IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Rai Chattopadhyay

MAT No.607 of 2022

With

CAN No.1 of 2022

With

CAN No. 2 of 2022

State of West Bengal

Versus

Anup Kumar Mondal & Anr.

For the Appellants : Mr. Supratim Dhar,
Mr. D.Nayak,

For the Petitioners/respondents : Mr. Amit Kr. Pan,
Mrs. T.Santra.

Hearing concluded on : 10/08/2022

Judgment on: 22/12/2022

Rai Chattopadhyay, J. :

(1) The respondents/writ petitioners' challenge in this appeal is twofold, predominantly that the Ld. First Court should not have directed the State to consider afresh any proposal of 'direct purchase' of their land as there is no scope for it to do so having the land acquisition case now been ended into declaration of award and elementarily that the compensation assessed and the notice of payment of compensation issued by the State on 8^{th} February, 2016, is wholly erroneous and liable to be set aside, having not taken into its fold the provisions of section 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act).

(2) The appeal has however, been preferred by the State, challenging the order of Ld. First Court dated 7^{th} October, 2021. Let us first go through the impugned order.

(3) The Court records the writ petitioners/respondents' case to have arisen out of their grievance that the State Authorities acquired and utilized the plot of land owned by them for the purpose of construction of a road but no compensation for the same has been granted to the petitioners. A notification is referred to, i.e, Notification No.756-I.P/IA-03/14(Pt-II) dated 25^{th} February, 2016. Court records that in view of the said notification, the writ petitioners/respondents are agreeable to the proposal of the State for 'direct purchase' of the land, in terms of the said notification.

(4) Court further records and directs the State Authority to deal with the matter and consider the proposal for direct purchase of the land of the writ petitioners, utilized for the purpose of construction of road in terms of the said notification. It has further been directed that the entire exercise should be completed within four months from the date of communication of the order and after affording reasonable opportunity of hearing to all the affected parties including the writ petitioners, in accordance with law.

(5) With this order the writ petition was disposed of, without, however, inviting any affidavits.

(6) For better understanding of the issue, let the said notification be produced hereinbellow :

GOVERNMENT OF WEST BENGAL
Land and Land Reforms Department
Land Policy Branch
NABANNA (6th Floor)
325, SaratChatterjee Road, Howrah-711 102.

No. 756-LP/1A-03/14(Pt-II) Date: 25.02.2016

MEMORANDUM

It has been observed that often important infrastructure projects like food godowns, roads, bridges etc. are not fully commissioned for want of small parcels of land. To ensure the optimal utilization of public funds and early implementation of such projects, direct land purchase from land owners may become necessary.

2. The State Government has considered the immediate need of land for such projects.

3. Now, therefore, the Governor is hereby pleased to allow the various departments of the State Government and also the Central Government department(s) or its organization(s) based on merit of its project to go in for the direct purchase of land for public purpose mainly involving the early commissioning of infrastructure projects like roads, railways, bridges, food godowns, drinking water, flood protection works and other similar projects, as the Government may consider, in rural and/or urban areas through ZillaParishad/Municipality/Municipal Corporation/ other Government bodies and parastatals, as the case may be, by adopting the following procedures :

(i) (a) The administrative department(s) will take concurrence of the Standing Committee on Industry, Infrastructure & Employment before going ahead with the purchase of land indicating its tentative location, quantum and financial involvement. In terms of Finance Department Memorandum No. 862-FB Dated 14/10/2015, the administrative department shall get the proposal vetted by the Finance Department before placing it for Cabinet approval.

(b) The Central Government department or its organization i.e. the Requiring Body will take prior approval/ concurrence of the competent authority which shall be the concerned Ministry of the Government of India. The relevant department in the State Government looking after the affairs of the concerned Requiring Body shall seek concurrence of the Standing Committee on Industry, Infrastructure and Employment prior to moving the proposal before the Purchase Committee. A representative of the RB shall be a member of the Purchase Committee.

(ii) A 15-day local notice mentioning preference and details of land intended for purchase shall be given in the public offices and local newspaper(s) informing the prospective land owners and requesting them to submit application in plain paper indicating their intention to sell their lands.

(iii) The department concerned will select the appropriate plot(s) of the land to be purchased as per suitability and other considerations from among the applications/offers received on the basis of the notice.

(iv) The relevant administrative department will undertake land searching through the panel advocate(s) at the respective sub-registry office to guard against fraudulent transfer. Besides, the BL & LRO will verify the right and title of the selected lands within 14 days and shall furnish report in the enclosed format to the Purchase Committee.

(v) Land would be purchased through the ZillaParishad/Municipality/Municipal Corporation/ Parastatal as may be decided by the administrative department(s).

(vi) Funds will be allotted to the ZillaParishad/Municipality/ Municipal Corporation/Parastatal by the administrative department for payment to land owners and payment will be made to their bank accounts. An appropriate administrative cost will be given to ZillaParishad/Corporation by the administrative department

(vii) A committee of the following officials will finalize the price of land for the purchasing department:

a) District Magistrate of the district – Chairperson

b) DL & LRO – Member

c) Special LAO – Member

d) Two members from the concerned PanchayatSamity to be nominated by the Chairperson – Members

e) FC & CAO, ZillaParishad – Member

f) Representative of administrative department/RB – Member

g) District Registrar – Member

h) Secretary ZillaParishad – Member Secretary

In case of purchase of land for Municipal areas, the Chairman of Municipality will also be a Member of the Committee in place of the members of PanchayatSamities as in SI. (d).

(viii) For areas under Municipal Corporations the Purchase Committee will be as follows :

a) District Magistrate – Chairperson

b) Mayor – Member

c) Municipal Commissioner/ CEO, Corporation – Member

d) DL & LRO/1 st LA Collector – Member

e) District Registrar – Member

f) Special LAO – Member

g) Two members from Ward Councillors to be nominated by the Chairperson – Members

h) Chief Municipal Auditor, Corporation – Member

i) Representative of administrative department/RB – Member

j) Secretary, Corporation – Member Secretary

However, for purchase of land situated within the jurisdiction of Kolkata Municipal Corporation, the Secretary of the L&LR Department will act as Chairperson of the Committee.

(ix) As regards the direct purchase of land by parasatals/ development authorities like WBIDC, WBSIDC, WBIIDC, WBSEDCL, WBSETCL/ Asansol Durgapur Development Authority (ADDA), Burdwan Development Authority (BDA), DighaSankarpur Development Authority (DSDA), Haldia Development Authority (HDA), SiliguriJalpaiguri Development Authority (SJDA), SriniketanSantiniketan Development Authority (SSDA), New Town Kolkata Development Authority (NKDA) or any other such agency that qualifies to be parastatal/ development authority as per the statute, the administrative department shall obtain concurrence of the Standing Committee on Industry, Infrastructure and Employment as in Para 3(i)(a) and thereafter the Parastatal/ Development Authority shall move the proposal before the Purchase Committee as in para (vii) and para (viii), as the case may be.

(x) Value of buildings/structures, would be assessed by the Executive Engineer, PWD/Municipal Engineering Directorate/ District Engineer/Executive Engineer, ZillaParishad or by such agency as the administrative department may decide.

(xi) The base price of the land will be determined taking into account the assessed value of land or set forth value of land whichever is higher. Incentive on the price of land finally determined will be given to the land owner if land registration is done: (a) within 30 days – 50% (b) within 31 to 60 days – 10%, from the date of publication/ communication of land price to the landowners. For this purpose, individual land owner will be informed of the price of land in writing by the Member-Secretary of the Land Purchase Committee, for registration of sale deed.

(xii) After the purchase of land from the land owners, land will be registered in the name of ZillaParishad/ Municipality/Municipal Corporation/ Parastatal. Thereafter, ZillaParishad/Municipality/ Municipal Corporation/ Parastatal, as the case may be, could formally transfer the land in favour of administrative department(s).

(xiii) Care would be taken by the ZillaParishad/ Municipality/Municipal Corporation/Parastatal to ensure that the entire transaction is fair and transparent and it is based on mutual consent. There shall be no element of coercion.

(xiv) Stamp duty shall be exempted for such purchase of land by ZillaParishad/ Municipality/ Municipal Corporation/ Parastatal and also for subsequent transfer to administrative department(s).

(xv) The Panchayat and Rural Development Department will issue direction upon all the ZillaParishads concerned to purchase land for other department(s) u/s. 212 of the West Bengal Panchayat Act, 1973.

(xvi) The Municipal Affairs Department will issue direction upon all the Urban Local Bodies to purchase land for other department(s) u/s. 429B of the West Bengal Municipal Act, 1993.

(xvii) In case, the aforesaid Purchase Committee fails to perform its functions within a reasonable time, the administrative department would be free to use any Corporation /Parastatal/ Authority under its control to purchase the land on the same terms & conditions as prescribed above.

This has the concurrence of the Finance Department vide U.O. No. Group T/2015-2016/ 0822, dated 14.01.2016.

This memorandum is issued in partial modification of the memorandum No. 3145-LP/1A-03/1 dated 24/11/2014 & Notification No. 971-LP/1A-03/14 dated 01/07/2015 and also in cancellation of Memorandum No. 3580-LP dated 31/12/2014.

By order of the Governor,

Sd/- MANOJ PANT
L.R.C. & Principal Secretary to the Govt. of West Bengal.

(7) It appears that a special arrangement was made by dint of the said notification, to eliminate the unnecessary time lag intervening in any project of public good, in order to comply with the formalities and procedure of law for acquisition of land.

(8) Be that as it may, Ld. First Court accepted the writ petitioners' case, that an arrangement can be resorted to as provided in the said notification and issued directions vide the impugned order dated 7th October, 2021.

(9) An unique feature of this appeal is that, both the parties are virtually aggrieved with the said impugned order. The facts of the case may be recounted, as mentioned herein below.

(10) Issue arose in 1979, when the appellant/State issued notice under section 3(1) of Act-II of 1948, in respect of 6.855 acres of land, comprised within three mouzas, namely (i) Ganti, (ii) Chikanpara and (iii) Simulpur. This notice was dated 6th June, 1979. Purpose for issuance of such notice was construction of Chandpara-Thakurnagar road, as per proposal of State Highway Planning Circle (P.W.Roads).

(11) It would be beneficial if we reproduce section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948, i.e, Act-II of 1948, which is as follows :

3. Power to requisition :-

(1) If the State Government is of the opinion that it is necessary so to do for maintaining suppliesand services essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government may, by order in writing, requisition any land and may- make such further orders as appear to it to be necessary or expedient in connection with the – requisitioning : Provided that no land used for the purpose for religious worship, used by an educational or charitable institution shall be requisitioned under this section.

(12) Pertinent also to mention here the object of the said Act-II of 1948, as mentioned therein, which is as follows:

"An Act to provide for requisition and speedy acquisition of land for certain purposes. WHEREAS it is expedient to provide for the requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community, increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas, providing proper facilities for transport, communication,

irrigation or drainage and creating better living conditions in urban or rural areas by the construction or reconstruction of dwelling places in such areas or for puposes connected therewith and incidental thereto; It is hereby enacted as follows"

(13) Section 4 of the said Act bestows power to the State Government to use or deal with the land requisitioned under section 3, for the specified purposes and also to acquire the same by publishing a notice in official gazette, which would result in absolute vesting of the land in the State from the date of publication of the notice. Therefore the said Act provided for separate procedure and mechanism for requisition and acquisition of land.

(14) Now coming back to the facts of the present case, the appellant states that the land acquisition case No. LA/II/08 of 1979-80 under the Act –II of 1948, in respect of the above named mouzas did not proceed further for non placement of funds and the proceedings lapsed.

(15) According to the writ petitioners/respondents, case No. LA/II/08 of 1979-80 under the Act –II of 1948, in respect of the above named mouzas, was only a requisition proceeding, which subsequently did not proceed and lapsed.

(16) However the purpose for which the said proceeding was started, i.e, construction of Chandpara-Thakurnagar road, was materialized and construction of road was completed. In doing so, certain amount of land comprised within the above named three mouzas had also been utilized.

(17) Consequently some land owners filed a writ petition in the High Court being W.P.No. 9300(W) of 2011 praying for compensation for the utilized land within mouzas Ghanti and Chikanpara. The same was disposed of on 30th June, 2011, with the directions that the appropriate authority was to complete the proceedings, pass an award and disburse the compensation in accordance with law, within a period of one year from the date of furnishing a photocopy of the certified copy of the said order.

(18) Pertinent to mention that said Act-II of 1948 remained in force until 31st day of March, 1997.

(19) After this Court's order dated 30th June, 2011 and in compliance thereof, three separate land acquisition proceedings under Act-I of 1894 were initiated being LA cases No. (i) 4/5 of 2013-14, (ii) 4/6 of 2013-14 and (iii) 4/7 of 2013-14, for mouzas Simulpur, Ghanti and Chikanpara respectively. Notification under section 4 of 1894 Act, i.e, preliminary notification was published on 4th December, 2013 and declaration under section 6 of the same, i.e, declaration that the land is required for a public purpose, was published on 16th April, 2014.

(20) Before that, the Act of 1894 was repealed with the coming into force of the 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', with effect from 1st January, 2014. Hence, in this case section 4 notification was published before coming into force of 2013 Act and section 6 notification was after the 2013 Act came into force.

(21) The appellant states that, in view of sections 114 and 24 of the 2013 Act, assessment of compensation has been made under sections 26 to 30 read with 1st schedule of the said Act of 2013 and an award was declared in the case on 28th April, 2016.

(22) The appellant further states that soon after declaration of award, notice was issued to the writ petitioners/respondents to accept the compensation as assessed, which they did not respond to and did not accept the compensation. Therefore, according to the appellant, the assessment proceedings has been completed in 2016, with publication of award on 28th April, 2016. It is its further contention that in such a circumstance, there would be no scope for the scheme under the notification dated 25th February 2016, for 'direct purchase' of the land to be applicable in this case. That, after completion of the proceedings and assessment of compensation, direct purchase of the same property is only an illusory concept and non-est in the eye of law as by operation of law the concerned land has already been vested with the State.

(23) It is stated that the respondents/writ petitioners are at liberty to claim their compensation, as assessed.

(24) It is reiterated that the writ petitioners/respondent's first contention is that the proceedings undertaken by the State in the year 1979, under the 1948 Act has been a 'requisition' proceeding under section 3 of the said Act (since repealed). They further state that the said proceeding for requisition of land under 1948 Act has never been converted to one under the 1894 Act, after repeal of the 1948 Act, for the purposes of acquisition of land in question to be followed by declaration of award. They have admitted lapse of 1979 proceedings under the 1948 Act. According to them, the acquisition proceedings started for the first time only in the year 2013-14, under provisions of Act-I of 1894. They say that award was not made under section 11 of 1894 Act, on the date the said Act stood repealed and 2013 Act came into being, i.e, 1st January, 2014. Therefore in their case, the provisions under section 24(1)(a) of the Act of 2013 should apply, the date for the purpose of determination of compensation should be reckoned to the date of coming into force of the 2013 Act, i.e, 1st January, 2014 and that in their case compensation should be determined in accordance with the provisions of 2013 Act.

(25) Mr. Dhar, for the appellant/State is very precise and candid in arguing that LA Case No. 4/5 of 2013-14, which pertains to Simulpur mouza and concerns the present writ petitioners/respondents, has ended in publication of an award under section 11 of the 1894 Act and in due compliance with the statutory provision, compensation therein has been assessed under the provisions of the 2013 Act. He argues that payment notice has already been issued to the land losers under section 12(2) of the 1894 Act, read with section 24 of the 2013 Act, back on 8th December, 2016. He says that writ petitioners have not yet claimed the same, though the State is now ready to pay after due compliance with all the formalities and in accordance with law. Appellant has relied on an ***"unreported' judgment of three Judge's Bench of the Hon'ble Apex Court, decided on 28th July, 2022, i.e, Haryana State Industrial and Infrustructure Development Corporation Limited and Others vs Mr. Deepak Aggarwal and Others***.

(26) Mr.Pan, on behalf of the writ petitioners/respondents has relied on a judgment of Hon'ble Apex Court reported in ***(2022) 2 SCC 772 [Executive Engineer, Gisikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation vs Mahesh and Others].***

(27) For better understanding of the matter and before discussing the ratio of the judicial pronouncements relied on by the parties, let the arguments made on behalf of the writ petitioners/respondents be discussed at the outset.

(28) It is Mr. Pan's first contention that in the instant case, land of the writ petitioners/ respondents has never been acquired either under the 1948 Act or under the Act of 1894, during their respective lifetimes. He states that it is the condition precedent that before declaration of the 'award' the land ought to have been acquired in order to vest the same with the State. He states that the only step taken by the State/appellant is that of issuance of a notification with respect to the land under section 3(1) of Act-II, 1948, on 6th June, 1979 and thereafter, after operation of the 1948 Act came to an end with effect from 31st March 1997, by issuing a notification under section 4(1)(a) of the Act of 1894, on 4th December, 2013. According to him, this 2013 notification is an intention of the State for acquisition and the same shall not have the effect of vesting of the land unto the State.

(29) He contends that at this stage, the Act of 1894 was repealed with effect from 1st January, 2014. Though he accepts that a notification has also been published under section 6 of 1894 Act, with respect to the land of the respondents on 16th April, 2014, but says that the same is non-est in the eye of law, as the Act of 1894 has already been repealed much before that date. He says that in the particular facts and circumstances of this case, not only the publication under section 6 of 1894 Act but any other provisions of the said Act cannot be taken into consideration for the purpose of declaration of the 'award'. He says that after coming into force of the 2013 Act, as per section 114 of the same, provisions of the Act of 1894 is saved to the extent that do not hinder application of provisions of section 24 of the new Act. He argues that as regards determination of compensation, the provisions of the new Act from section 25 to section 30 would be applicable.

(30) He points out that the repeal date of the Act of 1894, i.e, 1st January, 2014, is also the date of promulgation and coming into force of the Act of 2013, as mentioned above. Hence with effect from 1st January, 2014, the acquisition proceedings with respect to the respondent's land, lapsed and a fresh proceeding under the new Act reckoning from the date of its promulgation, i.e, 1st January 2014, should have been started.

(31) It is his argument that since that date, i.e, 1st January 2014, formalities as regards acquisition of his clients land should only be governed by the provisions of the Act of 2013. He submits that section 24 of the Act of 2013 shall have overriding effect in view of its non-obstante clause, and thus section 114 of the said Act as well as section 6 of the General Clauses Act, 1897 shall not apply to the extent hindered by section 24(1) of 2013 Act.

(32) As regards section 24(1) of 2013 Act, he submits that the statute would require the State, in case of his client's land, regarding which an acquisition proceeding was initiated under the Act of 1894 but no award under section 11 of the said Act was made till the date of its repeal, to apply all provisions of the 2013 Act relating to the determination of compensation, notwithstanding anything contained in the said Act of 2013. This provision, according to him hinders 'saving' clause, as enumerated in section 114 of 2013 Act and also application of section 6 of the General Clauses Act, 1897. Instead, according to him, the Collector has to determine compensation in this case, by taking into consideration sections 25 to 30 of the 2013 Act, after compliance with the provisions of sections 19 and 21 of the same.

(33) Issuance of notification under section 6 of 1894 Act on 16th April, 2014 and notice under section 12(2) thereof on 8th December, 2016 are, according to him, steps taken by the State only erroneously and illegally, as, after repeal of the said Act with effect from 1st January, 2014. In view of the non-obstante clause appearing in section 24 the new Act of 2013, thereby overriding the effect of 'saving' clause appearing in section 114 of the new Act of 2013, provisions under 1894 Act would have not been applicable any further, after coming into force of the Act of 2013. He says that the facts and circumstances of this case would require the State to initiate a fresh proceeding under the new Act, after lapse of the earlier proceedings with the repeal of the previous Act and proceed in terms of sections 25 to 30 of the same to determine compensation, after due compliance with the other relevant provisions of the said Act.

(34) In support Mr. Pan has relied on ***Mahesh's*** case ***[(2022) 2 SCC 772]***, as mentioned above.

(35) In the said judgment the Hon'ble Apex Court was interpreting Section 24 (1) (a) of the 2013 Act. The question that fell for consideration of the court was ***"whether the two year period specified under Section 11 (A) of the Land Acquisition Act, 1894 ('The 1894 Act' for short), will apply even after the repeal of the 1894 Act, or the twelve months period as specified in Section 25 of 2013 Act will apply for the awards made under Clause (a) of Section 24 (1) of the 2013 Act?"*** The Hon'ble Court considered further as to ***"whether the award dated 30-10-2014 is within the permissible time limit or whether the acquisition proceedings have lapsed?"***--- that is a question somewhat identical to what it is in this appeal, excepting that the date of 'award' here is 28th April, 2016.

(36) The court went on to interpret the law in a way to give affect and meaning to the underline intention of the legislature in the words **"all the provisions relating to determination of compensation"** as occur in Section 24 (1) (a) of the 2013 Act. It was held that the phrase as above would include the period of limitation specified in Section 25 of the 2013 Act. The words 'relating to' were held required to be given an expansive and wider meaning. Findings of the court may be quoted below:-

"Given this trend in interpretation, the words "all the provisions of this court relating to the determination of compensation" must not be imputed a restricted understanding of the word "relating" only to the substantial provisions on calculation of compensation, i.e, Sections 26 to 30 of the 2013 Act. Rather, the expression should be given an expansive meaning so as to include the provision on limitation period for calculation of compensation, i.e, Section 25 of the 2013 Act."

....

"In the context of clause (a) to Section 24(1) of the 2013 Act, it is to be stated that the said clause would apply only if the period for making of an award had not ended and time was available as on 1-1-2014. Where and if the period for making of the award had already lapsed before 1-1-2014, clause (a) to Section 24(1) would not apply so as to deprive and deny the vested rights which have already accrued in favour of the landowners. The present case is not of divesting of vested rights of the landowners on enactment of the 2013 Act."

....

"The expression "all the provisions relating to the determination of compensation" under the 2013 Act will encompass Section 25 of the 2013 Act."

....

"Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for

passing/making of an award under Section 25 of the 2013 Act would commence from 1-1-2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1-1-2014. This dictum is subject to the caveat stated in paras 20 to 23 (supra) that a declaration which has lapsed in terms of Section 11-A of the 1894 Act before or on 31-12-2013 would not get revived."

(37) State has conceded to the fact that in this case determination of compensation is to be made under the 2013 Act. It has relied on a written communication dated 4th March, 2014 by LRC & ACS, Land and Land Reforms Department, Government of West Bengal, noting therein that L.A. Cases where Section 4 has been notified but Section 11 has not been done, would be governed under L.A. Act, 1894, but compensation is to be determined under the 2013 Act. This communication was made to the Collector of the respective Districts with reference to judgment of the Hon'ble Supreme Court dated 24th January 2014 (Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.). It is their contention that pursuant to the direction of the concerned department as above, determination of compensation in this case has been made in strict adherence to the provisions under Sections 26 to 30 of the 2013 Act.

(38) State has relied on the judgment of ***Deepak Aggarwal's*** as mentioned above to submit that the State action in determination of compensation is in absolute compliance with the ratio decided therein. Hence, so far as the point of objection of the writ petitioners/ respondents as to the determination of compensation is concerned, according to the State the same is to be overruled in view of determination of compensation in this case, that being in concurrence with and in due compliance with the settled provisions of law.

(39) In ***Deepak Aggarwal's*** case a three judges bench of the Hon'ble Supreme Court was considering and interpreting the word "initiated" employed in Section 24 (1) of the 2013 Act, with reference to Land Acquisition proceedings under the Land Acquisition Act, 1894. Court held that:

"A perusal of Section 24 would reveal that passing of an Award under Section 11 of the L.A. Act is the key factor in deciding the manner and nature of continuance of the land acquisition proceedings. A scanning of Section 24 (1) (a) would reveal that if land acquisition proceeding was initiated under the L.A. Act, but no award was passed under Section 11 thereof, then, all provisions of the 2013 Act relating to the "determination of compensation" would apply."

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"A careful scanning of all the decisions cited by both sides would thus reveal that all those decisions hold that land acquisition proceedings under the L.A. Act begin with the publication of a notification under sub-section (1) of Section 4. A declaration under Section 6 of the L.A. Act is one of the steps under the L.A. Act which ultimately culminates into the conclusion of the proceedings by making an Award and taking over possession of the acquired land. A declaration under Section 6 cannot be made without holding an inquiry unless urgency clause under Section 17 is applied. Publication of a notification under sub-section (1) of Section 4 of the L.A. Act is condition precedent for taking further steps. Hence, such a notification is the starting point of acquisition proceedings under the L.A. Act. The initiation of the proceedings is by the publication of the notification under sub-section (1) of Section 4 of the L.A. Act."

………………………

"The legislative intention behind bringing up the 2013 Act was to have a unified enactment facilitating land acquisition for industrialization, infrastructure and urbanization projects in a

timely and transparent manner and at the same time, providing for just and fair compensation, to make adequate provision for rehabilitation and resettlement mechanism for affected persons and their families."

……………………

"Bearing in mind the aforesaid legislative intention we will have to construe Section 24 and also the word 'initiated' has to be construed with a view to implement the aforesaid twin purposes of providing fair and just compensation and facilitating acquisition of land for industrialization, infrastructure and urbanization projects."

……………………

(40) Admittedly, the land in question has already been converted into a metal road under the project and virtually admittedly in this case that the impugned order dated 7th October, 2021, is not sustainable. The writ petitioners/respondents are yet to receive compensation as they challenge the process by which the same has been assessed and determined, whereas the State/appellant considers that it has duly and in accordance with laws has completed the acquisition proceedings and determined the compensation payable, which has, however, not been claimed by the landowners as yet.

(41) The initial round of challenge is against the impugned order. If the scheme framed for 'direct purchase' as per the notification dated 25th February, 2016 may be applied to in this case or not – is the issue to be answered.

(42) The scheme for direct purchase of land vide memorandum dated 25.02.2016 was framed to fortify the objects for early commissing of infrastructure projects for public purpose.

(43) The case of the present land owners would not fall within the perview of the said notification, broadly for the following reasons: - Firstly, that the project of public purpose, i.e, construction of – read has already been completed, and in doing so, the state has already utilized portion of land in Mauza-Simulpur, which concerns the present land owners. Hence, there remains no urgency to undertake measures provided in that notification, to expediate the project work.

(44) Next is that the steps for acquisition in this case have been taken by the state long back, in the year 1979. Since then, under various Acts in operation, the proceedings are said to have been continued and ultimately ended in to an 'award'. During continuance of such proceedings, (the veracity of which is, however challenged), project work is completed. It is not the scheme of the notification that the same may also be applied in a case like this. At the cost of reiteration, it may be held that the state is not holding any stake to urgently complete any work of public purpose, for which land may be purchased directly from the owner by passing the entire procedure of acquisition. More so, when acquisition proceedings in this case has already been completed and rightly or wrongly an amount of compensation has been determind, there is no scope that the parties could have been directed to undergo the process under the said notification again, for assessment of the price for land.

(45) These findings shall lead to one definite conclusion, that the notification dated 25.02.2016, would not have any manner of application, in this case. Thus, it has been erroneous and not in accordance with law for the Ld. First Court to direct the parties to undergo a process as enumerated under the notification dated 25.02.2016. Though the court records that the parties have conceded to such an arrangement, the parties are not to proceed with the same any further.

(46) All these unfailingly conclude that the impugned order dated 7th October, 2021, is not sustainable and is liable to be set aside.

(47) This brings us to the second point put forth by the state, i.e, due compliance with the provisions of 2013 Act in determination of compensation, by referring to the decision of 3 Judges Bench in **Deepak Aggarwal's** case.

(48) Appellant states that with the repeal of 1894 Act, the proceedings thereafter does not lapse, though compensation has to be determined in accordance with the new Act, i.e, Act of 2013. That the state has duly compiled with such requirement of law to declare 'award' in this case.

(49) Respondents have raised strong objection, as dealt with herein before in details. In short, they say that proceedings under 1894 Act has lapsed, after the prescribed period of repeal of the same and compensation in their case should be determined by following the procedure prescribed under the 2013 Act including that under section 25 of the Act, as per the mandate of law.

(50) After repeal of Act of 1894, and coming into force of 2013 Act, Section 24 (1) (a) of the new Act shall have overriding affect, as to the provisions of the said Act, in view of its non-obstante clause. Therefore provisions of repeal and saving under Section 114 of the Act of 2013 shall operate to the extent it is not hindered by the provisions of Section 24 (1) (a) of the said Act. Provisions of Section 24 (1) (a) have fallen for interpretation time and again before the Hon'ble Apex Court, the two cases in hand are amongst those.

(51) It is now well settled that after promulgation of 2013 Act, with regard to the land acquisition proceedings, initiated on a date before the said Act came into force, the date of "initiation of the proceedings" would be rekoned to the date of publication of notice under Section 4 of the 1894 Act, i.e, 4th December, 2013, in this case. Also that publication of notice under Section 6 of the 1894 Act, is a step in the entire acquisition proceedings. It is also settled that declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act. Admittedly in this case, the proceedings did not conclude on the date of coming into force of the 2013 Act, i.e, 1st January, 2014. Also admittedly, a notification under Section 6 of the 1894 Act, has been made on 16th April, 2014, that is, after promulgation of the 2013 Act.

(52) In such a case, the Hon'ble Supreme Court has been pleased to hold that all provisions of 2013 Act relating to "determination of compensation" would apply, including that under Section 25 of the 2013 Act. Relevant portions of the two judgments, dealt with by the parties in this case, may again be gone through as hereinbelow:-

Mahesh's judgment *[(2022) 2 SCC 772]-*

> ***"24. Law of limitation is generally regarded as procedural as its object is not to create any right but prescribe periods within which legal proceedings should be instituted for enforcement of rights or adjudication orders should be passed. Statutes of limitation, therefore, have retrospective effect insofar as they apply to all legal proceedings brought after they come into force. However, the laws relating to limitation have been held to be prospective in the sense that they do not have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on the date. In this sense, the limitation provisions can be procedural in the context of one set of facts and substantive in the context of a different set of facts. Therefore, unless the language of the provision dealing with period of limitation clearly manifests, in express terms or by necessary implication, a contrary intention divesting vested rights, such provision is to be construed as prospective. In the context of clause (a) to Section 24(1) of the 2013 Act, it is to be stated that the said clause would apply only if the period for making of an award had not ended and time was available as on 1-1-2014. Where and if the period for***

making of the award had already lapsed before 1-1-2014, clause (a) to Section 24(1) would not apply so as to deprive and deny the vested rights which have already accrued in favour of the landowners. The present case is not of divesting of vested rights of the landowners on enactment of the 2013 Act.

25. Section 25 is a rule of procedure immediately following Section 24 and a part of fasciculus of "all the provisions", from Sections 25 to 30, "relating to determination of compensation". Hence, the expression "all the provisions relating to the determination of compensation" under the 2013 Act will encompass Section 25 of the 2013 Act.

30. A rational approach so as to further the object and purpose of Sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24(1) of the 2013 Act there would be no notification under Section 19, but declaration under Section 6 of the 1894 Act. When the declarations under Section 6 are valid as on 1-1-2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act.

31. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1-1-2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1-1-2014. This dictum is subject to the caveat stated in paras 20 to 23 (supra) that a declaration which has lapsed in terms of Section 11-A of the 1894 Act before or on 31-12-2013 would not get revived."

Deepak Aggarwal's judgment [unreported]-

"A perusal of Section 24 would reveal that passing of an Award under Section 11 of the L.A. Act is the key factor in deciding the manner and nature of continuance of the land acquisition proceedings. A scanning of Section 24 (1) (a) would reveal that if land acquisition proceeding was initiated under the L.A. Act, but no award was passed under Section 11 thereof, then, all provisions of the 2013 Act relating to the "determination of compensation" would apply."

(53) Chapter IV of the 2013 Act, enumerates about "Notification And Acquisition" to encompass Sections 11 to 30. Section 25 thereof provides for the "Period within which an award shall be made", which is as follows:-

> ***"25. Period within which an award shall be made. - The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:***
>
> ***Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:***
>
> ***Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned."***

(54) Therefore in compliance with the settled law, in this case, the land acquisition proceedings being initiated on 4th December, 2013 with publication of notice under Section 4 of the 1894 Act and having not been concluded by declaration of an Award within the period prescribed therein and the 2013 Act having coming into force in the midst of such proceedings, the provisions of the 2013 Act, as regards determination of compensation, shall apply. It is now settled well that, 'provisions as regards determination of compensation', in 2013 Act, would entail that under Section 25 of the 2013 Act.

(55) The fate of a proceeding which has been initiated prior to coming into force of the 2013 Act by issuance of a notification under Section 4 of the 1894 Act has been categorically determined by the Honorable Supreme Court in the said 3 Judges Bench decision in Deepak Aggarwal's case, in the following manner :

> ***"Thus, it is obvious that in case of non-passing of an award in terms of Section 11 of the L.A. Act where the acquisition proceedings have been initiated prior to 01.01.2014, all provisions under the 2013 Act relating to the determination of***

> ***compensation alone would apply to such acquisition proceedings. In other words, it would mean that in such circumstances the land acquisition proceedings should continue, but all the provisions relating to the determination of compensation under the 2013 Act alone will be applicable to such proceedings, meaning thereby, the 2013 Act would come into play only at that stage. There can be no doubt with respect to the position that between the initiation of land acquisition proceedings by issuance an publication of notice under Section 4(1) of the L.A. Act and the stage at which compensation for the acquisition calls for determination, there are various procedures to be followed to make the acquisition in accordance with the law. The question is when Section 24 (1) of the 2013 Act makes it clear with necessary implication that all provisions of the 2013 Act relating to the determination of compensation alone would be applicable to such proceedings initiated under the L.A. Act but, not culminated in an award, how the procedures are to be regulated during the intervening period till the proceedings reach the stage of determination of compensation. There cannot be any uncertainty on that aspect. The procedures to be undertaken and the manner in which they are to be regulated cannot remain uncertain. They are conducted either in the manner provided under the L.A. Act or in the manner provided under the 2013 Act. But then, in view of Section 24 (1) (a), the provisions relating to the determination of compensation alone can be applied to such proceedings or in other words, there is only a restricted application of the provisions of the 2013 Act in relation to such proceedings. The inevitable conclusion can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the L.A. Act. We have no doubt that without such a construction, the provisions under Section 24 (1) (a) would not work out, in view of the restrictive application of the 2013 Act."***

It has further been held as follows:

> ***"Certainly, it would not be in public interest to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will. A uniform procedure has to be followed in respect of such proceedings. The acquisitions initiated for public purposes should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and at the same time, the persons affected shall have definite idea about the manner in which procedures would be conducted. The Party 'B' would not be justified in describing such situations of necessity and the consequential application of provisions which are actually saved on account of the construction of Section 24 as an attempt to bring the words expressly employed in Section 24 (1) (b) and absent in Section 24(1) (a), by indirect method to Section 24 (1) (a) of the 2013 Act. The aforesaid conclusions and findings would make the contentions of Party 'B' that Section 4(1) notification issued prior to 01.01.2014 could not***

> ***survive after 01.01.2014 and also that Section 6 notification under the L.A. Act could not be issued after 01.01.2014, unsustainable. In fact, all such procedures and formalities shall be continued till the determination of compensation by applying all the provisions for determination of compensation, under the 2013 Act. A contra-construction, in view of the restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1) (a) of the 2013 Act unworkable."***

(56) Having read that, along with the findings of the Court in Mahesh's judgment [(2022) 2 SCC 772] that ".... declarations under section 6 of the 1894 Act are no different and serve the same purpose as the declarations under section 19 of the 2013 Act." - it can well be construed in this case that the land acquisition proceeding which was initiated in this case by publication of notification under Section 4 of 1894 Act on 4th December, 2013 shall continue even after promulgation of 2013 Act. It continued in this case. The next procedural step for publication of notification under section 6 of the 1894 Act , which has been held in Mahesh's judgment, to be akin to a declaration under section 19 of the 2013 Act, was undertaken on 16th April, 2014. The next step would be for declaration of Award and determination of compensation. Here come into play the provisions of 2013 Act for determination of compensation - which would include the provision of section 25 of 2013 Act too within its purview. In other words , in this case an Award should have been declared within a period of twelve months from the date of publication of notification under section 6 of the 1894 Act (which is akin to a declaration under section 19 of the 2013 Act). However, admittedly in this case the Award was declared on 28th April, 2016, i.e, beyond the said prescribed statutory period.

(57) There would be no gainsaying to state that in this case no Award was declared within a period of twelve months from the date of publication of notification under section 6 of the 1894 Act (which is akin to a declaration under section 19 of the 2013 Act). Therefore upon expiry of the said twelve months period from the date of publication of notification under section 6 of the 1894 Act (which is akin to a declaration under section 19 of the 2013 Act), the proceedings lapse. There would be no scope for the authorities to declare any Award in this case, after the said period of time and the purported Award dated 28th April 2016, in this case is perverse and a nullity in the eyes of law. The only option with which the appellant is left, is to start a fresh proceeding, in accordance with law.

(58) The other point worth mentioning is that, though the appellant has claimed to have determined the compensation in accordance with the provisions of 2013 Act, from the document submitted on behalf of the respondent/ writ petitioner, being annexed with his affidavit in opposition (affirmed on 22nd June, 2022) it could be gathered that the calculations and determination of compensation was done in the Award under the provisions of section 11 of the repealed Act of 1894. Illegality of State action is absolutely manifest which cannot sustain in the eyes of law.

(59) In the facts and circumstances aforestated, we dispose of the appeal and the connected applications with the following directions:-

(i) The order under appeal is set aside.

(ii) We declare that the award published on April 28, 2016, is non-est in the eye of law.

(iii) The acquisition proceedings have lapsed by reason of non-publishing of award within a year from the date of publication of declaration under Section 6 of the 1894 Act.

(iv) The State is not in a position to return the land to the owner since the same has been utilized for construction of a public road.

(v) Consequently, the State shall start fresh acquisition proceedings which will necessarily have to be under the provisions of the 2013 Act as there is no other statute under which acquisition proceedings can be initiated. Such acquisition proceedings shall be initiated and completed and the compensation determined under the provisions of the 2013 Act shall be paid to the respondents/writ petitioners within 4 months from the date of communication of this order to the concerned Land Acquisition Collector.

(60) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon usual undertaking.

I agree,

(Rai Chattopadhyay,J) **(Arijit Banerjee,J)**