

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.		LPA-4965-2018
National Highway Authority of India		 Appellant
	Versus	
Resham Singh and others		 Respondents

2.		LPA-428-2019
National Highway Authority of India		 Appellant
	Versus	
Raghav Aggarwal		 Respondent

3.		LPA-475-2019
National Highway Authority of India		 Appellant
	Versus	
Jaswinder Kaur and others		 Respondents

4.		LPA-224-2019
National Highway Authority of India		 Appellant
	Versus	
Kashmir Kaur and others		 Respondents

5.		LPA-4968-2018
National Highway Authority of India		 Appellant
	Versus	
Bishan Dass deceased through his Lrs and others		 Respondents

6.		LPA-4976-2018
National Highway Authority of India		 Appellant
	Versus	
Waryam Singh and others		 Respondents

7.	National Highway Authority of India through its Project Director	LPA-52-2019
		 Appellant
	Versus	
	Baldev Singh and others	
		 Respondents

8.	National Highway Authority of India	LPA-280-2019
		 Appellant
	Versus	
	Baljinder Singh and others	
		 Respondents

9.	Surinder Kumar	CWP-18775-2019
		 Petitioner
	Versus	
	Union of India and others	
		 Respondents

10.	Guranhat Singh and another	CWP-18799-2019
		 Petitioners
	Versus	
	Union of India and others	
		 Respondents

11.	Harbhajan Singh and another	CWP-28334-2018
		 Petitioners
	Versus	
	Union of India and others	
		 Respondents

12.	Gursharnpreet Singh	CWP-14487-2019
		 Petitioner
	Versus	
	Union of India and others	
		 Respondents

13.
National Highway Authority of India and others

LPA-1536-2019

. . . . Appellants

Versus

Ram Kishan Gupta and another

. . . . Respondents

14.
National Highway Authority of India and others

LPA-1537-2019

. . . . Appellants

Versus

Devendar Kumar Gupta and another

. . . . Respondents

15.
National Highway Authority of India and others

LPA-1539-2019

. . . . Appellants

Versus

Rajeev Aggarwal and another

. . . . Respondents

16.
National Highway Authority of India and others

LPA-1550-2019

. . . . Appellants

Versus

Devendar Kumar Jain and another

. . . . Respondents

17.
Amarjit Singh and others

CWP-25229-2019

. . . . Petitioners

Versus

Union of India and others

. . . . Respondents

18.

National Highway Authority of India
Versus
Kulbhushan Singh and others

LPA-324-2019
... Appellant

... Respondents
19.

Waryam Singh
Versus
Union of India and others

LPA-118-2020
... Appellant

... Respondents
20.

Het Ram and others
Versus
National Highway Authority of India and others

LPA-558-2019
... Appellants

... Respondents

Reserved on: 20.03.2023
Date of Decision: 12.04.2023

CORAM: HON’BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON’BLE MRS.JUSTICE SUKHVINDER KAUR

Present: - Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Mr. Nitin Goyal,
Mr. R.S. Madan, Mr. Rishi Kaushal and
Mr. Mahender Joshi, Advocate for the appellant-NHAI in
LPA Nos.4965, 4968, 4976 of 2018 and 52, 1536, 1537,
1539 and 1550-2019.

Mr. D.K. Singal, Advocate for the appellant-NHAI in
LPA Nos.475, 224, 280 and 428 of 2019.

Mr. Shailendra Jain, Senior Advocate with
Mr. Raj Karan Singh Verka, Advocate for the
Petitioner(s) in CWP No.28334-2018, CWP-14487-2019 and
CWP-25229-2019.

Mr. Satbir Rathore, Advocate for the petitioner(s) in
CWP Nos.18775 and 18799 of 2019 and for
Respondent No.1 in LPA No.4965-2018,
Respondent Nos.1 to 4 in LPA-428-2019,
Respondent Nos.1 and 2 in LPA-475-2019,
Respondent Nos.1 to 5 in LPA-224-2019,
Respondent No.1 in LPA-4976-2018,

Respondent No.1 in LPA-52-2019 and
Respondent No.1 in LPA-280-2019,
Respondent No.1 & 2 in LPA-324-2019,
Respondent No.1 in LPA-4968-2018 and for
the appellant(s) in LPA-118-2020.

Mr. Bhupender Singh, Advocate for Mr. Rishi Kaushal, Advocate
for respondent Nos.1 and 2 in CWP No.28334-2018,
CWP-14487-2019 and CWP-25229-2019.

Mr. Sudhanshu Makkar, Advocate for respondent No.1 in
LPA Nos.1536, 1537, 1539 and 1550 of 2019.

Mr. Arjun Sheoran, DAG, Punjab.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

M.S. RAMACHANDRA RAO, J.

In this batch of LPAs and Writ Petitions, common questions of
law arise and so they are being disposed off by this common order.

A brief overview of the facts

The respondents in the LPAs (except LPA-558-2019), the
appellants in LPA-558-2019 and the petitioners in the Writ Petitions are
land owners whose lands had been acquired under the National Highway Act,
1956 by the National Highway Authority of India (for short ‘the NHAI’) for
the purpose of widening/four-laning of certain National Highways.

Thereafter, matters were referred to the concerned District
Revenue Officer-cum- Land Acquisition Officer (the Revenue Authority of the
State) (hereinafter referred to as the ‘**competent authority**’) and he passed
awards and awarded compensation, but while doing so, he did not grant
benefits akin to those under Section 23, Section 28 and Section 34 of the Land
Acquisition Act, 1894.

Writ Petitions were filed in this Court challenging the award of the competent authority by landowners without approaching the arbitrator under section 3G (5) of the National Highway Act, 1956.

They were partly allowed by a learned Single Judge of this Court which judgments are challenged by the NHAI in the Letters Patent Appeals being LPAs-4965-2018, 428-2019, 475-2019, 224-2019, 4968-2018, 280-2019, 52-2019.

In LPA-324-2019, the landowners did approach the Arbitrator and he passed an award under section 3G(5), but the said award was not challenged by them under Section 34 of the Arbitration and Conciliation Act, 1996. Instead the land owners filed Writ Petition in this Court which was allowed by the learned Single Judge. The said order is challenged by the NHAI in the said LPA.

In LPA-558-2019, the landowners had filed a writ petition challenging the arbitral award passed on 04.05.2016 by the arbitrator confirming the order dt.30.04.2012 passed by the competent authority, but the same was dismissed by the learned Single Judge on the ground that they have a remedy to challenge the same under section 34 of the Arbitration and Conciliation Act, 1996. This judgment is challenged by them in the said LPA.

In CWP-18775-2019, CWP-25229-2019, CWP-14487-2019 and CWP-18799-2019, the landowners had not approached the statutory Arbitrator for enhancement of compensation granted by the competent authority under the National highways Act,1956 and had straight away approached this Court seeking the benefits akin to those granted under Section 23 and 28 of the Land Acquisition Act, 1894.

Contentions of the land owners

The landowners place reliance on the judgment of the Division Bench of this Court in *M/s Golden Iron and Steel Forgings vs. Union of India and Ors.*¹

In *M/s Golden Iron and Steel Forgings* (1 supra), a Division Bench of this Court held that in acquisitions of land under the National Highway Act, 1956, solatium and interest in terms of Section 23(2) and Section 28 of the Land Acquisition Act, 1894 should be granted to landowners and Section 3-J and Section 3-G of the said Act, which did not provide for payment of solatium and interest and other statutory benefits similar to the provisions contained in section 23(1-A), section 23(2) and section 28 of the Land Acquisition Act, 1894, were struck down.

This judgment was approved by the Supreme Court in *Union of India and another vs. Tarsem Singh and others*².

The Supreme Court in *Tarsem Singh* (2 supra) noted that solatium and interest were awarded to landowners for compulsory acquisition of their lands for the purpose of National Highways *until* the National Highways Laws (Amendment) Act, 1997 was enacted; after the Land Acquisition Act, 1894 was repealed and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) came into force, under section 105 of the said Act, a notification dt.28.08.2015 was issued directing that provisions of the 2013 Act relating to determination of compensation in accordance with the First Schedule would be extended to cases of land acquisition under the enactments

¹ 2011(4) R.C.R. (Civil) 375 (DB) dt.28.03.2008

² 2019(9) SCC 304

specified in the Fourth Schedule; that the National Highways Act, 1956 was also mentioned in the Fourth Schedule to the 2013 Act; since the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, it cannot contend that landowners, who were not granted solatium and interest in arbitral awards, should avail the remedy under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the awards passed under the National Highways Act, 1956. It therefore declared that the provisions of the Land Acquisition Act, 1894 relating to solatium and interest contained in section 23(1-A), section 23(2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act, 1956, and section 3-J of the National Highways Act, 1956 was declared unconstitutional to the extent it did not grant the said benefits to land owners.

Counsel for the land owners contended:

- a) In a welfare State, statutory authorities are bound to pay adequate compensation to the land losers; inspite of delay, the High Court can grant relief since there is a compelling demand for justice; and delay and laches is not an absolute impediment to deny exercise of discretion in favour of the land loser when no third party interest is involved. They contended that no hard and fast rule exists that the High Court should always refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay or is otherwise guilty of laches. They relied on the decision in *Tukaram Kana Joshi and Others Vs. MIDC and Others*³,

³ 2013(1) SCC 353

Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh and Another⁴.

- b) That the decision rendered by a Division Bench of this Court, in ***M/s Golden Iron and Steel Forgings*** (1 Supra) delivered on 28.03.2008 was not stayed by the Supreme Court in Civil Appeal No.10695 of 2011 filed challenging it and the same was disposed of on 03.08.2017 as settled out of Court. They contended that the said decision was binding on the competent authority and yet in the awards passed in all the matters in this batch after 28.03.2008 (some on 23.4.2008 and others on 31.12.2014 and 21.12.2009), deliberately the competent authority passed awards denying the benefits under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894 to the land owners who are deprived of land by virtue of notifications under the NHAI Act, 1956; this was impermissible on the part of the competent authority and amounts to contempt of the orders passed by this Court; and technical pleas ought not to be raised by the appellants/statutory authorities to deny legitimate claims flowing from statute to land losers.
- c) Prior to 1997, benefits under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894 were granted to all land losers whose lands were acquired under the Land Acquisition Act, 1894 for purpose of National Highways; the State itself had taken a decision that solatium and interest should be granted even in cases that arise between 1997 when the amendment was made to the NHAI Act, 1956 and 2015 (as recorded in ***Tarsem Singh*** (2 Supra)); and so the land owners are entitled to the said

⁴ 2021(1) SCC 804

benefits even if they did not challenge the awards of the competent authority before the arbitrator under Section 3J(5) of the NHAI Act, 1956 or even if they did not challenge any arbitrator's award passed under the said provision under Section 34 of the Arbitration and Conciliation Act, 1996 and they had directly filed Writ Petitions in this Court. It is contended that the NHAI cannot discriminate among the landowners and grant the said benefit to some of them and deny it to others similarly placed.

- d) That Supreme Court in ***Tarsem Singh*** (2 Supra) (at para 52 of the SCC) had declined to interfere even in cases where applications under Section 34 of the Arbitration and Conciliation Act, 1996 had not been filed challenging the awards of the competent authority under the National Highways Act, 1956 when the land owners had approached the High Courts directly under Article 226 of the Constitution of India as in *M/s Golden Iron and Steel Forging* (1 Supra) ; that remedy under Section 34 of the Arbitration and Conciliation Act, 1996 is not an effective alternative remedy because the Court cannot modify an erroneous arbitral award as was held in *NHAI Vs. M. Hakeem*⁵ and in other cases and so the writ petitions filed by them are maintainable.

Contentions of counsel for the NHAI

Shri Chetan Mittal, Senior Counsel for NHAI contends that in LPAs-4965-2018, 4976-2018, 52-2019, 324-2019, there is more than 10 years delay on the part of the landowners in challenging the awards passed by the competent authority; that in LPA-204-2020, 205-2020, there is more than 7 years delay on the part of the landowners in challenging the awards passed by

⁵ 2021 (9) SCC 1

the competent authority; that in LPAs-1536-2019, 1537-2019, 1539-2019, and 1550-2019, there is more than 3 years delay on the part of the landowners in challenging the awards passed by the competent authority; and on the ground of laches and delay in seeking relief before this Court, the landowners should be denied relief and orders of the learned Single Judge granting such relief should be set aside.

The following is the table submitted by the counsel for the NHAI:-

LPA No.	Date of Sec. 3-A Notification	Date of Award by competent authority	Whether challenged before the Arbitrator ?	Benefits granted	Delay in filing Writ Petition
LPA-4965-2018	24.12.2004	23.04.2008	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	10 years, 3 months, 22 days including the end date.
LPA-4968-2018	24.12.2004	23.04.2008	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	More than 10 years
LPA-4976-2018	24.12.2004	23.04.2008	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	10 years, 3 months, 22 days including the end date.
LPA-52-2019	24.12.2004	23.04.2008	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	10 years, 3 months, 22 days including the end date.
LPA-1536-2019	26.11.2009. 26.01.2010 & 04.05.2010	31.12.2014	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	3 years, 4 months, 7 days excluding the end date.
LPA-1537-2019	26.11.2009. 26.01.2010 & 04.05.2010	31.12.2014	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	3 years, 4 months, 11 days including the end date.
LPA-1539-2019	26.11.2009. 26.01.2010 & 04.05.2010	31.12.2014	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	3 years, 4 months, 11 days including the end date.
LPA-1550-2019	26.11.2009. 26.01.2010 & 04.05.2010	31.12.2014	No	Sec. 23(2) & Sec.28 of the L.A. Act, 1894	3 years, 4 months, 7 days excluding the end date.

LPA-324-2019	24.12.2004	14.12.2007	The respondents had invoked arbitration but had not filed objections under Section 34 of the Arbitration Act, 1996. The Claim regarding the Solatium & Interest was rejected by the Arbitrator.	Sec. 23(1)(A) & Sec.28 of the L.A. Act, 1894. (Note: The petitioner had invoked arbitration but had not filed objection under Section 34 of the Arbitration Act, 1996)	10 years, 7 months, 30 days excluding the end date.
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He contended:

a) On account of laches and delay in approaching this Court, no relief can be granted to any of the land owners and the benefit of ***Tarsem Singh*** (2 Supra) should be denied to all the land owners or in the alternative they should not be granted any interest on the enhanced amount of compensation for the period of delay in filing the Writs before the High Court. He relied upon the decisions in ***State of Himachal Pradesh and Others Vs. Rajiv and Another***⁶, ***New Okhla Industrial Development Authority Vs. Omvir Singh and Others***⁷, ***New Okhla Industrial Development Authority Vs. Rameshwar***⁸, ***Jaspal Singh and Others Vs. State of Haryana and Others***⁹, ***The Executive Engineer, Nimna Dudhna Project Vs. State of Maharashtra and Others***¹⁰ and ***Suresh Kumar and Others Vs. Union of India and Others***¹¹.

⁶ 2023 (2) RCR (Civil) 86 = Civil Appeal No.1278 of 2023 dt. 24.02.2023;

⁷ 2023 (1) ALT 54 : 2023 ALL SCR 429;

⁸ 2022 (4) DNJ 1428 : 2023 ALL SCR 88.

⁹ 2022 (4) DNJ 1299 : Civil Appeal 7516-7521 of 2022 dt. 20.10.2022

¹⁰ 2020 (3) SCC 255

¹¹ CWP-16168-2021 dt. 13.09.2021

- b) In cases where the Arbitrator had passed an award but the aggrieved land owner did not avail the remedy under Section 34 of the Arbitration and Conciliation Act, 1996, in view of the decision of the Mumbai High Court in *Sureshchandra Vs. The Secretary to Government of India, Ministry of Road Transport and Highway Transport*¹², relief should be denied under Article 226 of the Constitution of India to the land owners. He also relied on *M/s. SBP and Co. Vs. M/s Patel Engineering Ltd. and Another*¹³.
- c) Even if any relief is to be given to the land owners, still the benefit under Section 23(1-A) of the Land Acquisition Act, 1894 should be denied to them because the judgment in *Tarsem Singh* (2 Supra) was modified subsequently on 30.07.2021 in Civil Appeal No.7086 of 2019, and the benefit under Section 23(1-A) of the Land Acquisition Act, 1894, which had been granted in that judgment to land owners whose land was acquired under the National Highways Act, 1956, was withdrawn on the ground that Section 23(1-A) benefit was not present before any authority or the Supreme Court on the facts of the cases which were decided in *Tarsem Singh* (2 Supra).

He therefore contended that none of the land owners should have been granted the said relief by the learned Single Judge in the judgments which are in challenge in the LPAs and they are not entitled to grant of relief in that regard also in the Writ Petitions filed by them.

¹² Order dt.07.12.2021 in WP-1597-2020 (DB)

¹³ 2005 (8) SCC 618

Points for consideration

From the rival contentions of the parties, the following points for consideration arise:

- a) *Whether the landowners are entitled to additional market value (Section 23(1-A) of the Land Acquisition Act, 1894, solatium (Section 23(2) of the said Act) and interest (section 28 of the said Act) even though they were deprived of their land for the purpose of national highways/expansion of highways under the National Highways Act, 1956?*
- b) *Whether the landowners should be denied relief on the ground that they did not challenge the award of the competent authority under the National Highways Act, 1956 by way of arbitration under section 3G(5) of the said Act and had directly filed writ petitions in this Court for seeking benefits of section 23(1-A), section 23(2) and section 28 of the Land Acquisition Act, 1894?*
- c) *Whether the landowners, who are parties in LPA-324-2019 and who had invoked arbitration under section 3G(5) of the National Highways Act, 1956, but had not filed objections under section 34 of the Arbitration and Conciliation Act, 1996 and had approached this Court directly under Article 226 of the Constitution of India should be denied relief on the said ground?*
- d) *Whether the landowners should be denied relief on the ground of laches and if not, to what relief they are entitled?*
- e) *To what relief?*

Consideration by the Court

We shall first consider point (a) which is as under:

“(a)Whether the landowners are entitled to additional market value (Section 23(1-A) of the Land Acquisition Act, 1894, solatium (Section 23(2) of the said Act) and interest (section 28 of the said Act) even though they were deprived of their land for the purpose of national highways/expansion of highways under the National Highways Act,1956?”

Sections 23(1-A), section 23(2) and section 28 of the Land Acquisition Act, 1894 state as under:

“23. Matters to be considered in determining compensation.—

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the ¹[notification under Section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector’s taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector’s taking possession of the land.

²***[(1-A) In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum of such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the***

award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.]

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of ³~~[thirty]~~ per centum] on such market-value, in consideration of the compulsory nature of the acquisition.

28. Collector may be directed to pay interest on excess compensation.—

If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum, shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.”

Section 23(1-A) deals with **additional market value**. Section 23(2) deals with **solatium**, and Section 28 deals with payment of **interest** on excess compensation.

It is not in dispute that additional market value, solatium and interest under the above provisions were being awarded to landowners for compulsory acquisition of their lands for the purpose of national highways because such acquisitions till 1997 were under the Land Acquisition Act, 1894.

A National Highways Laws (Amendment) Ordinance, 1997 was promulgated by the President of India on 24.01.1997 amending the National Highways Act, 1956 introducing Section 3A empowering the Central Government to acquire land for the building, maintenance, management or operation of a national highway or part thereof.

Sections 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I and 3J were also added in the National Highways Act, 1956 and Section 3J stated that the provisions of the Land Acquisition Act, 1894 would not apply to acquisitions under the National Highways Act, 1956.

Determination of compensation under the National Highways Act, 1956 is to be made by the competent authority under section 3G(1) of the said Act which, if not accepted by either party, is then to be determined by an Arbitrator to be appointed by the Central Government under Section 3G(5) of the said Act. Such arbitrator's award can be challenged under the Arbitration and Conciliation Act, 1996. Thus, delays in references made to District Judges and Appeals therefrom to the High Court and the Supreme Court have been obviated.

But there was no provision for grant of solatium and section 3H (5) awarded interest only @9% on the excess amount determined by the Arbitrator under section 3G(5) over what is determined by the competent authority under section 3G(1) unlike section 28 of the Land Acquisition Act, 1894 and its proviso.

The Land Acquisition Act, 1894 was repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by Section 114 thereof.

Under First Schedule to the 2013 Act, market value is to be determined under section 26; in case of rural areas, it must be multiplied by a factor of 1 to 2 based on the distance of project from urban area as may be notified by the appropriate Government; in the case of urban areas, it must be multiplied by a factor of 1; **solatium** under section 69(3) equivalent to 100% of the market value of the land multiplied by various factors is payable depending on whether the land is situated in a rural or urban area (akin to section 23(2) of the Land Acquisition Act, 1894); **additional compensation** under section 69(2) calculated @12% p.a. (akin to section 23(1-A) of the Land Acquisition Act, 1894); **as also interest on excess compensation @9% p.a.** if paid within 1 year and at 15% p.a. if paid beyond 1 year (akin to section 28 of the Land Acquisition Act, 1894) is payable to the landlosers.

Importantly, section 105 of the 2013 Act *inter alia* enabled the Central Government to direct that any of the provisions of the 2013 Act relating to the determination of compensation in accordance with the First Schedule shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule. At serial No.7 in the Fourth Schedule is the National Highways Act, 1956.

Initially amendment Ordinance 9 of 2014 was promulgated amending the 2013 Act and section 10 thereof made applicable provisions of the 2013 Act relating to the determination of compensation in accordance with the First Schedule applicable to enactments relating to land acquisitions specified in the Fourth Schedule (including the National Highways Act, 1956) w.e.f 01.01.2015.

After the lapsing of the said Ordinance, a notification dt.28.08.2015 was issued under section 113 of the 2013 Act reiterating the same. It contains recital that the *Central Government considers it necessary to extend the benefits available to the landowners under the 2013 Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule* (including the National Highways Act, 1956).

Thus, both *before* the 1997 Amendment Act to the National Highways Act, 1956 and also *after* coming into force of the 2013 Act, additional market value, solatium and interest are payable to landowners whose property is compulsorily acquired for purposes of national highways.

So the Government itself accepted that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, 1956 when it comes to compensation to be paid for lands acquired under either of the enactments.

Taking note of this, the Supreme Court in ***Tarsem Singh*** (2 *supra*) held as under:

“31. Nagpur Improvement Trust(1973 1 SCC 500) has clearly held that ordinarily a classification based on public purpose is not permissible under Article 14 for the purpose of determining compensation. Also, in para 30, the seven-Judge Bench unequivocally states that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired, as, if the existence of these two Acts would enable the State to give one owner different treatment from another who is similarly situated, Article 14 would be infringed. In the facts of these cases, it is clear that from the point of view of the landowner it is immaterial that his land is acquired under the National Highways Act and not the Land Acquisition Act, as solatium cannot be denied on account of this fact alone.

... ..

52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed.”

(emphasis supplied)

Thus the Supreme Court held that that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act, 1956 and classification based on public purpose is impermissible.

However, NHAI filed a clarification application Miscellaneous Application diary no.2572 of 2020 to clarify the judgment in *Tarsem Singh* (2 supra); and the Supreme Court, on 30.07.2021, modified its order in the *Tarsem Singh case* (2 supra) and deleted section 23(1-A) observing that issue regarding entitlement to benefit under the said provision was not present before any authority or court in the said batch of cases.

Therefore, by virtue of the decision in *Tarsem Singh* (2 supra) as modified on 30.07.2021, all landowners whose lands are acquired by invoking

the National Highways Act, 1956, are entitled to solatium and interest under section 23(2) and section 28 of the Land Acquisition Act, 1894 *but not to* additional market value under section 23(1-A) of the said Act.

The said decision being binding on this Court, we follow the same and hold that landholders whose lands were acquired by invoking the National Highways Act, 1956 are only entitled to solatium and interest akin to that under section 23(2) and section 28 of the Land Acquisition Act, 1894 and not to additional market value under section 23(1-A) of the said Act.

This point is answered accordingly in favour of the landowners to the above extent.

Point (b):

We shall next consider point (b) which is as under:

“(b) Whether the landowners should be denied relief on the ground that they did not challenge the award of the competent authority under the National Highways Act, 1956 by way of arbitration under section 3G(5) of the said Act and had directly filed writ petition in this Court for seeking benefits of section 23(1-A), section 23(2) and section 28 of the Land Acquisition Act, 1894?”

In the context of contractual disputes between parties of whom one of them is a State or a State instrumentality, in spite of the contract containing an arbitration clause, the Supreme Court had held that such a clause is not a bar to the exercise of jurisdiction under Article 226 of the Constitution of India by High Courts.

In *Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others*¹⁴, the petitioner's dealership was terminated by the respondent-Corporation for an irrelevant and non-existent cause. The Supreme Court held that they should have been allowed relief by the High Court itself instead of being driven by the High Court to arbitration proceedings. The Court held that the *rule of exclusion of Writ jurisdiction because of availability of an alternative remedy is a rule of discretion and not one of compulsion*; and in an appropriate case, in spite of availability of alternative remedy the High Court can still exercise its Writ jurisdiction, i.e., where the *Writ petition seeks enforcement of fundamental rights or where there is a failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged*.

This was reiterated in *Ram Barai Singh and Co. v. State of Bihar and others*¹⁵ wherein the Supreme Court declared that *a constitutional remedy by way of a Writ Petition is always available to an aggrieved party and an arbitration clause in an agreement between the parties cannot ipso facto render a Writ Petition "not maintainable"*.

Recently, in *Unitech Ltd. vs. Telangana State Industrial Infrastructure Corporation and others*¹⁶ the Supreme Court held that recourse to jurisdiction under Article 226 of the Constitution of India is not excluded altogether in a contractual matter; and a public law remedy is available for enforcing legal rights subject to well settled parameters. It relied on the decision in *ABL International Ltd. vs. Export Credit Guarantee Corporation*

¹⁴ 2003 (2) SCC 107

¹⁵ 2015 (13) SCC 592

¹⁶ Civil Appeal No.317 of 2021 dt.17.02.2021

of *India*¹⁷ and held that jurisdiction under Article 226 is not excluded in contractual matters and *the presence of an arbitration clause within a contract between a State instrumentality and a private party has not acted as an absolute bar to availing the remedies under Article 226*. It declared that *if the State instrumentality violates the constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution can be granted*. It quoted the following passage in *ABL International* (17 *supra*):

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks*¹⁸.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

(emphasis supplied)

In the instant case, the NHAI contends that in view of the remedy of arbitration contained in section 3G(5) of the National Highways Act, 1956 to challenge the award of compensation made by the competent authority under section 3G(1) of the said Act, this Court ought not to have entertained

¹⁷ 2004 (3) SCC 553

¹⁸ 1998 (8) SCC 1

the writ petitions filed by the landowners whose lands were acquired under the said Act.

We have already noted that a Division Bench of this Court in a judgment delivered on 28.03.2008 in *M/s Golden Iron and Steel Forgings* (1 supra) held that landowners, whose lands are acquired under the National Highways Act, 1956, are entitled to solatium and interest in terms similar to those contained in section 23(2) and section 28 of the Land Acquisition Act, 1894.

This was challenged by the NHAI before the Supreme Court, but the Supreme Court, in Civil Appeal No.10695 of 2011, did not grant any stay of the said judgment.

Only on 03.08.2017, Civil appeal No.10695 of 2011 filed against the decision of this Court in *M/s Golden Iron and Steel Forgings* (1 supra) was disposed of in terms of a settlement entered into between the parties.

Thus, the decision of this Court in *M/s Golden Iron and Steel Forgings* (1 supra) was holding the field between 28.03.2008 and 03.08.2017.

The decision in *M/s Golden Iron and Steel Forgings* (1 supra) was later specifically upheld by the Supreme Court in *Tarsem Singh* (2 supra) on 19.09.2019 (at para 48).

The Supreme Court in *Sunita Mehra vs. Union of India*¹⁹ had taken the view that solatium and interest should be granted to landowners whose land is acquired under the National Highways Act, 1956 whose proceedings are pending on 28.03.2008 when this High Court pronounced the judgment in *M/s Golden Iron and Steel Forgings* (1 supra).

¹⁹ 2016 SCC online SC 1128=2019 (17) SCC 672
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integrity of this document

Though the NHAI was a party to the said decisions and the principle of law laid down in *M/s Golden Iron and Steel Forgings* (1 supra) was binding on it, yet in all the awards passed by the competent authority under section 3G(1) of the National Highways Act, 1956 in respect of the landowners in the instant batch of cases, which awards were passed *after* 28.03.2008 (the date of the decision in *M/s Golden Iron and Steel Forgings* (1 supra)) (from April 2008 to 2014), the competent authority did not follow the said principle and denied solatium and interest in terms akin to that under section 23(2) and section 28 of the Land Acquisition Act, 1894 to them.

The competent authority cannot ignore binding precedents and decide contrary to it. This is patently arbitrary, unreasonable and violative of Article 14 and 300-A of the Constitution of India. This also results in discrimination among the landowners whose lands are acquired under the National Highways Act, 1956.

Therefore, we hold that since NHAI, a State instrumentality, has violated the constitutional mandate under Article 14 of the Constitution of India, it is open to the landowners to invoke the plenary power of this Court under Article 226 of the Constitution of India seeking appropriate relief.

Therefore, this point is answered against the NHAI and in favour of the landowners.

Point (c):

We shall now consider point (c) which is as under:

“(c) Whether the landowners who are parties in LPA-324-2019 who had invoked arbitration under section 3G(5) of the National Highways Act, 1956 but had not filed objection under section 34 of the Arbitration and Conciliation Act, 1996 and had approached this Court directly under Article 226 of the Constitution of India should be denied relief on the said ground?”

In LPA-324-2019, order of the learned Single Judge in CWP-20024-2018 is challenged.

In that case, land was acquired under the National Highways Act, 1956 through a notification issued on 24.12.2004 under section 3A of the said Act and an award was passed by the competent authority under section 3G(1) of the said Act on 14.12.2007.

The landowners approached the arbitrator under section 3G(5) of the Act for enhancement on 03.12.2009 seeking benefit of solatium @30% and interest @12%.

The Arbitrator passed award on 17.02.2011 refusing solatium and interest.

The landowners did not avail the remedy under section 34 of the Arbitration and Conciliation Act, 1996 but filed the said CWP in 2018, after more than 7 years from the date when the award was pronounced by the Arbitrator.

The learned Single Judge partly allowed the said Writ Petition on 14.11.2018 holding that delay by itself would not come in the way and the alternative remedy issue also would not be a bar for entertaining the Writ

Petition. He held that the Supreme Court in *Sunita Mehra (19 supra)* had taken the view that solatium and interest should be granted to landowners whose land is acquired under the National Highways Act, 1956 whose proceedings are pending on 28.03.2008 when this High Court pronounced the judgment in *M/s Golden Iron and Steel Forgings (1 supra)*.

He held that issue of delay raised by the NHAI is not tenable in view of the principle of *eminent domain* where the landowners have lost their land on account of which they have no right as such to contest for the land which is being acquired for the purpose of building of national infrastructure; and interest of the NHAI can be protected by denying the benefit of interest on the amount of solatium and interest for the period of delay in approaching the Writ Court.

He held that once the matter is settled by the Supreme Court by holding that benefit of solatium and interest would accrue to landowners where the proceedings are pending as on 28.03.2008, the landowners would also be entitled to the same till February, 2011 when the award dt.17.02.2011 was passed; and interest thereafter is denied. He directed the NHAI to deposit the enhanced amount of solatium and interest on the amount of compensation awarded to the landowners along with solatium and interest within 3 months. He denied interest for the delayed period.

Challenging the same, *LPA-324-2019* is filed by the NHAI.

Counsel for the NHAI sought to contend that the landowners had not challenged the award of the arbitrator under section 3G(5) of the National Highways Act, 1956 under section 34 of the Arbitration and Conciliation Act,

1996 and so the learned Single Judge ought not to have entertained the Writ Petition and granted relief to the landowners.

We do not find any force in the said contention for the following reasons.

The Supreme Court in *Tarsem Singh* (2 Supra) (at para 52 of the SCC) had declined to interfere even in cases where applications under Section 34 of the Arbitration and Conciliation Act, 1996 had not been filed challenging the awards of the competent authority under the National Highways Act, 1956 when the land owners had approached the High Courts directly under Article 226 of the Constitution of India seeking benefits akin to those under sec.23(2) and 28 of the Land Acquisition Act, 1894.

Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law.

At any rate it does not oust the jurisdiction of the Court if the alternative remedy provided in a statute is not effective, then its mere existence is no bar to entertaining of a writ petition under Article 226 of the Constitution of India by a High Court.

The Supreme Court had held in *M. Hakeem* (5 Supra) and in *NHAI vs. P. Nagaraju and others*²⁰ that it was not permissible for a Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation

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Act, 1996 to *modify* an Award passed by an Arbitrator, and the Court, even it found the challenge to the substantial, would have to set aside the Award and remit the matter to the learned Arbitrator for *de novo* consideration.

This in our opinion shows that the remedy under section 34 of the Arbitration and Conciliation Act, 1996 to challenge an award passed by an Arbitrator under section 3G(5) of the National Highways Act, 1956 is not an effective alternative remedy in the context of claims for compensation under the said law as the landowners cannot get quick relief by invoking the said remedy.

In *Ram & Shyam Co. v. State of Haryana*²¹, the Supreme Court held that if the alternative remedy is not effective, then a writ petition under Article 226 of the Constitution of India can be entertained. It held:

*“9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in **Assistant Collector of Central Excise v. Jainson Hosiery Industries**²² rejected the writ petition observing that “the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him”. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in **State of U.P. v. Mohammad Nooh**²³ it is observed “that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where*

²¹ 1985 (3) SCC 267, at page 274

²² 1979 (4) SCC 22

²³ AIR 1958 SC 86

there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clitch of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

(emphasis supplied)

Again in **CIT v. Chhabil Dass Agarwal**²⁴, the Supreme Court declared as under:

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a

²⁴ (2014) 1 SCC 603, at page 610

petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

*16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In **Ram and Shyam Co. v. State of Haryana** this Court has noticed that if an appeal is from “Caesar to Caesar’s wife” the existence of alternative remedy would be a mirage and an exercise in futility.*

(emphasis supplied)

When the statutory authority/State instrumentality like NHAI acts arbitrarily and unreasonably and does not follow a binding precedent of this Court in *M/s Golden Iron and Steel Forgings* (1 Supra) and that of the Supreme Court in *Sunita Mehra* (19 supra) and denies to land owners relief of solatium and interest akin to those under Section 23(2) and section 28 of the Land Acquisition Act, 1894, there is a violation of Article 14 of the Constitution of India and this Court is entitled to invoke its plenary power under Article 226 of the Constitution of India and grant relief to the landowners.

For the above reasons, we do not agree with the reasoning of the Bombay High Court in *Suresh Chandra case* (9 supra) that existence of

remedy under the Statute bars exercise of jurisdiction under Article 226 of the Constitution of India.

Therefore, point (c) is answered in favour of the landowners and against the NHAI.

The aspect of laches and delay in filing the Writ Petition in 2018 before this Court, though the award of the Arbitrator was passed on 17.02.2011, and what relief the landowners should be granted, if at all, will however be considered under the points (d) and (e).

Point (d):

We shall now consider point (d) which is as under:

“(d) Whether the landowners should be denied relief on the ground of laches and if not, to what relief they are entitled?”

Much emphasis has been made by the counsel for the NHAI on the aspect of laches on the part of the landowners in approaching this Court under Article 226 of the Constitution of India seeking relief of solatium and interest akin to that granted under section 23(2) and section 28 of the Land Acquisition Act, 1894.

In *State of Himachal Pradesh and others* (6 supra) cited by him, a writ petition was filed in 2016 in the Himachal Pradesh High Court challenging acquisition of the respondents' land for construction of a road in 1996 and contending that no compensation was paid to the landowners. It was contested by the State on the ground that the respondents had agreed not to claim compensation for loss of their land. The learned Single Judge allowed the writ petition and directed the appellants to initiate the process for

acquisition of the land in accordance with law. LPA filed against the said order was dismissed on the ground of delay in filing it. The Supreme Court directed that though, the notification dt.17.05.1996 under section 4 of the Land Acquisition Act, 1894 had lapsed, and though there was a delay of 20 years in approaching the High Court, in exercise of its power under Article 136 and 142 of the Constitution of India, the said date should be taken as date of deemed acquisition of the land of the respondents by the appellants; and market rate as on that date should be given to them along with all other statutory benefits excluding interest from 17.05.1996 till the writ petition was filed in the High Court. Thus the landowners were granted relief by the Supreme Court to some extent in spite of their laches for more than 20 years.

In *Omvir Singh* (7 supra) cited by the counsel for the NHAI, an appeal was filed in the High Court in 2014/2015, 16 years after rejection of review applications by a reference Court refusing to review its order passed in 1998 refusing to enhance compensation to landowners under the Land Acquisition Act, 1894. The High Court condoned the delay in filing the appeal, enhanced the compensation, but denied interest for the period of delay. The Supreme Court declined to interfere with the order of the High Court condoning the delay in preferring the appeal but decided the SLP on merits holding that the landholders will not be entitled to statutory benefits excluding interest on the enhanced amount of compensation for the delayed period in preferring appeal before the High Court.

Similar view was taken in *Rameshwar* (8 supra) where the appeal in the High Court was entertained 22 years from the date of the judgment of the reference Court.

In *Jaspal Singh and others* (9 supra) also, landowners who had delayed filing of appeals in the High Court, were denied interest on enhanced amount of compensation for the period of delay.

In *Executive Engineer, Nimna Dudhna Project* (10 supra) also the Supreme Court held that landowners should be denied interest for the period of delay in filing first appeals in the High Court challenging award of the reference Court.

Thus, none of the above decisions supports the plea of the NHAI that mere delay or laches in seeking remedy under Article 226 of the Constitution of India is sufficient to refuse relief to a litigant.

On the other hand, counsel for the landowners cited *Tukaram Kana Joshi and others* (3 supra). In that case, the Supreme Court held that that delay and laches is only one of the facets to deny exercise of discretion but it is not an absolute impediment. If the whole thing **shocks the judicial conscience**, then the Court should exercise its discretion to entertain the writ petition, **when no third-party interest is involved**. In that case, land was notified under section 4 of the Land Acquisition Act, 1894 on 06.06.1964 for a project but no subsequent proceedings were taken up and the acquisition proceedings lapsed. Possession of the land was taken in 1964 but no compensation was paid to the landowners/petitioners though others similarly situated were paid compensation in 1966. In 2009, the landowners approached the High Court which dismissed the writ petition on the ground of delay and laches but the Supreme Court reversed its decision by giving the above reasons. The Supreme Court declared:

“12.The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is

provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N.⁸, State of M.P. v. Nandlal Jaiswal⁹ and Tridip Kumar Dingal v. State of W.B.¹⁰)

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When

*substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide **Durga Prashad v. Chief Controller of Imports and Exports¹¹**, **Collector (LA) v. Katiji¹²**, **Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur¹³**, **Dayal Singh v. Union of India¹⁴** and **Shankara Coop. Housing Society Ltd. v. M. Prabhakar¹⁵**.)*

*15. In **H.D. Vora v. State of Maharashtra¹⁶** this Court condoned a 30-year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.”*

In **Vetindia Pharmaceuticals Limited** (4 supra) the Supreme Court reiterated the said principle and held that jurisdiction under Article 226 of the Constitution of India is equitable in nature, and it is not a mandatory requirement that every delayed petition under Article 226 of the Constitution of India must be dismissed on the ground of delay. It observed:

“15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of

the discretionary jurisdiction will also arise. This Court in Basanti Prasad v. Bihar School Examination Board⁷, after referring to Moon Mills Ltd. v. M.R. Meher⁸, Maharashtra SRTC v. Balwant Regular Motor Service⁹ and State of M.P. v. Nandlal Jaiswal¹⁰, held that if the delay is properly explained and no third-party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows: (Basanti Prasad case⁷, SCC p. 796, para 18)

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”

(emphasis supplied)

In ***Sukh Dutt Ratra v. State of H.P.***²⁵ recently the Supreme Court declared in a case where the State deprived a person of property without following due process of law and sought to contest his case on ground of laches as under:

*“18. There is a welter of precedents on delay and laches which conclude either way—as contended by both sides in the present dispute—however, the specific factual matrix compels this Court to weigh in favour of the appellant landowners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a “limitation” to doing justice. This Court in a much earlier case — ***Maharashtra SRTC v. Balwant Regular Motor Service***²⁶, held : (AIR pp. 335-36, para 11)*

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as

²⁵ (2022) 7 SCC 508, at page 516

²⁶ AIR 1969 SC 329

equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy'.”

19. The facts of the present case reveal that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursal of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants’ prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction.”

The action of the competent authority under Section 3G (1) of the National Highways Act, 1956 in denying the solatium and interest akin to that granted under Sections 23(2) and 28 of the Land Acquisition Act, 1894 in spite of binding precedents such as *M/s Golden Iron and Steel Forgings* (1 supra) and *Sunita Mehra* (19 supra) shocks our judicial conscience, and it seems that it is actively trying to limit the quantum of compensation as required by law being paid to only those for which it is specifically prodded by the Courts, rather than to all those who are entitled, and act arbitrarily. So notwithstanding the delay in approaching this Court, we hold that such relief may not be denied to them *in toto*.

It would be useful to refer the decision of the Supreme Court in *Popatrao Vyankatrao Patil v. State of Maharashtra*²⁷, where it decreed that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice.

The conduct of the NHAI in the instant cases is quite contrary to what is expected of it as it had raised several technical pleas unfairly to deny just relief to the landowners.

Point (e):

Now we shall consider what relief is to be granted to the parties in this batch of cases.

LPA-324-2019

In *LPA-324-2019*, order of the learned Single Judge in *CWP-20024-2018* is challenged.

In that case, land was acquired under the National Highways Act, 1956 through a notification issued on 24.12.2004 under section 3A of the said Act and an award was passed by the competent authority under section 3G(1) of the said Act on 14.12.2007.

The landowners approached the arbitrator under section 3G(5) of the Act for enhancement on 03.12.2009 seeking benefit of solatium @30% and interest @12%.

The Arbitrator passed award on 17.02.2011 refusing solatium and interest.

The landowners did not avail the remedy under section 34 of the Arbitration and Conciliation Act, 1996 but filed the said CWP in 2018, after

²⁷ (2020) 19 SCC 241, at page 245

more than 7 years from the date when the award was pronounced by the Arbitrator.

The learned single Judge had held that once the matter is settled by the Supreme Court by holding that benefit of solatium and interest would accrue to landowners where the proceedings are pending as on 28.03.2008, the landowners would also be entitled to the same till February, 2011 when the award dt.17.02.2011 was passed; and interest thereafter is denied. He directed the NHAI to deposit the enhanced amount of solatium and interest on the amount of compensation awarded to the landowners along with solatium and interest within 3 months. He denied interest for the delayed period.

We have held under point (c) that when the statutory authority/State instrumentality like NHAI acts arbitrarily and unreasonably and does not follow a binding precedent of this Court in *M/s Golden Iron and Steel Forgings* (1 Supra) and that of the Supreme Court in *Sunita Mehra* (19 supra) and denies to land owners relief of solatium and interest akin to those under Section 23(2) and section 28 of the Land Acquisition Act, 1894, there is a violation of Article 14 of the Constitution of India and this Court is entitled to invoke its plenary power under Article 226 of the Constitution of India and grant relief to the landowners.

Therefore we find no merit in the LPA and the same is dismissed and hold that the landowners are held entitled to interest and solatium as per the order of the learned single Judge. In addition they are also entitled to interest from the date of filing of the Writ Petition till the date of payment and the NHAI shall also pay the landowners costs of ₹10,000/- within 4 weeks.

LPA-4965-2018, LPA-475-2019, LPA-428-2019, LPA-224-2019, LPA-4968-2018, LPA-52-2019, LPA-118-2020, LPA-280-2019, LPA-4976-2018

In the judgments impugned in these LPAs, the learned Single Judge, while holding that the landowners would be entitled to solatium and interest in terms of the provisions of sections 23(2) and 28 of the Land Acquisition Act, 1894 took care to ensure that the said benefit would be payable till the date when the payments were disbursed on the main amount of compensation. Thus he denied them benefit of interest on the amount of solatium and interest for the period of delay for approaching the Writ Court.

The learned Single Judge held that delay as such would not be a factor for denying relief to the landowners because on account of ignorance, poverty and similar handicaps they could not seek relief immediately and the existence of alternative remedy is also not a bar for granting relief to them; that once the matter stands settled by the Supreme Court in *Sunita Mehra* (19 supra) [that where the proceedings are pending on the date of the order pronounced by the Division Bench in *M/s Golden Iron and Steel Forgings* (1 supra), they should be entitled to benefit of solatium and interest on the amount awarded till the date when the payments were disbursed on the main amount], the NHAI cannot contend otherwise. We are in complete agreement with the learned single Judge's views.

Therefore we find no merit in the LPAs and the same are dismissed and hold that the landowners are held entitled to interest and solatium as per the order of the learned single Judge. In addition they are also entitled to interest from the date of filing of the Writ Petition till the date of

payment and the NHAI shall also pay the landowners costs of ₹10,000/- within 4 weeks.

LPA-1550-2019, LPA-1539-2019, LPA-1537-2019, LPA-1536-2019

In the judgments impugned in these LPAs, the learned Single Judge had allowed the writ petitions filed by the landowners and had directed the competent authority appointed by the Central Government under section 3G(1) of the National Highways Act, 1956 to pass a supplementary award pertaining to solatium and interest within 2 months by following the judgment of the Supreme Court in *Sunita Mehra* (19 supra) and *M/s Golden Iron and Steel Forgings* (1 supra) and had rejected the plea of availability of alternative remedy on the ground that the landowners had averred that they do not wish to seek enhancement of rate of compensation before the Arbitrator.

We find no error in the judgment passed by the learned Single Judge warranting our interference in exercise of Letters Patent Jurisdiction.

Therefore we find no merit in the LPAs and the same are dismissed and hold that the landowners are held entitled to interest and solatium as per the order of the learned single Judge. In addition they are also entitled to interest from the date of filing of the Writ Petition till the date of payment and the NHAI shall also pay the landowners costs of ₹10,000/- within 4 weeks.

LPA-558-2019

This is an Appeal by landowners challenging the order of the learned Single Judge dismissing his writ petition filed by them on 18.12.2018. In the said writ petition, they questioned order dt.04.05.2016 passed by the arbitrator appointed under section 3G(5) of the National Highways Act, 1956

confirming the order of the respondent No.3 passed on 30.04.2012 whereunder the latter had denied benefit of solatium and interest under sections 23(2) and 28 of the Land Acquisition Act, 1894 to them.

The learned Single Judge had held that the landowners have a remedy to approach the Civil Court of original jurisdiction against the award passed by the arbitrator for redressal of their grievances under Section 34 of the Arbitration and conciliation Act, 1996 and relegated the landowners to the said remedy.

In this case, we hold that the plea of laches is not available to the NHAI since within a reasonable time from the date of the order of the arbitrator, the writ petition has been filed before this Court by the landowners.

In view of our finding under point (c) that existence of alternative remedy of challenge to the arbitral award of the respondent No.4 under section 34 of the Arbitration and Conciliation Act, 1996 is no bar to filing the writ petition since the said alternative remedy is not effective because the Court cannot modify the award, we set aside the order of the learned Single Judge and grant to the appellants solatium and interest under section 23(2) and 28 of the Land Acquisition Act, 1894.

LPA-558-2019 is therefore allowed hold that the landowners are held entitled to interest and solatium. In addition we hold that they are also entitled to interest from the date of filing of the Writ Petition till the date of payment and the NHAI shall also pay the landowners costs of ₹10,000/- within 4 weeks.

CWP-18775-2019, CWP-25229-2019, CWP-14487-2019 and CWP-18799-2019

In CWP-18775-2019 and in CWP-18799-2019, award was passed by the competent authority under section 3G(1) of the National Highways Act, 1956 on 23.04.2008 and amounts were received on 29.05.2009.

In CWP-25229-2019 and CWP-14487-2019, award was passed by the competent authority under section 3G(1) of the National Highways Act, 1956 on 24.12.2009 and 21.12.2009 respectively.

Without approaching the arbitrator under section 3G(5) of the National Highways Act, 1956, the landowners have filed writ petitions in 2019 seeking relief of solatium and interest under section 23(2) and section 28 of the Land Acquisition Act, 1894 apart from additional market value under section 23(1-A) of the said Act.

For the reasons given by us under point (a), the landowners are not entitled to additional market value under section 23(1-A) of the said Act and are only entitled to solatium and interest under sections 23(2) and 28 of the Land Acquisition Act, 1894.

But they are not entitled to interest for the period of delay in approaching this Court i.e. in CWP-18775-2019 and in CWP-18799-2019 from 29.05.2009 till the date of filing of the writ petitions and in CWP-14487-2019 and CWP-25229-2019, from the date of passing of the award by the competent authority till the date of filing of the said writ petitions.

However we hold that they are also entitled to interest from the date of filing of the Writ Petition till the date of payment and the NHAI shall also pay the landowners costs of ₹10,000/- within 4 weeks.

Accordingly, these Writ Petitions are partly allowed as above.

CWP-28334-2018

In this case, the land of the writ petitioners was acquired under the National Highways Act, 1956 through a notification published on 24.12.2004 under section 3-A of the said Act. The competent authority passed an award on 08.05.2007.

Challenging the same, the NHAI approached the arbitrator under section 3G(5) of the Act contending the compensation awarded was on a higher side. The award of the competent authority was modified on 28.01.2009 by the arbitrator. But he did not grant benefits akin to those under sections 23(2) and 28 of the Land Acquisition Act, 1894 to the landowners.

Seeking the same, they filed the writ petition in 2018 without challenging the arbitral award under section 34 of the Arbitration and Conciliation Act, 1996.

In view of our finding on point (c) supra, the writ petition is allowed and the landowners/writ petitioners are held entitled to solatium and interest akin to those under sections 23(2) and 28 of the Land Acquisition Act, 1894 but they shall not be entitled to interest for the period of delay in filing the writ petition i.e. from 28.01.2009 till the date of filing of the writ petition. However we hold that they are also entitled to interest from the date of filing of the Writ Petition till the date of payment and the NHAI shall also pay the landowners costs of ₹10,000/- within 4 weeks.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 12, 2023.

Ess Kay/Mofit Goyal

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes