IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7115 OF 2022

Gangadhar Karbhari Jadhav
Indian inhabitant, Aged-64 Years, Having address at 301, Prasanna Arcade, Trimbak Naka, Old Agra Road, Near Mazda Hotel, Nashik 400002. ...Petitioner

Vs.

1. Union of India
Through its Secretary, Ministry of Petroleum and Natural Gas Having address at: Shastri Bhawan, New Delhi – 110001

2. Competent Authority
(For Pipeline Infrastructure Ltd.)
(Formerly known as Reliance Gas Transportation Infrastructure Ltd.) Duly appointed under Section 2(a) of the Petroleum and Minerals Pipelines (Acquisition of Of Right and User in Land) Act, 1962 Having adress at C.S. 08, Vaholi, Dahegaon, Kalyan Dist. Thane 421301.

3. Pipeline Insfrastructure Ltd.
(formerly known as Reliance Gas Transportation Infrastructure Ltd.) having address at Seawoods Grand Central, Tower-1, C-Wing, 301-304, Sector 40, Seawoods Railway Station, Navi Mumbai-400706 ...Respondents

WITH

INTERIM APPLICATION NO. 30285 OF 2022

Pipeline Insfrastructure Ltd. (formerly known as Reliance Gas Transportation Infrastructure Ltd.) having address at Seawoods Grand Central, Tower-1, C-Wing, 301-304, Sector 40, Seawoods Railway Station, Navi Mumbai-400706 ...Applicant

IN THE MATTER BETWEEN

Gangadhar Karbhari Jadhav Indian inhabitant, Aged-64 Years, Having address at 301, Prasanna Arcade, Trimbak Naka, Old Agra Road, Near Mazda Hotel, Nashik 400002 ...Petitioner

Vs.

1. Union of India Through its Secretary, Ministry of Petroleum and Natural Gas Having address at: Shastri Bhawan, New Delhi – 110001
2. Competent Authority (For Pipeline Infrastructure Ltd.) (Formerly known as Reliance Gas Transportation Infrastructure Ltd.) Duly appointed under Section 2(a) of the Petroleum and Minerals Pipelines (Acquisition of Of Right and User in Land) Act, 1962 Having adress at C.S. 08, Vaholi, Dahegaon, Kalyan Dist. Thane 421301. ...Respondents

Mr. Prahlad Paranjape i/b. Mr. Rahul Punjabi, Advocates for the Petitioner.

Mr. Niranjan P. Shimpi, Advocates for Respondent No. 1-U.O.I.

Mr. Mayur Khandeparkar a/w. Ms. Sabeena Mahadik a/w. Mr. Mangesh Avhale, Advocates for Respondent No.2 – Competent Authority in both the matters.

Dr. Milind Sathe, Senior Advocate a/w. Mr. Vaibhav Sugdare a/w. Mr. Rishit Badiani a/w. Mr. Ketan Dave a/w. Mr. Gaurav H. Gangal i/by. A.S. Dayal & Associates for Respondent No.3.

CORAM:- R. D. DHANUKA AND M.M. SATHAYE JJ.

RESERVED ON : 8 FEBRUARY, 2023
PRONOUNCED ON: 27 MARCH, 2023

JUDGMENT:

1. Rule. Mr. Shimpi waives service for Respondent No.1. Mr. Khandeparkar waives service for Respondent No.2. Dr. Sathe learned senior counsel waives service for Respondent No.3 in WP No. 7115 of 2022. Rule is made returnable forthwith. By consent of the parties, the matter is taken up for final hearing.

2. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a Writ of Certiorari for quashing and setting aside the impugned order dated 25 March, 2022 passed by the Respondent No.2 Competent Authority thereby rejecting the Petitioner’s claim for application of Right to Fair Compensation and

Transparency in Land Acquisition Act 2013 (for short **"Fair Compensation Act**") for determination of compensation for acquisition of Right of User of his lands under the provisions of Petroleum and Minerals Pipeline Act, 1962 (for short "**PMP Act**"). The Petitioner also seeks a Writ of Mandamus against the Respondents to apply the provisions of the Fair Compensation Act for determination of compensation for acquisition of Right of User of his lands under the provisions of the PMP Act and to make good the said amounts in a time bound manner.

<u>Some of the relevant facts for the purpose of deciding this writ petition are as under:</u>

3. The Petitioner is the owner of five portion of lands situated in Village Wakas, Taluka Karjat, Dist. Raigad bearing:

a.	S. No. 47/1/A/1 (Old Survey No. 81/1A/1) admeasuring Hectare 1.54 Are;
b.	S. No. 47/1/B, (Old Survey No. 81/1/B) admeasuring Hectare 0.37 Are;
c.	S. No. 49/5, (Old Survey No. 83/5) admeasuring Hectare 0.58 Are;
d.	S. No. 49/13/A/24, (Old Survey No. 83/13+24) admeasuring Hectare 1.08.80 Are;
e.	S. No. 49/17, (Old Survey No. 83/17) admeasuring Hectare 0.26 Are.

4. Some time in the year 2007, the Respondent No.1 had assigned the project of transportation of natural gas from Andhra Pradesh to different parts of the country passing through Maharashtra to the Respondent No.3.

5. On 1 October, 2008, the Respondent No.1 issued a notification under Section 3 of the PMP Act notifying its intention of laying down a pipeline and for Acquisition of Right of User in Petitioner's land bearing S.Nos. 47/1/A/1 (Old Survey No. 81/1A/1) admeasuring Hectare 0.61 Are.

6. On 30 November, 2009, the Respondent No.1 issued a notification under Section 3 of the PMP Act notifying its intention of laying down a pipeline and for Acquisition of Right of User in Petitioner's land bearing S. No. 49/13/A/24, (Old Survey No. 83/13+24) admeasuring Hectare 0.70 Are. Similarly on 6 May, 2009, the Respondent No.1 issued a Notification for declaration of Acquisition of Right of User under Section 6 of the PMP Act for the Petitioner's land bearing S. No. 47/1/A/1 (Old Survey No. 81/1A/1) admeasuring Hectare 0.46 Are.

7. On 9 March, 2010, the Respondent No.1 issued issued a Notification for declaration of Acquisition of Right of User under Section 6 of the PMP Act for the Petitioner's land bearing S. No. 49/13/A/24, (Old Survey No. 83/13+24) admeasuring Hectare 0.70 Are. On 9 April, 2011, the Respondent No.2-Competent Authority determined the compensation under Section 10 of the PMP Act for the Petitioner's land bearing S. No. 49/13/A/24, (Old Survey No. 83/13+24) admeasuring Hectare 0.70 Are. According to the Petitioner, the said pipeline was passing through all the five lands of the Petitioners and the three survey numbers in question in the present petition, namely, S. No. 47/1/B, (Old Survey No. 81/1/B) admeasuring Hectare 0.37 Are; S. No. 49/5, (Old Survey No. 83/5) admeasuring Hectare 0.58 Are; and S. No. 49/17, (Old Survey No. 83/17) admeasuring Hectare 0.26 Are were never notified.

8. On 1 January, 2014, the said Fair Compensation Act was notified for dealing with the various issues in relation to land acquisition and payment of compensation. On 31 December, 2014, an Ordinance (9 of 2014) was promulgated amending Section 105 of the Fair Compensation Act to the extent the provisions of the Fair Compensation

Act relating to determination of compensation and rehabilitation and resettlement to cases of land acquisition under enactments specified in Fourth Schedule to the Fair Compensation Act. On 3 April, 2015 and 30 May, 2015, the Respondent No.1 issued Ordinance of promulgated to give continuity to ordinance amending Section 105(3) of Fair Compensation Act. On 28 August, 2015, the Central Government passed an order of Removal of Difficulties Order in exercise of powers under Section 113(1) of the Fair Compensation Act for extending benefit for determination of compensation in accordance with First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule to apply to all cases of land acquisition under the enactments specified in Fourth Schedule of the Fair Compensation Act.

9. On 10 December, 2015, the Respondent No.1 issued a notification under Section 6(4) of the PMP Act directing Right of User vested in Respondent No.3 to be shared with another company and also declaring the intention to acquire the Right of User in the two lands of the Petitioner specified in the schedule. It is the case of the Petitioner that the three survey numbers in the present petition were never notified. Some time in the month of March, 2021, the Petitioner filed a

Writ Petition bearing No. 2499 of 2021 in the High Court seeking direction to the Respondents to issue requisite notification under the said PMP Act for three survey numbers, namely, S. No. 47/1/B, (Old Survey No. 81/1/B) admeasuring Hectare 0.37 Are; S. No. 49/5, (Old Survey No. 83/5) admeasuring Hectare 0.58 Are; and S. No. 49/17, (Old Survey No. 83/17) admeasuring Hectare 0.26 (subject matter of this Petition) and to pay compensation under the provisions of the Fair Compensation Act.

10. On 7 June, 2021, the Respondent No.2 issued a letter to the Government of India, Ministry of Petroleum and Natural Gas stating that the three lands of the Petitioner were never notified and therefore requested the Government of India, Ministry of Petroleum and Natural Gas to issue the notifications under Section 3 of the PMP Act. On 4 January, 2021, during the pendency of the earlier writ petition, the Respondent No.1 issued the notification under Section (3)(1) of the PMP Act for acquiring Right of User of the Petitioner in three lands bearing S. No. 47/1/B, (Old Survey No. 81/1/B) admeasuring Hectare 0.37 Are; S. No. 49/5, (Old Survey No. 83/5) admeasuring Hectare 0.58 Are; and S. No. 49/17, (Old Survey No. 83/17) admeasuring Hectare 0.26 which are the subject matter of this petition.

11. On 17 January, 2022, the Respondent No.2 issued notices calling upon the Petitioner to raise any objections regarding acquisition of Right of User under Section 5(1) of the PMP Act. On 1 February, 2022, the Petitioner submitted his objections contending that the pipeline had passed through the center of the lands of the Petitioner and therefore there were severe restrictions on the usage of lands. The Petitioner also contended that the adjoining lands had obtained N.A. permissions and were used for Non-Agricultural purposes and thus the Petitioner urged the Respondent No.2 to determine the compensation payable to the Petitioner under the provisions of the Fair Compensation Act. On 2 March, 2022, this Court passed an order in Writ Petition No. 2499 of 2021, thereby disposing off the said Writ Petition after noting that the three survey numbers had been notified and directing the Respondent No.1 to take appropriate steps for issuing notification under Section 6(4) of the PMP Act simultaneously.

12. On 25 March, 2022, the Respondent No.2 passed an order holding that the compensation for Acquisition of the Right of User in land would be acquired as per the PMP Act and not as per Fair Compensation Act. On 19 September, 2022, the Respondent No.2

issued a notification for declaration of the acquisition of Right of User in the three lands of the Petitioner i.e. S. No. 47/1/B, (Old Survey No. 81/1/B) admeasuring Hectare 0.37 Are; S. No. 49/5, (Old Survey No. 83/5) admeasuring Hectare 0.58 Are; and S. No. 49/17, (Old Survey No. 83/17) admeasuring Hectare 0.26 of the PMP Act. On 31 October, 2022, the Respondent No.2 issued a claim notice under Rule 4(2) of the Petroleum and Minerals Pipeline (Acquisition of Right of User in land) Rules 1963 (for short “PMP Rules”) offering payment of 10% of the land market value in respect of the three lands of the Petitioner.

13. Mr. Paranjape, learned Counsel appearing for the Petitioner invited our attention to some of the documents annexed to the writ petition including the impugned orders dated 25 March, 2022 holding that the compensation for Acquisition of Right of User, if any, of the Petitioner will have to be paid as per the provisions of the PMP Act after the acquisition of Right of User by the Central Government by following due procedure stipulated under the said PMP Rules. The land was acquired for Right of User and there was no acquisition of any ownership rights. It was held by the said impugned order that there was no loss to objector and therefore under these circumstances the objections were disallowed. Three separate orders were passed in

respect of three lands of the Petitioner.

14. Learned Counsel relied upon the definition of the Competent Authority under Section 2(a) of the said PMP Act, Section 3 which deals with the publication of notification for acquisition for the purpose of transportation of Petroleum or any Minerals from one locality to another locality by laying down pipeline by acquiring the Right of User in any land under which such pipeline would be led. He also relied upon Section 5 to 11 of the PMP Act. Learned Counsel placed reliance on Section 105 of the Fair Compensation Act read with the First, Second, Third and Fourth Schedule of the said Fair Compensation Act.

15. It is submitted that in the Fourth Schedule, the PMP Act is placed at serial No. 8. He submitted that the provisions of the Fair Compensation Act is a beneficial statute brought in by the Legislature to provide maximum benefits to those person whose lands are being acquired for various purposes. By virtue of Section 105 (1) of the Fair Compensation Act, certain statutes were excluded from the applicability of the Fair Compensation Act towards the determination of the compensation and for statutes mentioned in the Fourth Schedule which was corresponding to Section 105 of the Fair Compensation Act. He

submitted that the PMP Act was one of the enactments specified in the 4th Schedule and thus the Fair Compensation Act was not applicable to the said PMP Act at the time of the enactment of the Fair Compensation Act. He submitted that the ordinances promulgated earlier was said to lapse on 31 August, 2015.

16. It is submitted that the land owners were being placed in a disadvantageous position, resulting in denial of benefits of compensation and rehabilitation and resettlement to the cases of land acquisition under the thirteen acts specified in the Fourth Schedule. He submitted that the Central Government thus thought it fit to pass an order under Section 113(1) of the Fair Compensation Act for removal of the difficulties. He submitted that on 28 August, 2015, in exercise of powers conferred by Section 113(1) of the Fair Compensation Act, the Central Government notified the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 (for short “Removal of Difficulties Order”) extending the benefits of the Fair Compensation Act for determination of compensation in accordance with the 1st Schedule to all cases of land acquisition under the enactment specified in the Fourth Schedule of the Fair Compensation Act.

17. It is submitted that the provisions of the Fair Compensation Act were made applicable to the said PMP Act, as the said PMP Act, was one of the enactments specified in the Fourth Schedule. He submitted that the said Removal of Difficulties Order was notified with a view to provide equal advantage to the benefits of the Fair Compensation Act to similarly place land owners whose lands are acquired under the enactments specified under the Fourth Schedule. He relied upon the objects and reasons of the order and submitted that the Central Government had decided to extend the beneficial advantage to the land owners and uniformally apply the provisions of the Fair Compensation Act relating to the determination of compensation and rehabilitation and resettlement to the cases for land acquisition under the said enactment in the interest of land owners.

18. Learned Counsel for the Petitioner submitted that the Respondent No.1 had issued another notification in purport of Section 6 of the PMP Act directing the Right of User vested earlier in the Company previously known as Reliance Gas Trasportation Infrastructure Ltd. (now in the company known as Reliance Gas Pipeline Ltd.) for the purpose of laying down the Dahej Nagathana

Liquid and Ethane pipeline. He submitted that this pipeline was to be shared with the earlier pipeline laid down by the Pipeline Infrastructure Ltd. He placed reliance on Section 9 of the PMP Act and vehemently urged that various restrictions regarding the use of land imposed under the said provisions after publication of declaration under Section 6(1) of the PMP Act including restriction of construction of any building or any other structure, construction or excavation of any tank, well, reservoir or dam or plant any tree.

19. It is submitted that due to the laying down of the pipeline on the lands of the Petitioner, his land could not be used for the Non-Agricultural purposes. Although the neighboring plots had been converted to N.A., his land did not get N.A. permissions. There was restriction on construction of building on the land below which the pipelines are led, as a result of which there was reduction in the market value of the lands of the Petitioner. It is submitted that, the Respondent No.2 has not considered the objections raised by the Petitioner and has passed the impugned order in an arbitrary manner and in an ignorance of the provisions of the Fair Compensation Act. The provisions of the Fair Compensation Act for determination of compensation had been already made applicable to the lands acquired under the provisions of

PMP Act. In view of the said Removal of Difficulties Order dated 28 August, 2015, the Respondent No.2 ought to have applied the provisions of the Fair Compensation Act to calculate the compensation payable to the Petitioner for acquisition of the Right of User for laying down the pipelines.

20. It is submitted by learned Counsel for the Petitioner that the Petitioner is deprived of his constitutional right to property under Article 300A of the Constitution of India and although the pipeline was led long ago, no compensation was paid to the Petitioner. He submitted that the Fair Compensation Act being a beneficial legislation and thus once the Central Government had consciously decided to extend the benefits of the Fair Compensation to all the thirteen enactments including the said PMP Act for the purposes of determination of compensation payable for such acquisition, the Respondent No.2 was not justified in rejecting the plea of the Petitioner to apply the provisions of the Fair Compensation Act to the Acquisition for Right of User under the PMP Act. He submitted that the beneficial legislation has to be construed liberally so as to provide its benefits to all the persons who in fact seek protection.

21. It submitted that the denuding the benefits of the Fair

Compensation Act to the Petitioner would amount to a discrimination between land owners whose lands are acquired under the Fair Compensation Act and those whose lands are acquired under the PMP Act and thus in violation of fundamental rights of the Petitioner under Article 14 and 21 of the Constitution of India. It is submitted that the impugned order dated 25 March, 2022 is contrary to the purpose of the said Removal of Difficulties Order dated 28 August, 2015.

22. Learned counsel for the Petitioner placed reliance on Section 15 of the PMP Act and submitted that in case if the Petitioner carries out any activity on the land in respect of which Right of User is acquired, the Petitioner would be imposed penalty under Section 15 of the PMP Act. He placed reliance on the Judgment of the Supreme Court in case of ***Mahanadi Coal Fields Ltd. And Another Vs. Mathias Oram and Others (2022 SCC OnLine SC 1508)*** *and* in particular paragraph Nos. 19, 24, 26, 27, 29, 31, 33, 34, 36 and 70. He submitted that the Supreme Court in the said Judgment had considered the claim for compensation under the provisions of the Fair Compensation Act in respect of the land acquired under the provisions of the Coal Bearing Areas (Acquisition and Development) Act 1957.

23. It is submitted that the Supreme Court in the said Judgment had considered the fact that the Central Government had not issued a notification in terms of Section 105(3) however chose to exercise its power to remove difficulties under Section 113 because the notification was issued on 28 August, 2015 i.e. beyond the period prescribed in Section 105(3). He submitted that the Supreme Court accordingly held that the spirit of the statutory enactment to make the beneficial provisions of the Fair Compensation Act applicable to compensation determination and resettlement or rehabilitation measures was compared with in effect and substance. He submitted that the Supreme Court clearly held that the First Schedule of the Fair Compensation Act was applicable to the acquisition in question made by the Central Government under the provisions of the said Coal Bearing Areas (Acquisition and Development) Act 1957 (which is at serial No. 11 of the Fourth Schedule appended to the form of the Fair Compensation Act).

24. Learned Counsel for the Petitioner placed reliance on the Judgment of the Supreme Court in case of ***Union of India and Another Vs. Tarsem Singh and Others (2019) 9 SCC 304*** *and* in particular paragraph No. 1, 12, 13, 42, 45, 46, 48 and 52. He submitted that in the said Judgment, the Supreme Court had considered the acquisition of

the land of the Respondents under the provisions of the National Highways Act, 1956 and the claim made by the Petitioner for compensation under the provisions of the Land Acquisition Act, 1894. Learned Senior Counsel for the Petitioner placed reliance on the unreported Judgment delivered by the Aurangabad Bench of this Court on 1st July, 2022 in Writ Petition No. 2152 of 2017 in case of ***Shashikant s/o. Bhanjudas Shelke and Others Vs. State of Maharashtra and Others*** and in particular paragraph Nos. 1, 7, 15, 19, 20 and 22 in support of the submission that the Petitioners shall be paid compensation under the provisions of the Fair Compensation Act.

25. Learned Counsel for the Petitioner placed reliance on the Judgment of the Supreme Court in case of ***Brahampal Alias Sammay and Another Vs. National Insurance Company (2021) 6 SCC 512***. He placed reliance on Section 9 of the Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018 and submitted that under the said Act, it is specifically provided that where the land becomes un-buildable by virtue of the Right of User vested in the State Government or Corporation or Urban Local Body as the case may be, the land may be acquired under the provisions of the Fair Compensation Act.

26. Dr. Sathe, learned Senior Counsel for Respondent No. 3, on the other hand, invited out attention to the prayer clause (b) in the Writ Petition and submitted that the acquisition of the writ lands under the provisions of the PMP Act cannot be held as acquisition under the provisions of the Fair Compensation Act. The Petitioner cannot claim that the provisions of the Fair Compensation Act would be applicable to the case of the Petitioner though admittedly the writ land were acquired under the provisions of the PMP Act.

27. Learned Counsel invited our attention to prayer clause (c) of the Petition and submitted that the Petitioner himself is seeking an order and direction against the Respondents to apply the provisions of the Fair Compensation Act for determination of compensation for acquisition of Right of User of his lands under the PMP Act and to make good the said amounts in a time bound manner. He submitted that there is no legal foundation led by the Petitioner for seeking payment of compensation under the Fair Compensation Act though the land was admittedly acquired under the provisions of the PMP Act. It is submitted by learned Senior Counsel that the Competent Authority after considering the provisions of the PMP Act and also the PMP Rules has

rightly held that the land was acquired for Right of User and not acquisition of any ownership rights. The compensation would be thus paid as per the provisions of the PMP Act.

28. It is submitted by learned Senior Counsel that in this case the pipelines were led by the Respondent No.3, 10 feet below the surface of the land. All the activities are prohibited or restricted on the land of the Petitioner. He relied upon Section 7 of the PMP Act and submitted that the Central Government or the State Government or Corporation is allowed to lay down pipelines and for such purpose servants and workmen are allowed to enter upon the lands and lay down the pipelines or to do any other act which is necessary for laying the pipelines. There are restrictions imposed under the said provisions about laying the pipelines. He submitted that in so far as the writ lands are concerned, the lands are agricultural lands.

29. Learned Counsel relied upon Section 4 of the said PMP Act and submitted that the compensation is payable also if the servants and workmen of the Respondent No.3 are required to enter upon the writ land and to take survey and levels of any land specified in the notification and to do the various acts on the said land. He submitted

that in this case only, the Right of User of the Petitioner in the writ lands has been acquired. He relied upon the Entry No. 53 of List-I of Schedule 7 of the Constitution of India and submitted that in view of the subject "oil field and minerals oil resources, petroleum and petroleum products" falls in List-I, only the Parliament can legislate on this subject. Under Section 6(4) of the PMP Act, the Right of User vest in the said Company once notification under the same provisions is issued. He submitted that the Right of User is one of the species of the land and thus his client does not dispute that even if Right of User on the land is acquired by the Respondent No.3, compensation has to be paid to the Petitioner, however, not under the provisions of the Fair Compensation Act Act but only under the provisions of the PMP Act.

30. Learned Senior Counsel placed reliance on Section 105 of the Fair Compensation Act and vehemently urged that under Sub-Section (1) of Section 105, it is clearly provided that subject to Sub-Section (3), the provisions of the Fair Compensation Act shall not apply to the enactment relating to the land acquisition specified in the Fourth Schedule. He invited our attention to Section 105(2) and 105 (3) and submitted that subject to Sub Section 2 of Section 106, the Central Government is empowered to issue notification to omit or add to any of

the enactments specified in the Fourth Schedule. He submitted that under Section 105(3) of the Fair Compensation Act, the Central Government is empowered to issue a notification within one year from the date of commencement of the said Fair Compensation Act. Central Government can direct that any of the provisions of the said Act relating to determination of the compensation in accordance with the First Schedule and rehabilitation and resettlement specified in Second and Third Schedule, being the beneficial to the affected families, shall apply to the cases of the land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modification that do not reduce the compensation or dilute the provisions of the Fair Compensation Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. He submitted that such notification which can be issued under Section 105(3) by the Central Government has to be laid before each house of Parliament, while it is in session, for a total period of three days and in the manner prescribed therein.

31. Learned Senior Counsel invited our attention to the Ordinances dated 31st December, 2014 issued by the Central Government for seeking amendment to Section 105(3) of the Fair

Compensation Act to the effect that the provisions of the Fair Compensation Act relating to the determination of compensation in accordance with First, Second and Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1 January, 2015. He submitted that the said Ordinance has admittedly lapsed.

32. Learned Senior Counsel placed reliance on the Ordinance issued by the Central Government on 3rd April, 2015 i.e. Ordinance No. 4/2015 and submitted that by the said Ordinance, the Central Government sought to amend Section 105(3) by extending the payment of compensation by substituting Sub Section 3 of Section 105 in the similar way what was proposed by Ordinance No. 9 of 2014. He submitted that the said Ordinance also admittedly stood lapsed. Learned Senior Counsel for Respondent No.3 relied upon the Ordinance dated 30th May, 2015 bearing No. 5 of 2015 and submitted that by Section 12 of the said Ordinance, the Central Government proposed to substitute Sub Section 3 of Section 105 and proposed to provide the similar benefits which were proposed by Ordinance No. 9 of 2014 and 4 of 2015. He submitted that admittedly the said Ordinance also stood lapsed.

33. Learned Senior Counsel invited our attention to the said Removal of Difficulties Order issued on 28 August, 2015 and submitted that the said Removal of Difficulties Order purportedly issued under Section 113 of the Fair Compensation Act was at the most in the nature of executive order and cannot have effect of the amending the substantive provisions i.e. Section 105(3). He submitted that the Central Government having failed to issue a notification which was to be led before both the house in the manner prescribed under Section 105(4) of the Fair Compensation Act within the time prescribed, the Central Government could not have issued such Removal of Difficulties Order by purporting to give effect as if it is a notification under Section 105(3) of the Fair Compensation Act.

34. Learned Senior Counsel placed reliance on Article 123 of the Constitution of India and submitted that since the said three Ordinances issued by the Respondent No.1 were not converted into Act within the period of six weeks, those Ordinances automatically stood lapsed and they were of no effect. He submitted that the powers prescribed under Section 113 of the Fair Compensation Act to issue Removal of Difficulties Order thus could not have been exercised by the

Central Government in view of the Central Government having not got those Ordinances converted into Act in accordance with Article 123 of the Constitution of India. He submitted that by issuing such Removal of Difficulties Order, the Central Government could issue such order only in case, any difficulty arises in giving effect to the provisions of the Fair Compensation Act and not for enacting new laws or substantive amendment in the provisions of the Fair Compensation Act.

35. It is submitted that the Removal of Difficulties Order being in the nature of executive order is not enforceable under Article 73 of the Constitution of India and thus the provisions of the PMP Act does not stand inserted in the Schedule. The said Section 105(1) and 105(3) of the Fair Compensation Act read with Fourth Schedule does not apply to the acquisition made under the provisions of the PMP Act. Without prejudice to his submissions recorded aforesaid he submitted that even if provisions of the Fair Compensation Act stand incorporated in place of Section 10 of the PMP Act, the 10% market value of land as prescribed under Section 10 of the PMP Act cannot be changed. He relied upon Rule 3, 4, 4A, 7 and 8 of the PMP Rules, 1963.

36. Learned Senior Counsel for the Respondent No.3 placed

reliance on the following Judgments:

I. **Madeva Upendra Sinai and Ors. Vs. Union of India And Ors. [(1975) 3 SCC 765)].**

II. **Babu Verghese and Ors. Vs. Bar Council of Kerala and Ors. [(1999) 3 SCC 422].**

III. **Laljibhai K. Savaliya and Ors. Vs. State of Gujarat and Ors. [(2016) 9 SCC 791].**

IV. **Gas Authority of India Ltd. And Anr. Vs. State of Maharashtra & Ors. [2006 (6) BCR 527].**

V. **Ashoka Marketing Ltd. And Anr. Vs. Punjab National Bank and Ors. [(1990) 4 SCC 406].**

VI. **Clovis Siqueira Vaz and Anr. Union of India and Ors. [Unreported Judgment dt. 19th July, 1991 in WP/3023/1991].**

37. It is submitted by learned Senior Counsel that even if there is no challenge to the Removal of Difficulties Order of 2015, since the said order is not issued within the parameters and in accordance with

Section 105 of the Fair Compensation Act, such Removal of Difficulties Order cannot be relied upon. He submitted that since the manner in which such a notification came to be issued under Section 105(3) as prescribed specifically, such procedure not having been followed by the Respondent No.1 would not make such Removal of Difficulties Order valid and binding. He submitted that when statute provides that things are to be done in a particular manner, has to be done only in that manner and not in any other manner.

38. Learned Senior Counsel submitted that in the Judgment of Supreme Court in case of ***Laljibhai K. Savaliya and Ors. (supra)*** the constitutional validity of the PMP Act is upheld. He submitted that the Supreme Court has already held in the said Judgment that the principle of compensation as dealt in PMP act is reasonable and cannot in any way termed as illusory. He submitted that the PMP Act being special Act and therefore contended that the specific provisions thus would prevail. The said PMP Act is self contained Act. Learned Senior Counsel distinguished the Judgment cited by Mr. Paranjape for the Petitioner. He submitted that the Judgment of the Supreme Court in case of ***Mahanadi Coal Fields Ltd. And Another Vs. Mathias Oram and Others (supra)*** does not lay down a preposition that the provisions of 2001 Act gets

incorporated in the provisions of the PMP Act.

39. Insofar as the Judgment of the Hon'ble Supreme Court in case of ***Union of India and Another Vs. Tarsem Singh and Others (supra)*** relied upon by learned Counsel for the Petitioner is concerned, learned Senior Counsel for Respondent No.3 distinguished the said Judgment on the ground that the said Judgment was decided on the concession made by the learned Counsel for Union of India and does not lay down any law. He submitted that in the said Judgment the constitutional validity of Section 35 of the National Highways Act is upheld. The Petitioner has not challenged the validity of Section 10 of the PMP Act in this Petition.

40. Mr. Khandeparkar, learned Counsel for the Respondent No.2-Competent Authority adopted the submissions made by Dr. Sathe for the Respondent No.3 and made additional submissions. He relied upon the Judgment of Patna High Court in case of ***Krishnadeo Misra Vs. State of Bihar and Others (1987 SCC OnLine Pat 127)*** and in particular paragraph No. 6, 12 and 13 and submitted that the notification under Section 105(3) of Fair Compensation Act is different than the Removal of Difficulties Order. He submitted that by issuing such

Removal of Difficulties Order, the Respondent No.1 has indirectly exercised rule making power. He invited our attention to prayer clause (c) of the Petition and submitted that the Petitioner himself has prayed for writ of mandamus for determination of compensation under the Fair Compensation Act. It is submitted that the writ of mandamus can be issued only in accordance with law and not otherwise. Section 105 cannot be amended by the Central Government by issuing Removal of Difficulties Order Act. He submitted that the said Removal of Difficulties Order was not placed before the Parliament. It is submitted by learned Counsel that the Judgment in case of ***Mahanadi Coal Fields Ltd. And Another Vs. Mathias Oram and Others (supra)*** and in case of ***Union of India and Another Vs. Tarsem Singh and Others (supra)*** relied upon by learned Counsel for the Petitioner do not apply to the facts of this case as precedents as the points urged by the learned Counsel for the Petitioner in this Petition were not urged before the Supreme Court and would not be binding precedent.

41. Mr. Shimpi, learned Counsel for the Respondent No.1 tendered a copy of the letter dated 21 September, 2020 from the Secretary, Government of India, Ministry of Petroleum and Natural Gas to the Secretary of Department of Land Resources, New Delhi

requesting to initiate action to delete PMP Act, from the Fourth Schedule of the Fair Compensation Act, as removal of PMP Act, from the Fourth Schedule will bring clarity that the Fair Compensation Act is applicable only to cases where complete land is acquired and not to cases where only Acquisition of Right of User in Land is acquired. He submitted that so far the PMP Act has not been deleted from the Fourth Schedule as advised in the said letter by the Department of Land Resources under Section 106(1) of the Fair Compensation Act till date.

42. Learned Counsel tendered a copy of the letter dated 15th September, 2021 addressed by the Secretary, Government of India, Department of Land Resources, Ministry of Rural Development to the Secretary, Ministry of Petroleum and Natural Gas, New Delhi. He tendered a copy of the letter dated 30th January, 2023 addressed from the Secretary, Government of India, Department of Land Resources, Ministry of Rural Development to the Secretary of Department of Legal Affairs, Ministry of Law and Justice, New Delhi stating that the Department of Land Resources has already agreed to/initiated action to issue notification for omitting the PMP Act from the Fourth Schedule of the Fair Compensation Act after adopting due legal procedures.

43. Learned Counsel for the Respondent No.1 tendered a copy of the letter dated 18th January, 2023 addressed by the Under Secretary to the Government of India with a copy for information to the Secretary, Ministry of law and Justice, Department of Legal Affairs, New Delhi to the Secretary of Ministry of Ministry of Rural Development, Department of Land Resources, New Delhi referred to this Writ Petition filed by the Petitioner and requesting the Department of Land Resources to update about the status of action to issue notification for omitting the PMP Act from the Fourth Schedule of the Fair Compensation Act.

44. Mr. Paranjape, learned Counsel for the Petitioner in his rejoinder arguments submitted that in the Judgment of ***Mahanadi Coal Fields Ltd. And Another Vs. Mathias Oram and Others (supra),*** the Supreme Court held that the fact that the notification prescribed under Section 105(3) was not issued within the time prescribed and still having held that the provisions of the Fair Compensation Act being beneficial legislation, the payment of compensation prescribed under the said Fair Compensation Act should be extended to the lands acquired under Acts inserted in the Fourth Schedule of the said Fair Compensation Act so as to provide the compensation under the Fair Compensation Act to call parties whose lands acquired under the various other Acts prescribed

under the Fourth Schedule being similarly situated.

45. Learned Counsel for the Petitioner relied upon the Judgment of the Supreme Court in case of ***Brahampal Alias Sammay and Another Vs. National Insurance Company (supra)*** in particular paragraph Nos. 6 and 7 and submitted that the Supreme Court in the said Judgment has clearly held that the interpretation of a beneficial legislation was to be remedial and must be in furtherance with the purpose which the statute seeks to serve. He submitted that the provisions of the Fair Compensation Act being a beneficial legislation should receive a liberal construction so as to permit its objectives.

REASONS AND CONCLUSION:

46. The question that arises for consideration of this Court is;

(i) Whether the acquisition of the Right of user of the land under the provisions of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 would result into inconsistency with the provisions of the acquisition under the Right to Fair Compensation and Transparency in Land Acquisition , Rehabilitation and Resettlement Act, 2013 as the said PMP Act having been automatically inserted under the Fourth Schedule at Serial No.8 of Section 105 of the Fair Compensation

Act?

(ii) Whether all the provisions of the Fair Compensation Act would apply to the requisition in question under PMP Act including the determination of compensation?

(iii) Whether the Central Government having failed to issue Notification within one year from the date of commencement of the Fair Compensation Act under Section 105(3) the Central Government could have invoked Section 113 of the Fair Compensation Act, invoking powers to remove difficulties order and can provide that provisions relating determination of compensation under the Fair Compensation Act provided under I, II and III Schedule shall apply to the land acquisition under the enactment specified in the IV Schedule or not?

47. It is an admitted position that the Notification under Section 3 of the PMP Act for declaration of the acquisition of the right of user under Section 6 of the PMP Act was issued on 6th May, 2009 for the land bearing Survey No.47/1/A/1(Old Survey No.81/1A/1) admeasuring Area Hectare 0.46 Are. Similarly a Notification under Section 6 of the said PMP Act was issued by Respondent No.1 on 9th March, 2010 for the land bearing Survey No.49/13/A/24 (Old Survey No.83/13+24) admeasuring Hectare 0.70 Are. With effect from 1st January, 2014, the

provisions of the Fair Compensation Act came into effect. Admittedly, the said PMP Act has been prescribed at Serial No.8 of the IV Schedule under Section 105 and Section 113 of the said Fair Compensation Act.

48. It would be appropriate to refer to Section 105 of the Fair Compensation Act at this stage, which read thus:

"105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.- *(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.*

(2) Subject to sub-section (2) of section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while

it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

Section 113 of the Fair Compensation Act reads thus:

113. Power to remove difficulties *– (1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty.*

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

49. It is not in dispute that an Ordinance dated 31st December, 2014 was promulgated thereby inter alia, amending Section 105 of the Fair Compensation Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the Fair Compensation Act w.e.f.

from 1st January, 2014. The said First Ordinance dated 31st December, 2014 however, lapsed.

50. The Respondent No.1 thereafter issued Ordinances bearing No.4 of 2015 and No.5 of 2015 for continuing the provisions of the Fair Compensation Act to the Acts specified in the Fourth Schedule. The said Ordinances also admittedly also lapsed. The Central Government proposed to amend Section 105 of the Fair Compensation Act in a similar manner, what was proposed by Ordinance No.9/2014. It is thus clear without any reasonable doubt that Notifications prescribed under Section 105(3) could not be issued within one year from the date of commencement of the Fair Compensation Act i.e. 1st January, 2014 and draft was admittedly not placed before both the House of Parliament.

51. Section 105(1) clearly provides that subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. It is thus clear that since no Notification was issued within one year from the date of commencement of the Fair Compensation Act in accordance with the mode and manner prescribed under Section 105(4) of the Fair

Compensation Act, Section 105(1) which was subject to compliance of Section 105(3) of the Fair Compensation Act would not apply to the enactments relating to land acquisition specified in the Fourth Schedule including the provisions of PMP Act. In our view, since those three ordinances were not converted into Act within six weeks in view of Article 123 of the Constitution of India, those ordinances lapsed.

52. The next question that arises for consideration before this Court is whether the Central Government having failed to issue Notification under Section 105(3) under the mode and manner prescribed under Section 105(4) within the time prescribed could have extended the benefits of compensation under the provisions of the Fair Compensation Act applicable to the acquisition under the provisions of the Fair Compensation Act by invoking power under Section 113 of the Right to Fair Compensation Act or not?

53. Admittedly in this case, Central Government issued an order dated 28th August, 2015 stating that the provisions of the Fair Compensation Act relating to the determination of the compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in

accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act. In our view, the Removal of Difficulties Order being in the nature of executive order is not enforceable under Article 73 of the Constitution of India and cannot amend the provisions of Section 105(1) of the Fair Compensation Act. Fourth Schedule thus did not come into effect atleast in so far as PMP Act is concerned.

54. A perusal of the said order clearly indicates that the Reference has been made to the Ordinance 9 of 2014 promulgated on 31st December, 2014 thereby, inter alia, amending Section 105 of the Fair Compensation Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the Fair Compensation Act. In such order reference is also made to Ordinance 4 of 2015 promulgated on 3rd April, 2015 to give continuity to the provisions of the Fair Compensation Act (Amendment) Ordinance, 2014. The Central Government has also made reference to the Second Ordinance, 2015 (5 of 2015) promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015). The said

order states that the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 to 2015) was referred to the Joint Committee of the House for examination and report and the same is pending with the Joint Committee.

55. It is further stated that as per the provisions of Article 123 of the Constitution, the Fair Compensation Act (Amendment) Second Ordinance, 2015 (5 to 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Scheduled to the Fair Compensation Act as extended to the land owners under the said Ordinance.

56. It is further provided in the said order that the Central Government considers it necessary to extend the benefits available to the land owners under the Fair Compensation Act to similarly placed land owners whose land are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly

apply the beneficial provisions of the Fair Compensation Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners.

57. The Central Government accordingly exercised the powers conferred by sub-section (1) of Section 113 of the Fair Compensation Act and issued an order, called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Removal of Difficulties) Order, 2015. It is provided that the said order would come into force with effect from the 1st day of September, 2015. It was made clear by the said order that the provisions of the Fair Compensation Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

58. The Petitioner has not disputed that the Petitioner is already compensated to the extent of land utilized by the Respondents

towards the right of user. The Notification dated 4th January, 2022 under Section 3 (1) of the PMP Act clearly provides that for the purpose of laying the Pipeline, Government of India declared its intention to acquire the Right of User therein. The objects and reasons of the PMP Act clearly indicates that as a result of the implementation of plans for development of petroleum resources in the Country, it is anticipated that in next few years there will be a substantial increase in the production of crude oil, natural gas and petroleum products by the public sector oil fields and refineries in India. It has, therefore become necessary to lay petroleum piplines in the Country to serve as an efficient and cheap means of transportation and distribution of petroleum and petroleum products.

59. The Constitutional Validity of the provisions of the PMP Act was challenged by one of parties before the Gujarat High Court. The Gujarat High Court dismissed the said petition and upheld the validity of the provisions of the said PMP Act. The Supreme Court in case of **Laljibhai Kadvabhai Savaliya and Ors. Vs. State of Gujarat and Ors. [(2016) 9 Supreme Court Cases 791]** also upheld the validity of the provisions of the PMP Act. Supreme Court in the said judgment after construing the provisions of the PMP Act held that Section 18 of the

PMP Act has specifically laid down that the provisions of PMP Act shall be in addition to and not in derogation of any other law for the time being in force relating to acquisition of land. The PMP Act is thus a special enactment designed to achieve the purpose of laying pipelines as efficient means of transportation and with this idea it is only the right of user in the land to lay such pipelines which is acquired.

60. The Supreme Court held that the right of user sought to be taken over under the provisions of PMP Act amounts to acquisition of one of the facets of property rights which inhere in the owner/occupier. For the acquisition of such right of user, the compensation is prescribed in terms of Section 10 of the PMP Act. There are two elements of compensation under the Section 10. The first part deals with any damage, loss or injury sustained by any owner/occupier as a result of exercise of powers conferred by Sections 4, 7 and 8 of the PMP Act that is to say the actual damage, loss or injury sustained because of entry upon and/or digging or marking levels and survey of land under Section 4 or while actual laying of the pipeline including digging of trenches and carrying of requisite material for such operations under Section 7 or at any stage of maintenance, examinations, repairing and altering or removing of pipeline in terms

of Section 8 of the PMP Act.

61. It is held that the measure for determining such compensation is given with sufficient clarity in sub-section (3) of Section 10. The idea is to compensate the owner/occupier for actual damage, loss or injury sustained by him as a result of the operations carried out in terms of Section 4, Section 7 or Section 8 of the Act. Supreme Court held that the damage/loss or injury to the property is separately dealt with under first part of Section 10 and has to be compensated in toto.

62. In paragraph 24 of the said judgment, the Supreme Court held that the provisions of the PMP Act do specify the principles and the manner in which the compensation is to be determined. Not only the actual damage, loss or injury suffered as a result of exercise of various activities in terms of Section 4, 6, 7 are compensated in toto but additionally compensation linked to the market value of lands is also to be given for acquisition of right of user in respect of such land. What is taken over is mere right of user to lay the pipeline in the subsoil of land in question, leaving the title to the land as well as the right to possess that land intact in the hands of the landowner/occupier. It is no

doubt that the enjoyment thereof after the pipelines are laid is impaired to a certain extent, in that the owner/occupier cannot raise any permanent construction or cause any excavation or plant any trees. Barring such restrictions, the enjoyment and the right of possession remains unaltered. It is held that the principles of compensation as detailed in the PMP Act are thus reasonable and cannot in any way be termed as illusory.

63. A decision of the Division Bench of this Court in case of **Gas Authority of India Limited & Anr. Vs. State of Maharashtra and Ors. [2005(6) Bom.C.R. 527]** has held that bare perusal of the sections of PMP Act would reveal that the said Act is a complete Code for dealing with a particular situation. Section 3 provides for the issuance of a Notification specifying that it was necessary to acquire the right of user of the of the land for the purpose of laying a pipe-line.

64. Supreme Court in case of **Ashoka Marketing Ltd. and Anr. Vs. Punjab National Bank and Ors. [(1990) 4 Supreme Court Cases 406]** has held that one such principle of statutory interpretation which is applied is contained in the latin maxim: *generalia specialibus non derogant* (a general provision does not derogate from a special

one.) The principles laid down in the said judgment apply to the facts of this case.

65. It is thus clear beyond any reasonable doubt that the provisions of the Fair Compensation Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Fair Compensation Act. As such, the circumstances prescribed under Section 24 could be extended only by virtue of issuance of Notification with in the time prescribed under Section 105(3) and not otherwise.

66. Section 105(3) provides that the Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth

Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

67. Supreme Court in the case of **State of West Bengal Vs. Anindya Sundar Das and Ors. [2022 SCC Online SC 1382]** held that where there is a specific provision, as in that case Section 8(2) (a), it was not open to the State Government to conjure up a lacunae or omission and purportedly exercise the power to remove difficulties. It is held that the State Government chose the incorrect path under Section 60 by misusing the “removal of difficulty clause” to usurp the power of the Chancellor to make the appointment. A Government cannot misuse “removal of difficulty clause” to remove all obstacles in its path which arise due to statutory restrictions. Allowing such actions would be antithetical to the rule of law. Misusing the limited power granted to make minor adaption and peripheral adjustments in a statute for making its implementation effective, to side-step the provisions of the statute altogether would defeat the purpose of the legislation.

68. The Supreme Court held that High Court was justified in

coming to the conclusion that “in the guise of removing the difficulties, the State cannot change the scheme and essential povisions of the Act.” The said judgment in case of **State of West Bengal Vs. Anindya Sundar Das and Ors. (supra)** applies to the facts of this case. The power conferred upon the Central Government under Section 113 of the Fair Compensation Act could be exercised only if any difficulty arises in giving effect to the provisions of that Act. In that case, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty. Such an order made under this Section also have to be laid before each House of Parliament.

69. The said impugned order issued by the Central Government under Section 113 clearly indicates that the three Ordinances issued by the Central Government under Section 105(3) admittedly lapsed and could not be made effective. The Central Government having failed to issue such Notification within the time prescribed and in the mode and manner prescribed under Section 105, there is no scope of any extension of time to issue such Notification beyond the period of one year from 1st January, 2014, when the said

Fair Compensation Act came into effect.

70. In our view, the failure on the part of the Central Government in following the said mandatory procedure could not be ratified by issuance of the Removal of Difficulty Order by invoking Section 113 of the Fair Compensation Act. The said removal of difficulty order issued by the Central Government is without jurisdiction, as the same is issued not for making such provision or give such directions not inconsistent with the provisions of the Act but is to cover up the default in not issuing notification within a time prescribed under Section 105(3). The time prescribed under section 105(3) to issue such compensation in the mode and manner prescribed under Section 105(3) is sacrosanct. In these circumstances, the Central Government could not have exercised powers vested under Section 113 of the Fair Compensation Act. Central Government under the guise of 'Removal of Difficulties' cannot overcome the lapses in not complying with the mandatory provisions prescribed in Section 105(3).

71. Supreme Court in case of **Madeva Upendra Sinai and Ors. Vs. Union of India and Ors.** has held that the existence or arising of a "difficulty" is the *sine qua non* for the exercise of the power under

that clause cannot be invoked at all. Again the "difficulty" contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising aliunde, or an extraneous difficulty. Further the Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. It may slightly tinker with the Act to round off angularities, and smoother the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. It is held that in no case, can it, under the guise of removing a difficulty, change the scheme and essential provision of the Act. The judgment of the Supreme Court in case of **Madeva Upendra Sinai and Ors. Vs. Union of India and Ors. (supra)** applies to the facts of this case.

72. In our view, the impugned order and notification under Section 113 of the Fair Compensation Act are issued not to give effect to any difficulty arising in giving effect to the provisions of the Act but is issued to cover up the lapses made by the Government by not issuing notification under Section 105(3) within the time prescribed under Section 105(3) which is not permissible. For such lapses or for curing the difficulty in following mandatory procedure cannot be cured by

invoking power under Section 113(1) of the Fair Compensation Act r/w 105 having been not issued in the mode and manner prescribed thereunder. By taking shelter of Section 113 of the Act, Central Government could not have given the effect of Notification of Section 105(3) by issuing removal of difficulties order.

73. A perusal of Section 105(1) of the Fair Compensation Act clearly indicates that the said Section is subject to sub-section 3. If the conditions prescribed under sub-section 3 of Section 105 are not complied with, Section 105 (1) shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. In our view, the order passed by the Central Government by invoking powers under Section 113 is inconsistent with the provisions of Section 105(1) r/w. Section 105(3). On this ground also, the impugned order deserves to be quashed and set aside.

74. In so far as the judgment of the Supreme Court in case of **Mahnadi Coal Fields Ltd. and Anr. Vs. Mathias Oram and Ors. [2022 SCC Online SC 1508]** relied by Mr. Paranjape, Learned Counsel for the Petitioner is concerned, Supreme Court in the said judgment has held that when the Fair Compensation Act is brought into force w.e.f. 1st

January, 2014, the acquisition in favour of the **Mahnadi Coal Fields Ltd.** continued to be under the provisions of the Coal Bearing Areas (Acquisition and Development) Ac, 1957 to determine and disburse compensation payable to landowners as expeditiously as possible, preferably within six months.

75. It is held that under Clause (3) of the Coal Bearing Areas (Acquisition and Development) Act,1957, the Central Government was obliged to issue the notification within one year from the date of commencement of that Act to ensure that its provisions relating to the determination of compensation, were in accordance with the provisions in the First Schedule and rehabilitation and resettlement in accordance with with the Second and Third Schedules of that Act. It was pursuant to this mandate, that on 28.08.2015 the Central Government issued a notification in terms of Section 105(3).

76. However, the Central Government chose to exercise its power to remove difficulties, under Section 113. This seems to be because the notification was issued on 28.08.2015- beyond the period prescribed in Section 105(3). In the facts of that case, the Award was not declared before 1st January, 2014 i.e. the date on which the Fair

Compensation Act came into force. The land owners had also thus invoked the provisions of Section 24 of the Fair Compensation Act.

77. In view of the judgment of Constitutional Bench of the Supreme Court in case of **Indore Development Authority Vs. Manohar Lal & Ors. (supra). [2020 (8) SCC 1257],** in our view, the said judgment of the Supreme court in case of **Mahnadi Coal Fields Ltd. and Anr. Vs. Mathias Oram and Ors. (supra)** is thus, clearly distinguishable on the facts and would not assist the case of he Petitioner. In the facts of this case, the compensation had already been paid. The acquisition of right of user of the Petitioner's land were passed in or about 2000 to 2010.

78. So far as the judgment of the Supreme Court in the case of **Union of India and Anr. Vs. Tarsem Singh and Ors. [(2019) 9 Supreme Court Cases 304]** is concerned, the Supreme Court in the said judgment has considered the acquisition under National Highways Act, 1956. The Supreme Court in the said judgment, considered the concession made by the Learned Solicitor General and accordingly declined to interfere with the order passed by the High Court by refusing the discretionary jurisdiction under Article 136 of the Constitution of

India. There was no issue before the Supreme Court whether the Central Government having failed to exercise the powers to issue Notification under Section 105(3) within time prescribed, whether the exercise of power under Section 113 by issuing removal of difficulties order and giving same effect which could be done only by issuing Notification under Section 105(3) or not otherwise. The judgment of **Union of India and Anr. Vs.Tarsem Singh and Ors. (supra)** therefore, would not assist the case of the Petitioner.

79. So far as the judgment delivered by the Division Bench of this Court in the case of **Shashikant s/o. Bhanudas Shelke and Ors. Vs. State of Maharashtra and Ors. in Writ Petition No.2152 of 2017,** relied upon by the learned counsel for the Petitioner is concerned, this Court had rendered a finding that the Respondents would need to excavate pipeline, if there is a damage, leakage, maintenance etc. and that the land became unbuildable. In our view, even the judgment in the case of **Shashikant s/o. Bhanudas Shelke and Ors. Vs. State of Maharashtra and Ors. (supra)** is clearly distinguishable on facts of this case.

80. So far as the judgment of the Supreme Court in case of

Brahampal Alias Sammay and Anr. Vs. National Insurance Company [(2021) 6 Supreme Court Cases 512] is concerned, the Supreme Court has interpreted the provisions of the Motor Vehicles Act, 1988 and has held that Chapter XII of the Act is a beneficial legislation intended at protecting the rights of victims affected in road accidents. Moreover, the Act is a self-contained code in itself which provides procedures for filing claims, for passing of award and for preferring an appeal. Even the limitations for preferring the remedies are contained in the code itself. The Supreme Court held that the interpretation of a beneficial legislation must be remedial and must be in furtherance with the purpose which the statute seeks to serve. In our view, the said judgment relied upon by the Learned Counsel for the Petitioner does not even apply remotely to the facts of this case.

81. Mr. Khandeparkar, learned counsel for Respondent No.2 placed reliance on the judgment of the Supreme Court in case of **Municipal Corporation of Delhi Vs. Gurnam Kaur [(1989) 1 Supreme Court Cases 101].** The said judgment relied upon by the learned counsel for Respondent No.2, on the issue; where the judgments relied upon by the Petitioner in support of his submission amounts to precedents *sub silentio* is concerned, in our view would apply to the

facts of this case. The issue raised by Respondent No.3 in this petition are not the issues raised by the Respondent before the Supreme Court in those judgments which are relied upon by the Petitioner. We do not find any infirmity in the impugned order passed by the competent authority and thus, does not warrant any interference in this Writ Petition. In our view, Writ Petition is devoid of merit.

82. We accordingly pass the following order:

ORDER

(i) Writ Petition is dismissed.

(ii) Rule is discharged.

(iii) In view of dismissal of the Writ Petition, Interim Application No.30285 of 2022 does not survive and is accordingly dimissed.

(iv) No order as to costs.

(M.M. SATHAYE, J.) **(R.D. DHANUKA, J.)**