

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

**WRIT PETITION NO. 7092 OF 2009
WITH CA/10367/2011 IN WP/7092/2009**

- 1) Vijaykumar Satyanarayan Agroya,
Age 50 years, Occ. Agriculture,
R/o. near Central Hanuman Temple,
Latur Tq. & Dist. Latur.
- 2) Bapurao s/o Nagorao Pande,
Age 52 years, Occ. Agriculture,
R/o. Deshpande Galli, Latur,
Tq. & Dist. Latur (died his L.Rs.)
- 2/1) Sacchidanand s/o Bapurao Pande,
Age 37 years, Occ. Agriculture.
- 2/2) Pavan s/o Bapurao Pande,
Age 22 years, Occ. Agriculture,
Both r/o. Deshpande Galli,
Tq. Latur, Tq. & Dist. Latur.
- 3) Manmathappa Pandabaappa Lokhande,
Age 70 years, Occ. Agriculture,
R/o. Subhash Chowk, Latur.
- 4) Balmukund s/o Babulal Baldava
(died) through L.Rs.
- 4/1) Vijaykumar s/o Balmukund Baldava,
Age 45 years, Occ. Agriculture,
R/o. Signal Camp, Latur,
Tq. & Dist. Latur.
- 4/2) Ajaykumar s/o Balmukund Baldava,
Age 40 years, Occ. Agriculture,
R/o. Gaika Building Azad Chowk,
Latur Tq. & Dist. Latur.
- 5) Chandrakalabai Bhaguram Mirkale,
(died) through L.Rs.
- 5.1 Ram s/o Bhaguram Mirkale,
Age 55 years, Occ. Agriculture,

R/o. Signal Camp, Latur Tq. &
Dist. Latur.

- 5.2) Laxman s/o Bhaguram Mirkale,
Age 45 years, Occ. Agriculture,
R/o. Gaika Building, Azhad Chowk,
Latur Tq. & Dist. Latur.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through : Secretary,
Urban Development Department,
Mantralaya, Mumbai.
- 2) The Collector, Latur,
Tq. & Dist. Latur.
- 3) The Sub Divisional Officer,
and the Special Land Acquisition
Officer, Tq. & Dist. Latur.
- 4) The Municipal Council,
Through its Chief Officer,
Municipal Council, Latur,
Tq. & Dist. Latur.

... **Respondents**

...

Advocate for the Petitioners : Mr. A. B. Kale

A.G.P for Respondent Nos. 1 to 3 : Mr. M.A. Deshpande

Advocate for Respondent No. 4:Mr. V.D.Hon Senior Advocate i/b Mr.A.V. Hon

CORAM	:	MANGESH S. PATIL AND S.G. CHAPALGAONKAR, JJ.
RESERVED ON	:	18.01.2023
PRONOUNCED ON	:	24.03.2023

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard both the sides.

2. Before adverting to the arguments it would be appropriate to appreciate the facts.

i) The petitioners' land along with that of few others was reserved by the respondent No. 4-Municipal Council in its development plan for construction of a development plan road from Saligalli to Sidheshwar temple through the

lands Survey Nos. 1, 126, 128, 129, 130 and 131. The total area to be acquired from all these lands was 1 to 1.14 Hectare. A proposal for acquisition was submitted by the Chief Officer of the respondent No. 4-Municipal Council to the Collector Latur-respondent No. 2 on 20.03.1990. Necessary notification under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter 'the M.R.T.P. Act') read with Section 6 of the Land Acquisition Act, 1894 (hereinafter 'the Act') was issued on 19.12.1991 and the final award was passed under Section 11 of the Act by the Special Land Acquisition Officer – respondent No. 3 on 29.12.1994.

ii) The possession of the land was already taken by way of private negotiations on 08.03.1994. Pursuant to the award a demand for total amount of compensation of Rs. 90,52,045/- was raised with the respondent No. 4-Municipal Council on 22.02.1995.

iii) The respondent No. 4-Municipal Council preferred an application in Writ Petition No. 419/1997 filed by one of the land owners which was disposed of with a direction to the respondent No. 3-Special Land Acquisition Officer to decide the matter and declare an award with or without modification of the compensation but by extending an opportunity to the respondent No. 4 -Municipal Council of being heard and in the light of the decision in the matter of **U.P. Awas Awam Vikas Pratisthan Vs. Gyandevi and others; AIR 1995 SC 724.**

iv) As per the affidavits in replies filed by the respondent No. 2-Collector and the respondent No. 3-Special Land Acquisition Officer, pursuant to the directions of this Court a notice was issued to the respondent No. 4-Municipal Council but it did not appear and the award was declared without any modification.

v) The petitioners claim that in spite of having taken over possession of the land and passing of the award, not once but twice, the respondent No. 4-Municipal Council failed to make any deposit with the respondent No. 3-

Special Land Acquisition Officer and consequently he could not issue a notice under Section 12(2) of the Act to the petitioners.

vi) The present writ petition was filed in the year 2009 claiming that for want of notice under Section 12(2) of the Act and in spite of possession having taken long back without paying a farthing to the petitioners by way of compensation their right to property enshrined under article 300A of the Constitution of India has been trampled down. Consequently they are claiming that the award stands lapsed by virtue of Section 11-A of the Act. Following are prayers :

“C) To direct the respondent No. 3 to issue fresh declaration u/sec. 126(4) of the Maharashtra Regional Town Planning Act, 1966 r/w section 6 of the Land Acquisition Act and to pass award within 3 months from today and for that purpose issue necessary orders.

In the alternate

D) To declare and hold that the declaration u/section 126 (4) of M.R.T.P r/w section 6 of the Land Acquisition Act issued by the respondents is illegal and the same be quashed and set aside.

E) To direct the respondents to declare award and issue notice u/section 12(2) of the Land Acquisition Act and to pay compensation along with interest within a period of 3 months from today and for that purpose issue necessary orders.

E) To direct the respondents to deposit 80% of the compensation along with interest as per the award prepared in this Honble Court with liberty to the petitioners to withdraw the same during pendency of final disposal of this writ petition.

F) To grant any other just and equitable relief to which the petitioners found entitled be granted”.

3. The learned advocate Mr. Kale for the petitioners would refer to the decision in the matter of **Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Anr.; AIR 1961 Supreme Court 1500** and would emphasize that a notice to the owners of the property as contemplated under Section 12(2) of the Act is a necessary concomitant for determining the date of the award to enable the owner of the property to resort to reference under Section 18 of the Act if he is not satisfied with the amount of compensation. When no such notice was ever served to the petitioners, their vital right to claim enhanced compensation would be lost. Consequently, there is no award passed in the eye of law. The award that has been passed would stand lapsed by virtue of the provision of Section 11-A of the Act. Mr. Kale would also emphasize the fact that following the decision in the matter of **Raja Harish Chandra Raj Singh (supra)** this Court has also consistently taken a similar view in following matters :

(a) **Vijay s/o Kashinath Shinde and others Vs. State of Maharashtra and others; 2013(3) Mh.L.J. 566.**

(b) **Sriniwas Radhakishan Malani and others Vs. The State of Maharashtra and others; in Writ Petition No. 4594/2013 decided on 18.11.2015.**

(c) **Nandlal s/o Kisanlal Pallod Vs. The State of Maharashtra and others; in Writ Petition No. 1348/2016 decided on 18.03.2016.**

4. Mr. Kale would, therefore, submit that since admittedly the petitioners land has already been taken possession of and the clock cannot be set back, it is imperative for the respondent Nos. 2 and 3 to pass a fresh award and pay the compensation as on the market price that was prevailing on the date of the petition i.e. 2009.

5. Per contra, the learned A.G.P. and the learned Senior Advocate Mr.

Hon for the respondent No. 4-Municipal Council would vehemently submit that in view of the constitution bench judgment in the matter of **Indore Development Authority vs Manoharlal And Ors.;**(2020) 8 SCC 129, applying the same analogy, the petitioners are not entitled to claim any relief as is being claimed. They would submit that the present acquisition proceeding was initiated under the Act and even the award was passed way back on 29.12.1994 under Section 11 of the Act. They would submit that the notice to the owners as is contemplated under Section 12(2) of the Act does not go to the root of the validity of the award passed under Section 11. The demand for the amount of compensation as per the award was raised with the respondent No. 4-Municipal Council but it expressed inability and as a result the compensation could not be paid to the petitioners and the other land owners albeit possession was taken on 18.10.1994.

6. The learned A.G.P and Mr. Hon for the respondent No. 4 Municipal Council would further submit that the decision in the matter of **Raja Harish Chandra Raj Singh (supra)** was rendered in the context of the provisions of Section 18 of the Act which mandates filing of reference within a stipulated time from the date of the award. In this context the Supreme Court on facts held that in the absence of any notice under Section 12(2) of the Act, the date of the award contemplated under proviso (b) to Section 18(2) of the Act would mean the date when the award is communicated to the owner and is known to him either actually or constructively. They would submit that the decision in the matter of **Raja Harish Chandra Raj Singh (supra)** was considered and distinguished by the Supreme Court in the matter of **Kaliyappan Vs. State of Kerala; 1989 AIR (SC) 239** wherein in the context of Section 11-A of the Act it has been laid down that to make an award under Section 11-A means signing the award. It was specifically observed that there is no analogy between Section 11-A and Section 18 of the Act and that the award would not be liable to be quashed on the ground of inordinate delay since it was passed within two years from the date of the

commencement of the Land Acquisition (Amendment) Act, 1984.

7. The learned A.G.P and Mr. Hon would further point out that this distinction in the approach of the Court while considering the date of award for the purpose of Section 18 and for the purpose of Section 11-A was not brought to the notice of this Court while deciding **Vijay Kashinath Shinde**. The decision in the matters of **Sriniwas Radhakishan Malani** and **Nandlal Kisanlal Pallod** were rendered relying upon the decision in the matter of **Vijay Kashinath Shinde**.

8. They would further point out that a coordinate Division Bench of this Court at Nagpur in the matter of **Jitesh Bhaiyalal Sahu and another Vs. State of Maharashtra and others; 2016 (6) Mh.L.J. 356** has considered a similar argument and precisely pointed out the distinguishing features of the ratio laid down in the matters of **Raja Harish Chandra Raj Singh** and **Kaliyappan**.

9. The learned A.G.P and Mr. Hon for the respondent No. 4-Municipal Council would further submit that admittedly, during pendency of the writ petition, pursuant to the directions of this Court, the amount of compensation of Rs. 90,52,045/- has been deposited in this Court being a total compensation under the award and the petitioners were allowed to withdraw their share of compensation as per the office note on the Farad dated 11.09.2013 and 19.09.2013. Since the petitioners have duly received the amount of compensation proportionate to their share even before the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into effect from 01.01.2014, the petitioners are also not entitled to now seek any benefit under the new Act.

10. We have considered the rival submissions, perused the papers and the decisions cited supra. As can be appreciated, there is not any dispute as far as the facts are concerned. The plight of the petitioners can easily be understood. They had parted with the possession way back in the year 1994

and were not being paid any amount of compensation in spite of passing of the award till after filing of the petition, albeit admittedly, during pendency of the petition it was deposited and disbursed to them proportionately in the year 2013.

11. Once having found that the award was passed under Section 11 of the Act albeit the amount of compensation was not either deposited by the respondent No. 4-Municipal Council or paid to the petitioners earlier, that would not render it void/in operative.

12. As the scheme of the Act suggests, the provision for lapsing of the acquisition proceeding was introduced by virtue of Section 11-A which was brought on the statute book with effect from 24.09.1984. It reads as under :

11A. Period within which an award within made – (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse :

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

The declaration under Section 126(4) of the M.R.T.P Act read with Section 6 of the Act was issued on 19.12.1991 and was published on 23.04.1992 firstly in the daily news papers on 28.02.1992 and 29.02.1992, in the government gazette on 23.04.1992 and on the village Chavadi on

30.12.1992 and the award has been passed on 29.12.1994.

13. The declaration has to be published in the official gazette, two daily news papers, circulating in the locality in which the land situates and the Collector has to cause a public notice of the substance to be given at the convenient place in the locality which in the present case was even according to the petitioners published at the village Chavadi on 30.12.1992. Section 6 of the Act reads as under :

6. Declaration that land is required for a public purpose. -

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 , shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall

have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the appropriate Government may acquire the land in manner hereinafter appearing.

A plain reading of sub Section 2 of Section 6 of the Act would clearly show that the declaration contemplated therein should take place mandatorily in these three prescribed modes. It would be axiomatic that any lapse in any of these three modes prescribed for issuing a declaration would go to the validity of such declaration. If that be so, if such declaration by way of three modes has taken place on three different dates, essentially the declaration which is latest of the three will have to be reckoned as the date of declaration. The date of the last of such three declarations would constitute a declaration *stricto sensu*.

14. Admittedly, the award has been passed on 29.12.1994 that is within two years of the publication on the village Chavadi on 30.12.1992. Therefore, it cannot be said that the award would lapse as contemplated under Section 11-A of the Act as it has been passed within two years of the declaration under Section 6 of the Act read with Section 126(4) of the M.R.T.P. Act.

15. So far as the submission of the learned advocate Mr. Kale seeking to place reliance on the decision in the matter of **Raja Harish Chandra Raj Singh (supra)**, it is quite evident that the submission is misplaced and fallacious. A careful reading of this decision would reveal that observations were made regarding compliance with requirement of notice of the award as contemplated under Section 12(2) of the Act in the context of the date of award as contemplated under proviso (b) to Section 18(2) of the Act which

mandates an application seeking a reference to the Court to be made by any person interested has to be filed within six months of receipt of the notice under Section 12(2) of the Act. This decision in the matter of **Raja Harish Chandra Raj Singh** cannot be suitably pressed into service while considering the petitioners claim regarding lapsing of the acquisition proceeding under Section 11-A of the Act.

16. This is precisely, with respect, has been considered and succinctly observed in the matter of **Kaliyappan (supra)** which clearly distinguishes the decision in the matter of **Raja Harish Chandra Raj Singh (supra)** in following words :

“4. It is no doubt true that in Raja Harish Chandra's case (AIR 1961 SC 1500) (supra) while construing section 18 of the Act this Court held by giving an extended meaning that the date of the award for purposes of calculating the period of limitation should be the date on which the notice of the award is served on the owner of the land. The said interpretation was given by this Court on the principle that if a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and, therefore, must be presumed to have the knowledge of the order. Under section 18 of the Act the person on whom the notice of the award is served has to make an application before the Land Acquisition Officer within six weeks from the date of the award if such person was present or represented before the Land Acquisition Officer at the time when he made his award and in other cases within six weeks of the receipt of the notice of the Collector under section 12(2) or within six months from the date of the award whichever expires first. In a case where a person interested in the land is not present at the time when the award is made by the Collector he is entitled to make an application under section 18 of the Act seeking a reference of the case to the Civil Court for the determination of the proper compensation within six weeks of the receipt of the notice

from the Collector under section 12(2) of the Act or within six months from the date of the Collector's award whichever expires first. Since the process of service of notice issued under section 12(2) would occupy some time this Court was of the view that it would lead to injustice if the period of limitation prescribed by S. 18 of the Act was computed from the date on which the award was actually made and not from the date on which the notice under section 12(2) of the Act was served on the person interested in the land as it would result in the reduction of the period of six weeks by the time required for serving the notice on the person interested in the land. There is no doubt a difference between the meaning given by this Court in Raja Harish Chandra's case (supra) to the words "date of the award" in section 18 of the Act and the interpretation of the High Court of the words 'the Collector shall make an award' or 'the award shall be made' in section 11-A of the Act but such a distinction had to be maintained because the object of and the reason for prescribing the period of limitation under section 11-A of the Act are different from the object of and the reason for prescribing the period of limitation under section 18 of the Act and the consequences that would flow from the violation of the rule of limitation in two cases are also different. In the former case the period of limitation is prescribed for preventing official delay in making the award and the consequent adverse effect on the person or persons interested in the land but in the latter case the period of limitation is prescribed for providing a remedy to the persons whose lands are acquired to seek a reference to the civil court for the determination of proper and just compensation. Secondly, while in the former case violation of the rule of limitation would result in the acquisition proceeding becoming ineffective, in the latter case such a violation will not have any effect on the validity of acquisition proceeding. Thirdly, while in the former case the period of limitation prescribed represents the outer limit within which an award can be made in the latter case we are concerned with the point of time at which the time to make an application under section 18 of the Act will begin to run against the person interested in the land. The provisions of section 11-A have to be construed bearing in mind these

points of difference. It is well-known that the meaning to be assigned to the words in a statute depends upon the context in which they are found and the purpose behind them”.

17. Conspicuously, the decision in the matter of **Vijay Kashinath Shinde** was rendered without adverting the attention of the Court to the decision in the matter of **Kaliyappan**. This Court while deciding **Vijay Kashinath Shinde** simply relied upon the decision in the matter of **Raja Harish Chandra Raj Singh** and based on such decision the matters in the case of **Sriniwas Radhakishan Malani** and **Nandlal Kisanlal Pallod** were decided. In none of these three matters, the attention of the Court was adverted to the decision in the matter of **Kaliyappan**.

18. Incidentally, the issue slightly in a different context had come before another Division Bench of this Court at Nagpur Bench in the matter of **Jitesh Bhaiyalal Sahu (supra)** wherein the Division Bench made following observations :

“ 13. In the present case, our concern is in respect of Section 12(2) of the Act of 1894. Notice under Section 12(2) is a notice ex post facto of an award already made. It is not a kind of notice which goes to the root of the matter in the sense that failure to give notice would vitiate the award itself. The words "immediate notice" are used solely in the interest of public to ensure that acquisition shall be facilitated and completed without delay. This sub-rule imposes statutory duty upon the Collector and does not vest a right in the person interested so as to entitle him to say that a late notice is bad.

14. In the case of Raja Harish Chandra Raj Singh (supra), the appellant filed his claim to compensation for the land acquired in accordance with Section 9(2) and proceedings were held by the Deputy Land Acquisition Officer for determining the amount of compensation. In these proceedings, an award was made, signed and filed in his office on 25/03/1951. No notice of this award was,

however, given to the appellant as required by Section 12(2) and it was only on or about 13/01/1953 that he received information about making of the said award. The appellant then filed an application on 24/02/1953 under Section 18 requiring that matter be referred for the determination of the Court, as, according to the appellant, the compensation determined in the proceedings was quite inadequate. In these proceedings and also in the appeal before the High Court, it was held that the application filed by the appellant under Section 18 of the Act was barred by limitation. In view of this fact, the Hon'ble Supreme Court held that the expression "the date of award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively.

15. In the case of Kaliyappan vs. State of Kerala and others (supra), the decision in the case of Raja Harish Chandra Raj Singh was distinguished and in paragraph 3, the Hon'ble Supreme Court held thus :

"If the date of the communication of the notice of the award to the person interested in the land is treated as the date of making the award then the maximum period prescribed under Section 11-A of the Act for making the award would get reduced by the period required for serving the notice of the award on the owner of the land. Such maximum period may vary from one case to another.

If the person interested in the land is an unwilling person who is interested in defeating the land acquisition proceeding it is likely that it may not be possible to serve him with the notice of the award at all within the prescribed time and if he can avoid the service of said notice until the period of two years is over from the date of the publication of the declaration under Section 6 of the Act or the date of commencement of the Land Acquisition (Amendment) Act, 1984, as the case may be insofar as his interest in the land is concerned, the proceedings for the acquisition would lapse thus affecting seriously the public interest. It would also lead to absurd and inconvenient

results since the acquisition proceeding may be valid against some persons and may become invalid in the case of some others."

16. *In paragraph 4, the Hon'ble Supreme Court also observed that there is no doubt a difference between the meaning given by the Court in Raja Harish Chandra's case (supra) to the words "date of the award" in Section 18 of the Act and words 'the Collector shall make an award' or 'the award shall be made' in Section 11-A of the Act, but such a distinction had to be maintained because the object of and the reason for prescribing the period of limitation under Section 18 of the Act and the consequences that would flow from the violation of the rule of limitation in two cases are also different. In the former case, the period of limitation is prescribed for preventing official delay in making the award and the consequent adverse effect on the person or persons interested in the land but in the latter case, the period of limitation is prescribed for providing a remedy to the persons whose lands are required to seek a reference to the civil court for the determination of proper and just compensation. Secondly, while in the former case violation of the rule of limitation would result in the acquisition proceeding becoming ineffective, in the latter case such a violation will not have any effect on the validity of acquisition proceeding. Thirdly, while in the former case the period of limitation prescribed represents the outer limit within which an award can be made, in the latter case, the point of time at which the time to make an application under Section 18 of the Act will begin to run against the person interested in the land. The provisions of Section 11-A have to be construed bearing in mind these points of difference.*

17. *In the light of the above, it is clear that provisions of Section 18 of old Act employ the words "date of the Collector's award". Otherwise, Section 11 thereof which enjoins the obligation on Collector to make an award & use the words "shall make an award" does not refer to the date of such award. On the contrary the word "date" appears in Section 11 when it refers to Section 4 notification. It also*

appears in Section 11-A, where it indicates date of declaration under S.6 of old Act as starting point of period of two years within which the award must be made by the Collector under Section 11. Section 11-A nullifies the award if it is not made within said two years. Thus in both these Sections said word is used once each but not with reference to the date of award. Insistence therein is on "making" of award. For computation of period of two years in Section 11-A, two points of time between which the said period needs to be computed are required. It, still, does not indicate date of award but points out the event of making of award. As already seen, what constitutes making of an award is already explained by the Hon'ble Apex Court in Kaliyappan v. State of Kerala, Hon'ble Court points out that "to make an award" in this section means "sign the award". That is the ordinary meaning to be ascribed to the words "to make an award". Extended or a different meaning assigned to the words "the date of the award" by it in Raja Harish Chandra case (supra) has not be applied in this case holding that such an extended or different meaning is neither warranted by equity nor will it advance the object of the statute. Under the proviso to Section 11-A of the Act, the Collector is empowered to make an award within two years from the date of commencement of the Land Acquisition (Amendment) Act, 1984 irrespective of the date on which the notice of award is served on the person concerned. Apex Court did not find any analogy between Section 11-A and Section 18 of the Act insofar as the event of making of an award is concerned. Section 18 enables aggrieved landowner to file reference for enhancement of the compensation. This remedy opens only after the award is made by the Collector. It is in S.18(2) prescribing limitation for availing remedy of the reference, to show the starting time for its computation, words "from the date of the Collector's award" have been used. Thus, here the date of making award becomes significant to determine the limitation. Clause (a) & (b) of S.18(2) also envisage knowledge of making of award to such landowner."

19. True it is that the decision in the matter of **Jitesh Bhaiyalal Sahu** was

rendered on 04.08.2016 that is after the coordinate benches of this Court decided the matters in **Vijay Kashinath Shinde** which was decided on 12.12.2012 and **Sriniwas Radhakishan Malani** which was decided on 18.11.2015. Conversely the decisions rendered in the matter of **Vijay Kashinath Shinde** and **Sriniwas Radhakishan Malani** were not cited before the Division Bench which decided **Jitesh Bhaiyalal Sahu**.

20. In our considered view, since the decision in **Kaliyappan** was already there which clearly distinguished the decision in the matter of **Raja Harish Chandra Raj Singh**, the decisions rendered in the matter of **Vijay Kashinath Shinde** and **Sriniwas Radhakishan Malani** would be *per incuriam* and so would be the decision in the matter of **Nandlal Kisanlal Pallod** rendered on 18.03.2016.

21. In view of such legal scenario, when admittedly the award in the matter in hand was passed within two years of the declaration under Section 126(4) of the M.R.T.P. Act read with Section 6 of the Land Acquisition Act, 1894, the award in question would not lapse under Section 11-A of the Act.

22. The Writ Petition is dismissed.

23. Rule is discharged.

24. Pending Civil Application No. 10367/2011 is disposed of.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-