

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10505 OF 2019

**Jiten Agro Land and Farm
Pvt. Ltd. & Ors.**

..Petitioners

vs.

**The Ministry of Environment
& Forest & Ors.**

..Respondents

Mr.Rajiv Narula with Mehek Choudhary i/b. Jhangiani Narula & Associates, for the Petitioners.

Mr.Anil Singh, Additional Solicitor General with Mr.Aditya Thakkar, Mr.D.P.singh, Mr.Jitendra Patil, Mr.Pranav Thakur, Ms.Smita Thakur, for Respondent Nos.2, 5 & 8-Union of India.

Smt.Shehnaz V. Bharucha with Mr.Aditya Thakkar, Mr.D.P.Singh and Mr.Khiladar i/b. A.A.Ansari, for Respondent No.1-MoEF/Union of India.

Mr.M.M.Pable, AGP for the State-Respondent Nos.3, 4 & 6.

**CORAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

**HEARD ON : SEPTEMBER 6, 2021
JUDGMENT ON : SEPTEMBER 20, 2021**

JUDGMENT [Per DIPANKAR DATTA, CJ]:

1. The first petitioner is a company incorporated under the Companies Act, 1956 (hereinafter 'the Company' for short). The second and the third petitioners are the Directors of the Company. Incidentally, they are spouses.
2. It is claimed in paragraph 1 of the writ petition that the Company as well as the spouses are owners of the properties

in Dahanu taluka, as delineated therein (hereafter "the said properties", for short). Originally, the said properties were part of Thane district. However, after division of Thane district in 2016, the said properties are now part of Palghar district. Part of the said properties having been acquired under the provisions of Chapter IVA of the Railways Act, 1989 (hereafter "the 1989 Act", for short) for the execution, maintenance, management and operation of Special Railway Project namely, Western Dedicated Freight Corridor (hereafter "the said project", for short), the petitioners have presented this writ petition dated August 29, 2019 seeking, *inter alia*, the following relief: -

- "(a) That it be declared that the provisions of Chapter IVA with regard to determination of amount payable as compensation for the acquired land, *inter alia*, Section 20-F and 20G, so far as they are inconsistent with or contrary to the provisions of the said Right to Fair Compensation Act are arbitrary and illegal;
- (b) That this Hon'ble Court be pleased to call for the records and proceedings with regard to passing of Order dated 2nd June 2015 being Exhibit -HH hereto by Respondent No.7 and after going into the legality and validity thereof, be pleased to quash and set aside the same.
- (c) That this Hon'ble Court be pleased to call for the records and proceedings with regard to issuance of notice

bearing No. SO 298(E) under Section 20E dated 6th February, 2010 and notice bearing No. SO 1744(E) under Section 20A(1) of the Railways Act, 1989 dated 25th July 2011 and Notification dated 8th July 2015 issued under Section 20A of the Railways Act with regard to Petitioners' property and after going into the legality and validity thereof, be pleased to quash and set aside the same.

(d) that this Hon'ble Court be pleased to issue an appropriate writ, Order or direction in the nature of mandamus commanding the Respondent No.8 to forthwith withdraw their said notice bearing No. SO 298 (E) under Section 20E dated 6th February, 2010 and notice bearing No. SO 1744 (E) under Section 20A (1) of the Railways Act, 1989 dated 25th July 2011 and Notification dated 8th July 2015 (Exhibits E, G & II) issued under Section 20A of the Railways Act as being arbitrary and ultra-vires the Constitution of India;"

3. A brief factual narrative of the events leading to presentation of this writ petition, as a prologue to our discussion on the contentious issues, would not be inapt.

4. On July 25, 2011, a notification bearing No. SO 1744 (E) under section 20-A of the 1989 Act was issued conveying that the Central Government was satisfied that for a public purpose namely, the said project, acquisition of lands mentioned therein was considered necessary. By the said notification, it was proposed to acquire a total of 1.755

hectares of the petitioners' property in Survey No.51/3 at village Patilpada. With this notification commenced the first tranche of acquisition of the petitioners' property. On July 23, 2012, a notification bearing No. 1671 (E) was issued declaring, *inter alia*, that under section 20-E of the 1989 Act, upon publication of the notification, the lands specified in the 'Schedule' shall vest absolutely in the Central Government free from all encumbrances. On July 22, 2013, award was published under section 20-F of the 1989 Act by the Competent Authority-cum-Deputy District Collector (Land Acquisition) Surya Project, Dahanu declaring the compensation payable in respect of the acquired lands. On November 17, 2014, CRZ Clearance was granted by the Ministry of Environment and Forests (hereafter "the MoEF", for short). On March 2, 2015, this Court passed an order on Notice of Motion (L) No. 75 of 2015 in Public Interest Litigation No. 87 of 2006 granting permission with respect to cutting of mangroves. Thereafter, on May 25, 2015, a further notification bearing No. SO 1399E under section 20-A of the 1989 Act was issued recording the Central Government's intention to acquire more lands for a public purpose namely,

the said project. Vide this notification, acquisition of a total of 0.8240 hectares of the petitioners' property in Survey No. 51/3 at village Patilpada was proposed. This commenced the second tranche of acquisition of the petitioners' property. On June 2, 2015, an order was passed by Justice (Retd.) C. S. Dharmadhikari, Chairman of the Dahanu Taluka Environment Protection Authority (hereafter the DTEPA", for short) wherein detailed observations were made and findings rendered on the two alternatives that could be explored before holding, *inter alia*, that "after considering pros and cons of the whole matter, this Authority came to the conclusion that the detour alignment may be supported in the larger national interest and especially in the light of the promise given by DFCCIL Authorities that they shall abide by the conditions imposed and directions given by this Authority". DFCCIL, referred to in the preceding quotation, is the abbreviated form of M/s. Dedicated Freight Corridor Corporation of India Limited (respondent no.5), which is entrusted to complete the said project.

5. It appears on perusal of the writ petition that the petitioners had previously presented Writ Petition Nos. 4496

of 2014 and 4764 of 2016 before this Court.

6. In Writ Petition No. 4496 of 2014, the petitioners had (originally, and after amendment) prayed for the following relief: -

“(a) that this Hon’ble Court be pleased to issue an appropriate writ, order or direction in the nature of quo-warranto calling upon the Respondent Nos.2 and 5 to show authority under which they purport to act under the provisions of Chapter IVA of the Railways Act.

(b) that this Hon’ble Court be pleased to issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondent No.8 to forthwith withdraw their said Notice bearing No.SO 298 (E) under Section 20E dated 6th February, 2010 and bearing No. SO 1744(E) under Section 20A(1) of the Railways Act, 1989 dated 25th July, 2011 as being arbitrary and ultra-vires the Constitution of India or in the alternate a writ, order or direction striking down the said Notification being Exhibits “G” and “L” hereto;

(c) that this Hon’ble Court be pleased to declare that the Petitioners are entitled for provisions of the Constitution 44th Amendment Act by which Articles 19(1)(f) and 31 were deleted, violates the basic structure of the Constitution and is, therefore, liable to be struck down;

(C1) that this Hon’ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ or order or direction as this Hon’ble Court may deem fit and call for records of the proceedings before the Hon’ble Dahanu Taluka Environment Protection Authority and after

going into legality and validity of passing of orders dated 2nd June 2015 annexed as Exhibit "HH" hereto be pleased to quash and set aside the same;"

7. Insofar as Writ Petition No. 4764 of 2016 is concerned, the prayer clauses read as follows: -

"(a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for the proceedings in respect of issuance of the:

i) Notification dated 8th July 2015 issued by Respondent No.2;

ii) Order dated 2nd June 2015 passed by Respondent No.7.

iii) That the Order dated 5th January 2016 passed by the Respondent No.4 under Section 20-D(2) of Railways Act and the Notification dated 19th April 2016 and after going through the legality and validity of the same, be pleased to quash and set aside the same.

(b) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing Respondents to withdraw:

i) Notification dated 8th July 2015 issued by Respondent No.2;

ii) Order dated 2nd June 2015 passed by Respondent No.7."

8. Prayer (a) of Writ Petition No. 4496 of 2014 seeking a writ of quo warranto, we are minded to observe, was totally

misconceived. Further, we have failed to comprehend what the petitioners sought vide prayer (c) thereof. Also, the order dated 2nd June 2015 of the DTEPA, which we propose to refer at a later part of this judgment in more detail, was the subject matter of challenge in both the writ petitions although in terms of the provisions of section 16 of the National Green Tribunals Act, 2010 (hereafter "the NGT Act", for short), the same was an appealable order before the relevant Bench of the National Green Tribunal (hereafter "the NGT", for short).

9. It is not a rare experience that whenever a project in public interest is conceived and measures are taken for acquisition of lands, objections start flying in from all corners. The challenge posed by the petitioners was no different. It was claimed by them that no report on environment impact assessment had been obtained and, accordingly, interim relief by way of injunction was prayed. While hearing Writ Petition Nos. 4496 of 2014 and 4764 of 2016, a coordinate Bench of this Court by its order dated July 25, 2017 had called upon the respondents therein to file an additional affidavit, "*stating whether for the project under challenge they have taken an Environment Impact Assessment Report from the Ministry of*

Environment, New Delhi, within three weeks from today”.

Whilst adjourning the hearing of the writ petitions for three weeks, the coordinate Bench directed the parties to maintain *status quo* so far as the petitioners’ land is concerned.

10. In compliance with the said order, an additional affidavit was filed by the Chief Project Manager (North), Mumbai of DFCCCL dated August 14, 2017. To such an additional affidavit was annexed, and marked as Exhibit “D”, the final report of November 2011 on Environmental and Social Impact Assessment Study (ESIA) for Western Corridor of Dedicated Freight Corridor Project (Phase 2) for JNPT – Vadodara and Rewari - Dadri Sections (hereafter ‘the final ESIA report”, for short). The relevant part of the final ESIA report reads as follows: -

“iv) Dahanu Detour

The “Dahanu detour” of a total length approximately 12 km will be provided to by-pass dense built-up area around existing Suburban Dahanu Road Station of Indian Railways. Dahanu is a coastal city and a municipal council in Thane District on the western coast of Maharashtra State. It is located in 120-kilometer-north of Mumbai. The proposed detour alignment will start at Aagwan Village and end at Ambewadi Village in Dahanu Tehsil, Thane District. Other villages falling on the detour route are – Saravali, Patilpada,

Manfod, Junnarpada, Nandore, Dahanu, Kasar and Waki. The detour route will traverse through cultivated land, green area, small orchard farms, some marshy area, and rivulets (Photo 2.6.3). The proposed detour will also be likely to affect some existing private structures.

The alignment in Section 2 between Vaitarna and Bhilad will be mostly running parallel to the existing IR track on the east side except for a detour at Dahanu Road Station. The need for this detour route emanated mainly from social, environmental, and topographical constraints. Two alternatives were considered to the parallel alignment (Figure 2.6.4) to avoid present conditions along the existing railway line.

Alternative 1: Initially, it was planned to provide detour of length of 7 km around Dahanu Road Station due to the following two reasons.

Firstly, there exists a ROB near Dahanu Road Station which is difficult to re-construct as the area is fully occupied by residential buildings and the traffic on this ROB is so heavy that it is not possible to suspend traffic on ROB during re-construction period.

Secondly, as part of the augmentation of the Suburban services, a new goods shed has been constructed on the south east side of the Dahanu Station and in the north there will be EMU terminal with circulating area in the east. As a result, it will not be possible to have any access for the DFC tracks through the yard. Moreover, many new construction activities are on-going in the area adjoining the station and also along the existing western railway line before and after Dahanu Station.

Alternative 2: It was found that the above alternative had some limitations. The southern part of Dahanu Road Station or the eastern side along the existing railway line has swampy area and also surrounded by a number of salt pans. As a result, this part of area was found not suitable for providing DFC alignment as it would need extensive soil stabilization measures for proper foundation treatment to run heavy load DFC trains.

It was, therefore, decided to extend detour route on the southern end by another 5 km to avoid both swamp area and salt pans. Overall efforts were made to select appropriate alignment route for detour so as to minimally affect existing vegetation and habitation area in Dahanu but in view of the DFC design criteria, some area having matured trees will be affected. The project will compensate the loss of trees by adopting pre-afforestation measures which will be done in consultation with the Dahanu Taluka Environment Protection Authority (DTEPA)."

11. Writ Petition Nos. 4496 of 2014 and 4764 of 2016, on exchange of pleadings were, thereafter, listed for consideration before another coordinate Bench of this Court on August 26, 2019. The order passed on that day is important for the purpose of a decision on this writ petition and, accordingly, quoted hereunder: -

"1. Learned counsel for the Petitioners seeks leave to withdraw the two Writ Petitions with right reserving to file

fresh petitions making the same prayers but after incorporating the pleadings to show the cause of action.

2. Granting liberty to file fresh petitions, the present Writ Petitions are dismissed.

3. Interim protection already granted is extended for a week.”

(emphasis supplied)

12. It is in pursuance of the leave granted by the order dated August 26, 2019 that this writ petition has been presented.

13. What is evident from the aforesaid order dated August 26, 2019 is that the petitioners prayed for leave to withdraw the writ petitions and file fresh writ petitions with the same prayers and incorporating the pleadings to show the cause of action, and such prayer was granted by the Court. It requires no forensic study to reach the conclusion, based on what was submitted on behalf of the petitioners on August 26, 2019, that indeed there was no cause of action for seeking relief, as claimed in those two writ petitions, or else such a prayer would not have been made. It is unfortunate that such half-baked writ petitions stood pending with interim relief being granted and thereby stalled further progress of the said project in excess of two years.

14. In the passing, we may observe that it has also appeared to us to be a bit strange that after the writ petitions (with either insufficient or no pleadings as to cause of action) were dismissed, the petitioners became beneficiaries of an order passed by a coordinate Bench extending the interim protection, already granted, by a week with the result that without grant of any final relief on the writ petitions, the petitioners enjoyed interim protection from interference with their lands even for a public purpose for a further week to enable them present an appropriate writ petition. Law is well settled that interim protection is always granted in aid of the final relief. Since, finally, no relief had been granted to the petitioners and the pleadings in the writ petitions were considered not to have shown the cause of action, we are afraid that paragraph 3 of the order dated August 26, 2019 was in the teeth of the decision of the Supreme Court reported in AIR 1952 SC 12 [**State of Orissa Vs. Madan Gopal Rungta**].

15. Be that as it may, the petitioners having been granted leave to invoke the writ jurisdiction afresh with the same prayers, a comparative study of the prayers of the petitioners

in Writ Petition Nos. 4496 of 2014 and 4764 of 2016 on the one hand and this writ petition on the other would reveal that the petitioners have included fresh prayers in the latter for which no leave had been obtained from the Court. This is a factor which we need to bear in mind while dealing with such prayers, which the petitioners have sneaked in quite clandestinely.

16. To complete the narration of facts, we notice that the present writ petition was taken up for consideration by the same coordinate Bench, which had passed the order dated August 26, 2019. The first order passed on it on October 17, 2019 reads as follows: -

“1. With reference to Exhibit S it emerges that there exists two rival view points concerning the freight corridor. The first view point is to raise the height of the Road Over Bridge so that the freight corridor could be laid parallel to the existing railway line and the increased height of the Road Over Bridge would facilitate movement of the goods trains transporting containers. The second option is to deviate from the existing railway line and lay the corridor after acquiring land.

2. Learned Counsel for the Petitioners states that the Petitioners are not in possession of any documents showing an application of mind by the railway board for the two options.

3. Issue notice.
4. Learned Counsel as above accepts notice for R-1, R-2, R-3, R-4, R-5, R-6 and R-8.
5. R-7 be served with the notice returnable for 18.11.2019.
6. Status-quo qua the petitioners' land shall be maintained till the next date of hearing."

(emphasis supplied)

17. The interim relief has been continuing since then, as a consequence whereof the respondents are unable to proceed with the said project despite the said properties of the petitioners having been acquired. Whether such acquisition is in accordance with law and whether the statutory clearances for the said project have been obtained, are the questions that presently fall for our consideration.

18. The writ petition was listed before us on September 10, 2020, when none appeared for the petitioners. We had de-listed the writ petition for the time being; however, it was listed before us once again upon being mentioned by Mr. Anil Singh, learned Additional Solicitor General, representing the respondents. According to him, the interim order passed on October 17, 2019 has been operating to the respondents' utter detriment and prejudice and, therefore, a prayer was

made for taking up the writ petition for final hearing. It is upon such request being made that we directed listing of the writ petition. We have since heard Mr. Narula, learned counsel for the petitioners and Mr. Singh.

19. Before we note the contentions raised by Mr. Narula, we propose to deal with a preliminary submission of Mr. Singh seeking immediate vacation of the interim relief granted by the order dated 17th October 2019. At the outset, Mr. Singh invited our attention to Exhibit "S", referred to in the first line of the said order. Exhibit "S" is a 'Technical Feasibility Report on Parallel Alignment of Dedicated Freight Corridor through Dahanu Town' dated 2nd February 2013 prepared by a retired officer of the Central Railway. According to Mr. Singh, it is a private report obtained by the petitioners and the same could not have formed the basis of interim relief being granted to them. It was also the further submission of Mr. Singh that although the order dated 17th October 2019 records the inability of the learned counsel for the petitioners to show that they were in possession of any documents showing application of mind by the Railway Board for the two options referred to in paragraph 1 of the order, the respondents suffered the

interim order of *status quo* which has been continuing till date.

20. We need not be too critical of paragraph 2 of the order dated 17th October 2019 since it seems to be an inadvertent error in printing the word “petitioners” instead of “respondents”, who were duly represented. However, we find substance in the submission of Mr. Singh that even at the ad-interim stage, reference to Exhibit “S” was absolutely unnecessary. Mr. Singh has drawn our attention to a detailed order dated 2nd June 2015 of the Chairman of the DTEPA to contend that such authority was constituted by the Central Government in deference to the order dated 31st October 1996 passed by the Supreme Court in Writ Petition (C) No. 231 of 1994 [**Bittu Sehgal & Anr. Vs. Union of India & Ors.**] and also that such order was passed upon consideration of all options as well as all the relevant aspects of the matter. *Prima facie* impressed with such a contention, we had called upon Mr. Narula to respond so that the writ petition could be taken up for final hearing instead of considering Mr. Singh’s prayer for vacation of the interim order directing maintenance of *status quo* as regards the petitioners’ properties.

21. We heard Mr. Narula at some length on August 26, 2021 on the merits of the petitioners' claims. He was heard once again on September 1, 2021. The points argued by Mr. Narula in support of the relief claimed in the writ petition are as follows: -

- (i) Acquisition of the properties of the petitioners for the purpose of the freight corridor is contrary to the provisions of the 1989 Act;
- (ii) Notification dated June 20, 1991, as amended on February 24, 1999, issued by the Ministry of Environment and Forests, Government of India (hereafter "the MoEF notification", for short), has been observed in the breach in as much as no change of user, as contemplated therein, has been obtained till date;
- (iii) The freight corridor would pass through the green area and being included under "sensitive sectors" of the April 2010 report of the Japan International Cooperation Agency (hereinafter "JICA", for short) laying down guidelines for environmental and social considerations, any activity of construction for such

corridor would severely impact the environment and would be hazardous for the population of such area;

(iv) Consideration of the impact of construction activities have been totally ignored by the concerned authority; and

(v) Whatever permission has been obtained is *ex post facto* after damage has been caused and the same is not in the best interest of the environment.

22. We have considered the arguments advanced by Mr. Narula, while elaborating on the aforesaid points, with the attention the same deserve; however, we regret recording that none of the points has impressed us. In fact, at one point of time in course of hearing on August 26, 2021, we had observed that the petitioners' remedy, if at all, touching environmental issues lay before the NGT and that the NGT not having been approached within the period of limitation specified in section 16 of the NGT Act, 2010, the writ petition itself may not be maintainable. Mr. Narula had reacted by contending that acquisition of the petitioners' properties contrary to the 1989 Act could not have been a subject matter of challenge before the NGT in view of the decision of a

Division Bench of this Court in Writ Petition No. 594 of 2015 dated June 6, 2016 [**Windsor Realty Pvt. Ltd. vs. Secretary, Ministry of Environment and Forest & Ors.**] and, therefore, the writ petition was well-nigh maintainable. Mr. Narula, in support of his submissions, also relied on the decisions reported in (2019) 15 SCC 401 [**Hanuman Laxman Aroskar vs. Union of India**], (1997) 3 SCC 261 [**L. Chandra Kumar vs. Union of India & Ors.**] and (1998) 8 SCC 1 [**Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.**].

23. Accepting Mr. Narula's argument that acquisition of properties under Chapter IVA of the 1989 Act cannot be a subject matter of consideration by the NGT and, thus, raised before the NGT, we proceeded to examine the contentions that were advanced on its own merits.

24. We have noticed hereinbefore that the petitioners were granted leave to invoke the jurisdiction of the writ court with a fresh writ petition but containing the same prayers based on Mr. Narula's prayer. Prayer (a) of the present writ petition was not there either in Writ Petition No. 4496 of 2014 or in Writ Petition No. 4764 of 2016. We, therefore, discern an attempt

on the part of the petitioners to raise an issue not entertainable by the Tribunal. In any event, since the jurisdiction of the writ court has been invoked resting on the leave granted by the order dated August 26, 2019, it is considered inappropriate that the petitioners should have presented this writ petition with a prayer which was not there in the earlier writ petitions. The petitioners could have included all the prayers earlier made and then sought for amendment of the prayers if, at all, they wished to have a decision on prayer (a). That would have been fair on their part. In any event, we reject prayer (a) not on the ground of technicality but on the ground that no argument in relation thereto has been advanced on behalf of the petitioners. It is ordered accordingly.

25. Next, we proceed to deal with the first point raised by Mr. Narula of acquisition of lands contrary to the provisions of Chapter IV-A of the 1989 Act. Drawing our attention to section 20-B, Mr. Narula sought to contend that though the petitioners had objected to the proposed acquisition of lands for the named public purpose in the notification issued under section 20-A thereof, no order was passed disposing of such

objection either way as mandated by section 20-D(2). Being in breach of the statutory provisions, the acquisition proceedings stand vitiated and must be declared to be void *qua* the petitioners.

26. Section 20-D(1) ordains that any objection to a notification issued under section 20-A has to be filed within thirty days. The relevant notification under section 20-A seeking to acquire, *inter alia*, the said properties of the petitioners in the first tranche was issued on July 25, 2011. The petitioners were, thus, required to object within thirty days thereof. Our attention has been drawn by Mr. Narula to Exhibit "J", being the objection of the petitioners dated December 7, 2011. We put it across to Mr. Narula that the objection was time-barred. His response was that even then, an order disposing of the objection as time-barred was required to be passed.

27. The petitioners not having objected to acquisition of their properties within thirty days of July 25, 2011, we do not consider that there was any obligation on the part of the relevant officer/authority to dispose of the petitioners' objection by a formal order that it was time-barred. The duty

to allow or disallow an objection, as required by section 20-D(2), would spring in if the objection is otherwise free from defect and deserves a consideration on merits. Receipt of a time-barred objection, without any provision for condonation of delay, would have to be regarded as if "no objection" were received within the stipulated time. Since acquisition is intended for a public purpose, it is axiomatic that defect free objections are entertained at the earliest and disposed of either way. If the law is not so read and interpreted, the proper officer/authority would have to spend much of his time recording formal orders that the objections are not worthy of consideration since they are time-barred. No exception can, therefore, be taken by the petitioners by contending that their objection to the notification dated 25th July, 2011 was neither allowed nor disallowed as per the requirements of the statute.

28. There is one other aspect that needs to be taken note of in this regard. What is ingrained in section 20-D(2) about the right to be heard on the objection against the proposed acquisition and to receive an order, if the objection is disallowed, is the insistence of the legislature for compliance with a facet of the natural justice principles. If a person

affected by the proposed acquisition lodges an objection which, according to him, is within time but the same is not considered by the proper officer/authority based on his perception that such objection is time-barred and no hearing is given and no formal order disallowing such objection is received by him to such effect, the remedy of the affected person (should he consider himself aggrieved by the omission or failure or neglect to discharge the statutory duty) is to immediately subject the final notification under section 20-E of the 1989 Act (as and when it is published, informing the public at large, that the lands specified therein have been acquired for a public purpose and vests in the Central Government free from all encumbrances) to a challenge before the competent court. This would enable the court to pronounce on the validity of the challenge as to whether the objection was time-barred or not. If the challenge is upheld, that could necessarily lead to quashing of the notification limited to the affected/aggrieved person's lands. This interpretation, in our view, would be in furtherance of balancing the competing interests of protecting one's property from unlawful/wrongful acquisition and the need to acquire

private property for a public purpose. After all, the State's right of eminent domain cannot be ignored and subject to compliance of all safeguards for acquisition of property, the former interest has to yield to the latter.

29. What we find in the present case is that initiation of the process of acquisition by the notification dated 25th July 2011 under section 20-A of the 1989 Act terminated upon publication of the final notification under section 20-E thereof on 23rd July 2012. Such notification dated 23rd July 2012 has never been challenged by the petitioners at any point of time, either in the earlier round or the present round of litigation. With the final notification dated 23rd July 2012 remaining unchallenged, the same has attained finality. Even if the petitioners are right in their contention that the objection was lodged within time, they must be held to have waived their statutory rights of being heard and receiving a formal order passed on their objection. We draw guidance in this respect from the decision of the Supreme Court reported in (1994) 4 SCC 422 (**Krishan Lal Vs. State of Jammu & Kashmir**). The requirement of following natural justice principles, as in section 20-D(2) of the 1989 Act, is definitely intended to sub-

serve the interest of the land owner. A requirement imposed by the legislature for the benefit of an individual, as distinguished from a requirement imposed for furtherance of a public purpose, can be waived is the law laid down in the aforesaid decision. On facts and in the circumstances, we hold that the omission on the part of the petitioners to challenge the final notification dated 23rd July 2012 has to be regarded as a waiver of their right to have a hearing on their objection and a formal order passed thereon either way and is, thus, fatal; which leaves us with no other option but to reject the contention of violation of the provisions of the 1989 Act, insofar as the first tranche of acquisition of the petitioners' properties, as thoroughly misconceived.

30. At the risk of repetition, we also hold that the prayer of the petitioners for declaring Chapter IV-A of the 1989 Act and in particular sections 20-F and 20-G, insofar as they are inconsistent with or contrary to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as arbitrary and illegal, is a mere camouflage for crossing the threshold of this Court to have a decision on merits avoiding the forum under

the NGT Act, inasmuch as, during the course of hearing, absolutely no argument has been advanced by Mr. Narula in support of prayer (a).

31. Moving on to consideration of the next limb of Mr. Narula's contention, we record having been taken through the MoEF notification dated 20th June 1991, as amended on 24th February 1999, by Mr. Narula. The relevant portions thereof imposing restriction, on which emphasis has been laid by him, reads as follows:

"In exercise of powers conferred by clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, the Central Government, in consultation with the Government of Maharashtra, after considering the need for protecting the ecologically sensitive Dahanu Taluka, and to ensure that the development activities are consistent with principles of environmental protection and conservation, hereby declare Dahanu Taluka, District Thane (Maharashtra) as an ecologically fragile area and to impose restrictions on the setting up of industries which have detrimental effect on the environment.

The location for siting of industries and industrial units shall be in conformity with the Guidelines given in the Annexure.

However, the industrial projects already approved

or in existence in the said Taluka before the date of issue of this notification, will not be affected by this notification. The existing industries shall have to conform to the statutory standards.

The Government of Maharashtra will prepare a Master Plan or Regional Plan for the Taluka based on the existing land use of Dahanu Taluka within a period of 1 year from the date of this notification and get the plan approved by the Ministry of Environment & Forests. This Master Plan or Regional Plan will clearly demarcate all the existing green areas, orchards, tribal areas and other environmentally sensitive areas. No change of existing land use will be permitted for such areas in the Master Plan or Regional Plan for the Taluka. The total area within the Dahanu Taluka for location of permissible industries will be restricted to a maximum of 500 acres within the industrial areas earmarked in the Master Plan. The industrial units will be located at sites that are environmentally acceptable."

What we gather is that the MoEF notification imposes restrictions on the setting up of industries which have detrimental effect on the environment. Acquisition of lands for the project work in question, which have been acquired in terms of the provisions of Chapter IV-A of the 1989 Act, are not proposed to be used for industrial purpose. That apart, it

has not been shown to us what the Master Plan or Regional Plan is, in respect whereof "no change of existing land use will be permitted". In the absence of the requisite pleading supported with documentary evidence in support thereof, it would be improper on our part to examine the point raised by Mr. Narula. We may profitably rely on the decision of the Supreme Court reported in (1988) 4 SCC 534 [**Bharat Singh vs. State of Haryana**] in this regard. In our considered opinion, to support their point, the petitioners have made no attempt to substantiate it by pleading relevant facts and by producing relevant evidence. There being no material in the writ petition to hold that the subject acquisition offends the notification dated 20th June 1991, as amended on 24th February 1999, we reject the contention as without substance.

32. The other submission of Mr. Narula that construction activities within green area would cause health hazard as well as affect the environment adversely, are not built on any sure foundation of facts. The report of JICA does not advance the case of the petitioners at all. On the contrary, there is the final ESIA report which assesses the impact of the public project on

the environment. Notably, the final ESIA report though placed on record of the earlier writ proceedings, the petitioners did not challenge its contents by amending the relevant writ petition although once amendment, as prayed, was allowed. In the absence of any such challenge, the petitioners are precluded from raising any point in the present case regarding the adverse impact, if any, on environment as a result of the said public project.

33. The final contention of the petitioners is that *ex post-facto* sanction has been obtained by the respondents after damage to the environment has been caused. Inherent in this contention is that sanction has been obtained, albeit *ex post facto*. We have no hesitation to hold this contention to be misconceived. From the factual narrative, it is quite clear that all requisite permission/clearances have been applied for and obtained and there is no report of worth which could be relied upon to hold that the said project is being taken forward upon damaging the environment. Even otherwise, no illegality has been demonstrated by reference to any relevant provision of law.

34. Now, turning to the prayers, we record that as regards prayer (b), absolutely no effort was made to persuade us set aside the order dated 2 June 2015 of the DTEPA by showing any infirmity therein. We, therefore, reject the same.

35. Insofar as prayers (c) and (d) are concerned, the challenge to the notices dated February 6, 2010 and July 25, 2011 ought to fail not only on the ground of delay but also for reasons discussed hereinbefore. Although the petitioners have referred to a notification dated 8th July 2015 issued under section 20-A of the 1989 Act, we do not see a complete copy of the notification being part of the writ petition. What has been annexed at Exhibit-II (page 234 of the petition) is certain details of lands. It also does not appear from paragraph 6(mm) of the writ petition that appropriate pleadings have been made to question such notification dated 8th July 2015 issued by the respondents.

36. The freight corridor in terms of the order passed by the DTEPA is required to proceed along a 12.5 km detour alignment and such work is stalled because of the interim order passed by this Court directing maintenance of status quo *qua* the petitioners' said properties. Approximately, 2.5

hectares lands of the petitioners would be affected thereby for which they are entitled to due compensation.

37. Reliance placed by Mr. Singh on the decision of the Supreme Court dated 23rd July, 2018 in W.P. (C) No.1153 of 2017 [**Mazdoor Kisan Shakti Sangathan vs. The Union of India & Anr.**] is apt, wherein it has been held as under: -

“58. In the aforesaid context, it would be pertinent to point out that there may be situations where conflict may arise between two fundamental rights, intra fundamental rights and, in certain peculiar circumstances, in respect of some person one fundamental right enjoyed by him may come in conflict with the other fundamental right guaranteed to him. In all such situations, the Court has to examine as to where lies the larger public interest while balancing the two conflicting rights. It is the paramount collective interest which would ultimately prevail.”

(emphasis supplied)

38. After the said project has progressed to such an extent that an interim order passed on this writ petition stalls its further progress, we have no doubt in our mind that balancing of the competing interests would not warrant continuation of such order in the larger public interest.

39. We are also reminded at this stage of the caution sounded by the Supreme Court in its decision reported in (2000) 2 SCC 617 [**Air India Ltd. Vs. Cochin International Airport Ltd.**]. Although the decision was rendered in relation to award of a contract, the passage therefrom that we wish to reproduce hereunder is instructive on the point of interference in matters of public interest. It reads:

“7. ... the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.”

Tested on the touchstone of the aforesaid guidelines and in the light of the pleadings and the materials placed on record, we are satisfied that in a case of the present nature, where public interest is of paramount consideration and the petitioner has failed to set up a cast-iron case before the

Court for its interference, grant of interim relief should not have been casual, without consideration of all relevant factors, leading to holding up an important public project.

40. That apart, Mr. Singh has brought to our notice proceedings that have been initiated by the petitioners before the appropriate forum challenging the quantum of compensation awarded and the proceedings before the appropriate forum having terminated, proceedings are now pending before this Court in some other jurisdiction. The lack of candour on the part of the petitioners is evident.

41. The decisions cited by Mr. Narula have been duly considered. Since no flaw either in the final ESIA report or infirmity qua the order dated June 2, 2015 of the DTEPA have been shown to us, the decision in **Hanuman Laxman Aroskar** (supra) does not advance the cause of the petitioners.

42. The law laid down by the Supreme Court in **L. Chandra Kumar** (supra) and **Whirlpool Corporation** (supra) are well known. Since we have decided the writ petition on merits, further reference to such decisions is considered unnecessary.

43. We, thus, see no reason to uphold any of the contentions raised by Mr. Narula. The writ petition is devoid of merit and, accordingly, stands dismissed. Interim order stands vacated, forthwith. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

44. Later, Ms. Choudhary, learned advocate for the petitioners, seeks stay of operation of the order. The prayer is considered and rejected.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)