

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2127 of 2020

with

WRIT PETITION NO.1292 of 2021

with

WRIT PETITION NO.1349 of 2021

with

WRIT PETITION NO.733 OF 2023

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WRIT PETITION NO.2127 OF 2020

1. Pramod s/o Vasant Rao Ganesh,
Aged about 38 years, Occ. Business,
R/o Sainagar, Near Murarka College,
Shegaon, District Buldana.
2. Gopal s/o Maroti Vibhute,
Aged 69 years, Occ. Business,
R/o. Yogiraj Gest House,
Near Gajanaj(Gajanan) Mandir, Shegaon, Dist. Buldana.
3. Shrikrishna s/o Pralhad Patil,
Aged about 52 years, Occ. Business,
R/o. Krishna Mithai Kendra,
Near Gajanaj(Gajanan) Mandir, Shegaon,
District Buldana.
4. Dnyaneshwar s/o Vishwanath Hingane,
Aged about 39, Occ. Business,
R/o. Gajanan Verity Centre,
Near Gajanaj(Gajanan) Mandir, Shegaon,
District Buldana.
5. Ravindra s/o Purushottam Lanjekar,
Aged about 47, Occ. Business.
Mauli Verity Centre, Near Gajanaj(Gajanan) Mandir, Shegaon,
District Buldana.
6. Rajkumar Mahadeorao Dadgal,
Aged 53 years, Occ. Business,
Near Gajanaj(Gajanan) Mandir, Shegaon,
District Buldana.

7. Vajay s/o Shriram Dadgal,
Aged about 53 years, Occ. Business,
R/o. Near Jai Durga Bhojnalaya,
Near Gajanaj (Gajanan) Mandir, Shegaon,
District Buldana.
8. Subhash s/o Vitthal Kale,
Aged about 47 years, Occ. Business,
Near Gajanaj (Gajanan) Mandir, Shegaon,
District Buldana.
9. Abhijit s/o Vijay Shegokar,
Aged about 30 years, Occ. Business,
Near Gajanaj (Gajanan) Mandir, Shegaon,
District Buldana.
10. Dilip s/o Dinkar Muddalkar,
Aged about 57 years, Occ. Business,
Near Gajanaj (Gajanan) Mandir, Shegaon,
District Buldana.
11. Ambadas s/o Baban Wankhede,
Aged about 39 years, Occ. Business,
Near Gajanaj (Gajanan) Mandir, Shegaon,
District Buldana.
12. Dilip s/o Shrikrishna Mane,
Aged about 35 years, Occ. Business,
Near Gajanaj(Gajanan) Mandir, Shegaon,
District Buldana.

Deleted as per
Court's order dated
17/12/2021
Sd/- counsel for
petitioner
dt.20/12/2021

13. ~~Madhuri w/o Waman Tiwaskar,
Aged about 67 years, Occu. Business,
Near Gajanaj Mandir, Shegaon,
District Buldana.~~

..... **PETITIONERS**

...V E R S U S...

1. State of Maharashtra,
Through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032 .

2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector,
Buldana.
4. Sub-Divisional Officer and Land
Acquisition Officer, Khamgaon,
District Buldana.
5. Municipal Council, Shegaon,
Through its Chief Officer,
At/PO: Shegaon, Tahsil-Shegaon,
District Buldana.
6. Shri Gajanan Maharaj Sansthan,
Shegaon, through its Managing Trustee
(Power of Attorney Holder)
At/PO: Shegaon, Tahsil Shegaon,
District Buldana.

Added R.No.6
Amendment carried
our as per Court's
order dated
08.02.2021
Sd/-Counsel for
Petitioner
03.04.2021

..... **RESPONDENTS**

with
WRIT PETITION NO. 1292 OF 2021

1. Sanjay s/o Tukaram Shegokar,
Aged 57 years, Occ.:Business
2. Summet s/o Sanjay Shegokar,
Aged 21 years, Occ.Business
3. Rajendra s/o Bhaskarrao Chouthi,
Aged 49 years, Occ. Business,

All R/o. Shegaon, Tah. Shegaon,
District Buldhana.

--VERSUS--

1. State of Maharashtra,
Through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032 .

2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector, Buldana,
District Buldana.
4. Sub-Divisional Officer and Land
Acquisition Officer, Khamgaon,
District Buldana.
5. Municipal Council, Shegaon,
Through its Chief Officer, Shegaon,
Tahsil-Shegaon,
District Buldana.
6. Shri Gajanan Maharaj Sansthan,
Shegaon, through its Managing Trustee
(Power of Attorney Holder)
Shegaon, Tahsil Shegaon,
District Buldhana.

Added respondent
no.6 vide Court's
order dated
10.03.2021
Sd/-R.K.Thakkar
Counsel for
Petitioner
05.04.2021

..... **RESPONDENTS**

with
WRIT PETITION NO.1349 OF 2021

1. Pralhad Kisan Tayde
Aged about 50 years, Occ. Labourer
R/o. Shegaon, Tah. Shegaon,
District Buldana.
2. Dhruv Kisan Tayde,
Aged about 55 years, Occ. Labourer
R/o. Shegaon, Tah. Shegaon,
District Buldana.
3. Sunanda Supaji Taktode,
Aged about 50 years, Occ. Labourer
R/o. Khaira, Tah. Motala,
District Buldana.
4. Lata Ramesh Tayde
Aged about 50 years, Occ. Household
R/o. Shegaon, Tah. Shegaon,
District Buldana.

...**PETITIONERS**

---VERSUS--

1. State of Maharashtra,
Through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032 .
2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector, Buldana,
District Buldana.
4. Sub-Divisional Officer and Land
Acquisition Officer, Khamgaon,
District Buldana.
5. Municipal Council, Shegaon,
Through its Chief Officer,
Shegaon, Tahsil-Shegaon,
District Buldana.

..... **RESPONDENTS**

with
WRIT PETITION NO.733 OF 2023

Dhananjay s/o Tukaram Shegokar,
Aged 51 years, Occupation- Business,
R/o. Shegaon, Tah. Shegaon,
District Buldhana.

..... **PETITIONER**

--VERSUS--

1. State of Maharashtra,
Through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-400 032 .
2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector, Buldana.
District Buldana.

4. Sub-Divisional Officer and Land Acquisition Officer, Khamgaon, District Buldana.
5. Municipal Council, Shegaon, Through its Chief Officer, At/PO: Shegaon, Tahsil-Shegaon, District Buldana.
6. Shri Gajanan Maharaj Sansthan, Shegaon, through its Chairman R/o. Shegaon, Tahsil Shegaon, District Buldana.

..... **RESPONDENTS**

Shri Masood Shareef with Shri Aadil J. Mirza, Advocate for petitioners in W. P No.2127/2020

Shri R.K.Thakkar, Advocate for petitioners in Writ Petition Nos.1292/2021, 1349/2021 and 733/2023

Shri D. P. Thakare, Additional Government Pleader for respondent nos. 1 to 4 in all writ petitions.

Shri D.M.Kale, Advocate for respondent no.5 in all writ petitions

Shri Arun R.Patil Advocate for respondent no.6 in all writ petitions.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON 3rd FEBRUARY, 2023

JUDGMENT IS PRONOUNCED ON : 28th APRIL, 2023

JUDGMENT (PER CORAM)

The challenge raised in these writ petitions is to the preliminary notification dated 26.06.2019 issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013) as well as notification dated 20.06.2020 issued under Section 19 of the Act of 2013.

During the pendency of the writ petitions, the Special Land Acquisition Officer passed his award on 16.12.2020 and hence by amending Writ Petition Nos. 2127 of 2020, 1292 of 2021 and 1349 of 2021 a challenge is also raised to the final award. Similar challenge is also raised in Writ Petition No.733 of 2023.

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

FACTUAL BACKGROUND

2] The facts relevant for adjudication of these writ petitions are as under:

Samadhi of Shri Gajanan Maharaj Deosthan is located at Shegaon, District Buldana. It is visited by numerous devotees throughout the year. Keeping in mind the huge rush of devotees, the State of Maharashtra had on 26.11.1991 issued a Government Resolution thereby sanctioning a Special Development Plan for Shegaon as a Pilgrimage Centre. Municipal Council, Shegaon was designated as Development Authority for the said purpose. Since the development as was expected to be undertaken under the Special Development Plan could not be effected, Writ Petition No.5856 of 2007 (*Anandilal H. Bhutada and others. vs. Shegaon Municipal Council and others*) came to be filed in this Court. The said proceedings were treated to be in public interest and the matter was entertained in that

context. The State Government having taken cognizance of the rush of devotees at various religious places and with a view to avoid occurrence of any untoward incident as a result of stampede, etc., issued various guidelines vide Government Resolution dated 09.03.2009. These guidelines were made applicable to all religious structures/places in the State. Insofar as the town of Shegaon is concerned, it was noticed that on the western side of Shri Gajanan Maharaj Deosthan - the Sansthan, there were some encroachments in the area called as Matangwadi. The Maharashtra Housing and Area Development Authority (MHADA) constructed various tenements with a view to rehabilitate the persons occupying Matangwadi area.

3] On 08.03.2010 a fresh development plan for extension of the Sansthan premises came to be issued. Some of the present petitioners had approached this Court by filing Writ Petition Nos.4438 of 2017, 4439 of 2017 and 341 of 2018 raising a challenge to the notice dated 03.07.2017 that was issued by Municipal Council, Shegaon, calling upon the said petitioners to vacate the premises in their occupation. Various orders came to be passed from time to time in the said writ petitions. By the order dated 29.11.2017 passed in aforesaid writ petitions alongwith Writ Petition No.5856 of 2007, it was noticed that claims of twenty-seven persons were involved. The report of the Collector indicated that ten properties were privately owned while seventeen properties were subjected to

encroachment. After noting that in the light of the development work that had been undertaken and the situation had become irreversible as further development could not be halted, cognizance of the statement made by the petitioners that they were not against such development and that they would co-operate with the Municipal Council, State Government and the Sansthan if their rights were protected was taken. The petitioners were directed to file their affidavits agreeing to hand over their respective sites to the Municipal Council to enable the development work to be undertaken. The said writ petitions came to be disposed of on 05.04.2018 by which various directions were issued by the Court requiring all occupants to vacate their premises within seven days. The lands of the persons recognised by the Collector as owners were deemed to have been acquired and the Special Land Acquisition Officer was directed to determine the amount of compensation.

4] The order dated 05.04.2018 passed by this Court came to be challenged before the Hon'ble Supreme Court in Special Leave Petition No.9452 of 2018 that arose from Writ Petition No.4438 of 2017. It was directed that except the petitioner no.1– Sau. Lata Ramesh Tayade in Writ Petition No. 4438 of 2017, the petitioner nos. 2 to 14 as well as the sole petitioner in Special Leave Petition No.9453 of 2018 that also arose from Writ Petition No.4438 of 2017 were directed to remove their built up

structure from the land in question and any goods therein within a period of fifteen days. In Special Leave Petition No.9362 of 2018 arising from Writ Petition No.4439 of 2017, the directions given in paragraph 19 (b) to (d) of the order dated 05.04.2018 passed by this Court came to be stayed. In Special Leave Petition No.9969/2018 arising out of Writ Petition No.341 of 2018 notice was issued on 19.04.2018 but the petitioners were directed to vacate the premises in question on their own within a period of three months. Thus, of the twenty-seven petitioners who had suffered the order dated 05.04.2018, the possession of only ten petitioners was protected. They were nine petitioners in Writ Petition No. 4439 of 2017 and one petitioner in Writ Petition No. 4438 of 2017. During pendency of the aforesaid proceedings, an attempt was made to resolve the dispute through mutual negotiations but it appears that the same was not possible. On 12.10.2018 the General Body of Shegaon Municipal Council passed a Resolution proposing acquisition of privately owned lands from Nazul Sheet No.28-B from Matangpura area.

All the aforesaid Special Leave Petitions came to be decided on 10.05.2019. The directions contained in paragraph 19 (b) to (d) of the order dated 05.04.2018 passed by this Court came to be set aside. Other directions as issued were not interfered with and the State Government was permitted to proceed with the acquisition in accordance with law.

5] In the light of the aforesaid order passed by the Hon'ble Supreme Court, the Divisional Commissioner on 21.05.2019 issued a communication to the Sub-Divisional Officer to take further steps in accordance with the Act of 2013. On 23.05.2019 the Chief Officer, Municipal Council, Shegaon, sent a proposal to the Sub-Divisional Officer, Khamgaon proposing acquisition of lands from Nazul Sheet Nos.28-B and 28-A, Matangpura area. Such proposal was accordingly prepared for acquisition of the aforesaid lands by indicating that under Government Resolution dated 08.03.2010 the land was required as open land/garden, provision of various amenities and facilities to devotees. The area proposed to be acquired was 1555.10 square meters. The petitioners on 25.05.2019 raised an objection before the Divisional Commissioner stating therein that no direction had been issued by the Hon'ble Supreme Court to acquire the said lands. On 01.06.2019 the Sub-Divisional Officer issued notice to the land owners offering to purchase their lands by executing sale deeds in their favour. They were asked to attend the meeting in that regard on 07.06.2019. The land owners however raised an objection to the aforesaid process on 07.06.2019 stating therein that the acquisition was being undertaken in violation of the orders passed by the Hon'ble Supreme Court.

Preliminary notification under Section 11(1) of the Act of 2013 came to be published in the Government Gazette dated 11.07.2019. It was also published in two local newspapers on 06.07.2019 and 07.07.2019.

The preliminary notification was also pasted at prominent places in Shegaon town on 29.06.2019, on the notice board of Tahsil Office on 19.08.2019 and on the notice board of Municipal Council on 20.08.2019. The Sansthan submitted its objection under Section 15(1) of the Act of 2013 stating therein that twenty properties were owned by forty-two persons. However, in the preliminary notification, there was reference to fifty-one properties. Besides this objection, no land owner including the petitioners raised any objection under Section 15(1) of the Act of 2013. The objection raised by the Sansthan was considered by the Sub-Divisional Officer/Land Acquisition Officer, Khamgaon and the proceedings were then sent to the Collector for approval under Section 19 of the Act of 2013. Thereafter final declaration under Section 19 (1) of the Act of 2013 came to be published in the Official Gazette dated 09.07.2020. It was published in two local newspapers on 20.06.2020 and thereafter steps contemplated by Section 21(1) and (4) of the Act of 2013 were taken. Notice was issued to all interested parties to attend the Office of the Sub-Divisional Officer. Seventeen land owners remained present, out of whom fifteen land owners raised a written demand of amount of compensation. The Special Land Acquisition Officer determined the amount of compensation at Rs.11,300/- per square meter for Plot Nos. 56/1 and 56/2 falling in Nazul Sheet No.28-A and Plot No.11 in Nazul Sheet No.28-B. Amount of Rs.4,700/- per square meter was determined as compensation for all other plots from Nazul Sheet

No.28-B. Thus, final award came to be passed in the aforesaid manner on 16.12.2020.

CONTENTIONS OF LEARNED COUNSEL

6] Shri Masood Shareef, learned counsel for the petitioners in Writ Petition No.2127 of 2020 submitted that the award dated 16.12.2020 passed by the Special Land Acquisition Officer was not in accordance with the provisions of the Act of 2013 for various reasons. At the outset, it was submitted that the order passed in Writ Petition No.5856 of 2007 and connected writ petitions on 05.04.2018 was the subject matter of challenge before the Hon'ble Supreme Court. By its judgement dated 10.05.2019 directions issued in para 19 (b) to (d) of the order dated 05.04.2018 had been set aside. A statement was made on behalf of the Authorities that the State Government would proceed with acquisition and in accordance with law. This statement was construed by the Authorities as a direction to acquire the lands of the petitioners. In absence of any such direction to acquire the petitioners lands, there was no justification in proceeding on that basis. The initiation of the said proceedings itself was therefore by misconstruing the order dated 10.05.2019. It was then submitted that various mandatory provisions of the Act of 2013 while seeking to acquire the petitioners land had not been followed. The learned counsel invited attention to Chapter II of the Act of 2013 and submitted that there was no

Social Impact Assessment study undertaken by the respondents though it was mandatory for the Collector to do so. Reference was also made to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, Resettlement (Social Impact Assessment and Consent) Rules, 2014 in that regard. Similarly, the provisions of Chapter-III of the Act of 2013 had also not been followed. Though the power to exempt certain projects from the provisions of Chapters II and III of the Act of 2013 was available with the State Government, the present acquisition did not fall in that category. There was no case made out to invoke the provisions of Section 40 of the Act of 2013 since there was no urgency to acquire the said lands.

7] It was then submitted that the steps required to be taken while publishing a preliminary notification under Section 11 of the Act of 2013 had not been followed. The preliminary notification was not published as required nor was the Gram Sabha informed as per Section 11(2) of the Act of 2013. Though the notification dated 26.06.2019 published at a prominent place in the city of Shegaon stated that compliance of the provisions of Section 11 had been done, the same was not a fact. Referring to the provisions of Section 15 of the Act of 2013, it was submitted that by filing the present proceedings, the petitioners had raised objections as contemplated by Section 15(1) of the Act of 2013 and the same deserved

consideration. Referring to the award dated 16.12.2020 it was submitted that the same was silent insofar as the aspect of Social Impact Assessment as well as rehabilitation of displaced persons was concerned. The award also did not indicate how the market value of the acquired land came to be determined by the Collector under Section 26 of the Act of 2013. It was further submitted that on 01.06.2019, the Special Land Acquisition Officer issued notice to the land owners as well as the Sansthan to remain present on 07.06.2019 for purchasing the lands required. The petitioners had raised an objection to the same on 07.06.2019 and had opposed execution of any sale deed. Inviting attention to the replies filed by the Divisional Commissioner, Collector and Sub-Divisional Officer, it was submitted that the same were silent with regard to following the mandatory procedure for acquisition.

8] The learned counsel further submitted that the lands of the petitioners could not be said to be required for any public purpose inasmuch as the Municipal Council had proposed acquisition of the said land only with a view to provide facilities to devotees visiting the Sansthan. The Government Resolution dated 08.03.2010 also did not indicate that the land was required to be acquired for any public purpose. The Sansthan was a registered public trust like any other trust. The provisions of Section 2(1) and (2) of the Act of 2013 were not at all attracted and hence there was no

legal basis to acquire the lands in question. The petitioners being owners of the lands in question, they could not be deprived of their said lands in a manner contrary to law and in absence of any scheme for rehabilitation. It was thus submitted that the prayers made in the writ petition be granted. In support of aforesaid submissions, the learned counsel relied upon the decisions *Union of India and others vs. Krishan Lal Arneja and others* [(2004) 8 SCC 453], *Girnar Traders vs. State of Maharashtra and others* [(2011) 3 SCC 1], *J.K.Housing Board and another vs Kunwar Sanjay Krishan Kaul and others* [(2011) 10 SCC 714], *Raghubir Singh Sehrawat vs State of Haryana and others* [(2012) 1 SCC 792], *Usha Stud and Agricultural Farms Private Limited and others vs. State of Haryana and others* [(2013) 4 SCC 210], *Laxmi Devi vs State of Bihar and others* [(2015) 10 SCC 241], *Mehtab Laiq Ahmad Sheikh and another vs. State of Maharashtra and others* [2017 (6) Mh L J 408], *Shiv Singh vs State of Himachal Pradesh* [(2018) 16 SCC 270], *Chandrakant Mahadev Patil and others vs. State of Maharashtra and others* [(2018) SCC Online Bom 2825], *Nareshbhai Bhagubhai and others vs Union of India and others* [(2019) 15 SCC 1], *D. B. Basnett (Dead) through Legal Representatives vs Collector East District, Gangtok, Sikkim and another* [(2020) 4 SCC 572], *Bangalore Development Authority vs. State of Karnataka* [2022 Live Law (SC)76] and *Bharat Petroleum Corporation Limited and others vs. Nisar Ahmed and others* [2022 Live Law (SC) 837].

9] Shri R.K.Thakkar, learned counsel appearing for the petitioners in Writ Petition Nos.1292 of 2021, 1349 of 2021 and 733 of 2023 adopted the contentions raised the learned counsel for the petitioners in Writ Petition No. 2127 of 2020. In addition, he submitted that the provisions of Section 41 of the Act of 2013 would be attracted. The same however were not considered by the Authorities. It was thus submitted that the prayers made in the writ petitions be granted.

10] Shri D. P. Thakre, learned Additional Government Pleader appearing for the respondent nos. 1 to 4 opposed the aforesaid submissions. According to him, the award dated 16.12.2020 had been passed after complying with all provisions of the Act of 2013. A Special Development Plan for the town of Shegaon had been prepared on 26.11.1991 and the same was partly modified by issuing notification under Section 31 (1) of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966). Subsequently on 08.03.2010 a Government Resolution came to be issued with a view to provide various basic facilities to devotees visiting the Sansthan at Shegaon under the Special Development Plan. Since the State Government had stated before the Hon'ble Supreme Court that it would proceed with acquisition in accordance with law, the preliminary notification under Section 11 (1) of the Act of 2013 was issued on 26.06.2019. No objection whatsoever was raised by the petitioners to the

said preliminary notification and hence there was no question of hearing the petitioners in that regard under Section 15(1) of the Act of 2013. After a declaration under Section 19 came to be published, individual notices were given to all petitioners under Section 21. The objections raised were considered and decided by the Competent Authority. Since the final award had been passed, the petitioners had a remedy under Section 64 of the Act of 2013, if they were not satisfied by the amount of compensation determined by the Special Land Acquisition Officer. During the pendency of the proceedings pursuant to the order dated 08.02.2021 passed in writ petition the possibility of exploring amicable settlement was also examined by the Divisional Commissioner on 19.06.2021. The petitioners however were not willing to have the dispute settled amicably. It was thus submitted that there was no reason to interfere with the award passed by the Special Land Acquisition Officer.

Shri D.M.Kale, learned counsel appearing for the Municipal Council-respondent no.5 submitted that on 23.05.2019 the Chief Officer had sent a proposal to acquire lands from Nazul Sheet No.28-B and 28-A to the Sub-Divisional Officer, Khamgaon. It was pursuant to this request made by the Planning Authority that the process of acquisition commenced and the steps were thereafter taken by the Authorities under the Act of 2013. The Municipal Council had passed its resolution long back indicating the

need for the aforesaid lands under the Special Development Plan. The learned counsel also opposed the prayers made in the writ petitions.

11] Shri A.R.Patil, learned counsel appearing for the Sansthan - respondent no.6 also opposed the submissions made by the learned counsel for the petitioners. According to him, the Sansthan was in need of 6766 square meters of land under the Special Development Plan. Land to the extent of 5200 square meters was already received by the Sansthan after the same was acquired. In the present proceedings, the remaining land of 1555.10 square meters was sought to be acquired. The learned counsel invited attention to various orders passed in Writ Petition Nos. 4338 of 2017, 4339 of 2019 and 341 of 2018 followed by the orders passed by the Hon'ble Supreme Court in proceedings challenging the order dated 05.04.2018 passed by this Court. It was submitted that most of the petitioners in the present writ petitions were parties in the earlier litigation and they had been called upon to vacate their respective lands and hand over possession. The same was however not done. Insofar as the owners of respective pieces of lands were concerned, their lands were now sought to be acquired by the impugned award.

The learned counsel referred to the developments that took place since publication of the Special Development Plan on 26.11.1991 followed by the Circular dated 23.03.2009 whereby cognizance was taken by the

State Government of the possibility of a stampede like situation arising at religious places. In that backdrop, another Government Resolution was issued on 08.03.2010 approving various basic facilities to be provided at Shegaon under the Special Development Plan. The land in question was not required exclusively for any garden but for providing facilities to devotees visiting the Sansthan. The map prepared in that regard was accepted by this Court in the order dated 05.04.2018 which was not interfered with by the Hon'ble Supreme Court while considering the appeal against that order. It was then submitted that keeping in mind the risk to the life of the devotees that was likely for want of necessary facilities, steps were taken by the Sansthan as well as the Authorities to provide basic facilities. These steps taken were in the nature of Social Impact Assessment and the requirements in that regard stood satisfied. In that regard, he invited attention to the preliminary statement dated 26.06.2019 that was prepared by the Special Land Acquisition Officer. Referring to the provisions of Section 125 of the Act of 1966, it was submitted that by virtue of proviso thereof, the applicability of Sections 4 to 15 of the Act of 2013 stood excluded. Since the development plan dated 08.03.2010 was in existence, there was no need whatsoever to again undertake any Social Impact Assessment. Despite publication of preliminary notification under Section 11(1) of the Act of 2013, no objections were raised by the petitioners and hence it was clear that the petitioners did not dispute the

aspect that the lands were required for public purpose. The petitioners were not precluded from raising such objection but failed to do so for no justifiable reason. The petitioners had subsequently raised objection to the notification issued under Section 19 of the Act of 2013 and they had been heard in that regard. Thereafter the award came to be passed after determining the market value of the said land. The remedy under Section 64 of the Act of 2013 was available to the petitioners and hence there was no reason to interfere in writ jurisdiction. The learned counsel relied upon the decisions in *Municipal Corporation of Greater Bombay vs Industrial Development Investment Co. Pvt. Ltd. and others* [(1996) 11 SCC 501], *K.D.Sharma vs. Steel Authority of India Ltd. and others* [(2008) 12 SCC 481], *Navnath s/o Kashinathappa Biradar and others vs. State of Maharashtra and others* [2009 (1) Mh.L.J. 227], *Dalip Singh vs. State Uttar Pradesh and others* [(2010) 2 SCC 114], *Mehtab Laiq Ahmed Shaikh and another vs. State of Maharashtra and others* [2017(6) Mh.L.J.408], *Sahebrao Bhausahab Kalate vs. State of Maharashtra and others* [2019 (6) Bom.C.R.575], *Ajay Kumar and others vs. Kewal Kumar Jaggi and others* [2021(9) SCALE 256], *Shri K.Jayaram and others vs. Bangalore Development Authority and others*, [2021 (14) SCALE 663] and *M/s. Soorajmull Nagarmull vs. Sri Brijesh Mehrotra and others* [2021 (15) SCALE 346], in support of his submissions.

EVENTS LEADING TO PRESENT LITIGATION

12] We have heard the learned counsel for the parties at length and with their assistance we have perused the documents placed on record. Since the acquisition proceedings have a chequered history, it would be necessary to refer to certain events/developments that have taken place in the past which have relevance in the matter of acquisition. Considering the fact that large number of devotees visit Shegaon to pay obeisance at Shri Gajanan Maharaj Deosthan, the Planning Department of the State Government on 26.11.1991 issued a Government Resolution proposing various steps to be taken for providing basic facilities to devotees visiting Shegaon. This included widening of roads and providing sewerage systems as well as toilets in the town. A provision was also made to arrange for temporary accommodation. On 26.04.1994 notification under Section 31(1) of the Act of 1966 came to be issued providing for revision of the sanctioned development plan in the context of facilities to be provided. On 03.05.2005 the Charity Commissioner, Mumbai, issued a communication to the Sansthan inviting its attention to the guidelines to be followed for taking precautionary measures to avoid any untoward incident in the nature of a stampede. Since nothing much took place at the ground level, Writ Petition No.5856 of 2007 was filed in this Court seeking implementation of the Special Development Plan. Cognizance of the said proceedings was

taken in public interest. The Revenue and Forest Department issued a Circular on 23.03.2009 requiring steps to be taken to ensure that surroundings of temples/religious places are kept spacious and clear to avoid any mishap due to overcrowding. An emergency management plan with pilgrims in mind was directed to be prepared. Thereafter on 08.03.2010 the Planning Department issued another Government Resolution indicating the Special Development Plan for the town of Shegaon since 100th anniversary of Shri Gajanan Maharaj was to be celebrated on 12.09.2010. The nature of basic facilities to be provided were indicated therein which included provision of various facilities to devotees. The Municipal Council on 03.07.2017 issued notices to various occupants of properties especially in Matangwadi area to clear the same. This resulted in filing of Writ Petition Nos. 4438 of 2017, 4339 of 2017 and 341 of 2018 in this Court. On 29.11.2017 the claim of twenty-seven petitioners in Writ Petition Nos. 4438 of 2017 and 4439 of 2017 came to be examined. It was noticed that ten properties were privately owned while seventeen properties on government land had been encroached. These writ petitions were heard alongwith the public interest litigation and on 05.04.2018, the Division Bench issued various directions under which six of the seventeen encroachers opted for resettlement in the MHADA colony while eleven sought allotment of shops in the commercial complex on ownership basis. A direction was accordingly issued to all occupants in Matangwadi area to

vacate their premises within a period of seven days failing which a Superintendent of Police, Buldhana was directed to ensure that said persons were evicted. Insofar as persons whose names were found as owners were concerned, their lands were deemed to have been acquired under the Act of 2013. The Divisional Commissioner was directed to depute a Special Land Acquisition Officer to determine the claim of the persons who were owners of the land and on such determination, the Sansthan was to deposit the entire amount of compensation within a period of forty-eight hours with the Special Land Acquisition Officer. These specific directions insofar as owners of the lands are concerned, are contained in para 19 (b) to (d) of the order dated 05.04.2018. It is not in dispute that insofar as these directions contained in para 19 (b) to (d) are concerned, the same have been set aside by the Hon'ble Supreme Court on 10.05.2019. Rest of the directions that relate to the encroachers as well as the steps for rehabilitation of other persons and approval of the map indicating location of the police chowky have not been interfered with. Similarly, the plan prepared by the Sansthan to take care of interests of the citizens as well as pilgrims visiting the shrine have not been interfered with.

EARLIER LITIGATION

13. At this stage, it would be necessary to refer to the orders passed in Writ Petition No. 4438 of 2017, 4439 of 2017 and 341 of 2018. Insofar as

Writ Petition No.4438 of 2017 is concerned, there were in all eighteen petitioners. By the order dated 05.04.2018 the said petitioners were asked to vacate their properties in Matangwadi area. Special Leave Petition Nos. 9452-9453 of 2018 came to be preferred against the order dated 05.04.2018. Except the petitioner no.1-Sau. Lata Ramesh Tayade in Writ Petition No. 4438 of 2017, other petitioners were directed to remove their built-up structure on the land in question within a period of fifteen days from 11.04.2018. Insofar as Writ Petition No. 4439 of 2017 is concerned, there were nine petitioners. An order of status quo was passed as regards demolition while staying directions given in para 19 (b) to (d) of the order dated 05.04.2018. These Special Leave Petitions came to be disposed of on 10.05.2019 in the manner stated hereinabove. Insofar as Writ Petition No. 341 of 2018 is concerned, there were ten petitioners therein. Since consent of these petitioners was not obtained as recorded on 05.04.2018, they were held entitled to benefit of compensation under the Act of 2013. The said petitioners had challenged the order dated 05.04.2018 by preferring Special Leave Petition No.9969 of 2018. On 19.04.2018 while issuing notice in the said Special Leave Petition, the petitioners were directed to vacate the premises in question on their own within a period of three months from the date of the order. The order dated 05.04.2018 passed in Writ Petition No. 341 of 2017 was also challenged before the Hon'ble Supreme Court in Special Leave Petition No.9969 of 2018. The said petitioners however

19.04.2018 were directed to vacate the premises in question on their own within a period of three months from the date of that order. The sole petitioner in Writ Petition No.733 of 2023 was a party to those proceedings and it was necessary for him to vacate the said premises within a period of three months from 09.04.2018. Insofar as the said petitioner in Writ Petition No.733 of 2023 is concerned, it may be stated that he sought to redress his grievances in the public interest litigation being Writ Petition No. 5856 of 2007. In those proceedings an order passed on 28.09.2022 permitting the Sansthan to go ahead with the development of necessary works excepting those works that were prevented from being undertaken by virtue of an interim order passed in Writ Petition No.2127 of 2020. The said petitioner sought to intervene in the public interest litigation but his application came to be rejected on 20.10.2022 on the ground that pursuant to the final award, he had received compensation of Rs.13,25,445/- for 36.866 square meter land owned by him. Being aggrieved, the said petitioner challenged the aforesaid two orders before the Hon'ble Supreme Court by filing Special Leave Petition (Dairy) No.39311 of 2022. On 09.01.2023 the Hon'ble Supreme Court refused to interfere with the aforesaid orders and dismissed the Special Leave Petition.

It is thus clear that of the twenty-seven petitioners before this Court, the possession of only ten petitioners was protected by the order dated 11.04.2018 in Special Leave Petition Nos. 9362 of 2018, 9452 of

2018 and 9453 of 2018. The orders passed by this Court on 05.04.2018 and thereafter by the Hon'ble Supreme Court in various Special Leave Petitions would indicate that most of the petitioners barring few had been directed to vacate the respective premises and hand over possession of their respective lands/premises to the Authorities. Some of them have received the amount of compensation pursuant to the final award.

ABSENCE OF SOCIAL IMPACT ASSESSMENT

14] It is in this factual backdrop that the challenge raised to the final award would be required to be considered. The provisions of Section 4 of the Act of 2013 require preparation of Social Impact Assessment study. In that regard, the appropriate government intending to acquire land for public purpose has to consult the concerned local Authority in the affected area and carry out Social Impact Assessment study in consultation with it. While carrying out such study adequate representation has to be given to representatives of the local Authority and the study has to be completed within six months from its commencement. The matters to be considered included assessment as to whether the proposed acquisition serves public purpose, estimation of the number of families likely to be displaced, extent of lands likely to be affected by the proposed acquisition, whether the extent of land proposed for acquisition is the absolute bare minimum extent needed for the project, whether any alternate place has been considered

and found not feasible as well as the nature and cost of the impact on the overall cost of the project. Section 5 prescribes public hearing to be held at the affected areas by giving due publicity. Thereafter the Social Impact Assessment study report has to be made available in the local language, published in the affected areas and also uploaded on the website of the appropriate government.

The aforesaid provisions would indicate that the effect of acquisition of the lands proposed in the context of its social impact has to be assessed by considering the opinion of the representatives of the local body and by providing an opportunity of public hearing to families likely to be affected by such acquisition. Perusal of the preliminary statement dated 26.06.2019 published by the Sub-Divisional Officer indicates that at Annexure-4 it was stated that there was an exemption from undertaking the Social Impact Assessment study under Section 6 of the Act of 2013. It is however seen that Section 6 does not deal with granting any exemption from undertaking the Social Impact Assessment study. The only exemption is with regard to irrigation projects where the process of Environment Impact Assessment is required to be carried out. The proviso to Section 6(2) of the Act of 2013 is not attracted to the facts of the present case. It is thus clear that the Social Impact Assessment study has not been undertaken prior to publication of the preliminary notification under Section 11(1) of the Act of 2013.

15] To get over this situation, the learned counsel for the Sansthan sought to rely upon the provisions of Section 125 of the Act of 1966. It stipulates that when any land that is reserved in a development plan for a public purpose is required, it shall be deemed to be a land needed for a public purpose within the meaning of the Act of 2013 and that the procedure prescribes specified in Sections 4 to 15 (both inclusive) of the Act of 2013 shall not be applicable in respect of such lands. It is however seen that Section 125 of the Act of 1966 finds place in Chapter-VII of the Act of 1966, which relates to land acquisition. The said provision therefore would apply where acquisition is undertaken for any public purpose under Section 126 of the Act of 1966. This is for the reason that in the present case the acquisition has been undertaken by issuing preliminary notification under Section 11(1) and the process thereafter as stipulated by the Act of 2013 has been followed till passing of the final award dated 16.12.2020. It is only when land is to be acquired under the Act of 1966 that the procedure specified in Sections 4 to 15 (both inclusive) of the Act of 2013 would not be applicable. The said contention therefore cannot be accepted. It will thus have to be held that the acquisition in question has taken place under the Act of 2013 and therefore the procedure prescribed under Chapter-II of the Act of 2013 in the matter of determination of social impact and public purpose was required to be undertaken.

16] It appears from the record that the appropriate government as defined by Section 3 (e) of the Act of 2013 has proceeded on the premise that since the Special Development Plan dated 26.11.1991 for the town of Shegaon was already prepared followed by notification dated 26.04.1994 under Section 31(1) of the Act of 1966 coupled with the Government Resolution dated 08.03.2010 stipulating provision of various basic facilities in consonance with the Special Development Plan, it was not found necessary to undertake the exercise of having a Social Impact Assessment study. In other words, it can be gathered that since there was sufficient material available with the appropriate government to indicate its need for the lands in question for public purpose, that was existing much prior to the Act of 2013 coming into force, it was not found necessary to undertake Social Impact Assessment study. It is for that reason that the preliminary notification/statement dated 26.06.2019 states that there is an exemption from undertaking such study.

We do not find that there are any malafides on the part of the appropriate government in proceeding on this premise that there was an exemption from undertaking the Social Impact Assessment study under Section 4 of the Act of 2013. It is clear from the record that there is sufficient material available to demonstrate that for complying with the Special Development Plan prepared on 26.11.1991 with a view to provide basic facilities/amenities to devotees visiting the Sansthan, it was necessary

to acquire the adjoining lands for that purpose. In the public interest litigation, the relevant plan indicating the manner of land use for the said project came to be approved by the order dated 05.04.2018. In this regard, it is necessary to refer to the relevant portion of that order dated 05.04.2018 and especially paragraphs 8, 10 and 19 (l).

“8. We have perused the map placed on record by respondent no.6/Sansthan alongwith Civil Application No.767 of 2018. Perusal of the said map would reveal that immediate steps are required to be taken for development of Matangwadi area which is abutting the temple premises. Perusal of the map would also reveal that if immediate steps for development of the area and providing ample open space within the precinct of the area are not taken, possibility of mishap occurring cannot be ruled out.”

“10. It is further to be noted that, in order to maintain law and order and to take care of any untoward situation taking place, it is necessary that a permanent Police Chowki is established there, which will take care of the exigencies that may arise. It is further to be noted that an open area is also required to be kept around the temple if, in the event any incident of catching fire takes place, the fire department should reach the temple without any hindrance.”

“19(l). We find that the suggestion given by the learned amicus to accept the plan of the Sansthan annexed alongwith the Civil Application would take care of interests of the citizens as well as the pilgrims visiting the shrine. On one hand the Sansthan will have open area adjacent to the temple and on the other hand, the citizens will have wider road of 30 ft. for their passage. We, therefore, accept the plan as submitted alongwith the Civil Application No.767 of 2018 and permit the Sansthan to execute the same in accordance with the said plan. However, it is made clear that the plan as given alongwith the Civil Application shall

be scrupulously executed and no further construction except the one as is provided in the plan shall be made by the Sansthan.”

17] It is pertinent to state here that though the order dated 05.04.2018 had been challenged before the Hon'ble Supreme Court, the aforementioned part of the order was not interfered with and only the directions contained in paragraph 19 (b) to (d) came to be set aside on 10.05.2019. It is thus clear that rest of the order passed by this Court on 05.04.2018 has attained finality and the lands which are the subject matter of the final award dated 16.12.2020 have been acquired for putting up a permanent police chowky at the said area. To reiterate, the plan submitted by the Sansthan in that regard came to be accepted and with a view to maintain law and order as well as to take care of any untoward situation, the establishment of a permanent police chowky was found necessary. This would therefore indicate that there exists a public purpose behind acquiring the lands from Nazul Sheet Nos.28-B and 28-A.

Reference is also required to be made to Resolution No.35 passed on 12.10.2018 by the General Body of the Municipal Council, which is the local Authority under Section 3(s) of the Act of 2013. It is on the basis of this Resolution that the proposal for acquisition of the said lands at Matangpura was processed leading to issuance of the preliminary notification under Section 11(1) of the Act of 2013 followed by the final

award. This would thus indicate that the Municipal Council was involved in the determination of the need for acquiring the said lands. Its involvement has been found to be necessary under Section 4(1) of the Act of 2013 while preparing the Social Impact Assessment study. It is thus clear that in view of the involvement of the local Authority which put forward the need for such lands to provide basic facilities to devotees, the further exercise of acquisition came to be undertaken. These facts would have to be borne in mind while considering the question as to whether the award dated 16.12.2020 is liable to be set aside for failure to undertake the Social Impact Assessment study.

AWARD WHETHER VITIATED

18] It is not in dispute that the provisions of Chapter-II of the Act of 2013 are mandatory in nature and subject to provisions of Section 9 when the land is proposed to be acquired by invoking the urgency provisions under Section 40 of the Act of 2013, the Social Impact Assessment study would be required to be undertaken. Admittedly, the special powers under Section 40 of the Act of 2013 or Section 10-A as applicable in the State of Maharashtra have not been invoked. The provisions of Section 9 would therefore not be attracted. The preliminary notification under Section 11(1) of the Act of 2013 came to be issued on 11.07.2019 by having the same published in the Government Gazette. The said notification indicates

that the lands in question were sought to be acquired for public purpose. A person interested in the land that has been notified under Section 11(1) is granted an opportunity to object to the area and suitability of the land proposed to be acquired, justification offered for the public purpose and the findings of the Social Impact Assessment report. This course has been prescribed by Section 15(1) of the Act of 2013. Thereafter any objection so made within sixty days from the date of publication of the preliminary notification is required to be considered by the Collector after giving due opportunity to such objector. In the present case, none of the petitioners as land owners have raised any objection whatsoever in terms of Section 15(1) of the Act of 2013. The only objection raised under Section 15(1) is by the Sansthan in which it was stated that though the Commissioner had indicated that there were forty-two owners of properties, the preliminary notification under Section 11(1) made reference to fifty-one properties. With regard to twenty-nine property holders, their premises had been demolished in May 2017 and as regards the property holder with regard to portion bearing No.187 was concerned, he was an encroacher. This objection raised by the Sansthan was considered by the Special Land Acquisition Officer and it was stated that the land that was being acquired was on the basis of the joint measurement report. Since the allotment of lands had been undertaken by the draw of lots amongst the encroachers, the Special Land Acquisition Officer was not concerned with the same.

Reference to the aforesaid aspect can be found in the final award dated 16.12.2020. It is thus clear that there was no objection raised by any land owner to the preliminary notification under Section 11(1) of the Act of 2013 and the only objection raised by the Sansthan came to be decided. Since the petitioners failed to raise any objection whatsoever under Section 15(1) of the Act of 2013, there was no question of the Collector granting any opportunity of hearing to them under Section 15(2) of the Act of 2013. In these facts therefore reliance placed by the petitioners on the decisions in *Shiv Singh and others*, *Nareshbhai Bhagulbhai and ors*, *Raghubir Singh Shrawat and Usha Stud and Agricultural Farms Pvt. Ltd.* (supra) is misplaced.

19] Failure on the part of the petitioners to raise any objection whatsoever under Section 15(1) of the Act of 2013 is a vital factor that cannot be ignored. It was possible for the petitioners to raise an objection to the area and suitability of the land proposed to be acquired, that the justification offered to indicate that the land was required for public purpose was absent and that there was no Social Impact Assessment study undertaken by the appropriate government. If such objection would have been raised by the petitioners, the same could have been dealt with under Section 15(2) by the Collector and while making a report to the appropriate government he could have recommended remedial steps to be taken on the

basis of such objections. In other words, the effect of absence of any Social Impact Assessment report could have prompted the Collector to recommend undertaking the Social Impact Assessment study if he found the same was necessary notwithstanding the Special Development Plan. The petitioners having failed to raise any objection whatsoever at the appropriate stage when such objections could have been raised under Section 15(1) of the Act of 2013 are now precluded from urging that the lands cannot be said to be required for public purpose or that for failure to undertake the Social Impact Assessment study, the acquisition proceedings are vitiated. According to the petitioners, by filing the present writ petitions for challenging the preliminary notification dated 26.06.2019 it should be held that they had objected to the issuance of such preliminary notification as required by Section 15(1) of the Act of 2013. This stand of the petitioners cannot be accepted for more than one reason. Section 15(2) specifically requires an objection under Section 15(1) to be made to the Collector in writing after which it is the Collector who has to hear such objection and then make the report to the appropriate government. The objections are required to be made within sixty days from the date of publication of the preliminary notification. The preliminary notification under Section 11(1) of the Act of 2013 was to be published on 11.07.2019. The present writ petitions came to be filed after more than a year of the preliminary notification being published. Writ Petition No. 2127 of 2020 was filed on

24.08.2020, Writ Petition No.1292 of 2021 was filed on 08.02.2021, Writ Petition No.1349 of 2021 was filed on 03.02.2021 and Writ Petition No.733 of 2023 was filed on 25.01.2023. This is much beyond the period of sixty days as contemplated by Section 15(1). The challenge to a preliminary notification issued under Section 11(1) by filing a writ petition under Article 226 of the Constitution of India cannot be equated to raising an objection to the preliminary notification as contemplated by Section 15(1) of the Act of 2013. A statutory avenue available to the petitioners to raise a grievance with regard to absence of any public purpose for acquisition or absence of any Social Impact Assessment study not having been availed, the petitioners cannot be heard after long lapse of the statutory period of sixty days to contend that filing of the present proceedings be treated as an objection to the preliminary notification under Section 15(1) of the Act of 2013. The said contention raised by the petitioners therefore cannot be accepted. There is also no basis to hold that the preliminary notification issued under Section 11(1) of the Act of 2013 has not been published as required by law.

20] At this stage, it is necessary to refer to the decision of the Hon'ble Supreme Court in *Ramniklal N. Bhutta and another vs. State of Maharashtra and others [(1997) 1 SCC 134]* wherein the Hon'ble Supreme Court has struck a note of caution while making the following observations

in paragraph 10:

“10.The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings.”

21] In *Laxmi Devi* (supra) the Hon'ble Supreme Court has explained the distinction between setting aside of an acquisition and the reversion of possession to the erstwhile land owners. It was observed however that both the situations were not required to go hand in hand. In a given case while setting aside the acquisition of land which the government finds necessary it would not be imperative to hold that the land would revert to the owners

since the alternate course of permitting the government to keep possession provided it re-acquired the said lands by issuing a fresh notification was always available. In the said case, while setting aside the acquisition for non-compliance of provisions of Section 11 A of the Land Acquisition Act, 1894 the State Government was directed to initiate fresh acquisition proceedings in accordance with law. The Court however refrained from passing any order or issuing any direction interfering with the possession of the government over the subject land.

REASONS FOR MAINTAINING THE AWARD

22] When the aforesaid legal position is considered, it is clear from the record that in accordance with the Special Development Plan various steps have been taken to provide basic facilities to devotees. With a view to ensure maintenance of law and order coupled with safety of devotees, a permanent police chowky has been proposed on the acquired land. As far back as on 29.11.2017 this Court in the earlier round of litigation in Writ Petition Nos. 4438 of 2017 and 4439 of 2017 has observed in paragraph 10 that by virtue of the development already undertaken the situation had become irreversible and further development could not be now halted. In the affidavit filed by the Divisional Commissioner it has been stated in paragraph 11 that by now 97% work under the Special Development Plan has been completed and only a fraction thereof remains to be completed in

view of the present litigation. It has to be kept in mind that by the order dated 05.04.2018 passed by this Court it was found necessary in larger public interest to accept the suggestion made by the Authorities to have a permanent police chowky established at the lands that have now been sought to be acquired. The relevant map indicating its location came to be accepted by this Court and it is on this basis that steps have been taken to acquire the present lands. It is also to be kept in mind that with a view to facilitate re-settlement of affected families as well as encroachers on government land, an agreement has been entered into between the Revenue & Forest Department of the State Government and the Sansthan on 21.05.2018 to further carry out the directions issued by this Court on 05.04.2018. As per Clause 6 of the said agreement acquisition of lands from Nazul Sheet Nos.28-B and 28-A has also been proposed and it is the Sansthan that is to pay the amount of compensation towards such acquisition. It is further to be noted that the Sansthan has already deposited an amount of Rs.3,78,33,422/- towards cost of acquisition with the Special Land Acquisition Officer prior to passing of the award.

All the aforesaid facts which have neither been denied nor disputed by the petitioners indicate that with acquisition of almost 97% lands that were required under the Special Development Plan, the project in question has almost reached its final stages. That the lands are required for public purpose is evident from the Special Development Plan dated

26.11.1991 as modified on 26.04.1994 and read with the Government Resolution dated 08.03.2010. The land acquired in the present award admeasures only 1555.10 square meters. Each petitioner owns small portions of the aforesaid land. Even if the final award is quashed for failure to undertake the Social Impact Assessment study, it would always be open for the Authorities under the Act of 2013 to initiate a fresh process of acquisition and acquire the lands. This would only result in delaying the completion of the project thus depriving the public at large from benefiting with the provision of basic facilities as well as their safety and well-being. If a fresh process of acquisition is undertaken, the petitioners would get compensation at the market rate prevailing on the date of initiation of such proceedings which could be higher than what has been awarded to them in the present proceedings. In *Krishan Lal Arneja* (supra), the Hon'ble Supreme Court did not accept the view taken by the High Court that the notification issued under the Land Acquisition Act, 1894 itself must specifically state about the nature of urgency and in its absence such notification gets vitiated. It referred to the earlier decision in *Union of India vs. Ghanshyam Dass Kedia [(1996) 2 SCC 285]* that the notification need not specifically recite the nature of urgency and that it was enough if the records disclosed the consideration by the Government of the urgency for taking action under the provisions of Sections 17 (1) and (4) of the Land Acquisition Act, 1894.

23] We are satisfied from the material on record that there is larger public interest behind acquiring 1555.10 square meters of land as has been done under the impugned award. It would not be always necessary for the Court to exercise discretion under Article 226 of the Constitution of India merely on the ground that a legal point has been made out. While exercising such discretion the Court cannot turn a blind eye to the ground realities based on larger public interest. With the preparation of the Special Development Plan more than thirty years ago, steps are being taken to ensure that there is a systematic provision of basic facilities to devotees to ensure their safety and convenience and at the same time by accommodating the owners of the affected lands either by rehabilitating them by providing alternate accommodation/commercial shops or by paying them monetary compensation. Since we find that overwhelming public interest requires completion of the project in hand, we do not find it justified in larger public interest to set aside the award for absence of undertaking the Social Impact Assessment study. As noted above, had the petitioners raised an objection to the absence of such study at the appropriate stage that was available under Section 15(1) of the Act of 2013, the remedial steps, if any, could have been taken at that stage itself. We have also kept in mind the delay on the part of the petitioners in challenging the preliminary notification dated 26.06.2019 after more than one year while refusing to quash the final award dated 16.12.2020. Having

approached this Court after expiry of more than one year from publication of the preliminary notification under Section 11(1) of the Act of 2013, we do not find it expedient to set aside the final award dated 16.12.2020.

BALANCING COMPETING INTERESTS

24] Though we have declined to set aside the final award dated 16.12.2020 notwithstanding the fact that there has been absence of Social Impact Assessment study, we are inclined to award additional compensation to the petitioners while sustaining the final award dated 16.12.2020 with a view to balance the interests of both sides. We find that considering the period that has elapsed since issuance of preliminary notification dated 26.06.2019 and keeping in mind the fact that fresh proceedings could be immediately initiated if the final award is set aside, the interest of justice would be served by holding the petitioners in Writ Petition Nos. 2127 of 2020, 1292 of 2021 and 1349 of 2021 entitled to receive 25% additional compensation over and above the compensation that has been awarded to them under the final award. This amount of compensation would meet the ends of justice and would also result in putting an end to the aforesaid litigation. Needless to state that with the passing of the final award, it would be open for the aggrieved land owners to invoke remedy under Section 64 of the Act of 2013 by making a reference to the Collector for enhancement of the amount of compensation.

Since the final award dated 16.12.2020 was passed during pendency of Writ Petition No. 2127 of 2020, the said petitioners are entitled to invoke remedy under Section 64 of the Act of 2013 by treating the date of the judgment as the relevant date on which the limitation would commence for making such reference under Section 64 of the Act of 2013. Since Writ Petition Nos.1292 of 2021 and 1349 of 2021 have been filed on 08.02.2021 and 03.02.2021 respectively, the benefit of the aforesaid directions would also be available to the petitioners therein. Writ Petition No.733 of 2023 has been filed on 25.01.2023 and the said petitioner has already received the amount of compensation under the said final award. There being no explanation for the delay in approaching this Court for challenging the preliminary notification dated 26.06.2019 as well as the final award dated 16.12.2020, the aforesaid direction to treat the date of the judgment as the date of passing of the award for the purposes of Section 64 of the Act of 2013 would not be applicable to the said petitioner nor would he be entitled for additional compensation of 25% as granted to the other petitioners.

25] Rule in all aforesaid writ petitions is disposed of in aforesaid terms with no order as to costs.

This judgment shall come into effect on expiry of four weeks from today.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)