

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-28799-2019 (O&M)

Reserved on:- **July 20 , 2023**

Date of Pronouncement:- **Oct 05, 2023**

Krishan Singh and Others

...Petitioners

vs.

State of Punjab & Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ankur Mittal, Advocate,
Mr. Lalit Singla, Advocate,
Ms. Varsha Sharma, Advocate
and Ms. Kushaldeep Kaushal, Advocate,
for the petitioners.

Mr. Athar Ahmed, DAG, Punjab.

HARKESH MANUJA, J.

1. Briefly stating, facts of the case are that State of Punjab/respondent No.1 issued notification dated 20.11.2006, under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as '1894 Act') for acquisition of land measuring 602.25 acres for the public purpose namely; construction of embankments and widening of river Ghaggar from Khanauri to Village Karail (RD 58000 to RD 13343) of Tehsil Moonak, District Sangrur in Punjab territory for increasing its capacity to save the agriculture land and village abadis from floods in river Ghaggar in Punjab. Subsequently, notification under Section 6 of 1894 Act was issued on 13.04.2007. Though, total land of petitioners that formed part of notifications under Sections 4 and 6 of the 1894 Act was 41 Kanal 6 Marla, however, award dated 12.04.2008 was made only for land measuring 24 kanal 4 marla & the compensation

amounting to Rs. 74,99,712/- was paid to the petitioners, there being no award for land in question measuring 17 kanal 2 marla. It is pertinent to mention here that the nature of acquisition was compulsory and powers under Section 17(1) of the 1894 Act were exercised by respondents to take possession of the entire land under acquisition including 41 Kanal 6 Marla belonging to the petitioners.

2. Petitioners made representations dated 05.04.2011, 12.10.2013 and 14.01.2015 to respondents no. 2 & 3 for grant of compensation in respect of remaining land measuring 17 Kanal & 2 marla. Since no action was taken thereupon, petitioners filed Civil Writ Petition No. 10357 of 2015 before this Court which was disposed of vide order dated 21.05.2015, directing respondent no. 3 to pass a speaking order. Even thereafter, despite of petitioners having served a legal notice dated 04.11.2015 upon respondent no. 3 for compliance of the order dated 21.05.2015, no steps were taken in this regard, therefore, petitioners filed COCP No. 1175 of 2016 before this Court. During its pendency, respondent no. 3 filed reply dated 14.06.2018 & informed that a speaking order dated 09.10.2017 was passed vide which compensation in terms of award dated 12.04.2008 qua the remaining land measuring 17 Kanal & 2 marla was ordered to be assessed & granted to the petitioners.

3. By way of present petition, petitioners have impugned the order dated 09.10.2017 and pray that since on the date of passing of the said order, 1894 Act stood repealed, the assessment of compensation should have been ordered under the provisions of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred as

2013 Act), besides praying that petitioners be also granted compensation/ damages for the illegal possession / usage of their land since 2007, till date.

4. In this regard, learned counsel for the petitioners submits that land in question belonging to petitioners measuring 17 Kanal 2 Marla formed part of notifications issued under Sections 4 & 6 of the 1894 Act; but no award was announced for the same within the stipulated period as mandated under Section 11A thereof, hence, the acquisition qua the same stood lapsed. He further submits that vide impugned order dated 09.10.2017, the compensation amount was ruled to be assessed for the land in question in terms of award passed in the year 2008 which admittedly being post coming into force of the 2013 Act, was legally impermissible and clearly against the provisions of Section 24(1)(a) of the 2013 Act. He also contends that since no award was announced for the land in question, petitioners were unable to seek any further enhancement or to avail the benefits of Rehabilitation and Resettlement policy of the State. He again contends that 01.01.2014 being the cutoff date, therefore, in any subsequent award, compensation was required to be assessed in terms of the provisions of 2013 Act. Additionally, he also prays that possession of the land in question was taken in 2007 itself, in accordance with Section 17(1) of the 1894 Act and was utilized without grant of any compensation, hence, petitioners were entitled for mesne profit/damages as well. In support of his contentions, learned counsel for the petitioners places reliance upon following judgments:

- i. **"R.L. Jain (D) by Lrs v. DDA and others"**, reported as 2004(2) R.C.R.(Civil) 278

- ii. **"Madishetti Bala Ramul (D) By LRS v. Land Acquisition Officer"**, reported as 2007(3) R.C.R.(Civil) 455
- iii. **"M. Bugappa (D) Thro LR's v. Land Acquisition Officer cum Mandal Revenue Officer and other"**, bearing case No CIVIL APPEAL No. 10665 OF 2010
- iv. **"Vidya Devi v. State of Himachal Pradesh and others"**, reported as (2020) 2 SCC 569
- v. **"Shankarrao Bhagwantrao Patil etc v. State of Maharashtra"**, reported as 2021 SCC OnLine SC 763.

5. On the other hand, prayer made in the present writ petition has been opposed by learned State Counsel while contending that compensation offered by respondent No 3 vide order dated 09.10.2017 has been accepted by most of the petitioners barring only two. He further submits that the compensation offered is equal to the increased amount granted by this Court in RFA No 3367 of 2011 in relation to this very acquisition and therefore, petitioners have no valid reason for any grievance.

6. I have heard learned counsel for parties and gone through the paper-book as well as the law cited at the Bar. I find some substance in the arguments raised by learned counsel for the petitioners.

7. Respondent State in its short reply filed by way of affidavit in COCP No. 1175 of 2016 In CWP No. 10357 of 2015 (Annexure P-13) admitted the fact that petitioners were entitled for award of compensation against the land measuring 17 Kanal & 2 Marla, which stood utilized for widening the Ghaggar River and approval for paying the compensation was sought from the drainage department by passing a speaking order dated 09.10.2017 (Annexure P-12). It would

be appropriate to have a look at few relevant contents of the speaking order dated 09.10.2017, which are reproduced herein below:-

"2. *On receiving the application of petitioner Krishan Singh (abovesaid). the petitioner Krishan Singh son of Naranjan Singh, resident of Khanauri Kalan, vide letter no.1483/ Flood, dated 14.03.2017 and letter no.1500/ Flood dated 12.04.2017 was asked to bring the documents related to his land in this office. Thereafter, a meeting of the petitioner and Drainage Department authorities was fixed on 24.05.2017 in which the petitioner Krishan Singh and Drainage Department authorities expressed their consent that the demarcation of abovesaid land of the Krishan Singh be conducted so that it could be known as to whether his land is covered in Ghaggar or not. Circle Kanugo, Mandvi was directed that to conduct the demarcation by taking along the petitioner and Drainage Department officers. On 30.05.2017 the demarcation was done from which it became clear that 17 Kanals 2 Marlas area of the petitioner has been acquired in the land meant for widening the river. No compensation of 17 Kanals 2 Marlas of Land has been released to the petitioner.*

3. *As per the order dated 27.01.2016 passed by the Hon'ble Punjab and Haryana High Court Chandigarh in R.F.A. No. 3367 of 2011 and other connected matters the payment of the land at the rate of Rs.21,00,000/-(Twenty one lacs) per acre is to be made as under:-*

"From the above facts it is clear that the land of petitioner Sh. Krishan Singh son of Naranjan Singh and others has been acquired for the purpose of widening the Ghaggar River, but the amount of compensation in this regard has not been

received by the petitioner. In award pronounced regarding the abovesaid acquired land, the detail of the land of applicant have not been mentioned. However, as per award dated 12.04.2008 pronounced with regard to acquired land of the petitioner, the Drainage Department is hereby directed to release compensation in accordance with order dated 27.01.2016 passed by the Hon'ble Punjab and Haryana High Court,

Chandigarh.

Sd/-

*Land Acquisition Officer-
Cum- Sub Divisional
Magistrate, Moonak"
(emphasis supplied)"*

8. In view of the above, it is admitted position of fact that 17 Kanal 2 Marlas of land belonging to the petitioners was though possessed and utilized by the State of Punjab immediately on issuance of notification under Section 4 dated 20.11.2016, but for the same neither any award was passed; nor compensation was paid to them. With this fact in mind, prayer made in the present petition is required to be examined on the rigors of law so as to determine the compensation.
9. When the Constitution of India came into force on 26.01.1950, the right to property was given status of fundamental right and two articles, i.e. Article 19(1)(f) and Article 31 ensured that right of any person against his property remains protected. However, through 44th Amendment Act, 1978 of the Constitution of India, these two articles were repealed and a new Article, namely, 300A was inserted having title "Right to Property", so right to property still remains a

constitutional right as protected under Article 300A which reads as under:-

“CHAPTER IV.—RIGHT TO PROPERTY

300A. No person shall be deprived of his property save by authority of law.”

10. While any acquisition of property has to be as per the “authority of law”, the right to receive compensation even if not apparent, has to be inferred from Article 300A. Reliance in this regard can be placed on the judgment of Hon’ble Apex Court in **Vidya Devi’s case** (supra), and relevant para thereof is reproduced hereunder:

“12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right 2 in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution.”

11. Now coming back to the facts of this case, notifications under Section 4 & 6 of 1894 Act were issued on 20.11.2006 and 13.04.2007 respectively. Argument raised by learned Counsel for the petitioners that proceedings initiated u/s 4 & 6 of 1894 Act have lapsed

in view of Section 11A of 1894 Act is misplaced. Hon'ble Apex Court in **“Satendra Prasad Jain v. State of U.P.”** reported as (1993) 4 SCC 369 held that if State has taken possession of the land exercising its power u/s Section 17(1) of the Act, then Section 11A, thereof, will have no application. Relevant para of the above judgment is reproduced hereunder:-

"15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

12. However, there is substance in the argument raised by learned counsel for the petitioners that since 01.01.2014, 2013 Act has come into effect and the determination of compensation after this date has to be in accordance with the same. In this context, it would be relevant to have a look at Section 24(1) of the 2013 Act:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

- (a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
- (b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”*

13. Since, it is admitted position of fact that qua 17 Kanal 2 Marla of land belonging to petitioners, no award was passed till 01.01.2014, any subsequent award has to be as per the provisions of 2013 Act and anything done in its contradiction would not have the authority of law. Submission by learned counsel for the respondents that most of the petitioners have already received the compensation as per order dated 09.10.2017 and hence thus, are not entitled for any revised compensation, is devoid of any merit as there cannot be any estoppel against law.

14. Further, learned Counsel for the petitioners has also raised another pertinent question that market value in present case should not

be determined from the date of notification under Section 4 of the Act, rather it has to be seen as on 01.01.2014, as held by Hon'ble Allahabad High Court in "***Ishan International Educational Society Vs. State of U.P. and others***" reported as 2017 (123) ALR 558. It has further been pointed out by him that Special Leave Petition filed against this judgment was dismissed by a three Judges Bench of the Hon'ble Supreme Court of India on 09.07.2017 and review petition filed therein was also dismissed on 05.12.2017. He further contends that concerned department of the Government of India vide instructions/directions dated 26.10.2015 (hereinafter referred as 2015 instructions) has communicated that the date for determination of market value/compensation in such cases should be taken as 01.01.2014 and contends that even if these instructions have not been placed before the parliament as stipulated under section 113(2) of 2013 Act, the same are still enforceable as the aforementioned requirement is only directory and not mandatory.

14.1 I find substance in the submissions made by learned counsel for the petitioners in this regard. In cases where acquisition proceedings started in accordance with 1894 Act but award could not be passed, the pivotal question in such circumstances would be as to whether the market value has to be determined on the date of notification under Section 4 of 1894 Act or any other date. Provisions of 2013 Act are required to be examined in the proper context to trace the date on which market value is required to be assessed. A perusal of clause (a) to sub-Section 1 of Section 24 shows that in case there is no award under Section 11 of 1894 Act, provisions of 2013 Act relating to determination of compensation are to be made applicable. Resultantly,

the amount of compensation has to be assessed by following the principles laid down and envisaged under Sections 23 & 26 of 2013 Act. Relevant portion thereof is reproduced hereunder:-

"23. Enquiry and land acquisition award by Collector.—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 21, to the measurements made under Section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—

- (a) the true area of the land;
- (b) the compensation as determined under Section 27 along with Rehabilitation and Resettlement Award as determined under Section 31 and which in his opinion should be allowed for the land; and
- (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.....

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

- (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
- (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
- (c) consented amount of compensation as agreed upon under sub-Section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

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

14.2 Section 23 read with proviso to sub-Section 1 of Section 26 of 2013 Act shows that the date for determination of market value has to be the date on which the notification under Section 11 of 2013 Act was issued. As the acquisition proceedings in this case were initiated based on notifications under Section 4 and 6 of 1894 Act, and commenced prior to coming into force of 2013 Act, there was no notification made under Section 11 of 2013 Act. There is no suggestion by the legislature under the provisions of 2013 Act that in such a scenario, for the purposes of Section 26, the date of notification under Section 4 of 1894 Act has to be considered as the date relevant for the purpose of determination of market value by treating it to be the date of notification under Section 11 of 2013 Act. In that eventuality, it needs to be examined that in such circumstances, whether Reference Date (i.e. 01.01.2014) as suggested by the 2015 instructions, is rationally appropriate, being the date when Section 11 of 2013 Act itself came into existence on the statute book.

14.3 In the absence of any specific or collateral provision to cater the situation in hand, the position has to be dealt with by considering and relying upon the object and purpose of the 2013 Act, which primarily has been enacted “to provide a just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition”. In the light thereof, in case the date of notification under Section 4 of 1884 Act is taken to be the relevant date for the purposes of determination of compensation in terms of Section 23 & 26 of 2013 Act, it would defeat the very goal and intent of the enactment. Rather, on the contrary, it

would tantamount to granting legal umbrage to the actions of the respondent government while delaying the acquisition process & would place the land owners in extremely disadvantageous position.

14.4 In the present facts and circumstances and the situation faced therewith, it is appropriate to note here, as argued by the learned counsel for the petitioners as well, that concerned department of the Government of India, in relation to the applicability of the provisions of 2013 Act in such situations, while responding to an issue raised by Government of Maharashtra, vide directions/instructions dated 26.10.2015, communicated that the date for determination of market value/compensation in terms of Section 23 read with Section 26 of 2013 Act should be taken as 01.01.2014. Relevant part of letter dated 26.10.2015, is extracted as under:-

“Dear

Please refer to your letter No.R&FD/General-2014 CR- 31/A4, dated the 11th September, 2014, regarding directions under Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 21013.

2. *The issues raised by you along with the view of this Department were sent to the Department of Legal Affairs, Ministry of Law & Justice for opinion in the matter. The issues raised by the Government of Maharashtra and the opinion of the Department, as concurred in by the Department of Legal Affairs, thereon are enumerated below:-*

Sr. No.	Issues raised by the Government of Maharashtra	Opinion of the DoLR
1.	<i>While determining the amount of compensation under Section 27 of the RFCTLARR Act, 2013 of</i>	<i>Under Section 26 of the RFCTLARR Act, 2013 market value of land is determined while under Section 27, value</i>

	<i>Hon'ble Supreme Court's order are followed or cost of assets have to be separately computed in addition to cost of land?</i>	<i>of all assets attached to the land is added to the market value to determine, the amount of compensation. Thus, it is not contradictory to the Supreme court's orders quoted in the letter of Maharashtra Government.</i>
2.	<i>Under Section 24(1), the reference date for calculating 12% interest should be date of preliminary notification under Land Acquisition Act, 1894</i>	<i>Under Section 24(1), the reference date for calculating 12% interest should be date of preliminary notification under Land Acquisition Act, 1894. Department of Land Resources agrees to this, as there is no other reference date, than can be treated as equivalent to date of SIA notification under the RFCTLARR Act, 2013.</i>
3.	<i>For calculation of market value under Section 24(10(a), reference date should be 01.01.2014 (commencement of RFCTLARR Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894?</i>	<i>The reference date for calculation of market value under Section 24(1)(a) should be 01.01.2014 (commencement of RFCTLARR Act, 2013), as the Sections reads in many cases of Land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply. Under Section 26 reference date is date of preliminary notification, but Section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 01.01.2014) within a view to ensure that the land owned/farmers/affected families get enhanced compensation under the</i>

		<i>provisions of the RFCTLARR Act, 2013 (as also recommended by Standing Committee in its 31st report).</i>
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*Yours sincerely,
Sd/-
(Hukam Singh Meena)*

*Shri Manu Kumar Srivastava
Principal Secretary
Revenue & Forest Department,
Government of Maharashtra,
Mantralaya Mumbai-400032*

Copy to:-

All Principal Secretaries of States/UTs (except of States of Maharashtra & Govt. of Jammu & Kashmir) for information and necessary action.

*(Hukum Singh Meena)
Joint Secretary (LR)”*

14.5 It requires specific mention here that as per the content of this letter, these 2015 instructions refer to power u/s 113 of the 2013 Act, which vests in Central Government to issue necessary directions to remove difficulties in the implementation of the Act. Section 113 of 2013 Act is reproduced hereunder:

“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.”*

14.6 Apart from ***Ishan’s case*** (supra), legal basis of these directions has been discussed and upheld by Allahabad High Court in

some other cases as well, and relying upon these 2015 instructions, ordered to assess the market value as on 01.01.2014 in such circumstances. Few of these cases are cited below:

- i) **"Krishna Autar & others v. State of U.P. & others"**, reported as 2017(125) ALR 70;
- ii) **"Jila Singh @ Jile Ram & others v. Union of India & others"**, reported as 2017(125) ALR 594.

14.7 Different High Courts have taken into consideration the judgments passed by the Allahabad High Court in this regard and have agreed to the reasoning behind these judgments and therefore, various States in such situations are considering 01.01.2014 as the date of notification under Section 11 of 2013 Act. Judgments of few other High Courts which have followed the line taken by Allahabad High Court are cited as below:

- a) Rajasthan High Court (DB) : **"State Of Rajasthan & others v. Sita Ram & others"**, reported as 2021(218) AIC 401
- b) Madras High Court : **"N.Laxmi Srinivas v. State of Tamil Nadu & others"**, in W.P.No. 3504 of 2023 and W.M.P.No. 3548 of 2023 decided on 08.02.2023.

14.9 Even the Apex Court in **"Hori Lal v. State of Uttar Pradesh & others"**, reported as 2019(1) R.C.R.(Civil) 968, upheld the judgment of Allahabad High Court which in similar circumstances took 01.01.2014 as the base date for determination of the compensation. For convenience, relevant paras of aforesaid judgment are reproduced hereunder:-

"18. As mentioned above, the High Court held that in the light of the stand taken by the State contending in their counter that the appropriate

date for determining the market value of the appellant's acquired land would be the date, which is declared by the Central Government, i.e., "01.01.2014" and, therefore, the State would determine the compensation payable to the appellant accordingly. This order is not under challenge in these proceedings.

19. *Indeed, once the State took a defense in this case that the compensation in the case of the appellant would be determined keeping in view 01.01.2014 to be the date as the basis, the appellant should feel satisfied with this stand. The apparent reason is that though the acquisition was made under the old Act in 2002 yet the appellant was held entitled to get compensation under the New Act, 2013 by taking 01.01.2014 as the base date for determination of the compensation.*
20. *We, therefore, find no good ground to accept the submission of the learned counsel for the appellant when he contended that the date for determining the compensation should be the date on which the Land Acquisition Officer passed the award. This argument does not have any basis and is, therefore, not acceptable for the simple reason that such date is not provided either in the old Act, 1894 or in the Act, 2013.*
21. *Indeed, how the compensation is required to be determined and with reference to what date, is provided under the Act and admittedly the date suggested by the learned counsel is not the date prescribed either in the old Act or the new Act. This submission has, therefore, no merit and deserves to be rejected. It is accordingly rejected.*
22. *We, therefore, find no good ground to take a different view than what was taken by the High Court in the impugned order."*

14.10 Similarly, Hon'ble Apex Court in the case of "**Aligarh Development Authority v. Megh Singh & others**" in Civil Appeal No.4821 of 2016 decided on 12.2.2019, directed to re-determine the compensation on the footing that notification under Section 4 of the 1894 Act must be deemed to be as on 01.01.2014. Relevant para of the same is reproduced hereunder:

"8. Given the fact that the State itself has in other cases relied upon the Central Government's order under Section 113 and stated that compensation in similar cases should not be on the basis of the Section 4 notification which could be 10-15 years before, but on the footing, that it should be recorded as 01.01.14 in all cases, we dispose of this interlocutory application by setting aside the Award dated 05.11.2016 and directing the learned Special Land Acquisition Officer, Aligarh, to redetermine the compensation on the footing that the Section 4 notification must be deemed to be as on 01.01.2014. The Special Land Acquisition Officer, Aligarh, shall re-determine the compensation payable within a period of eight weeks from this judgment."

14.11 Interestingly, in the review petition of Ishan's case (supra), titled as "**State of U.P. & others v. Ishan International Education Society & others**", reported as 2022(151) ALR 427, it was argued by the Union of India that a clarification was issued by the Government of India on 26.09.2018 that direction dated 26.10.2015 were not issued under Section 113 of the 2013 Act. However, even the review was dismissed and it was also observed that even Hon'ble Apex Court has taken into consideration the 2015 instructions, while passing orders on

assurance from the state. It was also observed by the Hon'ble Bench that even in cases where directions have been passed otherwise, matter has been stayed by the Hon'ble Apex Court. Relevant para of the same is reproduced hereunder:

"38. Though dismissal of the Special Leave Petition may not be a bar for entertaining the Review Application, however, the fact remains that where this Court had taken the view that crucial date for assessment of compensation is January 1, 2014, Special Leave Petitions filed by State and Ghaziabad Development Authority in the case in hand were dismissed by Hon'ble the Supreme Court, whereas three Special Leave Petitions, as referred to in the preceding paragraphs, have been entertained thereafter and are pending consideration. Where the view taken by this Court was that the land owners are not entitled for assessment of compensation as on January 1, 2014."

15. At the same time it is also required to notice that a coordinate bench of this Court in **"State of Haryana & another v. Rajbir & another"**, in case bearing no RFA 309-2021 decided on 19.04.2022 held that these directions are arbitrary; without procedural compliance and hence cannot be followed and date of market value in such cases, shall be determined on the basis of date of Section 4 notification only. Though facts of the present case are a bit different as in the present case, land was acquired by the state exercising its special power u/s 17 of 1894 Act, as per which land immediately vests with the government and benefit of section 24 of 2013 Act cannot be availed by the landowners. This specific scenario and applicability of 2015 instructions in such scenario was neither raised nor discussed by

the Hon'ble Single Bench. Apart from that there are certain other legal aspects as well, in relation to 2015 instructions, which have been submitted before this bench but were not submitted before the bench in **Rajbir's** case (supra).

15.1 Firstly, so far as the aspect of non compliance of procedural requirement as stipulated under section 113(2) is concerned, there is substance in the argument raised by the learned Counsel for the petitioners that this requirement is only directory and not mandatory. Reliance in this regard can be placed on judgment of Hon'ble apex Court in "**Atlas Cycle Industries Limited & Others v. State of Haryana**", reported as (1979) 2 SCC 196, wherein, it was held that non-laying of the notification before both Houses of Parliament cannot result in nullification of the notification. Concluding para of this judgment is reproduced here under:

"32. From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification. Accordingly, we answer the aforesaid question in the negative. In view of this answer, it is not necessary to deal with the other contention raised by the respondent to the effect that the aforesaid notification being of a subsidiary character, it was not necessary to lay it before both Houses of Parliament to make it valid."

15.2 Even the procedural aspect in relation to these 2015 instructions, issued within the purview of powers of Central Government specified u/s Section 113 of 2013 Act, has been dealt by Patna High Court in "**Ranjit Kumar & others v. State of Bihar & others**", reported as 2021(5) B.L.Jud. 475 and relying upon **Atlas's** case (supra), it was held that such compliance is only directory and not mandatory. Relevant paras of this judgment are reproduced hereunder:

"37. A question was raised on behalf of the respondents that any order or direction issued by the Central Government in exercise of power to remove the difficulties under Section 133 of the L.A. Act, 2013, must be laid before each House of the Parliament as contemplated under sub-Section (2) thereof. It has been attempted to be argued that since the order/direction, dated 26.10.2015, was, admittedly, not laid before either House of the Parliament, the same cannot have statutory force of binding nature. In response to the said submission, Mr. Kaushik has argued that only orders passed under Section 113 of the L.A. Act, 2013, are required to be laid before the Parliament and since the said communication, dated 26.10.2015, is in the nature of direction, the same need not be laid as sub-Section (2) of Section 113 of the L.A. Act, 2013, refers to orders only and not directions. He has relied on Supreme Court's decision, in case of Atlas Cycle Industries Limited and Others v. State of Haryana, reported in (1979) 2 SCC 196, and, in case of Quarry Owners' Association v. State of Bihar and Others, reported in (2000) 8 SCC 655, to contend that since the requirement is of simple laying before the Parliament, without any adverse consequence in the event of default, the same

cannot be considered as inoperative and invalid only because it was not laid before the Parliament.

38. *In the light of Supreme Court's decision, in case of Hori Lal (supra), and dismissal of Special Leave Petition, in case of Ishan International Educational Society (supra), whereby the decision of Allahabad High Court to treat the date of notification as the date of commencement of the Act, i.e. 01.01.2014, effect of non-compliance of the requirement under sub-Section (2) of Section 113 of the L.A. Act, 2013, for the purpose of present adjudication, is not of much consequence for the present adjudication, in my view. However, I must notice the Supreme Court's decision, in case of Atlas Cycle Industries Limited and Others (supra), wherein it has been held that in case any order or notification is required to be simply laid before the Parliament without any adverse consequence in the event of default, such provision will have to be held to be directory in nature and nonplacing of the order before the Parliament would not render the order itself invalid.*
39. *In all fairness, I should record the submission made by Mr. Kaushik that sub-Section (2) of Section 113 of the L.A. Act 2013, requires only orders to be placed before the Parliament and communication, dated 26.10.2015, being in the nature of direction, the same is not required to be placed in the Parliament, which aspect has been dealt with by the Division Bench of Allahabad High Court, in case of Ishan International Educational Society (supra), which has been upheld by a three-Judge Bench of the Supreme Court in the order dated 19.07.2017, in case of Ghaziabad Development Authority v.*

Ishan International Educational Society and Ors. (supra). In the said order dated 19.07.2017, the Supreme Court did not find any 'legal and valid ground for interference'. This Court is, therefore, required to follow what has been laid down by a Division Bench of Allahabad High Court in case of Ishan International Educational Society (supra). Mr. Kaushik is correct in his submission that the requirement of laying before the Parliament of an order under Section 113(2) of the L.A. Act, 2013, is directory in nature since the requirement is of simply laying before the Parliament. Such order cannot be said to be under the purview of modification by the Parliament and requirement for laying before the Parliament is for the simple purpose of ensuring accountability of the executive Government to the Legislature. "Where any document, rule or notification requires placement before any House or when placed, the said House, subject to its procedure, gets the right to discuss the same, they may put questions to the Ministry concerned", the Supreme Court has remarked in case of Quarry Owners' Association (supra) (Paragraph 48). For the said limited purpose, an order is to be placed before the Parliament as contemplated under sub-Section (2) of Section 113 of the L.A. Act, 2013.

40. *I have, thus, no hesitation in concluding, in view of the aforesaid discussions that: -*
- (i) *in a case where the land acquisition proceedings had commenced under the provisions of L.A. Act, 1894, but award was not made prior to 01.01.2014, under Section 11 of the said Act, all provisions of the L.A. Act, 2013 shall apply for determination of the amount of compensation and the date of determination of market value of the land should be treated as 01.01.2014 in the*

light of the decision of the Central Government as contained in letter/communication dated 26.10.2015 (supra).

- (ii) *requirement of laying any order before the Parliament under sub-Section (2) of Section 113 of the L.A. Act, 2013, is directory in nature for default of which the order passed under Section 113 of the L.A. Act, 2013, cannot be said to be inoperative or invalid."*

15.3 Secondly, a careful perusal of 2015 instructions reveals that a later date of determination of market value (i.e. 01.01.2014) was suggested not only after obtaining a legal opinion from Department of Legal Affairs, Ministry of Law & Justice; but it was also in accordance with the recommendation by Parliamentary Standing Committee in its 31st Report with a view to ensure that the land owners/farmers/affected families get enhanced compensation under the provisions of the 2013 Act. In that context, it becomes imperative to trace a brief legal history of Section 24(1) of 2013 Act to arrive at a fair conclusion. However, before that, it is necessary to briefly discuss the relevancy of the Parliamentary Committee Report (PSC) in the context of their legal & persuasive value. In "**Kalpana Mehta v. Union of India**", reported as AIR 2018 (SC) 2493, a Constitution Bench of Hon'ble Apex Court held that though such reports cannot be decisive, and the Court is free to arrive at a different conclusion, however, at the same time, PSC Report can be used to evaluate the historical background of a law, or the nature of the problem that a statute sought to cure alongwith holding that a PSC Report has persuasive value while resolving an ambiguity in the wording of a statutory provision. Relevant para of the same is reproduced hereunder:-

“117. From the aforesaid, it clear as day that the Court can take aid of the report of the parliamentary committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of the Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment. Further, it is quite vivid on what occasions and situations the Parliamentary Standing Committee Reports or the reports of other Parliamentary Committees can be taken note of by the Court and for what purpose. Relying on the same for the purpose of interpreting the meaning of the statutory provision where it is ambiguous and unclear or, for that matter, to appreciate the background of the enacted law is quite different from referring to it for the purpose of arriving at a factual finding. That may invite a contest, a challenge, a dispute and, if a contest arises, the Court, in such circumstances, will be called upon to rule on the same.”

Therefore, it can be said without any doubt that aid of Parliamentary Committee Report can be taken to interpret provisions for the purpose of interpreting the meaning of the statutory provision where it is ambiguous and unclear.

15.4 A perusal of 31st Report of Standing Committee brings to the fore that Section 24 as it stood in the original bill i.e. "The Land Acquisition, Rehabilitation and Resettlement Bill, 2011" (hereinafter referred as LARR Bill) envisaged that if the award under section 11 thereof, has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the

provisions of this Act. Draft Section 24 as per LARR Bill is reproduced hereunder:-

- “24. (1) Notwithstanding anything contained in this Act, in any case where a notification under section 4 of the Land Acquisition Act, 1894 was issued before the commencement of this Act but the award under section 11 thereof has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the provisions of this Act.*
- (2) Where possession of land has not been taken, regardless of whether the award under section 11 of the Land Acquisition Act, 1894 has been made or not, the process for acquisition of land shall also be deemed to have lapsed and the appropriate Government shall initiate the process of acquisition afresh in accordance with the provisions of this Act.”*

15.5 A further perusal of 31st report of Standing Committee reveals that many stakeholders objected that the proceedings already initiated under the existing Land Acquisition, 1894 should not lapse as it would lead to time and cost over-run in many projects. Therefore Standing Committee recommended to incorporate necessary provisions to be framed under the new Act with a view to ensuring that the land owners/farmers/affected families get enhanced compensation and at the same time, the pace of implementation of infrastructural projects is not adversely impacted. Recommendation of the Standing Committee with respect to clause 24 of the LARR Bill are reproduced hereunder:-

“Recommendation of the Committee

16.5 The Committee note that Clause 24 of the Bill provides that land acquisition cases/process shall be invalid on enactment of the new Act in cases where Collector has not given award or possession of the land has not been taken before the commencement of the proposed legislation. Some of the representatives of the industry and also the Ministries like Railways and Urban Development submitted before the Committee that land acquisition proceedings already initiated under the existing Land Acquisition, 1894 should not lapse as it would lead to time and cost over-run in many infrastructural projects. However, in such cases land compensation and R&R benefits could be allowed as per the provisions of LARR Bill. The Committee would like the Government to re-examine the issue and incorporate necessary provisions in the Rules to be framed under the new Act with a view to ensuring that the land owners/farmers/affected families get enhanced compensation and R&R package under the provisions of the LARR Bill, 2011 and at the same time, the pace of implementation of infrastructural projects is not adversely impacted.”

Source: This report can be accessed on the website of Parliament of India i.e. <https://eparlib.nic.in/> , under the specific url https://eparlib.nic.in/bitstream/123456789/64751/1/15_Rural_Development_31.Pdf”

15.6 Therefore, while bringing section 24 to the present form, though the objective was to save the in process acquisitions, but at the same time the intent was also to provide enhanced compensation as per the 2013 Act. 2015 instructions, which were issued by the Central Government after having opinion from Department Of Legal Affairs, Ministry Of Law And Justice, categorically refers to the 31st report of the Standing Committee while specifying the reference date with

respect to Section 24(1)(a) of the 2013 Act. In that scenario, what logically follows is that mention of reference date as date of Section 4 notification under the 1894 Act was deliberately avoided by the parliament while amending Section 24(1)(a) of the 2013 Act. Additionally, it also follows that 2015 Instructions, while suggesting a later date of determination of market value (i.e. 01.01.2014) with a view to ensure that the land owned/farmers/affected families get enhanced compensation under the provisions of the 2013 Act, was in furtherance of the object and purpose of the 2013 Act.

15.7 There is another aspect as well, a law/statue/rule/provision can be made retrospective only by express provision or by necessary implication. In this case, there is no express provision under 2013 Act, which makes Section 26 read with section 23 of the Act as retrospective. On the contrary, retroactive operation of section 24(1)(a) has been specifically provided by the legislature itself. But, If the date of Section 4 notification in 1894 Act, is taken as the date of section 11 notification in context of section 26 of 2013 Act, it would amount to giving retrospective effect to Section 26 of the 2013 Act, and thus would not be legally tenable preposition being contrary to the provisions of the 2013 Act as propounded by the legislature. Reliance in this regard can be placed on a Constitution Bench judgment in **"Commissioner of Income Tax v Vatika Township"**, reported as (2015) 1 SCC 1, wherein, Hon'ble Apex Court held that rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. Relevant paras of the same are reproduced hereunder:

- "31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips vs. Eyre*[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.
32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

15.8 In view of the above discussion and considerations, it can be observed that the scope of 31st report of the Parliamentary Standing Committee besides the draft provision of Section 24 and the final enactment of 2013 Act, which was most relevant for determination of issue in hand, was never argued before the Coordinate Bench and therefore, Hon'ble Bench was not in a position to deliberate upon the same. The discussion by the Coordinate Bench was primarily regarding the power exercised by the Central Government under Section 113 of 2013 Act, while the issue raised before this Court is legal intent behind the 2013 Act, which lead to 2015 instructions, specifically taking into consideration the 31st report of Parliamentary Standing Committee and the retrospective application of Section 26. On this account, guided by the doctrine of ***sub silentio***, it would not be appropriate to follow the ratio laid down in the case of ***Rajbir's*** case (supra) in the facts and circumstances of the present case. The meaning of a judgment being *sub silentio* has been explained by Hon'ble Apex Court in "***Municipal Corporation of Delhi Vs. Gurnam Kaur***" reported as (1989) 1 SCC 101, wherein, Hon'ble Apex Court referred to the explanation provided by Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. was referred, which is as below:-

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the

particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.”

15.9 Accordingly, primarily relying upon the fact that even Hon’ble Apex Court based its judgment in **Hori Lal’s case** (supra) and in **Aligarh Development Authority’s case** (supra) on 2015 instructions, and also taking into consideration the object and purpose of the 2013 Act as discussed above, respondent No 3 is directed to determine the award by assessing the market value of the remaining land in question, measuring 17 kanal 2 marlas, as on 01.01.2014.

16. Therefore, impugned order dated 09.10.2017, to the extent it determines the compensation to be awarded to the petitioners as per the enhancement assessed by this Court upon vide decision dated 12.04.2008, is liable to be set aside. Respondent No 3 is directed to pass fresh award in accordance with 2013 Act by considering 01.01.2014 as the date of notification under Section 11 thereof, within a period of three months from the date of receipt of certified copy of this order.

17. There is also substance in the argument raised by learned Counsel for the petitioners that possession was taken in 2007 itself and since then, the petitioners have been deprived from the beneficial use of their own land without any compensation. Even in the present facts, the interest on the compensation award would be available to them only from the date of award and thus, in this situation, they are entitled to be granted damages / compensation from the date, possession was

taken over from them. Reliance in this regard can be placed on R.L. Jain's case (supra) and other cases cited by the Counsel for petitioners. Relevant para of R.L. Jain's case (supra) is reproduced here under:

“18. In a case the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.”

18. Accordingly, respondent No 3 is also directed to determine the damages for use of the land to which the land owners are entitled in addition to determining the compensation amount payable to them in view of the discussion made hereinabove.

19. Writ petition is disposed of in the above terms.

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20. Pending miscellaneous application(s), if any, shall also stand disposed of.

Oct 05, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No