

Suchitra/Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.974 OF 2016
WITH
CIVIL APPLICATION NO.111/2017**

MARIO COTTA PEREIRA
landlord, major of age,
Indian National, r/o House No.43,
Behind Cine Metropole, Tembim,
Margao, Goa.

... Petitioner

Versus

1. STATE OF GOA, through
its Chief Secretary with office at
Secretariat, Porvorim, Goa.

2. THE COLLECTOR (SOUTH),
having office at Collectorate,
Margao, Goa.

3. THE DY. COLLECTOR/LAND
ACQUISITION OFFICE,
South Goa Division, Collectorate,
Margao, Goa.

4. UNION OF INDIA
through the Ministry of Defence,
South Block, New Delhi.

... Respondents

Mr. Shivan Desai, Advocates *for the Petitioner.*

Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai,
Additional Government Advocate *for the Respondent-State.*

CORAM: **M.S. SONAK &
R.N. LADDHA, JJ.**

Reserved on: **28th June 2022**

Pronounced on: **26th August 2022**

JUDGMENT: (Per M. S. Sonak, J.)

1. Heard Mr. Shivan Desai for the Petitioner and Mr. D. Pangam, learned Advocate General who appears along with Mr. Pravin Faldessai, learned Additional Government Advocate for the State.

2. The Octogenarian Petitioner questions the constitutional validity of the **Goa (Allotment of Plots of Certain Displaced Persons) Act, 2016** (impugned Act) and acquisition of his property admeasuring 35,690.75 sq. mtrs. at Aquem, Salcete, Goa (said property) against the offered compensation of ₹1,37,052/-. The impugned Act is single-person legislation; it acquires only the Petitioner's property and not others. Accordingly, the Petitioner has applied for restoration of vacant and encumbrance-free possession of the said property. In the alternative, the Petitioner has prayed for a direction to the State to acquire the said property under the Right to Fair Compensation Act, 2013 (2013 Act) and/or pay compensation corresponding to the prevailing market value at the time of actual acquisition, i.e., as of 27.09.2016.

3. There is no dispute about the Petitioner being the owner of the said property. By Order dated 14.01.1964, the Administrator of the then Union Territory of Goa, Daman, and Diu requisitioned the said property under Section 29 of the Defence of India Act, 1962 for accommodating about 40 to 50 persons who were displaced due to the acquisition of their properties for establishment of 2 STC (3 Military Training Regiments) at Salcete, Goa. However, for a long time, i.e., up to 19.05.1991, even the compensation for such requisition was not determined.

4. On 19.05.1991, however, compensation of ₹54,662.68 was offered, but the same was never paid. This determination and offers were made under the Requisitioning and Acquisition of Immovable Property Act, 1952 (RAIP Act). The Petitioner has pleaded that he made some attempts to resolve the issue amicably. Still, after the same failed, the Petitioner instituted Special Civil Suit No.199/1993/A in the Court of the Civil Judge, Senior Division at Margao, seeking restoration of possession, *among other things*, on the ground that requisitioning cannot continue indefinitely. In the alternative, the Petitioner sought compensation from the Government.

5. The Special Civil Suit No.199/1993/A was dismissed by the Civil Judge, Senior Division at Margao vide Judgment and Decree dated 12.04.1999 on two preliminary grounds without touching the

merits. First, the Suit was barred by limitation, and second, the Suit was barred under Section 19 of the RAIP Act.

6. The Petitioner appealed to this Court vide First Appeal No.102/1999. By Judgment and Order dated 05.03.2010, a division bench of this Court set aside the Trial Court's dismissal of the Suit and remanded the matter to the Trial Court for adjudication on merits. This Court held that the Suit was neither barred by limitation nor under Section 19 of the RAIP Act. However, taking cognizance of the amendment to the Goa Civil Courts Act, the Suit was transferred to the District Court and was re-registered as Civil Suit No.30/2010.

7. On remand, the District Judge dismissed Petitioner's application for deletion of the private defendants viz. defendant nos.4 to 39 and 41 to 68. However, this Court, by Order dated 24.11.2015, permitted such deletion, *among other things*, by holding that the main grievance of the Petitioner was against the Government's failure to de-requisition the said property despite the expiry of the maximum permissible requisition period of 17 years. Accordingly, the Suit is pending adjudication before the District Court.

8. During such pendency, the Legislative Assembly of the State of Goa passed the impugned Act to acquire only the Petitioner's property and no others. The impugned Act was assented to on 27.09.2016 and

published in the Official Gazette on 29.09.2016. Section 3(2) provides that the Government will pay the petitioner compensation as per the market value of such land as prevailing on the date of the requisition, i.e., 14.01.1964. Under this clause, the State Government, in 2017, offered compensation @of Rs. 3.83 per sq. mtr. totaling to Rs. `1,37,052/- for acquiring Petitioner's property, admeasuring 35,690.75 sq. mtrs.

9. The above offer can be compared to the Government's 1991 offer of ₹54,662.68 only for the property requisition. (Even this amount was never paid). Additionally, Mr. Dessai relied on a Government order dated 26.12.2012 published in the official gazette dated 03.01.2013 issued under Rule 4(3) of the Goa Stamp (Determination of True Market Value of Property) Rules, 2003 containing the statement of minimum rates for the year 2013-14 in the State of Goa at Aquem, Salcete Goa, where the Petitioner's property is situated. This order specifies a rate of Rs. 2564/- per sq. mtr. even assuming that the Petitioner's Property is not an urban property. Aggrieved by all this, the Petitioner instituted this petition on 10.10.2016.

10. Mr. Shivan Desai, learned counsel for the Petitioner, submits that the impugned Act involves the acquisition of the said land without payment of any compensation or illusory compensation. He

presents that the impugned Act relates to Entry 42 of List III in the Seventh Schedule to the Constitution of India (Concurrent List). He submits that the impugned Act, enacted by the State Legislature, directly conflicts with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Restoration Act, 2013 (2013 Act) and the Requisitioning and Acquisition of Immovable Property Act, 1952 (RAIP Act). Therefore, having regard to the provisions of Article 254 of the Constitution, the same is void.

11. Mr. Desai also submits that the 2013 Act is a complete and exhaustive code on the subject of land acquisition and determination of compensation. He presents that the 2013 Act and the impugned Act occupy the same field. These, he submits, are additional reasons to infer Repugnancy.

12. Mr. Desai refers to Sections 105 and 113 of the 2013 Act. He refers to the Notification dated 28.08.2015 made by the Central Government to provide that the beneficial provisions of the 2013 Act concerning the determination of compensation apply even to acquisitions under the enactments listed in the Fourth Schedule. He points out that RAIP Act is one of the enactments listed in the Fourth Schedule of the 2013 Act. Based on this, and given the scheme of

Article 254 of the Constitution, he submits that the impugned Act will have to yield and be declared null and void.

13. Mr. Desai submitted that assuming that the Rule of "reading down" can be made applicable in the present situation, this is a fit case to construe the provisions of the impugned Act by reading into the requirement of payment of compensation at the market value prevalent on the date of acquisition, i.e., 2016 having regard to the principles laid down in Section 26 of the 2013 Act. Mr. Desai relied upon *Calcutta Gujarat Education Society & Anr. vs. Calcutta Municipal Corp. & Ors.*¹ to support this contention.

14. Mr. Desai submitted that the impugned Act is manifestly arbitrary and violates Articles 14, 21, and 300A of the Constitution of India. He points out that the impugned Act is single-person legislation, affecting only the Petitioner and the Petitioner's requisitioned land. No basis for the singling out of the Petitioner or Petitioner's land is disclosed. In any case, there is no basis for offering the Petitioner virtually no compensation or illusory compensation of ₹1,37,052/- corresponding to the rate of ₹3.83 per sq.mtr., when the market rate is more than Rs. 3000 per sq. mtr. He submits that the retrospective operation of the impugned Act also renders the same harsh, irrational, and arbitrary. He points out that the maximum prescribed requisition period expired was 17 years. The land was,

¹ (2003) 10 SCC 533

therefore, freehold. There was no justification for the acquisition of such land without any compensation or by payment of illusory compensation. He presents that all these factors render the impugned Act *ultra vires*, null and void.

15. Mr. Desai relied on *ALSPPL Subramanyan Chettiar vs. Muttuswami Goundan*², *A. S. Krishna vs. State of Madras*³, *Ishwari Khetan Sugar Mills (P) Ltd. & Anr. vs. State of Uttar Pradesh & Ors.*⁴, *Offshore Holdings Pvt. Ltd. vs. Bangalore Development Authority & Ors.*⁵, *H. D. Vora vs. State of Maharashtra & Ors.*⁶, *Deep Chand vs. State of UP*⁷, *M. Karunanidhi vs. Union of India*⁸, *West Uttar Pradesh Sugar Mills Association & Ors. vs. State of Uttar Pradesh*⁹, *Forum of People's Collective Efforts (FPCE) & Anr. vs. State of West Bengal & Anr.*¹⁰ and *Indore Development Authority vs. Manoharlal & Ors.*¹¹, *P. Vajravelu Mudaliyar vs. Sp. Dy. Collector*¹², *Nagpur Improvement Trust & Anr. vs. Vithal Rao & Ors.*¹³ and *Union of India & Anr. vs. Tarsem Singh & Ors.*, *G. Mohan Rao & Ors. vs.*

2 AIR 1941 FC 47

3 AIR 1957 SC 297

4 AIR 1980 SC 1955

5 (2011) 3 SCC 139

6 AIR 1984 SC 866

7 AIR 1959 SC 648

8 AIR 1979 SC 898

9 (2020) 9 SCC 548

10 (2021) 8 SCC 599

11 (2020) 8 SCC 129

12 AIR 1965 SC 1017

13 (1973) 1 SCC 500

*State of Tamil Nadu & Ors.*¹⁴, *P. Venugopal vs. Union of India (U.O.I.)*¹⁵, *Tukaram Kana Joshi & Ors. vs. M.I.D.C. & Ors.*¹⁶, *B. K. Ravichandra & Ors. vs. UOI. & Ors.*¹⁷, *Vidya Devi vs. State of Himachal Pradesh*¹⁸, *Sukh Dutt Ratra & Anr. vs. State of Himachal Pradesh & Ors.*¹⁹, *State of Haryana vs. Mukesh Kumar & Ors.*²⁰ and *Hari Krishna Mandir Trust vs. State of Maharashtra & Ors.*²¹ to support the above contentions.

16. Based on the above contentions, Mr. Desai urged that the Rule in this petition may be made absolute.

17. Mr. D. Pangam, learned Advocate General, submitted that the 55 displaced persons benefited by the impugned Act were necessary parties. Therefore, in their absence, the present petition should be dismissed.

18. Without prejudice to the above objection, the learned Advocate General submitted that the impugned Act is relatable to Entry 18 of List II read with Entry 42 of List III of the Seventh Schedule to the Constitution of India. He submitted that the issue of Repugnancy arises only in respect of legislations relatable to List III (Concurrent

14 2021 SCC OnLine SC 440

15 MANU/SC/2315/2008

16 (2013) 1 SCC 353

17 (2020) SCC OnLine SC 950

18 (2020) 2 SCC 569

19 (2022) SCC OnLine SC 410

20 (2011) 10 SCC 404

21 (2020) 9 SCC 356

List). Therefore he proposed that the issue of Repugnancy or applicability of Article 254 of the Constitution does not arise in this matter.

19. The learned Advocate General submitted that there is no direct conflict between the impugned Act and the 2013 Act because both the enactments operate in different and distinct fields. He offered that the object of the impugned Act is not the acquisition of the Petitioner's land but the vesting of proprietary rights in the 55 displaced persons. He submits that the acquisition of the Petitioner's land and determination of compensation was only incidental or peripheral. He invoked the Doctrine of "*pith and substance*" to support his contention.

20. The learned Advocate General referred to the definition of "*public purpose*" under Section 3(za) of the 2013 Act and submitted that the acquisition of Petitioner's land for allotment of the same to the 55 displaced persons would not amount to "*public purpose*" as defined under Section 3(za) read with Section 2(1) of the 2013 Act. From this, the learned Advocate General deduces that the 2013 Act is neither a complete nor an exhaustive code on the acquisition of lands and determining compensation for the acquired lands.

21. The learned Advocate General submitted that there was no infringement of Articles 14, 21, and 300A of the Constitution of India in the present matter. He pointed out that the Petitioner had lost possession of the acquired land sometime in 1964 because such land was already requisitioned under the Defence of India Act, 1962, and the RAIP Act, 1952. Therefore, he submitted that no discrimination was involved in providing a different basis for determining compensation for the Petitioner's land.

22. The learned Advocate General submitted that the Petitioner had already lost possession. In that sense, all the impugned Act does is extinguish Petitioner's title and vests the same in the 55 displaced persons. He, therefore, submits that the classification is based upon reasonable criteria and such criteria have nexus with the object which the impugned Act seeks to achieve.

23. The learned Advocate General also submitted that whatever may be the legal grounds urged by and on behalf of the Petitioner, no relief should be granted to the Petitioner by this Court in the exercise of its extraordinary and equitable jurisdiction, considering the background in which the impugned Act was passed and the public purpose that the impugned Act serves.

24. The learned Advocate General further pointed out that the 55 displaced persons had lost their land to establish 2 STC (Three Military Training Regiments) at Salcette-Goa. However, they were rehabilitated in the Petitioner's land sometime in 1964-65. In such circumstances, the State Government was duty-bound to protect such displaced persons' interests. Therefore, the impugned Act was enacted so that the rights and possession of such displaced persons are not jeopardized. The equities are consequently against the Petitioner, and any interference with the impugned Act will operate harshly against the 55 displaced persons.

25. The learned Advocate General relied on *Lingappa Pochanna Appelwar vs. State of Maharashtra*²², *Jilubhai Nanbhai Khachar vs. State of Gujarat*²³, *Ch. Tika Ramji vs. State of UP*²⁴, *West UP Sugar Mills Assn vs. State of UP*²⁵, *M. Karunanidhi vs. Union of India*²⁶ and *Kannan Devan Hills Produce vs. State of Kerala*²⁷ and *Prakash Amichand Shah vs. State of Gujarat*²⁸ in support of all the above contentions.

26. Mr. Desai countered the contentions raised by the learned Advocate General. He also relied on the *Film Federation of India vs.*

22 (1985) 1 SCC 479

23 1995 Supp (1) SCC 596

24 AIR 1956 SC 676

25 (2020) 9 SCC 548

26 (1979) 2 SCC 431

27 (1972) 2 SCC 218

28 1986 (a) SCC 581

*The Union of India & Ors.*²⁹ to answer the issue of non-joinder of the displaced persons. He pointed out the alternate relief sought by the Petitioner. Based on all this, Mr. Desai again urged that the Rule be made absolute in this petition.

27. The rival contentions now fall for our determination.

28. The main two issues involved in this petition are as follows:

(a) Whether The Goa (Allotment of Plots to Certain Displaced Persons) Act, 2016 (impugned Act) enacted by the State Legislature is repugnant to the Parliamentary enactments, i.e., *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (2013 Act), and the *Requisitioning and Acquisition Act, 1952*, (RAIP Act) given the provisions of Article 254 of the Constitution of India, and therefore null and void?

(b) Is the impugned Act violative of Articles 14, 21, and 300A of the Constitution of India and, therefore, null and void?

29. In *Forum for People's Collective Efforts (supra)*, the Hon'ble Supreme Court, on a thorough consideration of most of the precedents referred to and relied upon by Mr. Desai and the learned Advocate General has explained the concept and scope of Repugnancy in the context of Article 254 of the Constitution of India. Therefore, instead of adverting to each of the precedents relied upon by the

29 AIR 1986 Madras 43

counsel, reference to *Forum for People's Collective Efforts (supra)* will more than suffice in the present matter.

30. Paragraph 116 refers to some of the salient features of Article 254 of the Constitution of India: *Firstly, Article 254(1) embodies the concept of Repugnancy on subjects within the Concurrent List on which both the State Legislatures and Parliament are entrusted with the power to enact laws. Secondly, a law made by the Legislature of a State which is repugnant to parliamentary legislation on a matter enumerated in the Concurrent List has to yield to a parliamentary law whether enacted before or after the law made by the State Legislature. Thirdly, in the event of a repugnancy, the parliamentary legislation shall prevail and the State law shall "to the extent of the repugnancy" be void. Fourthly, the consequence of a repugnancy between the State legislation with a law enacted by Parliament within the ambit of List III can be cured if the State legislation receives the assent of the President. Fifthly, the grant of Presidential assent under clause (2) of Article 254 will not preclude Parliament from enacting a law on the subject-matter, as stipulated in the proviso to clause (2).*

31. The Hon'ble Supreme Court, by reference to *Zaverbhai Amaidas (supra)* and the Constitution Bench Judgment in *Tika Ramji (supra)*, noted that the three tests of inconsistency and Repugnancy formulated by Nicholas, in his *Australian Constitution*, 2nd Edition,

P.303, have been approved in the context of Article 254 of the Constitution of India. They are as follows:

"27. Nicholas in his Australian Constitution, 2nd Ed., p. 303, refers to three tests of inconsistency or Repugnancy -

(1) There may be inconsistency in the actual terms of the competing statutes (R. v. Brisbane Licensing Court, ex p Daniell – (1920) 28 CLR 23 (Aust)).

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code (Clyde Engg. Co. Ltd. v. Cowburn – (1926) 37 CLR 466 (Aust)).

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter [Victoria v. Commonwealth – (1927) 58 CLR 618 (Aust), Wenn v. Attorney General (Vict.) - (1948) 77 CLR 84 (Aust)."

32. The Hon'ble Supreme Court then referred to the decisions in *G. P. Stewart vs. Brojendra Kishore Roy Choudhury*³⁰, *Deep Chand (supra)*, *M. Karunanidhi (supra)*, *Innoventive Industries Ltd. vs. ICICI Bank*³¹ and concluded that Article 254 of the Constitution contemplates three types of Repugnancy, namely:-

"(a) The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision.

30 AIR 1939 Cal 628

31 (2018) 1 SCC 407

This may arise, for instance, where the two statutes adopt norms or standards of behaviour or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other.

*(b) The **second** situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a parliamentary enactment not because of an actual conflict with the absolute terms of a parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject.*

*(c) The **third** test of Repugnancy is where the law enacted by Parliament and by the State Legislature regulate the same subject. In such a case, the Repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject."*

33. The Hon'ble Supreme Court has explained that the first test is grounded on an irreconcilable conflict between the provisions of the two statutes, each of which operates in the Concurrent List. Where a law enacted by the Parliament is an exhaustive code, the second test may come into being. The intent of the Parliament in enacting an exhaustive code on the subject in the Concurrent List may be to

promote uniformity and standardization of its legislative scheme as a matter of public interest.

34. In a given case, Parliament may intend to secure the protection of vital interests that require uniformity of law and consistency of its application all over the country. In many cases, Uniform national legislation is considered necessary by Parliament to prevent vulnerabilities of a segment of society from being exploited by an asymmetry of information and unequal power in a societal context. The exhaustive nature of the parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject.

35. In the context of the third test of Repugnancy, the Hon'ble Supreme Court has explained that allowing the exercise of power over the same subject matter would trigger the application of the concept of Repugnancy. This may implicate the Doctrine of implied repeal in that the State legislation cannot coexist with legislation enacted by Parliament.

36. The Hon'ble Supreme Court also explained that in deciding whether a case of Repugnancy arises on the second and third tests, both the text and the context of the parliamentary legislation must be considered. The nature of the subject matter which is legislated upon, the purpose of the legislation, the rights which are sought to be

protected, the legislative history, and the nature and ambit of the statutory provisions are among the factors that guide the exercise of judicial review. The statute's text would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the Concurrent List.

37. Each of the above three tests for determining Repugnancy is disjunctive. This means that even if one of the tests is fulfilled, the State Legislation will have to be declared void on the grounds of Repugnancy. Therefore, it is necessary to examine the competing statutes to determine their true scope and import and, after that, whether the competing statutes are repugnant to one another, applying the above tests as explained by the Hon'ble Supreme Court of India.

38. The impugned Act is a short enactment comprising all seven Sections and two Schedules. Accordingly, the impugned Act is transcribed below for the convenience of immediate reference:-

The Goa (Allotment of Plots to Certain Displaced Persons) Act, 2016 Published in the Official Gazette Series I No.26 (Extraordinary) dated 29-9-2016;

1. The Goa (Allotment of Plots to Certain Displaced Persons) (Amendment) Act, 2017 (Act No.5 of 2017); published in the Official Gazette Series I No.9 (Extraordinary) dated 2-6-2017;

Arrangements of Sections

Section No.	Short title	Amendment 2017
1	Short title and commencement	
2	Definition	
3	Vesting of land in the Government	Substituted
4	Allotment of land to the displaced persons	
5	Act to have overriding effect	
6	Protection of action taken in good faith	
7	Power to remove difficulties	

Notification

7/27/2016-LA

The Goa (Allotment of Plots to Certain Displaced Persons) Act, 2016 (Goa Act 25 of 2016), which has been passed by the Legislative Assembly of Goa on 31-8-2016 and assented to by the Governor of Goa on 27-9-2016, is hereby published for general information of the public.

Sharad G. Marathe, Joint Secretary (Law).

Porvorim, 29th September, 2016.

Goa (Allotment of Plots to Certain Displaced Persons) Act, 2016

(Goa Act 25 of 2016) [27-9-2016]

AN

ACT

Whereas the then Government of Goa, Daman and Diu vide Order No. ES/1/64 dated 14-01-1964 requisitioned land admeasuring 35690.75 square metres in terms of section 29 of the Defence of India Act, 1962 (Central Act 51 of 1962);

And Whereas the Government sub-divided the said land and allotted plots to certain persons who were displaced due to acquisition of land for establishment of 2STC (3 Military Training Regiment) at Salcete, Goa;

And Whereas the Government has now decided to vest proprietary rights of the said plots unto the said displaced persons.

Be it enacted by the Legislative Assembly of Goa in the Sixty-seventh Year of the Republic of India, as follows:-

1. Short title and commencement.— (1) This Act may be called the Goa (Allotment of Plots to Certain Displaced Persons) Act, 2016.

(2) It shall be deemed to have come into force on the 20th day of January, 1964.

2. Definition.— In this Act, unless the context otherwise requires-

(a) "displaced persons" means the persons who were displaced due to acquisition of land for establishment of 2STC (3 Military Training Regiment) in Salcete, Goa;

(b) "Government" means the Government of Goa;

(c) "State" means the State of Goa;

(d) "said land" means land requisitioned vide Order No. ES/1/64 dated 14-01-1964;

(e) "said Act" means the Defence of India Act, 1962 (Central Act 51 of 1962).

3. Vesting of land in the Government.— (1) Notwithstanding anything contained in any other law, judgment, order or decree of any court, tribunal or any other authority, from the date of commencement of this Act, said land more particularly described in Schedule I hereto shall be deemed to have been vested with the Government, free from all claims, charges, encumbrances, liens, etc.

(2) The Government shall pay to the owner of the said land within a period of 270 days from the date of enacting this Act, compensation as per the market value of such land as prevailing on the date of making requisition for the said land under the said Act.

4. Allotment of land to the displaced persons.— The displaced persons specified in Schedule II hereto shall be deemed to have been allotted the area of the said land as specified in the corresponding entry in Column (2) of the said Schedule.

5. Act to have overriding effect.— Notwithstanding anything contained in any other law, judgement, decree or order of any court, tribunal or any other authority,—

(a) the land as specified in Schedule I hereto shall, from the date of commencement of this Act, stand vested with the Government.

(b) no suit or other legal proceedings shall be instituted, maintained or continued in any court, tribunal or any other authority against the Government or any person or authority whatsoever in respect of said land and all pending suits, applications, etc. filed under any local or special law shall stand abated forthwith.

(c) no Courts shall enforce any Decree or Order or Injunction or Stay on any ground whatsoever.

6. Protection of action taken in good faith.— No suit, prosecution or other legal proceeding shall lie against the Government or any officer or authority for anything which has been done or intended to be done in good faith under this Act.

7. Power to remove difficulties.— If any difficulty arises in giving effect to the provisions to this Act, the Government may, by Order published in the Official Gazette, make such provisions consistent with the provisions to this Act, as appear to it to be necessary or expedient for the removal of difficulty; and the Order of the Government in such cases shall be final:

Provided that no such Order shall be made after the expiry of two years from the date of this Act.-

SCHEDULE-I (See section 3)

Taluka Village	Survey No. PT Sheet No.	Sub-Div No.	Approximate Area in Sq. Mts.	Boundaries
Chalata No.				
1	2	3	4	5
SALCETE AQUEM	44	1	325	North: S. No. 43/1
		2	300	South: S. No. 26/1
		3	300	East: Road
		4	300	West: S. No.

				43/1
		5	300	
		6	325	
		7	300	
		8	300	
	45	1	300	
		2	325	
		3	300	
		4	325	
		5	300	
		6	300	
		7	650	Government Land
	46	1	3075	Government Land
		2	300	
		3	325	
		4	300	
		5	300	
		6	325	
		7	325	
	47	1	300	
		2	325	
		3	700	
		4	1158	
		5	375	
		6	350	
		7	325	
		8	325	
		9	325	
		10	325	

		11	300	
		12	325	
		13	325	
	48	-	3650	Government Land
	49	1	675	
		2	675	
		3	650	
		4	700	
		5	700	
		6	650	
		7	700	
		8	325	
		8-A	325	
		9	300	
		10	350	
		11	425	
		12	475	
	50	1	675	
		2	675	
		3	675	
		4	725	
	Public Road		6982.75	
Total 35690.75m ²				

SCHEDULE-II

(See section 4)

Sr. No.	Name of displaced/Rehabilitated	Survey No.	Area of land allotted	Date on which possession of
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	persons			land taken
1	2	3	4	5
1	Shri Andrew Vaz	44/1	325 sq. mtrs.	ES/1/64 dated 14-1-1964
2	Shri Rosalina Cardoz	44/2	300 sq. mtrs.	-do-
3	Rufina Vaz	44/3	300 sq. mtrs.	-do-
4	Agosntinho Vaz	44/4	300 sq. mtrs.	-do-
5	Francisco Costa	44/5	300 sq. mtrs.	-do-
6	Salvador Peixoto	44/6	325 sq. mtrs.	-do-
7	Camilo Costa	44/7	300 sq. mtrs.	-do-
8	Alex Vaz	44/8	300 sq. mtrs.	-do-
9	Manuel Fernandes 1. Camilo Fernandes 2. Xaverina fernandes 3. Joaquim Mariano Souza 4. Caetana Fernandes @ Caetana Souza	45/1	300 sq. mtrs.	-do-
10	Joaquim Rosario Vaz	45/2	325 sq. mtrs.	-do-
11	Aristo Vaz	45/3	300 sq. mtrs.	-do-
12	Santana Francisco Dias	45/4	325 sq. mtrs.	-do-
13	Domingos Vas	45/5	300 sq. mtrs.	-do-
14	Sebastiana Vaz	45/6	300 sq. mtrs.	-do-
15	Government	45/7	650 sq. mtrs.	-do-
16	Government	46/1	3075 sq. mtrs	-do-
17	Thomacinho Fernandes Benidita Fernandes	46/2	300 sq. mtrs.	-do-

18	Maria Philip Vaz	46/3	325 sq. mtrs.	ES/1/64 dtd 14-1-1964
19	Isabela Braganza	46/4	300 sq. mtrs.	-do-
20	Joaquim Fernandes	46/5	300 sq. mtrs.	-do-
21	Rosa Fernandes	46/6	325 sq. mtrs.	-do-
22	Fracisca Vaz 1. Luciano Francisco Vaz 2. Luis Vaz	46/7	325 sq. mtrs.	-do-
23	Atmaram Lingu Kudalkar	47/1	300 sq. mtrs.	-do-
24	Custodio Vaz	47/2	325 sq. mtrs.	-do-
25	(a) Isabela Fernandes (b) Domingos Vaz alias Domnic Vaz alias Domingos Agostinho Vaz (c) Yolanda D'Mello alias Yolanda Vaz (d) Tolentino Vaz alias Tolentino Agostinho Vaz (e) Manelina Dias alias Manelina Vaz	47/3	700 sq. mtrs.	-do-
26	Government	47/4 47/4 A & B	283 sq. mtrs. 592 sq. mtrs.	-do- -do-
27	Government	47/4C	283 sq. mtrs.	-do-
28	Mariano Vas Monica Braganza Vaz	47/5	375 sq. mtrs.	-do-
29	Joaquina Vaz	47/6	350 sq. mtrs.	-do-
30	Barbin Braganza	47/7	325 sq. mtrs.	-do-
31	Pedro Francisco Miranda	47/8	325 sq. mtrs.	-do-
32	Nicael Dias	47/9	325 sq. mtrs.	-do-

33	Folorin Dias Stenley Vaz	47/10	325 sq. mtrs.	-do-
34	Mariana Vaz	47/11	300 sq. mtrs.	-do-
35	(a) Doming Santano Gomes (b) Joaquim Pedro Gomes (c) Vicente Gomes	47/12	325 sq. mtrs.	-do-
36	Camilo Peixote Bento Peixote	47/13	325 sq. mtrs.	-do-
37	Government	48/0	3650 sq. mtrs.	-do-
38	Andrew Vaz	49/1	675 sq. mtrs.	-do-
39	Joao Mariano Braganza 1. Esparanca D'Costa 2. Conceicao Braganza 3. Esperanca Braganza	49/2	675 sq. mtrs.	-do-
40	Joao Lourenco Vaz	49/3	650 sq. mtrs.	-do-
41	(a) Custodio Sebastiao Rosario Vaz (b) Dionizio Vaz	49/4	700 sq. mtrs.	-do-
42	Paulo Vaz Clemento Vaz Conceicao Vaz	49/5	700 sq. mtrs.	-do-
43	Jacob Vaz	49/6	650 sq. mtrs.	-do-
44	Inacina Fernandes	49/7	700 sq. mtrs.	-do-
45	Filomena D'Silva Deepa Ulhas Naik	49/8	325 sq. mtrs.	-do-
46	Melinda D'Costa Vaz	49/8A	325 sq. mtrs.	-do-
47	Avelino Fernandes	49/9	300 sq. mtrs.	-do-
48	Antoneta Vaz Perpetua Costa e Fernandes alias Pepetua D'costa e Fernandes	49/10	350 sq. mtrs.	-do-
49	Joaquim Vaz	49/11	425 sq. mtrs.	-do-

50	Ruia Vaz	49/12	475 sq. mtrs.	-do-
51	Joaquim Vaz	50/1	675 sq. mtrs.	-do-
52	Antonio Vaz	50/2	675 sq. mtrs.	-do-
53	Caetano Vaz	50/3	675 sq. mtrs.	-do-
54	Josefa Fernandes Estevao Vaz Facunda Vaz Rosy Vaz Maria Aurora Vaz Constantina Brigida Vaz Leticia vaz Johnson Vaz	50/4	725 sq. mtrs.	-do-
55	Road	—	6982.75 sq. mts.	
		TOTAL 35690.75 sq. mts.		

Secretariat,
Porvorim-Goa.
Dated: 29-09-2016.

SUDHIR MAHAJAN,
Secretary to the Government of Goa,
Law Department (Legal Affairs).

39. In the oral arguments on behalf of the State, it was unclear whether the State contended that the impugned Act was relatable exclusively to Entry 18 of List III, Seventh Schedule of the Constitution of India. Even in the brief synopsis tendered by the learned Advocate General, the contention is: "*this legislative power exercised by the State Legislature squarely fall under Entry 18 of List II read with Entry 42 of List III of the Seventh Schedule to the*

Constitution of India". However, paragraphs 6 to 12 of the brief synopsis suggest a contention that the impugned Act is within the legislative competence of the State Legislature under Entry 18 of List II, Seventh Schedule, Constitution of India.

40. Learned Advocate General submitted that Entry 18 of List II and 42 of List III complement each other. He offered that Entry 42 of List III is supplementary to Entry 18 of List II. Further, he submitted that the background in which the impugned Act has been enacted and the purpose for which the impugned Act has been enacted indicates that the same is relatable to Entry 18 of List II. This contention is made clear in paragraphs 9 and 10 of the brief synopsis tendered by the learned Advocate General.

41. The issue of whether the impugned Act relates to the subject in Entry 18 of List II or Entry 42 of List III has to be determined by applying the Doctrine of "*pith and substance*." This Doctrine means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it, it cannot be invalid merely because it incidentally encroaches on matters assigned to the other Legislature.

42. The Hon'ble Supreme Court of India, in *Ujagar Prints vs. Union of India*,³² explained that entries in the legislative Lists are not

³² AIR 1989 SC 516

sources of legislative power but are merely topics or fields of legislation and must receive a liberal construction. The expression "*with respect to*" in Article 246 introduces the Doctrine of "*pith and substance*." Therefore, whenever a question of legislative competence is raised, the test is whether the legislation looked as a whole is substantially "*with respect to*" the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the same may well be taken to be the legislation on the topic. To examine whether legislation has impinged on the field of legislation, in fact, in substance, or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the Doctrine of "*pith and substance*."

43. The Hon'ble Supreme Court further explained that for applying the Doctrine of "*pith and substance*," regard is to be had (1) to the enactment as a whole, (2) to its main object, and (3) to the scope and effect of the provision. Where the question for determination is whether a particular law relates to a particular subject mentioned in one List or the other, the Court looks at the substance of the enactment. If the substance of the enactment falls within the Union list, then the incidental encroachment by the enactment on the State List would not make it invalid and vice versa (See ***Bharat Hydro Power Corpn. Ltd. vs. State of Assam***³³)

33 (2004) 2 SCC 553

44. Entry 18 of List II, referred to by the learned Advocate General, reads as under:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

45. Similarly, Entry 42 of List III, relied upon by both Mr. Desai and the learned Advocate General, reads as follows:-

"42. Acquisition and requisitioning of property."

46. In *Lingappa Pochanna Appelwar (supra)* and *Jilubhai Nanbhai Khachar (supra)*, the Hon'ble Supreme Court has indeed held that this expression "*land*" in Entry 18 is not restricted to agricultural land alone but includes non-agricultural land. Similarly, the expressions "*rights in*" or "*over land*" cover a very wide power not limited by rights between landholders *inter se* or the landholders or the State or the landholder or the tenant. Therefore, Entry 18 of List II enables the State Legislature to make laws not only in respect of land between also in respect of "*rights in or over land*."

47. Entry 42 of List III concerns "*acquisition and requisitioning of property*." In terms of this entry, it is within the legislative competence of the Parliament and the State Legislature to make laws on the subject of the acquisition and requisition of property. Therefore, though,

Entry 42 of List III may not denude the State Legislature from enacting laws with respect to land or rights in or over land if, applying the Doctrine of "*pith and substance*," the impugned law is found to be a law with respect to the acquisition of land and where the main and the dominant object of the law is the acquisition of land, then, such law, cannot be passed off as one made in respect of the topic in Entry 18 of List II.

48. Though no dispute was raised about the 2013 Act being relatable to Entry 42 of List III, the learned Advocate General did attempt to urge that the dominant object of the impugned Act was not either the acquisition of the Petitioner's property or determination of compensation payable to the Petitioner, unlike the provisions of the 2013 Act. Instead, he submitted that the dominant object of the impugned Act was to allot the sub-divided plots to the displaced persons as defined under Section 2(a) of the impugned Act and to vest in such displaced persons the proprietary rights in the allotted sub-divided plots. Additionally, the learned Advocate General submitted that the acquisition of the Petitioner's property or determination of compensation was only incidental or peripheral but certainly not the dominant object of the impugned Act.

49. Upon examining the "*pith and substance*" of the impugned Act, we are not inclined to accept the learned Advocate Generals above

contention. Besides, the learned Advocate General could not explain how the Government proposed to either allot or vest the proprietary rights in the displaced persons without the Government first acquiring the Petitioner's property so that it vested in the Government, free from all encumbrances.

50. As noted earlier, the impugned Act comprises only seven sections. Section 1 is concerned with the short title and commencement. Section 2 is concerned with the definitions. Sections 3, 4, and 5 forms the core of the impugned Act and will be discussed separately. Finally, section 6 protects action taken in good faith, and Section 7 confers on the Government the power to remove difficulties within two years from the date of the Act. The impugned Act has two Schedules.

51. Section 3 of the impugned Act is entitled ***Vesting of land in the Government.*** Section 3(1) provides that notwithstanding anything contained in any other law, judgment, Order or decree of any court, tribunal or any other authority, from the date of commencement of this Act, the said land more particularly described in Schedule I, *shall be deemed to have been vested with the Government*, free from all claims, charges, encumbrances, liens, etc. Section 3(2) then provides that the Government shall pay to the owner of the said land within 270 days from the enactment date

compensation as per the market value of such land as prevailing on the date of making requisition for the said land under the said Act.

52. The expression "*said land*" in Section 3(1) had been defined under Section 2(d) to mean the land requisitioned vide Order No. ES/1/64 dated 14-01-1964. This is the Order by which the Petitioner's property admeasuring 35,690.75 sq. mtrs., was requisitioned by the then Government of Goa, Daman, and Diu. This position is affirmed in the first recital in the preamble of the impugned Act. Similarly, the expression "*said Act*" in Section 3(2) is defined under Section 2(e) to mean the Defence of India Act, 1962 (Central Act 51 of 1962).

53. Thus, Section 3 of the impugned Act, the most crucial Section in the impugned Act, speaks about the "*vesting of land in the Government.*" Even if the title of this Section is to be ignored, Section 3(1), in terms speaks about the vesting of the Petitioner's land "*with the Government,*" free from all claims, charges, encumbrances, liens, etc. Section 3(2) then provides that it will be the *Government* that shall pay to the owner of the said land within 270 days from the enactment date compensation as per the market value of such land as prevailing on the date of making requisition for the said land under the Defence of India Act, 1962.

54. Thus, very clearly, the most crucial Section of the impugned Act provides for the acquisition of the Petitioner's property and the vesting of the same with the Government, free from all claims, charges, encumbrances, liens, etc. Towards such acquisition and vesting with the Government, Section 3(2) of the impugned Act requires the Government to pay the petitioner compensation as per the market value on 14.01.1964.

55. Section 4 of the impugned Act speaks about the allotment of land to displaced persons. The expression "*displaced persons*" has been defined under Section 2(a) of the impugned Act to mean the persons who were displaced due to the acquisition of land for the establishment of 2 STC (3 Military Training Regiments) in Salcete, Goa. The Section for allotment of lands to displaced persons follows or is placed after Section 3, which speaks about the vesting of land in the Government.

56. Thus, the legislative scheme is quite evident in that it contemplates, to begin with, the acquisition and vesting of the said land with the Government. Only after such acquisition and vesting is there allotment or deemed allotment to the displaced persons. The provision for compensation at the market value is only because Section 3(1) of the impugned Act was almost entirely and predominantly

concerned with acquiring and vesting the said land with the Government.

57. Though Section 4 speaks about the allotment of land to the displaced persons and further provides that the displaced persons specified in Schedule II shall be deemed to have been allotted the area of the said land as specified in the corresponding entry in Column (2) of the said Schedule, this position is far from accurate. Even the learned Advocate General, perhaps by noting the 55 serial numbers in Schedule II, had submitted that the said land was allotted to 55 displaced persons. However, as shall be seen hereafter, this position is far from accurate.

58. Schedule II, no doubt, refers to 55 serial numbers. However, at serial nos.15, 16, 26, 27, 37, and 55, the name of the displaced/rehabilitated persons in Column (2) is stated as "*Government*." The area allotted to the Government at such serial numbers constitutes 15,515.75 sq. mtrs. out of 35,690.75 sq.mtrs. This corresponds to almost 43% of the Petitioner's requisitioned property in terms of Order dated 14.01.1964.

59. The expression "*Government*" has been defined under Section 2(b) to mean the Government of Goa. The phrase "*displaced persons*" has been defined under Section 2(a) to mean the persons who were displaced due to the acquisition of land for the establishment of 2STC

(3 Military Training Regiment) in Salcete, Goa. Surely, therefore, the "*Government*" does not answer the definition of "*displaced persons*" in Section 2(a) of the impugned Act. Yet, contrary to what is provided in the text of Section 4, even the Government of Goa, without itself being a "*displaced person*," is allotted almost 43% of the said land. Despite all this, on behalf of the State, it is contended that the dominant object of the impugned Act is not the acquisition of the Petitioner's property, and such acquisition and vesting in the Government is only incidental or peripheral.

60. Section 5(a) of the impugned Act provides that notwithstanding anything contained in any other law, judgment, decree or Order of any court, tribunal or any other authority, - the land as specified in Schedule I shall, from the date of commencement of this Act, *stand vested with the Government*. Therefore, the State legislature was very clear in its understanding that there could be no allotment or vesting of proprietary rights in the displaced persons by the Government unless the Government were to acquire the said land and vest it unto itself.

61. Incidentally, there is no substantive provision in the impugned Act providing for any vesting of proprietary rights in the displaced persons. Therefore, the position stressed in two out of the three core provisions cannot be relegated to incidentals or peripherals, and a non-

mentioned position cannot be elevated to the central or dominant status.

62. Thus, Sections 3, 4, and 5(a) of the impugned Act, which forms the core of the impugned Act, is concerned almost entirely with the acquisition of the Petitioner's land and the vesting of the same with the Government free from all claims, charges, encumbrances, liens, etc. The dominant object of the impugned Act was the acquisition of the Petitioner's property and the vesting of the same with the Government free from all claims, charges, encumbrances, liens, etc.

63. The aspect of allotment of the Petitioner's property to the displaced persons was enabled through such acquisition and vesting. Incidentally, the second recital in the preamble to the said Act provides that the Government had already sub-divided the said land after it was requisitioned on 14.01.1964 and allotted the plots to certain persons who were displaced due to the acquisition of land for the establishment of 2STC (3 Military Training Regiment) in Salcete, Goa. Thus, the sub-division and allotment were already complete. Therefore, even Section 4 speaks about a deemed allotment from a back date because, in Section 1(2) of the impugned Act, the same is deemed to have come into force on 20.01.1964.

64. The third recital in the preamble to the impugned Act says that the Government has "*now decided to vest proprietary rights to the*

said plots unto the said displaced persons." However, in none of the seven sections of the impugned Act is there any reference to the vesting of proprietary rights in the displaced persons. Section 3, as noticed earlier, speaks about the vesting of the land in the Government. Section 5(a) also speaks about the said land standing vested with the Government.

65. On the other hand, section 4, which speaks about the allotment, omits any mention of the vesting of proprietary rights in the displaced persons. In the absence of even a simple word on the otherwise vital aspect of vesting of proprietary rights in the displaced persons, in any of the seven sections of the impugned Act, it is rather challenging to accept the learned Advocate General's contention that the dominant object of the impugned Act was to vest the proprietary rights in the displaced persons and acquisition or vesting of the said land with the Government was only the incidental or peripheral object.

66. Mr. Desai and the learned Advocate General relied on the legislative history or the background in which the impugned Act came to be enacted. No doubt, the inferences drawn by them were not the same. However, to a large extent, there was no serious dispute about the circumstances or the background in which the impugned Act came to be enacted.

67. Mr. Desai submitted that after the Division Bench allowed the petitioner's First Appeal No.102/1999 on 05.03.2010 and the petitioner's Writ Petition No.763/2014 on 24.11.2015, it was apparent to the Government that the petitioner's Special Civil Suit No.199/1993 would succeed. Therefore, the Government would have to either restore the possession of the said land to the petitioner or pay compensation at the market rate. Mr. Desai submitted that the impugned Act was enacted to defeat the petitioner's rights in the said Suit and to acquire the petitioner's property without any compensation or illusory/token compensation. He submitted that the bare perusal of the provisions of the impugned Act and the circumstances in which it was passed make this position quite evident.

68. In brief, synopsis tendered by the learned Advocate General, after his arguments, the background in which the impugned Act came to be enacted is set out in the following terms:-

"Background of enactment of Impugned Act

1. On 19th December 1961, Goa became part of India by a military action i.e., "Operation Vijay". Till 30th of May 1987, Goa was a Union Territory and was ruled by the Union Government through the mechanism provided under the Goa, Daman and Diu (Administration) Act, 1962.

2. While Goa was under the Union of India as a Union Territory, on 14.01.1964 the "said land", which is subject matter of this statute, was requisitioned by the Administration

of Goa, Daman and Diu under Section 29 of the Defence of India Act 1964. The then Administration of Goa, Daman and Diu sub-divided the said land and allotted the plots to certain persons who were displaced due to the acquisition of land for establishment of 2STC (3 military training regiment) at Salcette, Goa. On the basis of such allotment, the displaced persons constructed their residential houses on the said plots and their family members are residing in the said plots for more than 55 years.

3. On 30th of May 1987, Goa attained statehood and became the 25th State of the Union of India. Pertinently, the Union Territory (Union of India) did not take any steps to acquire the said land under the Defence of India Act 1964 or release the said land in favour of the owner (the Petitioner). In 1993, the Petitioner filed a suit bearing No.SCS 199 of 1993 before the Ld. Civil Judge Senior Division at Margao for recovery of possession of the said land with compensation. The suit was filed against the State of Goa and others who were allotted the said land by the then Administration of the Union Territory. On 12th April 1999, the suit came to be dismissed on the ground of limitation and jurisdiction. The Petitioner preferred First Appeal No.102 of 1999 before this Hon'ble Court against the judgment and decree dated 12.04.1999 by the Ld. Civil Judge Senior Division at Margao. This Hon'ble Court vide judgment and Order dated 05.03.2010 set aside the decree of the trial court and held that suit was within limitation. The impugned legislation came to be passed in this background."

69. Thus, as to the background in which the impugned Act came to be enacted, there is no significant variance between the versions of the petitioner and the respondents. The background suggests that the

impugned Act was passed to avoid an unfavorable outcome in the petitioner's Civil Suit seeking restoration of the Suit property or, in the alternative, compensation at the market rate. Some of the observations in paragraphs 12 and 20 of the Division Bench's Order dated 05.03.2010 may, in the perception of the State Government, have left minimal defenses to the State Government in such Suit instituted by the petitioner seeking restoration and compensation. A need was therefore felt to acquire the Petitioner's said land and secure the interests of the displaced persons.

70. The legislative history or the background makes it apparent that the dominant object of the impugned Act was to acquire the Petitioner's property by payment of minimum compensation and to vest the same with the Government. To aid this dominant object, the provisions were made to avoid the provisions of other enactments, judgments, orders, or decrees of any Court, tribunal, or other authority.

71. The non-obstante clauses in Sections 3 and 5, *among other things*, provide that vesting of Petitioner's property shall take place with the Government notwithstanding anything contained in any other law, judgment or order or decree of any Court, tribunal, or any other authority from the date of commencement of Act. Section 5(b) also seeks to oust the jurisdiction of the Civil Court, tribunal, or other

authorities regarding said land. Even pending suits and applications filed under any local or special law are to stand abated forthwith.

72. Section 5(c), with respect, is an absurd provision because it simpliciter provides “*no Courts shall enforce any decree or order or injunction or stay on any ground whatsoever.*” There is no reference to decree, order, injunction, or stay having any nexus with the said land, unlike the provisions in Section 5(a) and 5(b) of the impugned Act. Moreover, non-obstante clauses purport to exclude even the application of parliamentary statutes like the Defence of India Act, 1962 and RAIP Act, 1952 because, in terms of the said Acts, the maximum period of requisition was 17 years as interpreted by the Division Bench of this Court in First Appeal No.102/99, in connection with the Petitioner’s property.

73. Lest we are misunderstood, we hasten to clarify that the reference to the undisputed background, which led to the enactment of the impugned Act, is not even remotely intended to look into, much less question the motives of the Legislature in enacting the impugned Act. It is very well settled that the motives of the Legislature, whatever they may be, are not questionable in a Court of law while deciding the issue of the constitutional validity of the Act. A Legislative enactment cannot be struck down by attributing motives to the Legislature. The reference is only to appreciate the provisions of

the impugned Act in the proper setting in which the same came to be enacted.

74. Based on the above, we find it rather challenging to accept the learned Advocate General's contention that the dominant object of the impugned Act was only to vest proprietary rights in the displaced persons, and acquisition or vesting of the land with the Government was only incidental or peripheral object. As noted earlier, none of the seven sections of the impugned Act reference vesting proprietary rights in displaced persons. In contrast, each core section repeats and reiterates the vesting of the said land with the Government from all claims, charges, encumbrances, liens, etc. Moreover, the core sections provide that such vesting shall take place notwithstanding anything contained in other law, judgment, order, or decree of any Court, tribunal, or other authority. At least the State legislature was clear that there could be no allotment to the displaced persons until said land vested in the Government is free from all encumbrances.

75. Accordingly, the impugned Act relates to Entry 42 of List III (Concurrent List). Therefore, if the impugned Act is repugnant to the 2013 Act, or any other parliamentary legislation relatable to the said entry, then the impugned Act will have to be declared null and void, given the provisions of Article 254 of the Constitution.

76. Such repugnancy will have to be determined by applying the three evolved tests recently explained by the Hon'ble Supreme Court in *Forum for People's Collective Efforts (supra)*. However, the three tests so formulated are disjunctive. Therefore, even if repugnancy is established in terms of any of the three tests, the State Legislation, to the extent of repugnancy, will have to yield and be declared null and void, given the scheme of Article 254 of the Constitution.

77. The tests involve a comparison of the competing statutes. Therefore, it is necessary to refer to salient features and specific provisions of the 2013 Act to evaluate the contentions concerning an absolute conflict or inconsistency between the provisions of the impugned Act and the 2013 Act.

78. Mr. Desai also contended that the 2013 Act was a complete and exhaustive Code on the subject of acquisition of land and determination of compensation. He also claimed that the 2013 Act and the impugned Act were concerned with the same subject matter, i.e., land acquisition and the determination of compensation. Thus, Mr. Desai invoked all the three tests prescribed in *Forum for People's Collective Efforts (supra)* to contend repugnancy between the competing statutes.

79. In *Indore Development Authority* (supra), the Hon'ble Supreme Court has referred to salient features of the 2013 Act in paragraphs 92, 93, and 94, transcribed below for the convenience of reference.

“92. There can no dispute, no two opinions about the fact that provisions of the Act of 2013, were enacted with the object of providing fair compensation and rehabilitating those displaced from their land. The Introduction and Statement of Objects and Reasons of the Act of 2013 are extracted hereunder:

“Introduction

The Land Acquisition Act, 1894 was a general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act was found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act did not address the issues of rehabilitation and resettlement to the affected persons and their families. There had been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. However, there was growing public concern on land acquisition, especially multi-cropped irrigated land. There was no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement were two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement was necessary.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 addresses concerns of farmers and those whose livelihood are

dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

This Act represents a change in the legislative approach to land acquisition. It introduces for the first time provisions for social impact analysis, recognizes non-owners as affected persons, a mode of acquisition requiring consent of the displaced and statutory entitlements for resettlement. In addition, it has restricted the grounds on which land may be acquired under the urgency clause.

Statement of Objects and Reasons

The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

2. The definition of the expression "public purpose" as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer" basis, which could be seen to be a

more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

3. There have been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

4. Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Lok Sabha on 6th December 2007 and were referred to the Parliamentary Standing Committee on Rural Development for Examination and Report. The Standing Committee presented its reports (the 39th and 40th Reports) to the Lok Sabha on 21st October 2008 and laid the same in the Rajya Sabha on the same day. Based on the recommendations of the Standing Committee and as a consequence thereof, official amendments to the Bills were proposed. The Bills, along with the official amendments, were passed by the Lok Sabha on 25th February

2009, but the same lapsed with the dissolution of the 14th Lok Sabha.

5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood, and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological, and socio-cultural consequences on the affected population, which call for protecting their rights, particularly in case of the weaker sections of the society, including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation, and resettlement process framework, not only for those who directly lose their land and other assets but also for all

those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

8. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

9. The National Rehabilitation and Resettlement Policy, 2007, has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to

transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes, and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed if multi-crop land is acquired. In districts where net sown area is less than 50 per cent of total geographical area, no more than 10 per cent of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners, a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

14. *Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance, and resettlement allowance is proposed.*

15. *Comprehensive rehabilitation and resettlement package for livelihood losers, including subsistence allowance, jobs, house, transportation allowance, and resettlement allowance is proposed.*

16. *Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one-time financial assistance of Rs. 50,000/-; twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.*

17. *Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads, and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops, and seed-cum-fertilizers storage facilities.*

18. *The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894, where award has not been made, or possession of land has not been taken.*

19. *Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to*

the State Government's Land Bank. Upon every transfer of land without development, twenty per cent of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayats (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action, and contravention of the provisions of the propose legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of the Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the

displaced persons, covering rebuilding socio-cultural relationships, capacity building, and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

25. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.”

93. Section 2(2) of the Act of 2013, provides that in the event of acquisition for private companies, consent of 80% of the affected families has to be obtained and for the public-private partnerships, consent of 70% of the affected families is required to be taken. In Section 3(c), the term 'affected family' has been widened, which inter alia includes members of the Schedule Tribes, forest dwellers, and families whose livelihood is dependent on forests or water bodies. A “Social Impact Assessment” (“SIA”) has to be prepared, as provided in Sections 4 to 9. Special provisions to safeguard food security have been made by prohibiting the acquisition of multi-cropped land except in exceptional circumstances as enumerated in Section 10.

93.1. Section 11 is akin to Section 4 of the Act of 1894 regarding issuance of preliminary notification. The SIA report lapses in case preliminary notification under Section 11 is not issued within a period of 12 months from the date of the report. A Rehabilitation and Resettlement Scheme (“RR Scheme”) is provided in Sections 16 to 18.

93.2. The Collector has to pass the award under Section 23. Section 26 deals with the determination of the market value by the Collector. Section 30 provides for Solatium at 100%. The RR award has to be passed by the Collector under Section 31,

and notice has to be given immediately under Section 37, which is equivalent to Section 12 of the Act of 1894.

93.3. Section 38 provides that Collector has to take possession after full payment of compensation has been made as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons. Thus, there is a departure from Section 16 Act of 1894 in the provisions contained in Section 38 of the Act of 2013. The Collector has to ensure under Section 38 of Act of 2013 that the rehabilitation and resettlement process is complete before displacing people.

93.4. Section 40 deals with urgent cases. The Government may acquire land without making award in the case of urgency for the defence of India or national security. In other emergencies arising out of natural calamities or any other emergencies special provisions under Section 40 may be exercised with the approval of the Parliament. In such event, the provisions of the Social Impact Assessment and Rehabilitation and Resettlement Scheme may be exempted. Additional compensation of 75% is payable in such cases.

93.5. Section 41 contains special provisions for Scheduled Castes and Scheduled Tribes by prohibiting acquisition in scheduled areas as far as possible.

93.6. Sections 43 to 50 deal with appointment and constitution of the Rehabilitation and Resettlement Authorities and Monitoring Committees at Project as well as National Levels. Sections 51 to 74 deal with the establishment of Land Acquisition, Rehabilitation, and Resettlement Authority.

93.7. Sections 77 to 80 are pari materia to the provisions contained in Sections 31 to 34 of the Act of 1894, relating to

payment, deposit, and interest, etc. Section 93 is equivalent to Section 48 of the Land Acquisition Act. The Government shall be at liberty to withdraw from acquisition if possession of land has not been taken.

93.8. Section 101 provides that land be returned to the original owner or the Land Bank of the appropriate Government if acquired land remains unutilized for a period of five years.

93.9. Thus, various departures have been made from the old Land Acquisition Act, in the Act of 2013 relating to Social Impact Assessment, Rehabilitation and Resettlement Scheme, etc. It ensures higher compensation than the old Act; the public purpose has been defined; consent provisions have also been made. The interest of Scheduled Castes and Scheduled Tribes have been adequately protected. Various Committees and Authorities have been constituted. The definition of 'affected families' has been widened.

94. Undoubtedly, the Act of 2013 has provided safeguards, in the form of higher compensation and provisions for rehabilitation, which are necessary. In that light, the court has to interpret its provisions, to give full and meaningful effect to the legislative intent keeping in mind the language and tenor of the provisions, it is not for the court to legislate. The Court can only iron out creases to clear ambiguity. The intended benefit should not be taken away. At the same time, since the Act of 2013, envisages lapse of acquisitions notified (and in many cases, completed by the issuance of the award) due to indolence and inaction on the part of the authorities and therefore, intends acquisition at a fast track, the full effect has to be given to the provisions contained in Section 24.”

80. In addition to the above, reference to the scheme of the 2013 Act and some of its relevant provisions is in order to evaluate the challenges in this petition.

81. Chapter I is concerned with the short title, extent, commencement, applicability, and definitions. Chapter II is concerned with determining the social impact and public purpose. Chapter III makes special provisions to safeguard food security. Chapter IV of the 2013 Act involves the Notification and acquisition of lands. This contemplates hearing objections after the publication of the preliminary Notification. In addition, there are provisions for preparing rehabilitation and resettlement schemes to benefit the persons whose lands are proposed to be acquired.

82. Section 26 of the 2013 Act is concerned with the determination of market value by the Collector. The same is crucial and, therefore, transcribed below for the convenience of reference.

“26. Determination of market value of land by Collector.

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.— The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.— For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.— While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.— While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the

Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.”

83. Section 30 of the 2013 Act provides that the Collector, having determined the total compensation to be paid, shall impose a "Solatium" amount equivalent to one hundred percent of the compensation amount to arrive at the final award. The explanation, to remove doubts, declares that the Solatium shall be in addition to the compensation payable to any person whose land has been acquired.

84. Chapters V, VI, VII, and VIII are concerned with the aspects of rehabilitation and resettlement of persons whose lands have been acquired under the 2013 Act. Section 101 of the 2013 Act provides for the return of the unutilized land where the acquired land remains unutilized for five years from its possession date. Such land is then

required to be returned to the original owners or their heirs or the land bank of the appropriate Government as may be prescribed by the appropriate Government.

85. Chapter IX is concerned with the apportionment of compensation; Chapter X deals with payment of compensation, Chapter XI deals with the temporary occupation of land, and Chapter XII deals with offenses and penalties. Finally, chapter XIII deals with miscellaneous matters and includes Sections 103, 107, 108, and 113.

86. The First Schedule to the 2013 Act provides for the specified components of the compensation package in respect of land acquired under the Act, which shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in Section 3(c) in proportion to be decided by the appropriate Government.

87. Thus, it is clear that before any person's land is acquired under the 2013 Act, the appropriate Government has to determine social impact and public purpose, publish the preliminary notification and hear objections, make provisions for rehabilitation and resettlement, etc. Section 26(1) of the 2013 Act provides criteria for assessing and determining the market value of the land proposed to be acquired. Proviso to Section 26(1) makes it clear that the date for determination

of the market value shall be the date on which notification has been issued under Section 11 of the 2013 Act.

88. Section 11 of the 2013 Act provides for publication of preliminary notification and powers of the officers thereupon. This is more or less corresponding to provisions of Section 4 of the Land Acquisition Act, 1894. However, what is vital for the present matter is that the compensation under the 2013 Act has to be determined based on the market value on the issue of Section 11 notification date and not some date almost fifty to sixty years earlier.

89. Section 28 of the 2013 Act provides for parameters to be considered by the Collector in determining the amount of compensation awarded for the acquired land. The Collector is bound to consider the market value as determined under Section 26 and the award amount in accordance with First and Second Schedules. First Schedule, as noted earlier, refers not only to the compensation component but also to several other components, including, among other things, the factor by which the market value is to be multiplied in the case of rural or urban areas and solatium. Section 30, as noted earlier, provides solatium equivalent to 100% of the compensation amount.

90. As noted earlier, the proviso to Section 26(1) requires the determination of market value on the date of issue of Section 11 Notification. In addition, section 19 of the 2013 Act provides for the publication of a declaration and summary of rehabilitation and resettlement. Where no declaration is made under Section 19(1) within 12 months of preliminary notification, such notification shall be deemed rescinded.

91. Thus, subject to conditions prescribed in the proviso to Section 19(7), a declaration under Section 19 has to be made within 12 months from the date of preliminary notification, failing which such notification shall be deemed to have been rescinded. These provisions militate against the concept of retrospective acquisition or at least payment of compensation at a market value prevalent almost 60 years before the actual acquisition date.

92. In stark contrast, the impugned Act does away with restrictions and safeguards regarding acquiring Petitioner's property. Even the requirement of hearing etc. is dispensed with. Most importantly, the compensation is to be determined as per the market value prevailing on the date of the requisition, i.e., 14.01.1964. Based on these provisions, the Petitioner was offered compensation of Rs.1,37,052/- corresponding to the rate of Rs.3.83 per square meter for the acquisition of Petitioner's property admeasuring 35690.75 square

meters. This acquisition was made on 27.09.2016 but was stated to be given retrospective effect from 20.01.1964. No solatium is contemplated under the impugned Act.

93. None of the components to determine fair compensation referred to in the First Schedule to 2013 Act have been provided under the impugned Act. Moreover, the concept of transparency introduced by the Parliament in the 2013 Act is a complete casualty under the impugned Act. The Petitioner has even been denied the right to question the acquisition and the compensation before any Civil Court. Without a doubt, the provisions of the impugned Act, on the aspect of determination of compensation, are not even remotely more beneficial or provide any higher compensation than what is prescribed under the 2013 Act.

94. The learned Advocate General primarily relied upon equity by suggesting that since the displaced persons' lands had been acquired in 1964 for the 2 STC project in the public interest, the Petitioner should raise no grievance about the compulsory acquisition or even the quantum of compensation if his lands were acquired to rehabilitate such displaced persons or to secure their possession. He submitted that even this Court should deny any relief to the Petitioner based on equitable considerations.

95. The above contention does not appeal to us in the facts of the present case. Equity, like fairness, is not a one-way street. The State's object of rehabilitation of the displaced persons may be noble and even in the public interest. But the same cannot be entirely at the cost and drastic consequences of the Petitioner. There can be no equity in robbing Peter to pay Paul. Right since 1964, The Petitioner has not been paid a farthing. Instead, he claims to have spent a fortune to recover his property or at least some decent compensation in lieu of his property. No sooner he obtained some favorable orders from Courts than the combined might of the Legislature and the Executive was used to oust the jurisdiction of the Court and to acquire only the Petitioner's property against payment of illusory compensation. Yet, we are surprised that the State pleads equity against the Petitioner!

96. At this stage, we must record that we had interrupted the final hearing to enable the learned Advocate General to see if the Government would be willing to pay some decent compensation having some nexus or at least a broad correlation with the market position in 2016 to the Petitioner. We are sure that the learned Advocate General did make efforts, but apparently, no settlement could arrive. Therefore, we proceeded with the hearings and reserved the matter for orders, again in the fond hope that in the meanwhile, some resolution equitable to all parties might emerge. But, that was not to be.

97. The State maintains that the market rate need not be paid because the said land was under requisition, and the Petitioner was out of possession since 1964. Incidentally, even Section 7 of the RAIP Act, 1952, empowers the acquisition of any property subject to requisition. However, Section 8(3), in terms, provides that the compensation payable for the acquisition of any property under Section 7 shall be the market value on the acquisition date and not the market value on the requisition date.

98. Thus, comparing the impugned Act with the 2013 Act, it is apparent that there is an absolute or irreconcilable conflict or inconsistency between the provisions of the two statutes, both on the aspects of pre-conditions to be complied for acquisition and determination of compensation for the acquired lands. Such a conflict brings the two statutes into a state of a direct collision.

99. In the present case, the impugned Act adopts norms or standards of behavior or provides consequences that stand opposed in direct and immediate terms of the 2013 Act. Therefore, it is almost impossible to comply with provisions of the impugned Act without disobeying the 2013 Act. Thus, applying the first test formulated in *Forum for People's Collective Efforts (supra)*, it is clear that the impugned Act is repugnant to the 2013 Act.

100. Since, applying the first test itself, there is repugnancy between the provisions of the impugned Act and the 2013 Act, there is no necessity to advert to the second and third tests for determining repugnancy. First, however, we must record that, at least *prima facie*, a case of repugnancy was made out even by applying the second and third tests.

101. The learned Advocate General's only contention was that the 2013 Act could be resorted to acquiring lands for public purpose as defined under Section 3(za). He pointed out that this definition of public purpose means the activities specified in Section 2(1) of the 2013 Act. Accordingly, he took us through the provisions of Section 2(1) of the 2013 Act. He submitted that acquiring the land to rehabilitate displaced persons due to the acquisition of land for establishing 2STC (3 Military Training Regiment) at Salcete Goa will not constitute "*public purpose*." Therefore, no acquisition for such a purpose could have been undertaken under the 2013 Act. From this, the learned Advocate General wanted us to deduce that the 2013 Act is neither an exhaustive code nor does it occupy the same subject as occupied by the impugned Act.

102. In the first place, at least *prima facie*, we are not sure whether the approach suggested by the learned Advocate General represents the correct approach. If the learned Advocate General is right in his

interpretation of Section 3(za) and Section 2(1) of the 2013 Act, then, according to him, acquisition of the petitioner's land to rehabilitate the displaced persons would be prohibited under the 2013 Act, which is admittedly a Parliamentary Legislation. If this is so, the State Legislature, by law relatable to Entry 42 of List III, cannot authorize or effect any acquisition, which, according to the learned Advocate General, is prohibited by the Parliamentary enactment relatable to the same entry in the Concurrent List. That would result in an irreconcilable conflict or inconsistency between the two statutes, where the State Legislation would say “Do” and the Parliamentary legislation would say “Don’t.”

103. Besides, we are also unsure about the correctness of the learned Advocate General's interpretation of the expression “*public purpose*” as defined under Section 3(za) r/w. Section 2(1) of the 2013 Act. The statement of objects and reasons to the 2013 Act indeed refers to redefining the expression “*public purpose*” to restrict its scope. However, the activities specified in Section 2(1) of the 2013 Act include, among other things, project-affected families or persons displaced or affected by the implementation of any scheme undertaken by the Government or local authority or corporation owned or controlled by the State.

104. At least *prima facie*, therefore, we find it difficult to accept that the appropriate Government would be precluded from acquiring the petitioner's land by resorting to the 2013 Act to rehabilitate the displaced persons whose lands were allegedly acquired for the establishment of 2STC (3 Military Training Regiments) at Salcete, Goa.

105. However, we clarify that our observations concerning repugnancy based on the second and third tests are only *prima facie*, given our findings on repugnancy based upon the first test formulated in *Forum for People's Collective Efforts (supra)*.

106. Section 103 of the 2013 Act provides that the provisions of this Act shall be an addition to and not in derogation of any other law for the time being in force. The Hon'ble Supreme Court has already explained the impact of a similar clause on the issue of repugnancy in the case of *Forum for People's Collective Efforts (supra)*. In any case, the existence of such a clause is not a license for the State Legislature to enact a law on the subject in the Concurrent List, which is in direct conflict with a Parliamentary law on the same subject. Therefore, to avoid a construction that might have enabled the State legislatures to whittle down the benefits of the 2013 Act, the Parliament made specific provisions in Sections 107 and 108 of the 2013 Act.

107. Section 107 explicitly empowers the State legislature to enact any law more beneficial to affected families. This section provides that the State can enact any law to enhance or add to the entitlements enumerated under the 2013 Act, which confers higher compensation than payable under the 2013 Act. Similarly, Section 108 gives an option to avail of better compensation where higher compensation is provided under the State law or policy framed by the Government of the State.

108. The provisions of Sections 103, 107, and 108, therefore, provide that nothing contained in the 2013 Act shall prevent the State from enacting any law to enhance or add to the entitlements enumerated under the 2013 Act, which confers higher compensation than payable under the 2013 Act. In other words, this means that the State legislature cannot enact any law providing for compensation that is less than what is provided under the 2013 Act. Thus, the limits of the space that the Parliament was willing to concede to the State Legislatures on land acquisition and the compensation payable are substantially delineated and defined. In the present case, by enacting the impugned Act, the State Legislature has provided compensation much less than the compensation payable under the 2013 Act. The State Legislature has consequently overstepped this limit. This brings the corresponding provisions of the impugned Act, which is the State Legislation, in direct conflict with Section 107 of the 2013 Act, which

is Parliamentary legislation. The impugned Act, in the teeth of the provisions of Section 107 of the 2013 Act, and the scheme of Article 254 of the Constitution, has whittled down the compensation provisions for the acquisition of the petitioner's property. This is a case of direct and irreconcilable conflict, as noticed in the first test to determine repugnancy.

109. For all the above reasons, we hold that the impugned Act deserves to be declared null and void because the impugned Act, which is a State Legislation, is repugnant to the 2013 Act, which is a Parliamentary Legislation, given the scheme of Article 254 of the Constitution.

110. The next issue which falls for consideration is whether the impugned Act is violative of Articles 14, 21, and 300A of the Constitution of India and, therefore, null and void.

111. The petitioner's contention, based on Article 14 of the Constitution, must also succeed in the present case. As noted earlier, the impugned Act provides for the acquisition of the petitioner's property and the vesting of the same with the Government, free from all claims, charges, encumbrances, liens, etc. Though the impugned Act was assented to by His Excellency Governor of Goa on 27.09.2016, Section 3(2) of the impugned Act provides that the

Government shall pay to the petitioner, within 270 days from the enactment date, compensation as per the market value of such land as prevailing on the date of making requisition for the said land under the said Act. The requisition date is 14.01.1964, as mentioned in the first recital in the preamble to the impugned Act. Based on this, the Government has determined and offered the petitioner compensation of Rs.1,37,052/- for the acquisition of the petitioner's property situated at Aquem, Salcete, Goa, admeasuring 35690.75 sq. mtrs.

112. The record bears out that though the petitioner's above property admeasuring 35690.75 sq. mtrs. was requisitioned by the then Government of Goa, Daman, and Diu on 14.01.1964; it was only in the year 1991 that the compensation for such requisitioning was determined at Rs.54,662.68. Again, the record shows that even this compensation amount was never paid to the petitioner. A vague dispute is raised in the written statement filed by the Government in Special Civil Suit No.199/1993/A instituted by the petitioner that it was the petitioner who failed to collect this compensation amount.

113. However, the above statement cannot be accepted at face value because the Government was also candid enough to state that the files and papers concerning all this are not traceable with the Government. In any case, it is apparent that right from the year 1964, the petitioner, has received nothing towards the requisitioning of the above property.

And now, After the petitioner obtained favorable orders from this Court in First Appeal No.102/1999 and Writ Petition No.763/2014, the impugned Act was enacted. In terms of the same, the petitioner has been offered compensation of Rs.1,37,052/- as above.

114. Mr. Desai submitted the offer of compensation of Rs.1,37,052/- for acquiring the petitioner's property in a prime location, admeasuring 35690.75 sq. mtrs. amounts to offer of no compensation at all. He submits that at least from 1993, the petitioner has been litigating to repossess his property and has incurred massive expenditure. He points out that the petitioner has received no compensation whatsoever, even during the requisition period, which, according to Mr. Desai, ended in 1981 or 1986.

115. In any case, Mr. Desai submits the payment of illusory compensation of only Rs.1,37,052/- for the acquisition of the petitioner's property, admeasuring 35690.75 sq. mtrs. is *ex facie* violative of the equality clause under Article 14 of the Constitution of India. He submits that the classification between the petitioner or the petitioner's property and others is based on no reasonable criteria. He presents that such criteria have no nexus whatsoever with the object that the impugned Act seeks to achieve. He strongly relies on *P. Vajravelu Mudliyar* (supra), *Nagpur Improvement Trust* (supra), and *Tarsem Singh & Ors.* (supra).

116. However, the learned Advocate General submits that the classification between the lands under requisition and those not is perfectly reasonable and has been expressly recognized as such in *Union of India vs. Hari Krishan Khosla*³⁴ and *Union of India vs. Chajju Ram*³⁵. He submits that the earlier decisions in *P. Vajravelu Mudliyar* (supra) and *Nagpur Improvement Trust* (supra) were distinguished in these decisions. Accordingly, the challenge that the provisions of the RAIP Act, 1952 and the Defence of India Act, 1971 were violative of Article 14 of the constitution because they did not provide for payment of any solatium or provided for payment of solatium which was less than that provided under the Land Acquisition Act, 1894 was rejected.

117. Besides, the learned Advocate General reiterated that the acquisition of the petitioner's property in the present case was to rehabilitate the 55 persons displaced due to the acquisition of their properties to establish 2 STC (3 Military Training Regiments) at Salcete, Goa. For this purpose, he submitted that the petitioner should not complain of inadequate or lesser compensation. Furthermore, the learned Advocate General submitted that the petitioner had lost possession in 1964. Therefore, the compensation now offered was for the petitioner's title in the said land, which could then be vested in the displaced persons. For all these reasons, the

³⁴ 1993 Supp (2) SCC 149

³⁵ (2003) 5 SCC 568

learned Advocate General submitted that there was no violation of Articles 14, 21, or 300A of the Constitution involved in this matter.

118. In *P. Vajravelu Mudliyar (supra)*, the Madras Legislature amended the Land Acquisition Act, 1894, providing for land acquisition for housing schemes by laying down principles for fixing compensation different from those prescribed under the Land Acquisition Act, 1894. For acquisition towards the housing schemes, the Madras Legislature provided that the compensation payable would be the market value at the date of publication of Section 4 notification or an amount equal to an average market value of the land during five years immediately preceding such date, whichever is less. Section 23 of the Land Acquisition Act, 1894, was amended by adding a clause that required the Collector to consider the use to which the land was put on the date of publication of Section 4 notification for determining its market value. Finally, even Section 24 of the Land Acquisition Act, 1894, was amended to reduce the solatium from 15% to 5%.

119. The Constitution Bench of the Hon'ble Supreme Court struck down the above Amending Act as violative of Article 14. At para 20, the Constitution Bench held as follows:

“20. Now what are the differences between persons owning lands in the Madras City or between the lands acquired which

have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences based upon the said criteria have no relevance to the object of the amending Act. To illustrate: the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a university or for a network of hospitals under the provisions of the principal Act and also for a housing scheme under the amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the amending Act and the other for a hospital under the principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the principal Act and the other under the amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to

acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the amending Act. So too, for a public purpose any such land can be acquired under the principal Act. We, therefore, hold that discrimination is writ large on the amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the amending Act clearly infringes Article 14 of the Constitution and is void.”

(emphasis supplied)

120. In *Nagpur Improvement Trust* (supra), a Seven Judge Bench of the Hon'ble Supreme Court of India was concerned with a challenge to the provisions of the Nagpur Improvement Trust Act, under which lands were to be acquired with reference to the Land Acquisition Act, 1894, as modified. One of the challenges was that the Nagpur Improvement Trust Act did not provide for a solatium of 15% that was payable under the Land Acquisition Act, 1894. Accordingly, the Seven Judge Bench struck down the impugned provisions by observing the following in paragraphs 27 to 30:

“27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?”

28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an

advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words, can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a government building? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words, can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner

different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.”

(emphasis supplied)

121. In *Tarsem Singh (supra)*, the challenge was to the decision of the Punjab & Haryana High Court striking down the provisions of the National Highways Act for making no provisions for grant of solatium and interest to lands acquired under the said Act. The land owners had contended that they would have obtained solatium and interest if their lands were acquired under the Land Acquisition Act, 1894. Therefore, the denial of solatium and interest where their lands were acquired under the National Highways Act violated their right to equal treatment under Article 14 of the Constitution of India.

122. The Hon'ble Supreme Court held that both *P. Vajravelu Mudliyar (supra)* and *Nagpur Improvement Trust (supra)* clinch the issue in favor of the respondents (land owners), as has been correctly held by the Punjab & Haryana High Court in ***Golden Iron and Steel Forging vs. Union of India***³⁶. The Court noted that the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved. However, awarding of solatium and interest has nothing to do with achieving this object, as it is nobody's case that land acquisition for National Highways slows down due to the award of solatium and interest. Thus, a classification

³⁶ 2008 SCC OnLine P&H 498

made between different sets of landowners whose lands happen to be acquired for National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act, i.e., speedy acquisition of lands for the purpose of National Highways. Therefore, the court held that the Amendment Act falls foul on this ground alone under Article 14.

123. The Hon'ble Supreme Court held that even otherwise, in *P Vajravelu Mudaliar* (supra), even though the object of the Amendment Act was to acquire lands for housing schemes at a low price, the Amendment Act was struck down when it provided for solatium @ 5% instead of 15%, that was provided in the Land Acquisition Act, 1894. The Court held that whether adjacent lands of the same quality and value are acquired for a housing scheme or some other public purpose such as a hospital is a differentiation between two sets of landowners having no reasonable relation to the object sought to be achieved. More pertinently, another example was given - out of two adjacent plots belonging to the same individual, one may be acquired under the Land Acquisition Act, 1894 for a particular public purpose and one acquired under the amending Act for a housing scheme, which, when looked at from the point of view of the landowner, would be discriminatory, having no rational relation to the object sought to

be achieved, which is the compulsory acquisition of property for public purposes.

124. The Court held that *Nagpur Improvement Trust* (supra) is an authority for the proposition that ordinarily, a classification based on public purpose is not permissible under Article 14 to determine compensation. The Court referred to the seven-Judge Bench unequivocally stating that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired, as if the existence of these two Acts would enable the State to give one owner different treatment from another who is similarly situated, Article 14 would be infringed. The Court, therefore, concluded that from the point of view of the landowner, it is immaterial that his land was acquired under the National Highways Act and not the Land Acquisition Act, 1894. Therefore, solatium cannot be denied on account of this fact alone.

125. In *Tarsem Singh* (supra), the Court distinguished *Hari Krishan Khosla* (supra) and *Chajju Ram* (supra). The Court also referred to *H. V. Low & Co. (P) Ltd. vs. State of W. B.*³⁷ and observed that in this case, the Division Bench found on a prima facie examination that *Chajju Ram* (supra) requires re-consideration. Apart from the distinction explained in *Tarsem Singh* (supra), according to us, in the

³⁷ (2016) 12 SCC 699

present case, there are two additional grounds to distinguish *Hari Krishan Khosla (supra)* and *Chajju Ram (supra)*.

126. Firstly, Hari Krishan Khosla (*supra*) and Chajju Ram (*supra*) were concerned with acquiring land under the requisition. In *Hari Krishan Khosla (supra)*, the acquisition and requisition were under the RAIP Act, 1952. In *Chajju Ram (supra)*, *pari materia* provisions under the Defence of India Act, 1971 were invoked. But what is significant is that the acquisition was regarding lands under requisition.

127. In the present case, the petitioner's land was undoubtedly requisitioned by Order dated 14.01.1964 in Section 29 of the Defence of India Act, 1962. However, it is the case of the State Government that after five years, such requisition was deemed a requisition under the RAIP Act, 1952. The RAIP Act now provides that the maximum period for land to be held under requisition is 17 years. Therefore, the Petitioner's property was not requisitioned on the enactment date, i.e., 27.09.2016.

128. The observations in paragraph 20 of the judgment and order dated 05.03.2010 in First Appeal No. 102/99 instituted by the Petitioner clarify this position. They read as follows:-

“20. The plaintiff has filed the suit for recovery of possession of the property. As can be seen from sub-section (1A) of Section 6 of the Act of 1952 which contains a non obstante clause, a mandatory duty is cast on the Central Government to release the property from requisition after a period of 17 years unless such property is acquired under Section 7 of the Act of 1952 within the said period. If the Central Government has a duty to release the property in case it remains without being acquired for 17 long years then certainly it would create a right in favour of the plaintiff to recover the possession of the same. The plaintiff has filed the suit for recovery of its possession and such a relief would not be hit by the bar created by Section 19 of the Act of 1952 and to that extent we are of the view that the main relief sought by the plaintiff was certainly cognizable by the civil Court and the bar of Section 19 of the Act of 1952 was not applicable. It is to be noted that the exclusion of jurisdiction of a civil court is not to be readily inferred and such exclusion must be either explicitly expressed or clearly implied. Whether the plaintiff would succeed in the main relief sought by the plaintiff is entirely a different matter regarding which we express no opinion and that will have to be decided by the trial Court on the merits of the case. The said main relief is not affected by the bar created by Section 19 of the Act of 1952. In other words, release of the property in terms of sub-section (1A) of the Act of 1952 is not a matter required to be determined by the competent authority. It is the requirement of law and the duty cast is on the Central Government.”

129. Concerning the property which is the subject matter of the impugned Act, the Division Bench of this Court, in paragraph 20 of its Judgment and Order dated 05.03.2010, has dealt explicitly with this issue and held that Section 6(1-A) of the RAIP Act, 1952 contains a *non-obstante* clause casting a mandatory duty on the Government to

release property from requisition after 17 years unless such property is acquired under Section 7 of the RAIP Act, 1952 within the said period.

130. Thus, on the enactment date of the impugned Act, i.e., 27.09.2016, the petitioner's property which the impugned Act has purported to acquire, was not requisitioned. The requisition had ended, and the property was a freehold property. Therefore, the basis of distinction in *Hari Krishna Khosla (supra)* and *Chajju Ram (supra)* would not apply in the peculiar facts of the present case.

131. Secondly, reference can be usefully made to Sections 105 and 113 of the 2013 Act. Section 105 provides that provisions of the 2013 Act shall not apply in some instances or apply with certain modifications to the enactment relating to land acquisition specified in the Fourth Schedule. One of the enactments in the Fourth Schedule is RAIP Act, 1952.

132. Thus, even if the petitioner's property were to be regarded as requisitioned property as of 2013, it could be possibly contended that the compensation payable need not correspond to the compensation payable under the 2013 Act, given the provisions of Section 105 of the 2013 Act. However, this position has changed since 01.09.2015

because of the Removal of difficulties Order dated 28.08.2015 discussed hereafter.

133. The Central Government, by resort to provisions of Section 113 of the 2013 Act (power to remove difficulties), has issued an order dated 28.08.2015 called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement (Removal of Difficulties) Order, 2015. This order provides that the provisions of the 2013 Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the second Schedule, and infrastructure and amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactment specified in the Fourth Schedule to the said Act.

134. Thus, with effect from 01.09.2015, even for the acquisition of requisitioned property under the RAIP Act, 1952, the appropriate Government would be obliged to determine the compensation in accordance with First Schedule to the 2013 Act. The impugned Act was enacted on 27.09.2016. On the enactment date of the impugned Act, therefore, the appropriate Government was bound to pay compensation that could be not less than the compensation provided under the 2013 Act, even for the acquisition of requisitioned property under the RAIP Act, 1952. The basis of distinction in *Hari Krishna*

Khosla (supra) and *Chajju Ram (supra)*. would no longer apply from 01.09.2015, given the removal of difficulties Order dated 28.08.2015.

135. Consequently, the law in *P. Vajravelu Mudaliyar (supra)* and *Nagpur Improvement Trust (supra)* as reiterated in *Tarsem Singh & Ors. (supra)* will prevail. Based on the law in these decisions, the petitioner's challenge based on Article 14 will have to be upheld. To the extent it denies the petitioner compensation in the 2013 Act, the impugned Act will have to be held as violative of Article 14 of the Constitution and consequently null and void.

136. The contention based on the nobility of the purpose of the acquisition under the impugned Act is addressed earlier in this judgment. Besides, as explained so felicitously by the Hon'ble Supreme Court in *Tarsem Singh (supra)* , that from the point of view of the land owner, the purpose of the acquisition or the law under which his land is acquired is hardly relevant. Ultimately, the land owner who is set to lose his land to the State can legitimately aspire to some decent compensation from the State. Therefore, based on this contention of the learned Advocate General, the charge of discrimination or arbitrariness cannot fail.

137. For all the above reasons, the impugned Act deserves to be declared null and void, given the provisions of Articles 14 and 254 of

the Constitution of India. However, striking down the impugned Act would mean that the Respondents will have to restore the Petitioner's property to the Petitioner free from all encumbrances. This will undoubtedly affect the continued occupation of the 49 displaced persons. Mr. Desai, however, relied on the judgment of the Division Bench of Madras High Court in the *Film Federation of India Vs. The Union of India and others*¹ (supra). He also reiterated that the Petitioner would be satisfied with the alternative relief of compensation in terms of the 2013 Act as of 27.09.2016.

138. In *Film Federation of India* (supra), it is held that a matter involving the Constitutional validity of a statute must be considered on a different footing than cases where either right of private parties are involved or some member of the public is seeking to agitate the enforcement of certain rights on behalf of a section of the public who are entitled to the benefit of those rights. On a detailed consideration of the various shades of contentions, the Madras High Court division bench held that such a petition would not fail for non-joinder of the beneficiaries under the act impugned.

139. Though the observations assist the Petitioner, in our judgment, we need not go into the above issue because the Petitioner has sought alternative relief in this petition. This relief can be granted to the Petitioner without affecting the displaced persons. The Petitioner has

prayed for a direction to the State to acquire the Petitioner's property under the 2013 Act and/or to pay compensation corresponding to the prevailing market value at the time of actual acquisition, i.e., on 27.09.2016. At least two decisions of the Hon'ble Supreme Court are instructive on the issue of molding relief in similar matters. In one of the matters where possession of the appellants' properties had been taken in 1964, the Court directed compensation payment based not on the 1964 rates but on the current rates. In another, possession was ordered to be restored together with compensation from the date possession was taken from the appellants till effective restoration.

140. In *Tukaram Kana Joshi and others Vs Maharashtra Industrial Development Corporation and others*³⁸, the State issued a notification under Section 4 of the Land Acquisition Act, 1894, on 06.06.1964 and in the same year, even took the actual physical possession of the Petitioners' land. However, further proceedings under the Land Acquisition Act were abandoned. Yet, Maharashtra Industrial Development Corporation, which was put in possession by the State Government, continued in possession. The MIDC, in the year 1988, went ahead and handed over such possession to the City Industrial Development Corporation of Maharashtra (CIDCO).

141. In 2009, the Appellants filed Writ Petition No.9513 of 2009 before the High Court of Bombay as a last resort. However, the same

38 (2013) 1 SCC 353

was dismissed on the ground of delay and non-availability of some documents. The Hon'ble Supreme Court, however, reversed the above decision. The Court held that the right to property is now considered not only a constitutional or statutory right but also a human right. Though it is not a basic feature of the Constitution or a fundamental right, Human rights are considered in the realm of individual rights, such as the right to health, livelihood, shelter, and employment. Now, however, human rights are gaining an even greater multifaceted dimension. The property right is considered very much to be a part of such a new dimension. [(Vide: *Lachhman Dass v. Jagat Ram & Ors.* (2007) 10 SCC 448; *Amarjit Singh & Ors. v. State of Punjab & Ors.* (2010) 10 SCC 43; (2010) 4 SCC (Civ) 29; *State of M.P. & Anr v. Narmada Bachao Andolan*, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875 : AIR 2011 SC 1989; *State of Haryana v. Mukesh Kumar & Ors.* (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769: AIR 2012 SC 559 and *Delhi Airtech Services (P) Ltd. v. State of U.P & Anr.* (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673 : AIR 2012 SC 573).

142. The Hon'ble Supreme Court held that in a democratic body polity that is supposedly governed by the rule of law, the State could not be allowed to deprive a citizen of his property without adhering to the law. Functionaries of the State took over the possession of the appellants' land without any sanction of law. The appellants had repeatedly asked for the benefit of compensation, but the same was

denied. The Court held that act of the State amounts to encroachment in the exercise of absolute power, which in common parlance is also called abuse of power or muscle power. To further clarify this position, the Court noted that the authorities have treated the land owner as a '*subject*' of medieval India but not as a '*citizen*' under our Constitution. The State, especially a welfare State governed by the Rule of Law, cannot arrogate itself to a status beyond the Constitution. Therefore, the High Court should not have dismissed the petition on delay and laches or because of the non-availability of records. The Hon'ble Supreme Court held that depriving the appellants of their immovable properties clearly violated Article 21 of the Constitution. In a welfare State, statutory authorities are bound to pay adequate compensation and have a legal obligation to rehabilitate such persons.

143. The Hon'ble Supreme Court noted that the appellants were deprived of their legitimate dues for about half a century. The Court wondered for which class of citizens the Constitution provides guarantees and rights in this regard and what percentage of the citizens of this country to whom constitutional/statutory benefits are accorded in accordance with the law. The Court noted that the appellants were seriously discriminated against qua other persons whose lands were also acquired. Some of such persons were given the benefits of the acquisition, including compensation in the year 1966. This kind of

discrimination not only breeds corruption but also disrespect for governance, as it leads to frustration and, to a certain extent, forces persons to take the law into their own hands. The Court noted that even under valid acquisition proceedings, there is a legal obligation on the authorities' part to complete such proceedings at the earliest and to make payment of requisite compensation.

144. The Court noted that if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property for the amount of compensation that is likely to be paid to him at a belated stage. The Court referred to ***K. Krishna Reddy & Ors. v. Collector (LA)***, (1988) 4 SCC 163: AIR 1988 SC 2123, in which it was held:

“12.....After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charm and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost

importance that the award should be made without delay. The enhanced compensation must be determined without loss of time....”

145. Finally, the Court noted that good sense prevailed, and the learned counsel for the State suggested that the authority would notify the land in dispute under Section 4 of the LA Act within four weeks. The Court, however, directed that the market value of the land in dispute should be computed as per the current market value of land and not what it was in 1964 when the possession had been illegally taken by the State. The Court also directed the grant of all statutory benefits to the appellants.

146. In ***B. K. Ravichandra and others Vs Union of India and others***³⁹, the Hon'ble Supreme Court was considering an appeal against the Karnataka High Court judgment dismissing the Petitioners' claim to vacate peaceful possession of their lands that the Union of India requisitioned in 1964. The Petitioners had urged that an option could be left open to the Union of India to initiate appropriate proceedings for the acquisition of the Petitioners' lands.

147. The Hon'ble Supreme Court referred to Requisitioning and Acquisition of Immovable properties Act, 1952, which was brought into force in 1952. The object of the RAIP Act was to enable the

39 2020 SCC OnLine SC 950

Union to requisition or acquire immovable property if the competent authority thought that any property was necessary for a public purpose. This Act was to be in force for six years. On 27.02.1958, however, the period of its operation was extended. Meanwhile, the Defence of India Act, 1962 (DIA) was enacted by the Parliament, empowering the Central Government with powers akin to those enacted under the RAIP Act. Accordingly, the Union of India invoked its power under DIA and requisitioned the Petitioners' properties. The competent authorities fixed the compensation for these lands on 18.12.1964, but the approval was given much later in 1968.

148. The Hon'ble Supreme Court noted that in 1963, the RAIP Act was amended, and its period of operation was extended till 14.03.1970. In the meanwhile, the DIA lapsed with effect from 10.01.1968. Therefore, the RAIP Act was amended, incorporating Section 25, which enacted that the immovable property under the DIA, which had not been released as of 10.01.1968, was deemed to have been requisitioned under the RAIP, 1952. The RAIP Act was again amended in 1970 to enable requisitioning of property and stated that requisitions were to be continued and were to be released after 12 years. Subsequently, this period of 12 years was extended to 17 years.

149. The Hon'ble Supreme Court held that the legal effect of requisitioning immovable property, it goes without saying, is that

temporarily- i.e., for the period the requisition order is in operation, the owner loses her possessory rights, even though the title remains undisturbed. Since the deprivation of possession is through the authority of law, in keeping with the fair procedure, the law (in this case, the Requisitioning Act) provides for payment of compensation following predetermined principles. Yet, the taking of property by definition is finite: it cannot result in expropriation or deprivation of title altogether unless another acquiring process is initiated. The Court also relied upon the decision of the Constitution Bench in ***Grahak Sanstha Manch v. State of Maharashtra***⁴⁰, in which it was held that requisition, by its nature, is temporary and the landowner's right to property cannot remain suspended indefinitely, at the wishes of the State or its agencies.

150. The Hon'ble Supreme Court held that although the property right is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable Constitutional right. The Court referred to its decision in ***Delhi Airtech Services Pvt. Ltd v. State of U.P.***⁴¹, where it was observed that it is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson believed that

40 (1994) 4 SCC 192

41 (2011) 9 SCC 354

liberty could not long subsist without the support of property. "*Property must be secured, else liberty cannot subsist*" was the opinion of John Adams. Indeed, the consensus among political thinkers and jurists is that property itself is the seedbed that must be conserved if other constitutional values are to flourish.

151. The Hon'ble Supreme Court held that even other judgments of this court have also highlighted the importance of the right under Article 300-A in the context of regulatory laws and enactments, which do not directly result in expropriation or acquisition, but rather, obliquely and indirectly, block the right to the enjoyment of properties, underlining that the essential theme of Article 300-A is unauthorized deprivation, which would result in an indefinite suspension of the property right. The court stressed that the law (of development or town planning, of any other such enactment) should be explicit about the nature and effect of the deprivation, expressing the intention to do so.

152. The Hon'ble Supreme Court concluded that it is, therefore, no longer open to the State: in any of its forms (executive, state agencies, or legislature) to claim that the law – or the constitution can be ignored or complied with at its convenience. The decisions of this court and the history of the property right show that though its pre-eminence as a fundamental right has been undermined, the essence of

the rule of law protects it. The evolving jurisprudence of this court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative, and its resemblance with Articles 21 and 265 cannot be overlooked- they guarantee the supremacy of the rule of law, no less.

153. The Hon'ble Supreme Court held that to permit the state: whether the Union or any state government, to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction)– whatever be the pretext, is no less than condoning lawlessness. The court's role is to act as the guarantor and jealous protector of the people's liberties: be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behavior, which it then can justify its conduct on the anvil of some loftier purpose at any future time- aptly described as a "*loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.*"

154. The Hon'ble Supreme Court not only directed the Union of India to restore the possession to the Petitioners but also permitted the Petitioners to seek compensation based on fresh fixation of the capital

value and recurring annual value based on the different five years periods for the last 20 years. Even the facts in *B.K. Ravichandra* (supra) are similar to the facts in the present case. The strong observations in both the decisions apply to the facts in the present case and answer most of the contentions raised on behalf of the State, claiming equities in its favor or against the Petitioner.

155. Therefore considering the legal position and balancing equities to the extent possible, the grant of alternate relief will be appropriate in the facts and circumstances of the present case. Moreover, such a grant will neither affect the interest of displaced persons nor substantially prejudice the Petitioner's claim. Even in the suit instituted in 1993, the Petitioner had prayed for compensation if the State was desirous of acquiring the Petitioner's property.

156. Besides, since the impugned Act was single-person legislation, affecting the Petitioner alone. Therefore, it is not as if the State could acquire any other lands for a token compensation based upon the impugned Act that otherwise deserves to be struck down. With the acquisition of the Petitioner's said land, which was its sole purpose, the impugned Act, has worked itself out. Therefore, by molding relief or granting alternative relief, neither will the displaced persons' interests be prejudiced nor will the petitioner be deprived of adequate compensation for his lost property.

157. Accordingly, even though the Petitioner has made out a case for striking out the impugned Act, we refrain from striking the same down or declaring the same as void. Instead, we hold that the Petitioner is entitled to alternate relief of compensation and statutory benefits equivalent to the compensation and statutory benefits in terms of the 2013 Act corresponding to the prevailing market value at the time of the actual acquisition, i.e., as of 27.09.2016. Further, considering that the Petitioner has received no compensation from 1964, we direct the State to pay the Petitioner the above compensation package at the earliest and no later than three months.

158. For computing the compensation, the State will have to go by its own order dated 26.12.2012 published in the official gazette dated 03.01.2013 issued under Rule 4(3) of the Goa Stamp (Determination of True Market Value of Property) Rules, 2003 containing the statement of minimum rates for the year 2013-14 in the State of Goa at Aquem, Salcete Goa, where the Petitioner's property is situated. However, the Petitioner's property will have to be treated as property in a developing area, not an urban area. The rate prescribed for developing areas in Aquem is ₹2564/- per square meter as against the rate of ₹8250/- per square meter prescribed for the urban area.

159. The rule is made absolute in the above terms. There shall be no order for costs.

160. The Civil Application No.111 of 2017 does not survive with the disposal of the petition, and the same is disposed of accordingly.

R. N. LADDHA,J

M. S. SONAK, J