

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.4239 OF 2018
IN
WRIT PETITION NO.1228 OF 2015**

Sakharbai w/o. Haribhau Shelke
(Deceased) through LR's

1. Sau. Sanjivani W/o. Dashrath Mahabare,
Age : 54 years, Occu : Business
2. Sau. Rajani W/o. Vishwas Joglekar
Age : 58 years, Occu : Agri,
3. Sau. Soniya Devidas Patil,
Age : 52 years, Occu : Household,

All R/o. Shirdi, Tq. Rahata,
Dist. Ahmednagar
Through their power of attorney holder
Prasad Dashrath Mahabare
Age : 32 years, Occu : Business,
R/o. Shirdi, Tq. Rahata,
Dist. Ahmednagar

.. Applicants

Versus

1. The State of Maharashtra
Through Revenue and Forest Department,
Mantralaya Mumbai.
2. The Additional Commissioner,
Nashik Division, Nashik,
Dist. Nashik
3. The Sub-Divisional Officer
At Shirdi, Tq. Rahata,
Dist. Ahmednagar.
4. Shri. Saibaba Sansthan Shirdi,
Tq. Rahata, Dist. Ahmednagar
Through C.E.O., Deepak Madhukar Muglikar,

Age : 57 years, Occu : Service,
R/o. Shirdi, Tal. Rahata, Dist. Ahmednagar. .. Respondents

...

Mr. Amol K. Gawali, Advocate for the applicants
Smt. R.P. Gour, AGP for respondent nos.1 to 3
Mr. Anil S. Bajaj, Advocate for Respondent No.4

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 14.09.2022
PRONOUNCED ON : 20.09.2022**

ORDER (*PER* SANDEEP V. MARNE, J.) :

. The issue involved in the present Civil Application is about entitlement of the applicants, who are the original petitioners, to get compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013') by taking the reference date as 01.01.2014 in view of the directions issued by the Central Government vide Notification / Circular dated 26.10.2015.

2. Petitioner has filed the present Civil Application in a disposed of Writ Petition No.1228 of 2015. Therefore, it would be necessary to set out brief factual background under which the Civil Application has been filed.

3. The land admeasuring 4-Hector, 59-Are from Survey No.148/1 was sought to be acquired for Shirdi Sansthan (respondent no.4) for construction of Dahrmashala. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894') was published on 27.09.2000. Petitioners' predecessor in title raised an objection to the acquisition under Section 5-A of the Act of 1894, which was rejected. Thereafter, declaration under Section 6 was published on 21.09.2001. The notification issued under Section 4 and declaration under Section 6 of the Act of 1894 were assailed in Writ Petition No.390 of 2002. By order dated 29.04.2002, the petition was admitted and the parties were directed to maintain *status quo* until further orders. It is undisputed position that on account of the *status quo* order passed on 29.04.2002, the acquisition proceedings could not be completed during pendency of the petition. By judgment and order dated 25.04.2014, this Court dismissed Writ Petition No.390 of 2002 in so far as the challenge to the notification issued under Section 4 and declaration under Section 6 of the Act of 1894 was concerned. However, it was clarified that the compensation should be determined as per the provisions of the Act of 2013.

4. Thereafter Writ Petition No.1228 of 2015 came to be filed seeking directions to the respondents to invoke the provisions of the Act of 2013 for declaration of Award in respect of the land under acquisition. A direction was sought for issuance of fresh notification under Section 4 (2) and to decide the market value and to pay the compensation as provided under the Act of 2013. By order dated 09.02.2015, Writ Petition No.1228 of 2015 came to be rejected by this Court holding that this Court had already held in Writ Petition No.390 of 2002 that the proceedings till the stage of notice under Section 9 of the Act of 1894 were saved and only the compensation will have to be determined as per the provisions of the Act of 2013. Therefore, the contention of the petitioners for issuance of fresh notification under Section 4 (2) of the Act of 2013 was rejected.

5. Third Writ Petition No.1943 of 2016 was filed seeking a declaration that the land acquisition proceedings had lapsed in view of the provisions of Section 25 of the Act of 2013. Said writ petition came to be dismissed by this Court by judgment and order dated 03.03.2016.

6. The petitioners challenged the judgments and orders passed by this Court in Writ Petition Nos.390 of 2002, 1228 of 2015

and 1943 of 2016 before the Supreme Court. When all three Special Leave Petitions were listed before the Supreme Court on 19.02.2018, the petitioners sought liberty to withdraw the SLPs for moving this Court by way of appropriate application(s) in the light of the Government Notification / Circular dated 26.10.2015. The Supreme Court permitted the petitioners to do so. This Court was directed to consider such application(s) filed by the petitioners on their own merits, without being influenced by any of the observations made in the earlier judgments and having regard to the fact that the Government Notification / Circular dated 26.10.2015 is a subsequent notification.

7. In pursuance of the liberty granted by the Supreme Court by its order dated 19.02.2018, the petitioners have filed the present Civil Application seeking following prayers:

“B. The Hon’ble High Court may be pleased to quash and set aside the award dated 13.08.2015 passed by the Sub-Divisional Officer, Shirdi Division, Shirdi, and further direct to pass a fresh award as per provision of Section 26 to 30 of the Right to Fair Compensation Act, 2013, by determining the market value of the suit property as on 01.01.2014 as per the Central Government notification / direction dated 26th October, 2015.

In the alternative

The Hon’ble High Court may be pleased to direct that the land reference No. 01/2016 filed by the

present applicants and pending before Civil Judge Senior Division, Kopargaon, may be decided by considering the market value of the suit property, for the purpose of determining of compensation under the Right to Fair Compensation Act, 2013 as on 01.01.2014 as per the Central government notification / directions dated 26th October, 2015.

C. The Hon'ble High Court may be pleased to direct the respondent to grant the legitimate right of the applicant, to get the compensation, right to resettlement, rehabilitation and all other benefits under the New Act."

8. Appearing for the Petitioners, Mr. Gawali the learned counsel would submit that the Notification / Circular dated 26.10.2015 issued by the Department of Land Resources, Ministry of Rural Development, Government of India, directs that the reference date for calculation of market value under Section 24 (1)(a) of the Act of 2013 would be 01.01.2014. He would therefore contend that the compensation payable to the petitioners is required to be redetermined by taking into consideration the reference date of 01.01.2014. He would submit that since this Court has directed, by its judgment and order dated 25.04.2014 passed in Writ Petition No.390 of 2002, that the compensation should be determined as per the provisions of the Act of 2013, and since the Award has been passed after coming into effect of the Act of 2013, the market value of the property as on 01.01.2014 is required to be taken into consideration.

9. Mr. Gawali would further submit that the petitioners are justified in filing the present Civil Application in pursuance of the liberty granted by the Supreme Court. He would submit that the objective behind filing Writ Petition No.1228 of 2015 was to secure correct amount of compensation. Since the Notification / Circular dated 26.10.2015 was issued after disposal of the writ petition on 09.02.2015, but during pendency of the SLP before the Supreme Court, the petitioners have rightly filed this Civil Application for redetermination of amount of compensation by considering the market value of the acquired property as on 01.01.2014.

10. Per Contra, Mr. Bajaj learned counsel appearing for the respondent no.4 raises preliminary objection of maintainability of Civil Application in the light of the dismissal of Writ Petition No.1228 of 2015. He would submit that the present Civil Application is otherwise beyond the scope of prayers made in Writ Petition No.1228 of 2015. So far as the entitlement of the petitioners for redetermination of amount of compensation on the basis of Circulars / Notification dated 26.10.2015 is concerned, Mr. Bajaj would submit that the petitioners cannot be permitted to take benefit of their own wrong. He would submit that the acquisition

proceedings could not be completed on account of interim order passed on 29.04.2002 in Writ Petition No.390 of 2002 filed by the petitioners. He would submit that the petitioners stalled the acquisition proceedings for over 12 long years and cannot now be permitted to take benefit of Notification / Circular issued on 26.10.2015. In support of his contention, Mr. Bajaj would rely upon judgment of the Supreme Court in **Faizabad Ayodhya Development Authority, Faizabad Vs. Dr. Rajesh Kumar Pandey and Others, 2022 SCC OnLine SC 679.**

11. In rejoinder Mr. Gawali would contend that the issues of acquisition proceedings being stalled on account of interim orders and the petitioners not being permitted to take advantage of the same, were specifically raised by respondent no.4 in Writ Petition No. 390 of 2002 and the same were rejected. He would submit that on account of respondent no.4 not challenging the judgment and order dated 25.04.2014 passed in Writ Petition No.390 of 2002, the same attained finality *qua* respondent no.4. He would, therefore, submit that respondent no.4 cannot now raise very same objection in the present petition. He would further submit that the judgment in **Faizabad Ayodhya Development Authority** (supra) is not applicable to the present case as no possible benefit has been derived by the petitioners on account of pendency of Writ Petition No.390 of 2002.

He would submit that the petitioners had lost possession of the property and therefore, mere pendency of the petition has not caused any benefit to them. He would further submit that inability of this Court to decide Writ Petition No.390 of 2002 for 12 long years cannot be attributed to the petitioners for the purpose of denying them the lawful benefits admissible under the Notification / Circular dated 26.10.2015. He would further submit that there was no lethargy on the part of the petitioners leading to delay in acquisition proceedings. Mr. Gawali has relied upon Judgment of this Court in **Abuli Abdul Husain Vora, Daudi-vora and another Vs. Union Territory of Dadra and Nagar Haveli and others, [2019 (1) Mh.L.J. 366]** in which the petitioners therein were held entitled to compensation not on the basis of Section - 4 notification, but as on 01.01.2014. He would also rely upon the order passed by this Court, Bench at Nagpur in **Hardas (Haridas) Ramdas Udasi Vs. State of Maharashtra, Writ Petition No.1461 of 2018 decided on 10.04.2019.** He would submit that in that case as well, an order of *status quo* for possession was passed. But, still this Court directed that the reference date of 01.01.2014 be taken into consideration for determination of compensation. He would also rely upon the judgment of the Supreme Court in **Hori Lal Vs. State of Uttar Pradesh and Others, 2019 SCC OnLine SC 129,** in which again, 01.01.2014 was directed to be considered as the

reference date for determination of compensation.

12. Rival contentions of the parties now fall for our consideration. We must first deal with the preliminary objection about the maintainability of the present Civil Application raised by Mr. Bajaj. Writ Petition No.1228 of 2015 has already been disposed of by this Court by order dated 09.02.2015. Therefore, in normal circumstances, Civil Application seeking substantive prayers in a disposed of writ petition could not have been filed or entertained. However, the Supreme Court granted specific liberty to the petitioners to file such an application with a further direction to this Court to consider and decide the same. We reproduce the order passed by the Supreme Court on 19.02.2018 which is as under:

“Learned counsel for the petitioners prays for liberty to withdraw the present Special Leave Petitions and instead move the High Court by way of appropriate application(s) in the light of the Government Notification / Circular dated 26th October, 2015. The petitioners are permitted to do so. The High Court, as and when such application(s) is filed, will consider the same on its / their own merits without being influenced by any of the observations made in the impugned order and also having regard to the fact that the Government Notification / Circular dated 26th October, 2015 is a subsequent notification. We make it clear that we have expressed no opinion on the merits of the case.

The Special Leave Petitions as also all pending applications therein are accordingly closed on withdrawal with liberty and directions / observations as aforesaid.”

13. Since there is a specific direction by the Supreme Court for decision of application filed by the petitioners in light of the Government Notification / Circular dated 26.10.2015, we would proceed to decide the application on merits rather than reject the same for technical reasons. We must note that Mr. Gawali was, in fact, willing to amend the prayers in the Civil Application by adding a prayer for review / recall of the judgment and order dated 09.02.2015 passed in Writ Petition No.1228 of 2015. However, in the light of the order passed by the Supreme Court, we heard the Counsels for the parties at length on the merits of the Civil Application and, therefore, we would proceed to decide the same on its own merits. Accordingly, the objection raised by Mr. Bajaj about maintainability of the Civil Application is rejected.

14. Since the effect of Circular / Notification dated 26.10.2015 is to be considered in the present application, the same is reproduced herein below:

“Dated : 26th October, 2015

Dear,

Please refer to your letter No. R&FD/General-2014 CR-31/A4, dated the 11th September, 2014 regarding directions under section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The issues raised by you along with the views of this Department were sent to the Department of Legal Affairs,

Ministry of Law & Justice for opinion in the matter. The issues raised by the Government of Maharashtra and the opinion of the Department, as concurred in by the Department of Legal Affairs, thereon are enumerated below:-

S. No .	Issues raised by the Government of Maharashtra	Opinion of the DoLR
1		
2		
3	For calculation of market value, under Section 24 (1)(a), reference date should be 01.01.2014 (commencement of RFCTLARR Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894?	The reference date for calculation of market value, under Section 24(1)(a) should be 01.01.2014 (commencement of RFCTLARR Act, 2013), as the Section reads “in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply. Under section 26 reference date is date of preliminary notification, but section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 01.01.2014) with a view to ensure that the land owners / farmers/ affected families get enhanced compensation under the provisions of the RFCTLARR Act, 2013 (as also recommended by Standing Committee in its 31 st report).

Yours sincerely,
Sd/-
(Hukum Singh Meena)”

15. Thus, as per the Circular / Notification dated 26.10.2015

the reference date of 01.01.2014 is required to be taken into consideration for the purpose of calculation of market value or property under acquisition under Section 24 (1)(a) of the Act of 2013. Mr. Gawali has relied upon judgments in **Abuli Abdul Husain Vora** (supra) and **Hardas (Haridas) Ramdas Udasi** (supra) in which the date of 01.01.2014 was directed to be considered as the reference date for determination of compensation in respect of land acquisition proceedings initiated under the provisions of the Act of 1894.

16. Faced with the trite legal position of reference date of 01-01-2014, Mr. Bajaj contends that the petitioners cannot be permitted to take benefit of their own wrong. This contention is raised on the premise that the petitioners had stalled the acquisition proceedings during the period from 29.04.2002 to 25.04.2014 on account of *status quo* order passed in Writ Petition No.390 of 2002. Mr. Bajaj has relied upon the judgment of the Apex Court in **Faizabad Ayodhya Development Authority** (supra). In that judgment, the Apex Court has considered the effect of interim order resulting in stay of acquisition proceedings on the rights of the owners to receive compensation under the provisions of the Act of 2013. The Court held in para nos.35 and 36, 39, 40 and 41 as under:

“35. What is of significance for the purpose of this

case is clause (a) of sub-section 1 of Section 24 of the Act. To reiterate the same, when no award under Section 11 of the Act, 1894 has been made, all provisions of Act, 2013 relating to determination of compensation shall apply. This means that when the acquisition proceeding under Act, 1894 has been initiated but the award has not been made as on the date of the enforcement of Act, 2013 i.e., 01.01.2014, in such an event, the provisions of Act, 2013 would apply with regard to determination of compensation. It is necessary to understand the implication of the words “where no award under Section 11 of Act, 1894 has been made.” This means that although acquisition proceedings had been initiated, for reasons best known to the acquiring authority, the Collector or the Deputy Commissioner or District Magistrate or the Special Land Acquisition Officer, as the case may be, had not passed an award as on the date of enforcement of Act, 2013 i.e., on 01.01.2014. This could be on account of sheer inaction on the part of the Collector or Land Acquisition Officer in not passing an award and the Act, 2013 being enforced. In such a case, the provisions of the Act, 2013 would straightaway apply vis-a-vis determination of compensation. This is because Act, 2013 is a more beneficial legislation as compared to Act, 1894. The compensation payable under the Act, 2013 is higher than under the repealed Act being Act i.e., 1894. Thus, there would be a continuity in the acquisition proceedings under the Act, 2013.

36. However, it is necessary to delve deeper into the provision to assimilate the reasons as to why no award would have been made on the date of enforcement of the Act, 2013 in a given case when the acquisition had commenced under the Act, 1894 which is the repealed Act. One of the reasons would be that the acquisition proceedings are assailed either before the High Court under Article 226 of the Constitution of India or by filing a civil suit before the Civil Court seeking certain reliefs, in which there would be interim orders including but not limited to “stay of further proceedings”, “stay of dispossession” or “status quo to

be maintained by both the land owner as well as the acquiring authority". In such a case, where an interim order would have been operating against the acquiring authority, the said authority would be restrained from proceeding further in the acquisition proceedings vis-à-vis making of an award under Section 11 of the Act, 1894.

39. We find that the expression "where no award under Section 11 of the said Land Acquisition Act has been made" has to be read contextually and not by way of a plain reading. This is because a land owner who has an interim order of stay of further proceedings pursuant to the declaration made under Section 6 of the Act, 1894 issued by a Court of law and has thereby restrained the Collector/Land Acquisition Officer from making an award cannot thereafter by contending that as on 01.01.2014, no award has been made by the acquiring authority seek benefit under the provisions of the Act, 2013 by receiving a higher compensation.

40. As already noted, Section 24 is in the nature of a saving clause to save all acquisitions initiated under the provisions of Act, 1894 and at the same time, to grant certain reliefs under the provisions of Act, 2013 such as lapse of acquisition under sub-section 2 of Section 24 of the Act or clause (a) of sub-section 1 of Section 24 thereof. Therefore, while applying the said provisions to the facts of each case, it is necessary to bear in mind the contextual interpretation having regard to provisions under both the Acts. This also becomes clear on a reading of clause (b) of sub-section 1 of Section 24 which states that if an award has been made under Section 11 of Act, 1894 as on 01.01.2014 i.e., the date of enforcement of Act, 2013, then the proceedings shall continue under the provisions of Act, 1894 as if the same has not been repealed. But if no award has been made as on 01.01.2014 then clause (a) of sub-section 1 of Section 24 would apply.

41. Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make an award for reasons beyond his control and in compliance of the interim order granted by a court of law at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.”

17. After taking into consideration various judgments on the issue, the Apex Court has summarised its observations in para-46 as under:

“46. The sum and substance of the aforesaid observations could be summarized as under:-

- (i) The time of five years is provided to the authorities to take action, not to sleep over the matter;
- (ii) Only in cases of lethargy or inaction and default on the part of the authorities and for no other reason lapse of acquisition can occur;

(iii) Lapse of acquisition takes place only in case of default by the authorities acquiring the land, not caused by any other reason or order of the court;

(iv) The additional compensation @ 12% provided under Section 69 of the Act, 2013 has been excluded from the period acquisition proceedings have been held up on account of the interim injunction order of any court;

(v) If it was not possible for the acquiring authorities, for any reason not attributable to them or the Government, to take requisite steps, the period has to be excluded;

(vi) In case the authorities are prevented by the court's order, obviously, as per the interpretation of the provisions such period has to be excluded;

(vii) The intent of the Act, 2013 is not to benefit landowners only. The provisions of Section 24 by itself do not intend to confer benefits on litigating parties as such, while as per Section 114 of the Act, 2013 and Section 6 of the General Clauses Act the case has to be litigated as per the provisions of the Act, 1894.

(viii) It is not the intendment of the Act, 2013 that those who have assailed the acquisition process should get benefits of higher compensation as contemplated under Section 24;

(ix) It is not intended by the provisions that in case, the persons, who have litigated and have obtained interim orders from the Civil Courts by filing suits or from the High Court under Article 226 of the Constitution should have the benefits of the provisions of the Act, 2013 except to the extent specifically provided under the Act, 2013;

(x) In cases where some landowners have chosen to take recourse to litigation and have obtained interim orders restraining taking of possession or orders of status quo, as a matter of practical reality it

is not possible for the authorities or the Government to take possession or to make payment of compensation to the landowners. In several instances, such interim orders also have impeded the making of an award;

(xi) However, so far as awards are concerned, the period provided for making of awards under the Act, 2013 (sic 1894 Act) could be excluded by virtue of Explanation to Section 11-A, which provided that in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a court shall be excluded;

(xii) The litigation initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants in a straightjacket manner. In case there is no interim order, they can get the benefits they are entitled to, not otherwise. Delays and dilatory tactics and sometimes wholly frivolous pleas cannot result in benefitting the landowners under sub-section (1) of Section 24 of the Act, 2013;

(xiii) Any type of order passed by this Court would inhibit action on the part of the authorities to proceed further, when a challenge to acquisition is pending;

(xiv) Interim order of stay granted in one of the matters of the landowners would cause a complete restraint on the authorities to proceed further to issue declaration;

(xv) When the authorities are disabled from performing duties due to impossibility, it would be a sufficient excuse for them to save them from rigour of provisions of Section 24. A litigant may have a good or a bad cause, be right or wrong. But he cannot be permitted to take advantage of a situation created by him by way of an interim order passed in his favour by the Court at his instance. Although provision of Section 24 does not discriminate between landowners, who are litigants or non-litigants and treat them

differently with respect to the same acquisition, it is necessary to view all of them from the stand point of the intention of the Parliament. Otherwise, anomalous results may occur and provisions may become discriminatory in itself;

(xvi) The law does not expect the performance of the impossible;

(xvii) An act of the court shall prejudice no man;

(xviii) A party prevented from doing an act by certain circumstances beyond his control can do so at the first subsequent opportunity;

(xix) When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse;

(xx) The Court can under its inherent jurisdiction *ex debito justitiae* has a duty to mitigate the damage suffered by the defendants by the act of the Court;

(xxi) No person can suffer from the act of Court and an unfair advantage of the interim order must be neutralised;

(xxii) No party can be permitted to take shelter under the cover of Court's order to put the other party in a disadvantageous position;

(xxiii) If one has enjoyed under the Court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24 as the State authorities would have acted and passed an award determining compensation but for the Court's order."

18. Thus, the ratio enunciated in **Faizabad Ayodhya**

Development Authority (supra) is that if the acquisition proceedings are stalled as a result of interim order passed in litigation initiated by the land owners, the benefit of Section 24 (2) of the Act of 2013 would not be available to such owners. The Court has recorded its conclusion in para - 52 of the Judgment as under:

“52. In view of the above and for the reasons stated above, it is observed as under:-

(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.”

Considering the exposition of law in **Faizabad Ayodhya Development Authority** (supra), we find that in the present case the acquisition was stalled on account of interim order of *status quo* passed by this Court on 29.04.2002 in Writ Petition No.390 of 2002. The land acquisition proceedings could not be processed or concluded upto 25.04.2014. Thereafter the Writ Petition No.390 of 2002 was ultimately dismissed. It is not even the case that the writ petition was allowed. Thus, on account of pendency of non-meritorious writ petition, the acquisition

proceedings were stalled for the period of 12 long years. The issue therefore is, whether the petitioners can be permitted to derive benefit of Notification / Circular dated 26.10.2015? In our opinion, following the ratio in **Faizabad Ayodhya Development Authority** (supra), the petitioners cannot be permitted to take benefit of their own wrong.

19. Now we deal with the contention of Mr. Gawali that the objection about the petitioners taking benefit of their own wrong was already considered and decided by this Court in its judgment and order dated 25.04.2014 passed in Writ Petition No.390 of 2002. We do not find merit in the contention as the Supreme Court has directed that while considering the present Civil Application, we cannot be influenced by the observations made in the said Judgment. Even otherwise, the said objection was raised by the respondent no.4 in an altogether different context. Also, the judgment in **Faizabad Ayodhya Development Authority** (supra) was not available when the said objection was repelled. Therefore, we reject the contention of Mr. Gawali in this regard.

20. We, therefore, hold that the Award could not be declared under Section 11 of the Act of 1894 on account of pendency of Writ

Petition No.390 of 2002 and on account of interim order of *status quo* dated 29.04.2002. Therefore, the reference date of 01.01.2014 envisaged under Notification / Circular dated 26.10.2015 cannot be taken into consideration for calculation of market value of acquired property under Section 24 (1)(a) of the Act of 2013.

21. Civil Application being devoid of any merit is liable to be dismissed and is accordingly dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)