hold that the determination of valuation of superstructure, trees, standing crop on the land acquired is under Section 3G, not only owing to the similarity in language in this respect in the NH Act to the Land Acquisition Act and the law as has developed under the Land Acquisition Act but also because, to hold otherwise would amount to the State compulsorily appropriating valuable property of its citizen without valuing the same fully and without depositing any compensation therefor, leaving the citizen in lurch, and which interpretation has to be outrightly discarded. The same would also be contrary to the scheme of the NH Act, which though divests the citizen of title to the land even before the same has been valued and the valuation determined deposited but protects the possession of the citizen till such valuation and deposit; there is no reason to differentiate between land and things permanently attached to the land, in this respect.

48. Thus what follows is that while determination of valuation of land, building, superstructures, trees, standing crop thereon and deposit thereof with CALA is under Section 3G(1) and 3H(1) of the NH Act, the determination of solatium and additional amount is not under Section 3G(1) and deposit thereof not mandatory before taking over possession.

49. However solatium and additional amount are nothing but statutory additions to the valuation arrived at of land and superstructure/trees/standing crop. In ***Sunder Vs. Union of India*** (2001) 7 SCC 211, the Constitution Bench held that solatium and interest (additional amount) are awarded to land owners for compulsory acquisition of their lands and grant of compensation without solatium and interest was / is not necessary to carry out the object of incorporation of provisions for acquisition in the NH Act in the year 1997 and would not receive the protective umbrella of Article 31C and non award thereof would be infraction of Article 14 of the Constitution of India. Earlier, in ***Nagpur Improvement Trust Vs. Vithal Rao*** (1973) 1 SCC 500, it was held that it is immaterial whether acquisition is under one Act or another, as solatium cannot be denied on account of this fact alone. In ***Tarsem Singh*** supra, it was held that the government, by extending the application of Sections 26 to 30 of the RTFC Act to the NH Act, has accepted the principle of ***Nagpur Improvement Trust*** supra. Thus, to hold, that CALA is entitled to take over possession of the land without depositing solatium and additional amount which are also components of compensation, would again amount to the Central Government compulsorily acquiring the property of its citizen without even depositing the admitted lawful compensation thereof for disbursement to the citizen. We are again not inclined to accept the said proposition. We repeat, that under the scheme of the NH Act though the citizen is divested of his land without even determination and deposit of compensation therefor, as distinct from under the Land Acquisition Act applicable till 1997 to acquisitions of land for national highways also, but is not divested of possession of the said land till such determination and deposit. Once the legislative intent is so and it is

found that the land owner, besides the compensation determined under Section 3G, albeit under a different statute i.e. under the RTFC Act, entitled to solatium and additional amount also, in our opinion, it will be violation of the Scheme of the NH Act to allow the possession of the land to be taken without deposit of solatium and additional amount. It cannot also be forgotten that save for the provision of deposit before demanding possession, there is no other time limit for payment of solatium and additional amount. If it were to be held that the additional amount and solatium is not required to be deposited before taking over possession, the Central Government shall be entitled to retain the same with itself, forever, till the citizen who has been divested of his land as well as deprived of possession thereof, litigates with the Central Government therefor. Such an interpretation would be violative of the constitutional right to property and would wrest the State with unjustified advantage and lead to arbitrary and unfair outcomes and which interpretation of statutes, as reiterated in **Indian Performing Rights Society Ltd. Vs. Sanjay Dalia** (2015) 10 SCC 161, is to be avoided. We thus hold that the entire compensation for land, building, superstructures, trees, standing crop, solatium and additional amount has to be deposited before any demand for possession can be made by CALA under Sections 3E(1) and 3H(1) of the NH Act.

50. CALA, in the present cases, admittedly did not do so. It has thus but to be held that the demand published in the newspapers on 16th January, 2019, for possession, was illegal and CALA, in pursuance thereto, is not entitled to possession and was by interim orders of this Court, rightly restrained from recovering possession.

51. However that leaves another question to be determined i.e. whether part determination of compensation in the impugned 3G declaration / notification dated 18th December, 2018, is bad in law and liable to be set aside and the consequences thereof.

52. We will first take up the question, whether the law requires all components of compensation to be contained in one single document. In this regard, we find a Full Bench of the High Court of Bombay, as far back as in ***Prag Narain Vs. The Collector of Agra*** MANU/MH/0016/1932, faced with an award for part only of a single block of land, to have held that the Land Acquisition Act did not appear to contemplate that where more than one person is interested in a parcel of land, there should be more than one award relating thereto; however this does not mean that the whole of the land at any one time to be acquired, must necessarily be dealt with in one award; it only means that any one piece of land in which more than one person has an interest for which he can claim compensation, ought not to be made the subject of more than one award; each award should contain within its four corners, the fixing of the value of the land with which it deals. We find a Division Bench of the High Court of Gujarat, thereafter in ***Mohamadsarif Hakimji Chipka Vs. State of Gujarat*** AIR 1967 Guj 269, in the context of Land Acquisition Act, to have held that the legislative intent is that in respect of land under acquisition, all matters referred to in Section 11 between all persons interested, must be decided by one award; to construe them otherwise may lead to anomaly; if the Collector were to have authority to decide the same matters between the same parties more than once, it may happen that he may come to one decision in respect of some piece of land acquired, and another decision subsequently; on all matters concerned under

W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019, 3096/2019, 3632/2019&4781/2019 *Page 47 of 58*

Section 11 between all the parties interested, one award has to be filed and which assumes finality; however the concept of one award does not necessarily imply that it should be contained in a single document; the said decision of the Collector, under given exceptional circumstances, may be contained in more than one document, so long as one or more documents constitute one compendious decision of the Land Acquisition Officer or the Collector; the mere fact that it is contained in more than one document would not amount to two or more separate awards. This Court, in **Lal Singh Vs. Lt. Governor, Delhi** MANU/DE/0221/1971 also held that the language used in the provisions of the Land Acquisition Act suggests that the land covered by a notification under Section 6 has to be dealt with as a whole, without being split up and the compensation amount has to be apportioned in the award under Section 11 amongst all the persons known or believed to be interested in the land; there may however be more than one award in exceptional circumstances, provided the said awards are not inconsistent decisions regarding the parcel of land, but constitute one decision in respect of the parcel of land and all matters required to be considered under Section 11 concerning all the persons interested in that parcel of land. Thereafter, this Court in **Amar Nath** supra relied upon by the senior counsel for NHAI, held that no fault could be found with a supplementary award with respect to some of the matters as the award already stood announced and the supplementary award submerged itself into the main award, it being only its part. We also find that a Full Bench of the High Court of Gujarat, headed by Chief Justice B.N. Kirpal, in **Kanchanbhai Jhaverbhai Desai Vs. State of Gujarat** MANU/GJ/0211/1994, dealing with a writ petition with the grievance that in the award made and pursuant to which possession had been

taken, no compensation had been determined with respect to standing crop and claiming direction for determination and payment of compensation for standing crop, to have held that in respect of the same parcel of land only one award is contemplated and no supplementary award is contemplated and the remedy is by way of seeking a reference under Section 18 of the Land Acquisition Act.

53. That brings us to **Mohanji** supra cited by the counsels for the petitioners as well as the counsels for the respondents. The said judgment came in the wake of amendment to the Land Acquisition Act which required an award to be made in all pending cases of land acquisition within a period of two years from the insertion of Section 11A and it further provided that all proceedings for acquisition of land in which no award is made within the specified period, would lapse on expiry of that period. The said period of two years expired on 23rd September, 1986. Supreme Court in the said judgment was concerned with an award made on the last date i.e. 23rd September, 1986 but only in respect of vacant land but not for buildings constructed over a portion thereof. It was the contention of the petitioners that since the part award was no award, the acquisition proceedings lapsed. It was held that it could not be said that no award had been made for the land acquired, because admittedly award had been made for the entire land acquired and since no piecemeal award by making a subsequent award after the expiry of the period of two years was contemplated in law, the award dated 23rd September, 1986 must be considered as the whole award made under Section 11, awarding compensation for the entire area of land with no compensation awarded for the building. It was further held that it was open to the petitioners to seek reference, if dissatisfied with the award. The said

W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019, 3096/2019, 3632/2019&4781/2019 *Page 49 of 58*

judgment was also followed in ***Sharan Pal Singh*** supra. Supreme Court, thereafter in ***Harbans Lal Malhotra & Sons Ltd. Vs. Union of India*** MANU/SC/1393/2002 was concerned with an award for land only, recording that with respect to superstructures, there will be a separate valuation; however without making the said separate valuation, possession of the land was sought to be taken. The three Judge Bench was constituted on a doubt being expressed with respect to the correctness of ***Mohanji*** and ***Sharan Pal Singh*** supra. However the matter was disposed of, directing compensation as claimed, for the superstructures, to be paid with interest for the delay. Mention may lastly be made of a dicta of the Division Bench of the High Court of Gauhati in ***Fortuna Agro Plantation Ltd. Vs. The Union of India*** MANU/GH/0394/2011. It was held that an award even if made by ignoring some of the factors which in the light of Section 23(1) of the Land Acquisition Act are required to be taken into account, is still an award rendered under Section 11 and the person aggrieved by such an award has the remedy of applying to the Collector to make a reference in terms of Section 18.

54. Thus the law with respect to the provisions of the Land Acquisition Act is, that only one award is envisaged and even if is not with respect to one of the factors to be taken into consideration, the award made is to be deemed to be denying any compensation therefor and the only remedy is of seeking reference under Section 18. One award only has been advocated, only to avoid inconsistencies in determination of valuation of different parcels of land vide the same notification. For this reason it has been held that even where there are more than one award, inconsistencies should be avoided. There is no absolute bar to more than one award.

55. We next proceed to adjudge, whether application of Sections 26 to 30 of the RTFC Act to the acquisition proceedings under the NH Act changes the position in any way. Mr. Gaurav Mitra, Advocate has vehemently contended that RTFC Act contemplates a single award and not separate awards.

56. We however find different Sections of the RTFC Act to be dealing with different components of the compensation, with Sections 26 to 28 dealing with the determination of market value of land, Section 29 with determination of value of things attached to the land and Section 30 with solatium and additional amount. The language thereof rather suggests that separate determinations have to be made under each of the heads. Thereafter, Section 30 requires the Collector to arrive at the final award.

57. At this stage, the contention of Mr. Gaurav Mitra, Advocate on the basis of Section 30(2), of the Collector being required to issue individual awards with respect to each of the claimants, needs to be dealt with.

58. Section 30(2) uses the words 'individual awards' in the context of different components of the final award and the individual awards referred to are individual awards for value of land, value of things attached to earth, solatium and additional amount and not individual claimants. Section 30(2) provides issuance of individual awards detailing the particulars of compensation payable and the details of payment of compensation as specified in first schedule. A perusal of the first schedule to the RTFC Act shows the same to be listing, (a) market value of land; (b) factor by which the market value has to be multiplied in the case of rural areas; (c) factor by which market value has to be multiplied in case of urban areas; (d) value of

assets attached to the land; (e) solatium; and, (f) final award. There is no reference to the claimants therein. It is thus clear that individual awards are with respect to each of the components of compensation and not with respect to each of the claimants. Rather the use of the word 'individual awards' means that there can be separate awards for each of the components of compensation, though any one or two of the separate individual awards would not constitute a final award. We may also add that separate awards for separate claimants is also likely to lead to inconsistencies and for this reason also it is imperative that valuation of the entire land is arrived at. As far as apportionment between different claimants is concerned, the same, as stated by the senior counsel for NHAI and counsel for CALA, is to be as per the revenue records. CALA is not competent and empowered to adjudicate disputes as to apportionment and in the event of disputes, under Section 3H(4) is required to refer the same for decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

59. Thus, application of the provisions of the RTFC Act to the NH Act goes against the contentions of the petitioners that the determination / award of value of land alone and recording that a supplementary award shall be made with respect to compensation for structures etc., vitiates the award with respect to land also, which is liable to be set aside, rather than comes to the aid of the petitioners.

60. Though as aforesaid, doubt was expressed in **Harbans Lal Malhotra & Sons Ltd.** supra with respect to **Mohanji** and **Sharan Pal Singh** supra but as of today, the law remains that even if the award does not contain any

component of compensation, it is to be treated as complete award, with nil award towards the component of compensation not included, and has to be applied. We may in this context notice, that this is even otherwise a principle of law. With respect to awards under the Arbitration Act, 1940, it has been held in ***Bijendra Nath Srivastava Vs. Mayank Srivastava*** (1994) 6 SCC 117 and ***M.K. Shah Engineers & Contractors Vs. State of Madhya Pradesh*** (1999) 2 SCC 594 that an arbitration award is not vitiated merely because the Arbitrator has not given item wise award. It was also held to be well settled, that an award need not formally express the decision of the Arbitrator on each matter of difference nor is it necessary for the award to deal with each and every claim and counterclaim; it has to be presumed that the award disposes finally, all the matters in difference and the claims or counterclaims on which no award is made, are deemed to have been rejected. Supreme Court, recently also in ***Yashwant Sinha Vs. Central Bureau of Investigation*** (2020) 2 SCC 338, while dealing with an application for review, held that a judgment may be silent in regard to a relief which is sought by a party and referring to Section 11 of the CPC held that if a decree is silent as regards any relief, that relief must be treated as declined.

61. Thus the impugned declaration dated 18th December, 2018 under Section 3G of the NH Act, cannot be said to be bad or illegal or vitiated for the reason of not valuing and not making any award with respect to the buildings, superstructures, trees and standing crop, and for stating that a supplementary award with respect to valuation of superstructures shall be made. In stating, that a supplementary award shall be made, CALA indicated that notification dated 18th December, 2018 is not the final award.

Significantly, the said notification dated 18th December, 2018 does not

demand possession within 60 days and which could have been demanded after the final award only, and merely states that possession be delivered as per the provisions of Section 3E of the NH Act and which could be only after the final award.

62. The only effect of CALA, in the declaration dated 18th December, 2018 under Section 3G of the NH Act stating so is that the declaration notified is only qua the value of the land and not the final determination and thus, pursuant to deposit in terms thereof, possession could not have been demanded. The counsels for the petitioners, though have contended that the said determination for the said reason is liable to be quashed and/or declared bad but have not given any reason or justification therefor. As aforesaid, the only effect thereof is of making the demand for possession bad and nothing more.

63. As far as ***Competent Authority Vs. Barangore*** supra relied upon by Mr. Gaurav Mitra, Advocate for the petitioners is concerned, the challenge therein was to the Notification under Section 3A of the NH Act and it was in the said context that it was observed that if the said challenge was successful, vesting of land under Section 3D Notification, being in pursuance to Section 3A Notification, will also fall. However here, the challenge to Section 3A Notification has failed and which order has attained finality. The challenge here is to the Section 3G Notification but which challenge also has been found to be misconceived as aforesaid and the possession demanded is not in the Notification under Section 3G but in the public notice. A wrongful demand for possession, in the non statutory public notice pursuant to Notification under Section 3G cannot invalidate

vesting of land in the Central Government under an earlier Section 3D Notification invalid.

64. As held in **V. Chandrasekaran** supra and reiterated in **Manshukhbhai Dhamjibhai Patel Vs. State of Gujarat** (2018) 2 SCC 642, it is settled legal proposition, that once the land has vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act (Land Acquisition Act in that case) would not lapse, even if an award is not made within the statutorily stipulated period; the said land, once acquired, cannot be restored to the persons interested, even if it is not used for the purpose for which it was so acquired or for any other purpose either. It was further held that vesting “under Sections 16 and 17 of the Land Acquisition Act means that the property acquired becomes the property of the government, without any condition or limitation either as to title or possession and that vesting is not for any limited purpose or limited duration. Thus, in the present cases, on declaration under Section 3D of the NH Act being made on 5th June, 2018, the land vested in the Central Government; the challenge to the said vesting earlier made by some of the petitioners, failed; others, neither then nor now have challenged the said vesting. Applying the law aforesaid, the acquisition of land stood completed on publication of Section 3G declaration and the same remains unaffected. Though under the NH Act, as distinct from the Land Acquisition Act, vesting is not accompanied with delivery of possession but the same in our view will not change the legal position as held to be well settled in **V. Chandrasekaran** supra. In this context, Section 3F of the NH Act becomes relevant. Though under the NH Act notwithstanding the vesting of land delivery of possession of land is deferred till determination and deposit of compensation and for which there is no time

limit prescribed but Section 3F empowers the Central Government to enter and do other acts necessary upon the land for the purpose for which the land has been acquired i.e. of building, maintenance, management or operation of a National Highway or a part thereof or any other work connected therewith. Such empowerment makes delivery of possession of acquired land a formality inasmuch as without even taking possession the land is permitted to be used for the purpose for which it has been acquired. There is nothing in Section 3F or otherwise in the Act to indicate that Section 3F is to be invoked in emergent situations only, as contended by Mr. Gaurav Mitra, Advocate. Of course if the State is found to be using its powers of effectively depriving the citizen even of possession of land, without any intent to within a reasonable time determine and deposit compensation, the Courts shall intervene.

65. Thus, on CALA, in notification dated 18th December, 2018 under Section 3G of the NH Act stating that the supplementary award was still to be made, and pursuant thereto vide public notice dated 16th January, 2019 demanding possession within 60 days, the only entitlement of the petitioners was to challenge the claim of delivery of possession and the respondents had/have no right to challenge either the declaration under Section 3G of the NH Act or the acquisition proceedings. As aforesaid, under the Land Acquisition Act also, there is no absolute bar to piecemeal award. The only caution while making a piecemeal award advised is, that it should not lead to any inconsistencies. It is not the argument of the counsels of any of the petitioners that the action of CALA of making separate awards for land and superstructures, trees, etc., results in any inconsistencies. In fact, the award made on 18th December, 2018 is with respect to valuation of the land which

W.P.(C) Nos.2733/2019, 2741/2019, 2743/2019, 3096/2019, 3632/2019&4781/2019 *Page 56 of 58*

is one of the components and there is no question of any inconsistency between valuation of the land and valuation of superstructures, buildings, trees, structures etc.

66. In fact CALA, in the declaration dated 18th December, 2018 under Section 3G, has given reasons for not making the award with respect to the superstructures. It is reasoned that though valuation of superstructures as per Section 29(1) and (2) of the RTFC Act had been got done from a valuer appointed by NHAI but the said valuation was yet to be authenticated by Public Works Department and such authentication had not been received till the date of making of the declaration dated 18th December, 2018 and thus a supplementary award with respect thereto shall be made. The same, in our view also falls within the meaning of “extraordinary circumstances” in which piecemeal award has been held to be permitted to be made. Rather it shows that neither CALA nor Central Government wanted to withhold the value determined of land, to await determination of other components of compensation.

67. All the other disputes which have been urged, are with respect to computation of the compensation and / or quantum of the compensation and for which statutory remedy of arbitration is provided and in the face whereof no challenge in writ jurisdiction can be made.

68. The supplementary award including all the elements / components of compensation having since been made, now there is no impediment to the possession being delivered. Even if it is the contention of any of the petitioner that any component is missing, remedy thereagainst is under Section 3G(5) of the NH Act.

69. We accordingly dispose of all these petitions, directing the respondents to, within 30 days hereof (since entitlement to possession accrued on pronouncement of the supplementary award on 4th October, 2019 and more than 60 days wherefrom have already expired and since we have been told that the work of Dwarka Expressway is held up, putting thousands of citizens to daily inconvenience in traffic jams) deliver possession of land in possession / occupation of each of the petitioners, to CALA, failing which Central Government / CALA shall be entitled to enforce surrender of land in accordance with law.

70. Needless to state, this judgment shall not affect the right of the petitioners under Section 3G(5) or under Section 3H(4) (regarding apportionment of compensation) of the NH Act.

71. The petitions are disposed of.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2020
'gsr/bs'..

ASHA MENON, J.