

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NOS. 5351/2019 AND 5492/2019

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WRIT PETITION NOS. 5351/2019

PETITIONER :- The Agricultural Produce Market Committee,
Pandit Jawaharlal Nehru Market Yard,
Kalmana, Nagpur. Through its Secretary.

-versus-

- RESPONDENTS :-**
1. The State of Maharashtra,
Department of Urban Development and Town
Planning, Mantralaya, Annex. Mumbai.
Through its Secretary.
 2. The Collector, Nagpur.
 3. The Deputy Collector, Land Acquisition (General)
Nagpur.
 4. Shri Narayan s/o Laxmanrao Nakade,
Aged : Major, Occupation : Agriculturist.
 5. Shri Waman s/o Laxmanrao Nakade,
Aged : Major, Occupation : Agriculturist.
 6. Mrs. Tara Sopan Makde
(Daughter of Laxman Nakade)
Aged : Major, Occupation : Agriculturist.

Nos. 4 to 6 through their duly constituted Power
of Attorney and respondent no.7 herein
Shri Udaykumar s/o. Ramniwasji Vyas,
R/o. 226 Vijaya Bhavan, West High Court Road,
Nagpur.
 7. Shri Udaykumar s/o Ramniwasji Vyas,
Aged : Major, Occupation : Agriculturist.
R/o. 226 Vijaya Bhavan, West High Court Road,
Nagpur.
 8. Shri Jagdish s/o Narayanrao Karemore,
Aged : Major, Occupation : Business and
Agriculturist.
Dharnidhar Palace, Bajaj Nagar, Nagpur.

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Shri S.P.Dharmadhikari, Senior Advocate with Shri Vandan M. Gadkari, Advocate for petitioner.

Shri Amit Chutke, Assistant Government Pleader for respondent nos. 1 to 3.

Shri M.G.Bhangde, Senior Advocate with Shri A.M.Qazi, Advocate for respondent nos. 7 and 8.

WRIT PETITION NO.5492/2019

- PETITIONERS** :-
1. Udaykumar s/o Ramniwasji Vyas,
Aged : about 60 years, Occupation : Agriculturist.
R/o. 226 Vijaya Bhavan, West High Court Road,
Nagpur.
 2. Jagdish s/o Narayanrao Karemore,
Aged : 68 years, Occupation : Business and
Agriculturist.
Dharnidhar Palace, Bajaj Nagar, Nagpur.

-versus-

- RESPONDENTS** :-
1. The State of Maharashtra,
through the Secretary, Urban Development and
Town Planning Department, Mantralaya, Mumbai.
 2. The Collector, Nagpur.
 3. The Deputy Collector and the Special Land
Acquisition Officer,(General) Nagpur.
 4. The Agricultural Produce Market Committee,
Through its Secretary.
Kalmana, Nagpur.

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Shri M.G.Bhangde, Senior Advocate with Shri A.M.Qazi, Advocate for petitioners.

Shri Amit Chutke, Assistant Government Pleader for respondent nos. 1 to 3.

Shri S.P.Dharmadhikari, Senior Advocate with Shri Vandan M. Gadkari, for respondent no.4.

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CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

Date on which the arguments were heard : 16.09.2021.

Date on which the judgment is pronounced : 28.10.2021

Judgment : (Per A.S.Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties in both the writ petitions at length.

2. Land bearing Survey No.94 at Chikhali, Taluka and District Nagpur admeasuring about 9.56 acres which is owned by the petitioners in Writ Petition No.5492/2019-land owners is the subject matter of the present proceedings. In 1981 the Nagpur Improvement Trust agreed to allot 126 acres of land towards Kalmana Market Project to the Agricultural Produce Market Committee, Nagpur which is the petitioner in Writ Petition No.5351/2019-Market Committee. From the total area of about 126 acres, the Market Committee received possession of 110.88 acres of land while the possession of the remaining land admeasuring 15.27 acres remained to be delivered. According to the Market Committee, a proposal dated 26.07.2003 was given by the land owners to the Market Committee by which the said land was offered to the Market Committee at the rate of Rs. Five lakhs per acre. Resolution to that effect was passed by the Market Committee resolving that land admeasuring 9.56 acres would be acquired at Rs. Five lakhs per acre and 5.81 acres land would be permitted to be retained by the land owners. On 28.06.2005 a joint application was made by the Market Committee as well as the land owners to the Land Acquisition Officer for

acquiring the aforesaid land. It appears that subsequently on an Administrator taking charge of the Market Committee, nothing further progressed. Ultimately on 04.05.2012 the Collector informed the Market Committee of the passing of provisional award and called upon the Market Committee to deposit a sum of Rs.12,08,40,720/- towards compensation for the said land. The aforesaid communication gave rise to Writ Petition No.503/2013 that was filed by the Market Committee challenging that communication with a prayer to make an award in terms of the mutual agreement between the parties. By the judgment dated 05.12.2015 this Court turned down the challenge as raised to the passing of the provisional award after noticing that the Market Committee had proceeded to deny the title of the land owners in the enquiry under Section 5A of the Land Acquisition Act, 1894 (for short, 'the Act of 1894'). That judgment dated 05.12.2015 in Writ Petition No.503/2013 was challenged by the Market Committee before the Honourable Supreme Court by filing Special Leave Petition No. 17353/2016. The said Special Leave Petition came to be dismissed on 03.10.2016 by clarifying that while fixing the value of the land, the benefit that was given to the State in respect of 3.32 acres on the main road would be considered along with all other relevant aspects in case there was acquisition. Review Petition filed by the Market Committee was also dismissed on 20.04.2017.

3. On the dismissal of the Special Leave Petition the land owners requested the Land Acquisition Officer to value the land as per provisions of

the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'). It was submitted that the land owners were willing to offer the land to the Market Committee under the Act of 2013. In that regard the Land Acquisition Officer called upon the Secretary of the Market Committee to submit a fresh proposal if it was interested in the land in question or to take steps as per the policy of the State Government dated 12.05.2015 to acquire the land by private negotiations. This was followed by two reminders dated 09.11.2016 and 23.11.2016. The Information Officer from the Land Acquisition Office informed the land owners on 19.01.2017 that as the Market Committee had not deposited the requisite amount, the proceedings had lapsed. It was also informed that no acquisition proceedings were pending with the said Authority. In the meanwhile, the land owners on 19.06.2017 issued a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966') to the Market Committee in which it was stated that the land in question be acquired within the time stipulated in the Act of 1966 failing which it would be deemed that the reservation with regard to the user of land for the Market Committee would lapse. The Administrator of the Market Committee on 20.03.2018 in reply to various communications issued by the Land Acquisition Officer requested the said Authority to take steps as per the directions issued by the Hon'ble Supreme Court and pass a fresh provisional award by following the prescribed procedure. In the light of the aforesaid

communication, the Land Acquisition Officer on 12.04.2018 informed the Administrator of the Market Committee that despite various requests the requisite amount towards acquiring the land in question was not deposited by it as a result of which the award could not be passed. Considering all these aspects the Land Acquisition officer declared that in view of the provisions of Section 24(2) of the Act of 2013, the acquisition proceedings had lapsed. It is this communication dated 12.04.2018 that has been challenged by the Market Committee in Writ Petition No.5351/2019. Prayer clauses (i) and (ii) being relevant for the present purpose, the same are reproduced hereunder :

i) By writ of mandamus or any other suitable writ, order or direction quash and set aside the decision/communication dated 12.04.2018 passed/issued by the Deputy Collector, Land Acquisition (General), Nagpur-respondent no.3(Annexure-L) in respect of land acquisition proceedings bearing No.1/A-65/2003-04 of the land bearing Khasra No.94, Mouza : Chikhali (Deosthan), District Nagpur;

ii) By writ of mandamus or any other suitable writ, order or direction be further pleased to direct the respondent – Deputy Collector, Land Acquisition (General), Nagpur to continue the land acquisition proceedings bearing No.1/A-65/2003-04 in respect of land bearing Khasra No.94, Mouza : Chikhali (Deosthan), District Nagpur from drawing a fresh provisions/draft award in compliance of the directions dated 03.10.2016 issued by the Hon'ble Supreme Court in SLP No.17353 of 2016 and complete the acquisition proceedings within stipulated period, preferably within a period of six months.”

4. The land owners consequent to the issuance of notice under Section 127 of the Act of 1966 have preferred Writ Petition No.5492/2019 seeking declaration that the reservation of the land in question had lapsed under Section 127 of the Act of 1966. Alternate prayers have also been made in the writ petition. Prayer clauses (i) to (iii) being relevant are reproduced hereunder:

i) Hold and declare that the reservation of the land of the petitioners bearing survey number 94, Mouza Chikhli, Tahsil-District Nagpur for APMC, Nagpur the respondent no.4, A.P.M.C., Nagpur has lapsed under Section 127 of the MRTP Act, 1966 as none of the respondents have taken the steps contemplated by the said provision for a period of two years despite service of notice dated 19.06.2017 by the petitioners and be further pleased to direct the respondent no.1-State of Maharashtra to issue notification in the official Gazette as required by Section 127(2) of the MRTP Act, 1966 forthwith;

ii) In the alternate and without prejudice to the above, hold and declare that the land acquisition proceedings, if any, pending in respect of the land of the petitioners has lapsed on account of inordinate and unreasonable delay of 15 years in completing the same;

iii) In the alternate and without prejudice to the above, direct the respondent nos. 1 to 3 to determine the compensation payable to the petitioners in accordance with the provisions of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" on the basis of market value as on the date of determination of compensation or at-least as on 01.01.2014 the date on which Act of 2013 came into force and be further pleased to direct the respondent no.4 -APMC to pay the same to the petitioners."

In short, it is the case of the land owners that no steps having been taken by the Market Committee for a considerable period of almost fifteen years for

acquiring the land in question, the land acquisition proceedings have lapsed on account of such inordinate delay which was not reasonable. In the matter of determination of compensation it is alternatively prayed that the same be determined on the basis of market value as on 01.01.2014 when the Act of 2013 came into force.

5. Shri S.P.Dharmadhikari, learned Senior Advocate for the Market Committee in support of the prayers made in Writ Petition No.5351/2019 submitted that in view of the law laid down by the Hon'ble Supreme Court in ***Girnar Traders (3) Vs. State of Maharashtra and ors. (2011) 3 SCC 1***, the provisions of Section 24(2) of the Act of 2013 could not have been relied upon for declaring the acquisition proceedings to have lapsed as was done by the Land Acquisition Officer under the impugned communication dated 12.04.2018. The matter being governed by the Act of 1966 pursuant to the Notification issued in that regard on 22.11.2007 and the Act of 1966 being a complete Code in itself, there was no basis to import the provisions of Section 24(2) of the Act of 2013 in this regard. That the provisions of Section 24(2) of the Act of 2013 would not apply to acquisition proceedings initiated in terms of Sections 125 to 127 of the Act of 1966 was clear from the judgment of the Full Bench in ***Mehtab Laiq Ahmed Shaikh and anr. Vs. State of Maharashtra and ors. 2017 (6) Mh.L.J. 408***. The Notification under Section 126 of the Act of 1966 having been issued, there was no question of the acquisition proceedings lapsing thereafter. Even the aspect of delay in completion of acquisition proceedings was taken care of by the Hon'ble

Supreme Court in its decision in *Girnar-(3)* (supra). It was urged that since beginning the Market Committee was interested in acquiring the land in question with the object of completing the project undertaken by it. It was true that the declaration of the provisional award was challenged by the Market Committee by filing Writ Petition No.503/2012 and thereafter the matter was pursued before the Hon'ble Supreme Court. Those proceedings having attained finality, it would not mean that the Market Committee was not interested in acquiring the land in question. It was further submitted that the insistence on the part of the Land Acquisition Officer to deposit part of the compensation before further steps for acquiring the land could be taken was uncalled for and without there being any provision in that regard in the Act of 1966. It was on account of such insistence that time was consumed for which the grievance was now being made by the land owners. Drawing attention to the object behind reserving the land for development under the provisions of the Act of 1966 it was submitted that with a view to ensure that such developmental activities are not hampered, no provisions for lapsing of the acquisition proceedings was made in the Act of 1966. Attention was invited to the decisions in ***Hanumanrao Morbaji Gudadhe and ors. Vs. State of Maharashtra and ors. 2015 (6) Mh.L.J. 127*** and ***Mehtab Laiq Ahmed Shaikh*** (supra) in that regard. It was thus submitted that the communication dated 12.04.2018 was liable to be set aside being bad in law and thereafter a direction ought to be issued to the Land Acquisition Officer to complete the acquisition proceedings by drawing a fresh award in the

light of the directions issued by the Hon'ble Supreme Court within a stipulated time.

6. Shri M.G.Bhangde, learned Senior Advocate for the land owners on the other hand opposed the aforesaid submissions by contending that the challenge as raised by the Market Committee to the communication dated 12.04.2018 was without any substance. He submitted that even before issuance of the said communication dated 12.04.2018, the earlier communication dated 21.10.2016 issued by the Land Acquisition Officer calling upon the Market Committee to submit a fresh proposal or to acquire the land by mutual agreement gave cause of action to the Market Committee to challenge the same. Inviting attention to paragraph 12 of the writ petition preferred by the Market Committee it was urged that though the Market Committee was of the view that the communication dated 21.10.2016 was illegal, no steps to challenge the same were taken. Similarly, the stand of the Land Acquisition Officer as communicated to the land owners on 19.01.2017 that no acquisition proceedings were pending with the said Authority in view of failure on the part of the Market Committee in depositing the requisite amount of compensation also gave a cause of action to the Market Committee. However without seeking any legal redress against these two communications, the Market Committee belatedly sought to challenge the communication dated 12.04.2018. In fact this communication merely reiterated the stand of the Land Acquisition Officer which was made clear on 21.10.2016 and 19.01.2017. Such conduct

on the part of the Market Committee dis-entitled it to any relief whatsoever. Moreover, on 02.01.2018 the land owners had sought documents from the Market Committee to enable them to submit a plan for a private market building but the Market Committee approached this Court only on 18.06.2019 quite belatedly. The learned Senior Advocate placed reliance on the decisions in *Union of India and anr. Vs. S.S.Kothiyal and ors. (1998) 8 SCC 682*, *Udai Shankar Awasthi Vs. State of Uttar Pradesh and anr. (2013) 2 SCC 435* and *State of Tripura and ors. Vs. Arabinda Chakraborty and ors. (2014) 6 SCC 460* in this regard. A party aggrieved was required to seek legal redress when the cause of action arose for the first time and it could not sit by and let things pass. The Market Committee had in fact acquiesced to the situation. Reliance in this was placed on the decisions in *U.P.Jal Nigam and anr. Vs. Jaswant Singh and anr. (2006) 11 SCC 464* and *Urmila Roy and ors. Vs. Bengal Peerless Housing Development Company Limited and ors. (2009) 5 SCC 242*.

7. Inviting attention to the Circular dated 23.02.2012 issued by the State Government, it was submitted that clear directions were issued by the State Government that alongwith the proposal for acquiring any land, care should be taken that necessary funds for that purpose are available. The time framed mentioned therein for depositing compensation at various stages was also indicated. Clear directions were also issued that if such funds were not available, no further steps towards acquisition be taken by the Land Acquisition Authorities. Reference was also made to the

Notification dated 01.08.2016 by which proviso was added to Rule 14(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014 (for short, the Rules of 2014) prescribing various stages of deposit of compensation while acquiring reserved places under the Act of 1966. The communication dated 12.04.2018 was therefore issued in the light of the aforesaid Circular. However this Circular was not challenged by the Market Committee and therefore there was no legal basis for challenging the communication dated 12.04.2018. Inviting attention to the communication dated 31.05.2012 issued by the Land Acquisition Officer to the Market Committee on the same lines to deposit the requisite amount to facilitate the acquisition proceedings, it was submitted that the said communication was not disturbed by this Court while deciding Writ Petition No.503/2012. The Market Committee could not under the garb of the order passed by the Hon'ble Supreme Court contend that its hands were tied unless steps were taken by the Land Acquisition Officer as directed therein. A direction to take into account the benefit in respect of land admeasuring 3.32 acres was only if the final award was to be passed and unless the Market Committee complied with the directions issued by the Land Acquisition Officer by depositing the amount of compensation, the Land Acquisition Officer was not in a position to proceed further. As regards the decision in *Girnar-(3)* (supra), it was submitted that even if Section 11A of the Act of 1894 was held inapplicable to proceedings under the Act of 1966, the ratio of that decision would not cover those cases

where there was unreasonable delay in acquiring the land in question. He submitted that the Market Committee ought to have acted within a reasonable time for acquiring the land in question. The inaction on the part of the Market Committee in that regard indicated its unreasonable approach. The time from 2003-04 till 2021 having passed by, it was clear that said period was more than reasonable for acquiring the land in question. Reference in this regard was made to the decisions ***Godrej and Boyce Manufacturing Company Limited and anr. Vs. State of Maharashtra and ors. (2014) 3 SCC 430*** and ***K.B.Lingaraju s/o Bairappa and anr. Vs. The State of Karnataka and anr. (Writ Petition Nos.34318-322/2016 and connected petition decided on 17th August, 2017 , High Court of Karnataka at Bengaluru).***

It was then submitted that the impugned communication dated 12.04.2018 was in two parts. Even if it was assumed that the acquisition proceedings would not lapse by applying the provisions of Section 24(2) of the Act of 2013, the other part of the communication indicating failure on the part of the Market Committee in depositing the requisite amount of compensation being factually and legally correct ought to be maintained. In other words, if after striking out that part of the order which was found to be bad in law, the portion remaining in that order was found to be legal and valid, such order as regards the valid part could be maintained. Reliance in that regard was placed on the decision in ***Sawarn Singh and anr. Vs. State of Punjab and Ors. (1976) 2 SCC 868***. For the aforesaid reasons, it was stated that the writ petition filed by the Market Committee was liable to be

dismissed.

8. In the alternate, it was submitted that if the Court was inclined to permit the land to be acquired, the compensation payable ought to be in accordance with the Act of 2013 in view of the fact that a period of almost fourteen years had elapsed since the Notification under Section 126(2) of the Act of 1966 was issued. The market value ought to be reckoned from 01.01.2014 when the Act of 2013 came in to force. Support was sought to be drawn in that regard from the decisions in *Ujjain Vikas Pradhikaran Vs. Rajkumar Johri and ors. (1992) 1 SCC 328*, *Competent Authority Vs. Barangore Jute Factory and others. (2005) 13 SCC 477*, *Union of India Vs. Star Television New Ltd. (2015) 12 SCC 665* and the judgment of this Court in *Hardas (Haridas) s/o Ramdas Udasi and ors. Vs. State of Maharashtra and ors. 2019 (5) Mh.L.J. 867* wherein such relief was granted.

9. In reply, the learned Senior Advocate for the Market Committee submitted that in Writ Petition No.503/2012 what was under challenge was only the provisional award and that challenge had failed. The Hon'ble Supreme Court maintained the order passed by this Court by simply dismissing the Special Leave Petition and without granting any leave. According to him, the Act of 1966 did not contemplate making of any provisional award and hence there was no requirement in law to deposit the amount of compensation. He submitted that all along from the various communications issued by the Market Committee, it was clear that it was

interested in the land in question but due to insistence on the part of the Land Acquisition Officer to deposit part of the amount of compensation the matter could not progress further. Reference in that regard was made to the communications issued by the Market Committee on 01.02.2017 and 07.02.2017. The communications dated 21.10.2016 and 19.01.2017 did not give any cause of action to the Market Committee to challenge the same. Reference to the demand made by the Land Acquisition Officer to deposit part of the amount of compensation was without any legal basis and was thus liable to be ignored. The only cause of action as conferred was by the communication dated 12.04.2018 by which it was sought to be declared that the acquisition proceedings had lapsed. On the basis of that communication the Market Committee had approached the Court. At the highest it could be said that the Market Committee had approached the Court after a period of one year from the issuance of communication dated 12.04.2018. It was not permissible to seek to read the communication dated 12.04.2018 in two parts. The entire communication had to read as a whole and the only conclusion that could be drawn was indicated in last paragraph that the acquisition proceedings stood lapsed. After rejection of the Special Leave Petition, it was for the Land Acquisition Officer to have taken appropriate steps but he did not do so resulting in passage of time. Since the Market Committee had approached this Court within a short period of issuance of communication dated 12.04.2018, the reliefs as prayed for in its petition ought to be granted. Delay if any was not on account of the Market

Committee alone and interests of justice could be met by directing expeditious completion of the acquisition proceedings.

10. As regards the submission that on acquisition of the land the land owners ought to be compensated by applying the provisions of the Act of 2013, it was submitted that such course was not permissible. Inviting attention to the provisions of Section 126(3) and (4) of the Act of 1966 it was submitted that the modality for determining grant of compensation and the market value has been laid down therein. Reference was also made to paragraphs 142 to 145 of the Constitution Bench judgment in *Girnar*(3) (supra) to contend that the aforesaid aspects had not been considered by the Division Bench in *Hardas (Haridas)* (supra) thus rendering that decision *per incuriam*. Support in that regard was sought to be drawn from the judgments in *Delhi Development Authority Vs. Mahender Singh and anr. (2009) 5 SCC 339* and *Dr. Shah Faesal and ors. Vs. Union of India and anr. (2020) 4 SCC 1*. The decision in *Hori Lal Vs. State of U.P. and ors. 2019 SCC Online SC 129* could not have been relied upon for permitting grant of compensation under the Act of 2013. That private interests would suffer on account of some delay would hardly be of consideration when the same was compared to larger public interest. For these reasons it would not be permissible to direct determination of compensation by considering the market value as on 01.01.2014 as it would amount to the Court legislating instead of deciding legal rights.

It was further submitted that the Circular dated 23.02.2012 could not be relied upon in the present case since it pertained to acquisitions under the Act of 1894. The Circular was in the nature of departmental instructions and had no statutory force. There was no such requirement prescribed under the Act of 1966 by which amount of compensation was required to be deposited in advance. The insistence in that regard was unjustified. It was thus submitted that no relief could be granted to the land owners and the writ petition filed by them was liable to be dismissed.

11. We have heard the learned counsel for the parties at length and with their assistance we have also perused the material placed on record. In the light of the submissions as urged on behalf of the land owners and the Market Committee, the following points arise for adjudication:

- (a) What is the legal effect of communications dated 21.10.2016, 19.01.2017 and 02.01.2018 as issued by the Deputy Collector, Land Acquisition/on his behalf vis-a-vis the challenge to the communication dated 12.04.2018 by the Market Committee ?
- (b) Whether the communication dated 12.04.2018 declaring the acquisition proceedings to have lapsed in view of the provisions of Section 24(2) of the Act of 2013 deserves to be quashed in its entirety or only in part?
- (c) Whether the acquisition proceedings are liable to be quashed on account of delay in completing the same or whether directions can be issued to draw a fresh provisional award or whether the

compensation can be directed to be determined as per the market value prevailing on 01.01.2014 ?

Other ancillary issues raised would be considered while answering the aforesaid points.

12. According to the land owners the challenge raised by the Market Committee to the communication dated 12.04.2018 declaring the acquisition proceedings to have lapsed under Section 24(2) of the Act of 2013 does not deserve to be entertained in view of the fact that though communications dated 21.10.2016, 19.01.2017 and 02.01.2018 gave sufficient cause of action to the Market Committee, it did not prefer to raise a grievance against those communications and instead sought to challenge only the communication dated 12.04.2018, that too belatedly. The Market Committee having acquiesced to the aforesaid communications, the challenge raised to the communication dated 12.04.2018 did not deserve to be entertained.

In this regard, it would be necessary to refer to the relevant communications exchanged between the parties for determining this aspect. The judgment of this Court in Writ Petition No.503/2012 that was filed by the Market Committee raising a challenge to the provisional award as declared by the Land Acquisition Officer was dismissed on 05.12.2015. The Special Leave Petition preferred by the Market Committee was dismissed on 03.10.2016 after observing that while fixing the value of the land the benefit given to the land owners with regard to 3.32 acres land be taken into

consideration. The land owners on 17.10.2016 issued a communication to the Land Acquisition Officer stating therein that since the Special Leave Petition preferred by the Market Committee had been dismissed and no other proceedings were pending before any Court, the acquisition proceedings were liable to be quashed. It was noted that the land owners were interested in offering their land to the Market Committee as per the Act of 2013. Based on the aforesaid application of the land owners, the Land Acquisition Officer on 21.10.2016 issued a communication to the Market Committee seeking its response as to whether the Market Committee was in need of the land and if so, it should submit a fresh proposal to the Land Acquisition Officer. An option was also given that if the land was urgently required, it could be acquired through mutual agreement as per Government Resolution dated 12.05.2015. The Land Acquisition Officer also issued reminders to the Market Committee on 09.11.2016 and 23.11.2016. The Market Committee responded to these communications on 01.02.2017 by stating that the Market Committee was in need of the land for extension of its activities. It was stated that the valuation of that land be done and the value be informed to the Market Committee so that the matter could be kept before the Board of Directors and a decision in that regard could be taken.

13. Perusal of the sequence of these communications between the parties indicates that the Land Acquisition Officer merely sought to elicit the response of the Market Committee as regards its need for the land in question and in response thereto, the Market Committee indicated its

requirement for the said land. We do not find that the contents of the communication dated 21.10.2016 issued by the Land Acquisition Officer gave a cause of action to the Market Committee to challenge the said communication. The Land Acquisition Officer merely sought to know from the Market Committee whether it was in need of the said land. The response of the Market Committee dated 01.02.2017 clarifies its position and in the light of the said response, it cannot be said that the Market Committee was aggrieved by the communication dated 21.10.2016.

14. On 18.01.2017 the land owners sought information from the Office of the Land Acquisition Officer as regards the status of the acquisition proceedings with regard to the land in question. On 19.01.2017 the Information Officer from the Land Acquisition Office supplied information to the land owners stating that as no award was passed for acquiring the said land, there were no proceedings pending in the said office. Even this communication in our view cannot be read as conferring any cause of action to the Market Committee to challenge the same. What was informed to the land owners was the fact that no award had been passed for acquiring their land and no matter in that regard was pending with the said Office. The Market Committee having indicated its interest in the said land as per the communication dated 01.02.2017, it cannot be said that the information supplied to the land owners by the Office of the Land Acquisition Officer gave a cause of action to the Market Committee.

Reference was also made by the land owners to the communication dated 02.01.2018 issued by them to the Nagpur Improvement Trust in which it was stated that the land owners desired to construct a private market on its land and it thus desired to submit an application for sanction. The land owners therefore sought necessary details in that regard. A copy of this communication was addressed to the Secretary of the Market Committee. This according to the land owners also gave a cause of action to the Market Committee to assail the same since contents of that communication ran counter to the interests of the Market Committee. This communication merely indicates the desire of the land owners to use the land in question for developing a private market. Nothing much can be read into this communication so as to confer a cause of action to the Market Committee to assail the same. In any event, the Land Acquisition Officer having shortly thereafter on 12.04.2018 issued the impugned communication the same has been rightly challenged by the Market Committee. The decisions in *S.S.Kothiyal*, *Udai Shankar Awasthi* and *Arbinda Chakraborty* (supra) relied upon by the land owners are thus distinguishable in these facts.

We therefore find that the communications dated 21.10.2016, 19.01.2017 and 02.01.2018 did not confer any cause of action to the Market Committee to challenge the same. The Market Committee also did not acquiesce to the same. The challenge as raised to the communication dated 12.04.2018 is therefore liable to be entertained on merits notwithstanding

the aforesaid communications. At the same time, the effect of said communications indicating the stand taken by the parties can be kept in mind while finally determining the nature of relief to which the parties would be entitled. Point (a) stands answered accordingly.

15. The communication dated 12.04.2018 issued by the Land Acquisition Officer declaring the acquisition proceedings to have lapsed in view of the provisions of Section 24(2) of the Act of 2013 has been challenged by the Market Committee. We may note that there was not much debate on the aspect of non- applicability of the provisions of Section 24(2) of the Act of 2013 to the present proceedings in view of the fact that the same were initiated by having resort to Section 126(2) of the Act of 1966. This was in view of the judgment of the Full Bench in *Mehtab Liaq Ahmed Shaikh and another* (supra) wherein it was held by the Full Bench that the provisions of Section 24(2) of the Act of 2013 were not applicable to acquisition proceedings initiated in terms of Sections 125 to 127 of the Act of 1966. To that extent therefore we do not find any difficulty in holding that the Land Acquisition Officer was not legally justified in declaring that the acquisition proceedings had lapsed by virtue of the provisions of Section 24(2) of the Act of 2013.

16. The challenge raised to the aforesaid communication however does not rest on the aforesaid aspect as according to the land owners the said communication was not restricted to declaring the acquisition

proceedings to have lapsed but it also included a reference to earlier communications between the parties and in-action on the part of the Market Committee in taking steps to have the land acquired. It was urged that if the communication dated 12.04.2018 could be split in two parts, the part which was found to be illegal could be set aside while retaining the other part which was found valid. Reference in this regard was made to the decision in *Sawarn Singh and anr.* (supra). The Market Committee however would urge that the said communication cannot be split up since it only conveys the opinion of the Land Acquisition Officer that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013. In this context, if the communication dated 12.04.2018 is perused in its entirety, it could be seen that the Land Acquisition Officer has referred to various events that have occurred since 05.01.2004 when the Market Committee submitted its proposal for acquiring the land. Reference has been made to the proceedings in Writ Petition 503/2012 and the said adjudication being challenged before the Hon'ble Supreme Court. Various communications made with the Market Committee giving an option of acquiring the land through private negotiations have also been referred to. Ultimately the Land Acquisition Officer has concluded that since requisite funds were not received from the Market Committee, the acquisition proceedings had lapsed in view of the provisions of Section 24(2) of the Act of 2013.

On a complete reading of the aforesaid communication, we find that it cannot be segregated into distinct parts as urged by the land owners. The only conclusion that can be drawn on reading that communication as a

whole is as regards lapsing of the acquisition proceedings. Reference to earlier events is merely for supporting the ultimate conclusion of the Land Acquisition Officer that the acquisition proceedings have lapsed. We therefore find that since the communication dated 12.04.2018 conveys only one aspect, namely that the acquisition proceedings had lapsed which conclusion has been found to be contrary to the judgment of the Full Bench in *Mehtab Liaq Ahmed Shaikh and another* (supra) the entire communication is liable to be set aside. Point (b) stands answered accordingly.

17. Having found that the proceedings having been initiated by virtue of the provisions of Section 126(2) of the Act of 1966 and the same not having lapsed, the principal challenge as raised by the land owners seeking a declaration that the acquisition proceedings deserve to be quashed on account of considerable delay in completion of the same now deserves to be considered. The facts on record indicate that pursuant to the request made by the Market Committee by submitting a proposal, the acquisition proceedings commenced vide LAC No. 1/A-65/2003-04. Notification under Section 4 of the Act of 1894 was issued on 12.08.2004. Notification under Section 6(2) of the Act of 1894 read with Section 126(2) of the Act of 1966 was published on 22.11.2007 and subsequently by issuing a corrigendum on 10.10.2011, land bearing Survey No.94 which is the land in dispute came to be included therein. In the meanwhile, an attempt was made to acquire the land through mutual consent which led to passing of a provisional award by

the Land Acquisition Officer on 04.05.2012. The Market Committee was informed by the Land Acquisition Officer to deposit an amount of Rs.12,08,40,720/- towards compensation. According to the Market Committee this was not the rate at which the land was agreed to be acquired by it and hence the provisional award was challenged by filing Writ Petition No.503/2012. This writ petition was dismissed on 05.12.2015 by holding that no directions could be issued to the Land Acquisition Officer to pass an award under Section 11(2) of the Act of 1894 on the basis of the agreement dated 28.06.2005 between the parties. The Special Leave Petition preferred by the Market Committee was dismissed on 03.10.2016. Thereafter on 20.04.2017 the review application preferred by the Market Committee was also dismissed. In the meanwhile, various communications issued by the Land Acquisition Officer directing the Market Committee to deposit part of the amount of compensation in the context of the Circular dated 23.02.2012 were not acted upon by the Market Committee. This ultimately led to issuance of the impugned communication dated 12.04.2018 by the Land Acquisition Officer declaring that the acquisition proceedings had lapsed for failure to pass an award within the stipulated time in the light of the provisions of Section 24(2) of the Act of 2013.

18. According to the land owners in the aforesaid background since the Market Committee failed to act within reasonable time by taking requisite steps for having the land acquired, the acquisition proceedings deserve to be quashed on that count. A period of almost fourteen years had

lapsed since the publication of the Notification under Section 126(2) of the Act of 1966 on 22.11.2007. The conduct of the Market Committee of not depositing the amounts as directed by the Land Acquisition Officer to facilitate the acquisition of land also ought to be taken into consideration. The land owners were not responsible in any manner whatsoever for the time taken by the Market Committee for the delay in acquiring the land in question. It was submitted that though the provisions of Section 11A of the Act of 1894 have been held inapplicable to proceedings under the Act of 1966 by virtue of the decision of Constitution Bench in *Girnar-3* (supra), the ratio of the decision of the Constitution Bench did not cover those cases where there was unreasonable delay on the part of the acquiring body in acquiring the land. This aspect had not been dealt with by the Constitution Bench and if the Court found that there was unreasonable delay on the part of the Market Committee in acquiring the land, the acquisition proceedings could be quashed in an appropriate case. Similar view has been taken by the learned Single Judge of the Karnataka High Court in *K.B.Lingaraju* (supra).

19. The Constitution Bench in *Girnar-3* (supra) was called upon to examine the question as to whether the Act of 1966 was a self-contained code or not and its effect. Further, whether the provisions of Section 11A of the Act of 1894 could be read into the provisions of the Act of 1966 ? It was held that by virtue of amendment to the Act of 1966 in the year 2009, the application of the default clause was restricted only to the situations covered under Section 126(2) and 126 (4) of the Act of 1966. The object of the Act

of 1966 was to specify and provide for development plans at the macro as well as micro level. Its primary object was planned development and the Act of 1966 was not dependent upon the Act of 1894 except to the limited extent of completing the process of determining compensation. It was then held that the Act of 1966 was a self-contained code and the provisions of the Act of 1894 could be taken recourse to only in the matter of determination of compensation. It was thus held that the Act of 1966 after its amendment had restricted application only in the context of lapsing of reservation or designation if there was default in complying with the provisions of Section 126(2) and 126(4) of the Act of 1966. Referring to the provisions of the Section 127 of the Act of 1966, it was held that the intention of the Legislature of not requiring compliance of the mandate of Section 11A of the Act of 1894 in the Act of 1966 was clear. It was thus held that the Act of 1966 was self-contained code. The provisions of the Act of 1894 were limited to the extent to the acquisition of land, payment of compensation and recourse to legal remedies provided under the Act of 1894 that could be read into an acquisition controlled by the provisions of Chapter VII of the Act of 1966. The provisions of the Act of 1894 providing different time frames and consequences of default including lapsing of acquisition proceedings could not be read into the Act of 1966. Section 11A of the Act of 1894 could not be applied to acquisition under Chapter VII of the Act of 1966. If the acquisition proceedings were permitted to lapse by applying of the provisions of Section 11A of the Act of 1894, the same would result in

frustrating the rights of the State as well as the scheme contemplated under Sections 126 and 127 of the Act of 1966 which would not be permissible in law. It was also noticed that the provisions of the Act of 1966 provide for time limitation as well as consequences in the event of default. Even if there was delay despite the framework provided under the Act of 1966, the land owners were duly compensated by payment of compensation.

20. To get over this position, the learned Senior Advocate for the land owners sought to rely upon the observations in paragraph 41 of the Judgment of the Hon'ble Supreme Court in ***Union of India and another Vs. Tarsem Singh and others, (2019) 9 SCC 304*** wherein it was observed that the aspect that the Act of 1966 was "self-contained code" could not be used as a discriminatory tool to deny benefits available to land owners merely because the land was being acquired under a different statute. It is true that the challenge to acquisition proceedings on the ground of unreasonable delay in completion of the same is not precluded notwithstanding the judgment in *Girnar-3* (supra). While considering such challenge however the fact that the acquisition is under the Act of 1966 and the ratio of the decision in *Girnar-3* (supra) highlighting the object of the Act of 1966 as well as the intention of the Legislature in seeking planned development cannot be ignored. In other words, while considering a challenge to acquisition proceedings on the ground of unreasonable delay in completion of the same when such acquisition proceedings are pursuant to the Act of 1966, the object behind seeking to acquire those lands cannot be lost sight of. It is in

the aforesaid backdrop that the aspect of unreasonable delay would be required to be considered.

21. The facts referred to hereinabove indicate that though the land was sought to be acquired in the year 2004 and Notification under Section 126(2) of the Act of 1966 was published on 22.11.2007, it is pursuant to corrigendum dated 10.10.2011 that the subject land was included therein. Pursuant to negotiations between the parties, provisional award was passed on 04.05.2012 and the litigation raising challenge to the same continued till 20.04.2017 with the dismissal of the review application preferred by the Market Committee before the Hon'ble Supreme Court. Thereafter again the Land Acquisition Officer sought deposit of part of the amount of compensation while the Market Committee insisted upon quantifying the benefit that was made admissible to the land owners in respect of 3.32 acres of land. This ultimately led to the issuance of communication dated 12.04.2018 by the Land Acquisition Officer. The Market Committee approached this Court by filing Writ Petition No. 503/2012 for challenging the communication dated 12.04.2018. It is in the aforesaid context and keeping in mind the dictum of the Constitution Bench in *Girnar-3* (supra) that the challenge to the acquisition proceedings on the ground of unreasonable delay has to be adjudicated.

22. It is clear from the record that the parties had initially agreed to have the land acquired by mutual agreement but the same was not

successful. The provisional award as passed has not been disturbed in the challenge raised to it by the Marketing Committee. In the light of legal position referred to above, even the provisions of Section 24(2) of the Act of 2013 are inapplicable to proceedings for acquisition initiated under the Act of 1966. Given the aforesaid background and the time spent in litigation between the parties, we are unable to hold that the time spent till today in the process of completing the acquisition proceedings is so unreasonable so as to warrant quashing the acquisition proceedings itself on the ground of delay. The object behind seeking to acquire the land is for establishment and extension of the Market Committee which itself is an object in public interest and of vital importance to planned development. The clear dictum of the Constitution Bench in *Girnar-3* (supra) that the legislative intent behind not permitting lapsing of acquisition on account of non-compliance with various time frames cannot be ignored. On the contrary it has been observed that the aspect of delay in completion of the acquisition proceedings is taken care of while determining the compensation payable under the Act of 1894, notwithstanding the contention that the Act of 1966 is a self-contained code and it cannot be utilized for discriminating the land owners. Though the acquisition proceedings were quashed by learned Single Judge of the Karnataka High Court in *K.B.Lingaraju* (supra), the aspect of maintaining the acquisition proceedings by balancing the rights of both parties was not urged therein. The said decision is therefore clearly distinguishable. In the facts of the present case, we are not inclined to hold that the acquisition proceedings

have lapsed on account of the period taken for completion of the same.

23. Having held that the acquisition proceedings are not liable to be quashed on account of the period taken for completing the same, the alternate prayer made by the land owners for altering the date for determining the basis for awarding compensation deserves to be considered. In this regard the land owners have sought to rely upon the decision in *Horilal* (supra) as well as the judgment of the Division Bench of this Court in *Hardas(Haridas)* (supra). It was also urged that while sustaining the acquisition proceedings which have continued for a long period, the Court could mould the relief by directing award of compensation under the Act of 2013. This was countered by the Market Committee by urging that it was not permissible to apply the provisions of the Act of 2013 for determining the compensation in view of the fact that the acquisition proceedings had commenced much prior to enactment of the Act of 2013 and that there was a provisional award already passed. The Court could not in this regard legislate by altering the relevant date for determining compensation since there was no such statutory provision permitting the same to be done.

24. In *Hori Lal* (supra) the acquisition proceedings were commenced by issuing Notification under Section 4(1) of the Act of 1894 on 30.10.2002. Notification under Section 6 was issued on 29.11.2003. The Act of 1894 was repealed with the coming into force of the Act of 2013 on 01.01.2014. The Land Acquisition Officer passed his award on 30.06.2016 and the same

was challenged by the land owner before the High Court. The challenge to the acquisition proceedings on the ground that the award was passed after the Act of 1894 was repealed was given up and the challenge was restricted to the manner in which determination of compensation was done by the Land Acquisition Officer. The State Government in that case relied upon an order passed by the Central Government under Section 113 of the Act of 2013 and stated that the compensation would be determined on the basis of the market value as on 01.01.2014. The High Court dismissed the writ petition and the land owners approached the Hon'ble Supreme Court. It was held that the land owner having given up the challenge to the acquisition proceedings, it was sufficient that the State Government had sought to determine compensation as per the market value as on 01.01.2014 which was a reasonable stand. On that premise the proceedings came to be dismissed.

25. In *Hardas(Haridas)* (supra) Notification under Section 6 of the Act of 1894 was issued on 08.12.1995 and the award was passed by the Land Acquisition Officer on 07.09.2017. This award was sought to be challenged on the ground that it was passed almost twenty-two years after the Notification under Section 6 of the Act of 1894. It was prayed that a fresh Notification be issued under Section 19 of the Act of 2013. Before this Court the land owner restricted the claim only to the assessment of damages by praying that 01.01.2014 be taken as the date of Notification under Section 19 of the Act of 2013. The Division Bench referred to the decision

in *Hori Lal* (supra) as well as the decision in ***Tukaram Kana Joshi and ors. Vs. Maharashtra Industrial Corporation and ors. (2013) 1 SCC 353*** to hold that there was legal obligation on the part of the authorities to complete the acquisition proceedings at the earliest. Finding that it would be a gross abuse of power if the award was allowed to sustain on the basis of the market value that was prevailing twenty-two years ago, the award was quashed and the State was directed to initiate afresh enquiry for assessing the compensation by taking 01.01.2014 the date of Section 19 Notification under the Act of 2013.

26. According to the learned Senior Advocate for the Market Committee the decision of the Division Bench has been rendered *per incuriam* in view of the fact that the observations in paragraph nos. 142 to 145 of the decision in *Girnar-3* (supra) were not brought to the notice of the Court. Moreover, the provisions of Section 126 (2) and (4) of the Act of 1966 were also not referred to. Since the aspect of delay in completion of the acquisition proceedings was taken care of as held in *Girnar-3* (supra), it was not permissible to alter the date of determining the compensation. The Division Bench in fact proceeded to legislate in the matter was the submission. We are not in a position to hold that the decision of the Division Bench in *Hardas(Haridas)* (supra) has been rendered *per incuriam*. The Court therein noticed that the period of almost twenty-two years had been consumed in passing the award by the Land Acquisition Officer. It further found that it was unjust to restrict the claim for compensation to the year

1995 when the Notification under Section 6 of the Act of 1894 was issued. Even though reference was not made to paragraph nos. 142 to 145 of the decision in *Girnar-3* (supra) same would not make much difference in view of the long period of twenty-two years taken to pass the award. We have held that the aspect of delay in completion of the acquisition proceedings notwithstanding, the aforesaid observations can be considered when a challenge is raised to the award on the ground of unreasonable delay in completion of the acquisition proceedings. It is also pertinent to note that in *Hardas (Haridas)* (supra) final award was passed which was the subject matter of challenge before this Court. The same is not the position herein since the final award is yet to be passed. Since it is found that the competing rights can be balanced by maintaining the acquisition in public interest, we do not find that by altering the date of determination of market value the Court undertakes the exercise of legislating in the matter. The said contention raised on behalf of the Market Committee therefore cannot be accepted.

27. In the present case, we find that the land of the land owners has been subjected to acquisition from 2003-04. Despite passing of the provisional award on 04.05.2012 the land owners have not received any amount of compensation. In spite of various communications to the Market Committee to deposit part of the amount of compensation by the Land Acquisition Officer, that request has not been acceded to. Such request based on the Circular dated 23.02.2012 has been resisted by the Market

Committee by submitting that there is no statutory requirement in that regard. It is not necessary to go into the legality of the Circular dated 23.02.2012 on the basis of which the Market Committee was called upon to deposit part of the amount of compensation since that Circular has not been challenged before us. The learned Senior Advocate for the land owners is justified in relying upon the observations in *Gurudev Singh* (supra) that for seeking a declaration that an order is inoperative, the party aggrieved must approach the Court. It is also necessary to notice that Rule 14(1) of the Rules of 2014 has been amended vide Notification dated 01.08.2016 by adding proviso thereto by which in cases of acquisition of reserved places in the development plan under the Act of 1966, the cost of acquisition has to be proportionally deposited with a rider that unless such amount is deposited, no declaration or award under Section 19 or 23 of the Act of 2013 would be made. The Circular dated 23.02.2012 having been issued by the State Government was binding on the Land Acquisition Officer and he was thus justified in calling upon the Market Committee to comply with the terms thereof. The learned Assistant Government Pleader also referred to an earlier Circular dated 17.01.2008 in that regard. In the aforesaid context it can be safely said that had the Market Committee deposited the cost of acquisition as contemplated by the aforesaid Circulars, the matter would have definitely progressed so as to facilitate passing of the final award.

28. Be that as it may, the fact remains that the cost of acquisition has not yet been deposited by the Market Committee but it has been submitted

that if a fresh award is passed, the amount of compensation determined would be deposited within a period of seven days thereof. All this is being referred only to indicate that from the perspective of the land owners, the position as on 2003-04 continues to prevail even today. Except the benefit received to the extent of land admeasuring 3.32 acres, rest of their land remains locked. In our view, therefore, while sustaining the acquisition proceedings that have been initiated under the Act of 1966 and by keeping larger public interest in view, the legitimate rights of the land owners also cannot be ignored. In the aforesaid factual backdrop and in the light of the observations in *Barangore Jute Factory and Tukaram Kana Joshi* (supra), pegging down the market value of the land to the rates prevailing on 22.11.2007 when the Notification under Section 126(2) of the Act of 1966 was issued would be highly inequitable. “After all money is what money buys” has been observed by the Hon’ble Supreme Court in *K. Krishna Reddy and ors. Vs. Special Deputy Collector, Land Acquisition Unit-II, LMD Karim Nagar, (1988) 4 SCC 163*. It would thus be necessary to balance the competing rights. On one hand in the light of larger public interest the acquisition proceedings deserve to be permitted to be taken to their logical end while on the other hand, the land owners can be compensated by directing the compensation to be determined by taking market value as on 01.01.2014 on which date the Act of 2013 came into force. This is principally for the reason that from 22.11.2007 when the Notification under Section 126(2) of the Act of 1966 was issued, a period of almost fourteen years has elapsed.

29. In the light of aforesaid discussions, we conclude as under:

(a) The communications dated 21.10.2016, 19.01.2017 and 02.01.2018 did not confer a cause of action to the Market Committee to assail the same.

(b) The communication dated 12.04.2018 is liable to be quashed in its entirety. It cannot be segregated into various parts.

(c) While maintaining the acquisition proceedings that have commenced pursuant to the Act of 1966 in the light of ratio and the observations of the judgment of the Constitution Bench in *Girnar-3* (supra), by balancing the rights of the parties, the compensation ought to be determined by reckoning the market value of the land as on 01.01.2014 instead of 22.11.2007 being the date on which the Notification under Section 126(2) of the Act of 1966 was issued.

Consequently, Writ Petition No.5351/2019 is partly allowed by quashing the communication dated 12.04.2018 issued by the Land Acquisition Officer-respondent no.3. Writ Petition No.5492/2019 is also partly allowed by directing the respondent nos.1 to 3 to complete the acquisition proceedings expeditiously in accordance with law but by determining the market value of the acquired land as prevailing on 01.01.2014 when the Act of 2013 came into force.

Rule is made absolute in aforesaid terms in both the writ petitions. The parties shall bear their own costs.

JUDGE

JUDGE