

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1712 OF 2018

Sandesh Vitthal Thakur & Ors.

.. Petitioners

Versus

The Deputy Collector
(Land Acquisition) Raigad & Ors.

.. Respondents

WITH

INTERIM APPLICATION NO.1515 OF 2023

IN

WRIT PETITION NO.1712 OF 2018

Union Bank of India
(Erstwhile Corporation Bank)

.. Applicant

Versus

Sandesh Vitthal Thakur & Ors.

.. Respondents

WITH

WRIT PETITION NO.2046 OF 2023

Dipen Vadodaria & Anr.

.. Petitioners

Versus

The Deputy Collector
(Land Acquisition) Raigad & Ors.

.. Respondents

WITH

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WRIT PETITION NO.2047 OF 2023

Sharad K Vasant

.. Petitioner

Versus

The Deputy Collector
(Land Acquisition) Raigad & Ors.

.. Respondents

WITH

WRIT PETITION NO.10428 OF 2018

M/s. Virat Container Freight Station
Private Limited through
Vilas Triambak Raut

.. Petitioner

Versus

The Deputy Collector
(Land Acquisition) Raigad & Ors.

.. Respondents

Mr. Rahul Thakur i/b Sanket Thakur a/w Sushmita Bhoir, Advocates for the Petitioners.

Ms. M.S. Bane, AGP for State-Respondent.

Mr. Ashutosh Kulkarni a/w Akshay Kulkarni, Advocates for Respondent No.5-CIDCO.

Mr. Akshay Shinde, Advocate for Respondent No.6/MMRD.

Mr. Deepak Saxena a/w Jitendra Bakliwal and Sahel Koli i/b Legal Prism, Advocates for Applicant in IA/1515/2023.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

RESERVED ON :OCTOBER 10, 2023

PRONOUNCED ON :JANUARY 16, 2024

JUDGMENT: [PER B. P. COLABAWALLA J.]

1. All the above Writ Petitions *inter alia* seek to challenge the Award dated 22nd April 2015 passed by Respondent No.1 under which the lands of the Petitioners were acquired. We must mention that the prayers sought in all the Writ Petitions are identical and for the sake of easy reference the prayers in Writ Petition No.1712 of 2018 are reproduced hereunder:-

"(a) *Issue a writ of Certiorari or any other writ, order, direction in the nature of writ Certiorari, calling for the records and proceeding from the office of the Respondent No.1 i.e. Deputy Collector (Land Acquisition), Metro Centre No.1 Uran District Raigad in the matter of the award being No.4/2006 relating to the acquisition of the lands situated at Village Jasai, Tal.Uran, Dist. Raigad for the Sewri-Nhava Road of the CIDCO under New Bombay Project and after scrutiny and perusal as to propriety, legality validity and Correctness of the award dated 22.4.2015 passed therein be declared as illegal, invalid as against the provision of the Act and accordingly be quashed and set aside.*

- (b) *That his hon. court may be pleased to hold that the impugned award dated 22/4/2015 bearing no.4 of 2006 for acquiring the suit land has lapsed according to provisions of Section 11A of The Land Acquisition Act."*

2. The facts in all the above Writ Petitions are really undisputed. The Petitioners lands were to be acquired for the MTHL Sea Link Project, at Jasai Village, Tal-Panvel, Dist-Raigad. This was because CIDCO had envisioned an ambitious project of the "Sewri-Nhava Road" under the New Bombay Project. The execution of this project was entrusted to the MMRDA. CIDCO had made an intention for acquisition of lands admeasuring about 15.79.10 Hectares required for the said project situated at village Jasai, Tal-Uran, Dist-Raigad, out of which CIDCO has claimed to have acquired about only 8.66.00 Hectares of land from the concerned land owners without taking recourse to the provisions of the statute by obtaining some agreements etc. For the balance area of 7.13 Hectares, acquisition proceedings under the Land Acquisition Act, 1894 (for short "**the 1894 Act**") came to be initiated which includes the Petitioners lands. Accordingly, and to take these acquisition proceedings forward, a Section 4 notification came to be published in the Government Gazette on 2nd July 2009. Further, individual notice under Section 4(1) of the 1894 Act were also issued to the concerned landowners whose lands were proposed to be acquired for

the said "Sewri-Nhava Road Project". It is not in dispute that the Petitioners were also served with the notice under Section 4(1) of the 1894 Act. It appears that in the present case the urgency clause [under Section 17 of the 1894 Act], was applied to this acquisition and hence no enquiry under Section 5A of the said Act was conducted. Thereafter, a declaration under Section 6 of the 1894 Act came to be published in the Government Gazette on 19th June 2012 and published in the local newspaper on 18th July 2012. The final date of publication of the Section 6 declaration was 22nd December 2012. However, despite this, the Award, which is impugned in the present Writ Petition, came to be passed only on 22nd July 2015.

3. In this factual backdrop, Mr. Thakur, the learned advocate appearing on behalf of the Petitioners, submitted that though in the Petition it is averred that because of the provisions of Section 11A of the 1894 Act, the above acquisition has lapsed because no Award is passed within 2 years from the final date of publication of the Section 6 declaration (i.e. within 2 years from 22nd December 2012), he is not pressing this argument in light of the law laid down by the Hon'ble Supreme Court in the case of ***The Executive Engineer, Goshikhurd Project Ambadi, Bhandara, Maharashtra Vidharbha***

Irrigation Development Corporation V/S Mahesh & Ors [(2022) 2 SCC 772]. He fairly submitted that this decision clearly stipulates that if acquisition proceedings have been initiated under 1894 Act, and which has not culminated into an Award by the time *the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (for short "**the 2013 Act**") came into force, then, the Award has to be passed within a period of 1 year from the date when the 2013 Act came into force. He submitted that the 2013 Act came into force w.e.f. 1st January 2014 and therefore, the Award ought to have been passed by 31st December 2014. He submitted that this view is taken by the Hon'ble Supreme Court whilst harmoniously construing the provisions of the 1894 Act and the 2013 Act, and more particularly Section 24(1)(a) of the 2013 Act.

4. He submitted that as far as the State of Maharashtra is concerned, as per the provisions of the 1st Schedule of the 2013 Act read with Sections 26 and 30 thereof, the Government had initially issued a notification dated 19th March 2014 specifying that when market value of the land [in rural areas] being acquired is calculated, the same shall be multiplied by a factor 1.00. This notification was challenged before the

Aurangabad Bench of this Court in Writ Petition No.4274 of 2014. This notification was stayed on 26th May 2014. Thereafter, the Government came out with a fresh notification dated 13th August 2014 stipulating a multiplier factor of 1.10. This too was challenged before the Aurangabad Bench of this Court [in the same Writ Petition]. Though no stay was granted, it was clarified that any Award passed would be subject to the outcome of the said Writ Petition. Ultimately, both the aforesaid notifications were set aside by the Aurangabad Bench vide its order dated 9th March 2015. Be that as it may, since a stay was granted by the Aurangabad Bench for a certain period of time [79 days], the period of stay would have to be excluded whilst determining the time period for passing the Award. He submitted that even when one takes this into consideration, the Award had to be passed by 20th March 2015. He submitted that in the facts of the present case, the Award has been passed much after this date, namely, on 22nd April 2015. He therefore submitted that considering the decision of the Hon'ble Supreme Court in the case of ***Executive Engineer, Goshikhurd Project Ambadi, Bhandara, Maharashtra Vidharbha Irrigation Development Corporation (supra)***, the acquisition proceedings have lapsed. This is basically the relief that Mr. Thakur seeks in the present Writ Petitions.

5. On the other hand, Ms. Bane, the learned AGP appearing on behalf of the State, submitted that the arguments canvassed by Mr. Thakur are wholly misconceived. She submitted that in the facts of the present case, the State has invoked the urgency clause under Section 17 of the 1894 Act and once this is the case, the law laid down is that there is no question of the acquisition proceedings lapsing. She submitted that the Hon'ble Supreme Court in the case of ***M/s. Delhi Airtech Services Pvt Ltd & Anr. V/S State of U.P. & Anr. [(2022) SCC Online SC 1408]*** has clearly taken this view and therefore, the arguments of Mr. Thakur are wholly misconceived.

6. The next argument canvassed by Ms. Bane is that there was strong opposition by the landowners for joint measurement and it is because of that the Award could not be declared/passed by 20th March 2015 and was only declared/passed on 22nd April 2015. Since the project was very essential and important for the State Government, a meeting was conducted with the landowners for joint measurement through satellite. It is for this reason also, that the Award could not be passed within the time stipulated.

7. Ms. Bane then contended that the Section 6 declaration was published finally on 22nd December 2012 and as per the provisions of Section 11A of the 1894 Act the maximum period to declare the Award was till 22th December, 2014. However, in the present matter, the Award was declared on 22nd April 2015. Since the Award was declared after the 2013 Act came into force, the compensation had to be calculated as per the provisions of Section 26 to 30 of the 2013 Act. For this purpose, the State Government issued a notification dated 19th March 2014 under the 1st Schedule of 2013 Act. This notification was stayed by the Aurangabad Bench of this Court in Writ Petition No.4274 of 2014 on 26th May 2014. That stay ultimately was vacated only on 23rd September 2014. She, therefore, submitted that the stay continued for a period of 121 days. If this period is to be excluded, then the Award ought to have been passed by 20th April 2015. However, in the present case the Award is declared on 22nd April 2015 i.e. with a delay of about 2 days. She submitted that this delay of 2 days was due to the procedure which is required to be followed and due to acute opposition of the landowners for joint measurement, whose lands were to be acquired. She therefore submitted that the delay is fully justified.

8. The last argument canvassed by Ms. Bane was that there is an inordinate delay in approaching this Court under Article 226 of the Constitution of India and therefore, the above Writ Petition ought to be dismissed on that ground also. In support of her submission of delay, Ms. Bane relied upon a decision of the Hon'ble Supreme Court in the case of ***Banda Development Authority, Banda V/S Motilal Agarwal & Ors. [(2011) 5 SCC 394]***. For all the aforesaid reasons, Ms. Bane submitted that there is no merit in the above Writ Petitions and the same ought to be dismissed with costs.

9. We have heard the learned counsel for the parties at length. We have also perused the papers and proceedings in the above Writ Petitions. As mentioned earlier, the facts in all the above Writ Petitions are really undisputed. The Petitioners lands were to be acquired for the Mumbai Trans Harbour Link Project at Jasai Village, Tal-Panvel, Dist-Raigad. For this this purpose, acquisition proceedings under the 1894 Act came to be initiated. Accordingly, and to take the acquisition forward, a Section 4 notification came to be published in the Government Gazette on 2nd July 2009. Individual notices under Section 4(1) of the 1894 Act were also issued to the concerned landowners whose lands were proposed to be acquired for the said project. In the present case, at the time of the

issuing the Section 4 notification, the urgency clause under Section 17 of the 1894 Act was resorted to and hence no enquiry under Section 5A of the 1894 Act was conducted. Thereafter, a declaration under Section 6 of the 1894 Act came to be published in the Government Gazette on 19th June 2012 and was finally published on 22nd December 2012. However, despite this, the Award, and which is impugned in the present Petitions, came to be passed only on 22nd April 2015. When one looks at these undisputed facts, what is clear is that before the 2 years lapsed for passing the Award under Section 11A of the 1894 Act, the 2013 Act came into force on 1st January 2014. By virtue of Section 24(1)(a) of the 2013 Act, if no Award is passed, then, compensation has to be determined as per the provisions of the 2013 Act. Further, if no Award is passed by the time the new Act [the 2013 Act] came into force, namely, by 1st January 2014, then, the Award has to be passed within a period of 1 year as set out in Section 25 of the 2013 Act. This issue is no longer *res integra* and is clearly decided by the Hon'ble Supreme Court in the case of ***Executive Engineer, Goshikhurd Project Ambadi, Bhandara, Maharashtra Vidharbha Irrigation Development Corporation (supra)***. In this decision, the Hon'ble Supreme Court has, in no uncertain terms, held that the period of 1 year set out in Section 25 of the 2013 Act would apply to Awards not published by the time the

2013 Act came into force, namely, within 1 year from 1st January 2014. However, in the aforesaid decision, the Supreme Court held that in light of the stay granted by the Aurangabad Bench of this Court to the notifications issued by the Government of Maharashtra under the 1st Schedule of the 2013 Act, the period for which the stay continued was to be excluded for the purpose of calculating the period within which the Award had to be passed. The Hon'ble Supreme Court therefore excluded the period of 79 days and opined that the Awards had to be passed by 20th March 2015, failing which the acquisition proceedings lapsed. The relevant portion of the Supreme Court's decision in ***Executive Engineer, Goshikhurd Project Ambadi, Bhandara, Maharashtra Vidharbha Irrigation Development Corporation (supra)*** is reproduced hereunder:-

"20. We begin by examining the phrasing of clause (a) to Section 24(1) of the 2013 Act. We would prefer to read the words "all the provisions relating to determination of compensation" in Section 24(1)(a) as including the period of limitation specified in Section 25 of the 2013 Act. To elaborate, the word "all" and the expression "relating to" used in Section 25 are required to be given a wide meaning to ensnare the legislative intent. The expressions "relating to" or "in relation to" are words of comprehensiveness which may have a direct as well as indirect significance depending on the context. [State Wakf Board v. Abdul Azeez Sahib, 1966 SCC OnLine Mad 80 : AIR 1968 Mad 79]

24. Law of limitation is generally regarded as procedural as its object is not to create any right but prescribe periods within which legal proceedings should be instituted for enforcement of rights or adjudication orders should be passed. Statutes of limitation, therefore, have retrospective effect insofar as they apply to all legal proceedings brought after they come into force. However, the laws relating to limitation have been held to be prospective in the sense that they do not have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on the date. In this sense, the limitation provisions can be procedural in the context of one set of facts and substantive in the context of a different set of facts. Therefore, unless the language of the provision dealing with period of limitation clearly manifests, in express terms or by necessary implication, a contrary intention divesting vested rights, such provision is to be construed as prospective. In the context of clause (a) to Section 24(1) of the 2013 Act, it is to be stated that the said clause would apply only if the period for making of an award had not ended and time was available as on 1-1-2014. Where and if the period for making of the award had already lapsed before 1-1-2014, clause (a) to Section 24(1) would not apply so as to deprive and deny the vested rights which have already accrued in favour of the landowners. The present case is not of divesting of vested rights of the landowners on enactment of the 2013 Act.

25. Section 25 is a rule of procedure immediately following Section 24 and a part of fasciculus of "all the provisions", from Sections 25 to 30, "relating to determination of compensation". Hence, the expression "all the provisions relating to the determination of compensation" under the 2013 Act will encompass Section 25 of the 2013 Act.

26. The determination of compensation is never simple. It is a complex factual and legal exercise. As per sub-section (2) to Section 26 of the 2013 Act, the market value calculated under sub-section (1) is to be multiplied by the factor to be specified in the First Schedule. Section 30(2) requires the Collector to issue individual awards detailing the particulars of compensation payable and details of payment as specified in the First Schedule. As per the First Schedule, the factor/multiplier in case of rural areas can be between one and two, based on the distance from the urban area, and this factor/multiplier is to be notified by the “appropriate Government”. This aspect is of importance when we examine the second issue and would be adverted to later. Thus, it clearly delineates that until notification of the multiplier is issued by the “appropriate Government” for rural areas, compensation in terms of sub-section (2) to Section 26 cannot be determined. When a multiplier of more than 1 applies, the compensation payable under Section 26 of the 2013 Act would be higher than the market value of the land.

27. Section 30(1) of the 2013 Act adumbrates that the Collector having determined the total compensation shall, to arrive at the final award, impose “solatium” of an amount equivalent to 100% of the compensation amount. As per Section 30(3), the landowners in addition to the market value of the land are entitled to an amount calculated at the rate of twelve per cent per annum commencing from the date of publication of

“the notification of the Social Impact Assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier”. [For the purposes of the present dispute, we are not interpreting provisions of Section 30(3) of the 2013 Act.]

28. Per contra, the provisions for determination of compensation under the 1894 Act are different. Under the 1894 Act, no multiplier/factor is to be applied and solatium payable is 30 per cent. Prescription of the outer limit of twelve months in Section 25 is a calculated dictate, necessary and appropriate given the time, task and effort involved in making an award under the 2013 Act.

29. Given the object and purpose behind Sections 24 and 26 to 30 of the 2013 Act, we notice that practical absurdities and anomalies may arise if the two-year period for making of an award in terms of Section 11-A of the 1894 Act commencing from the date of issue of the declaration is applied to the awards to be made under Section 24(1)(a) of the 2013 Act. This would mitigate against the underlying legislative intent behind prescription of time for making of an award in respect of saved acquisition proceedings initiated under the repealed 1894 Act, which is twofold : (i) to give sufficient time to the authorities to determine compensation payable under the 2013 Act; and (ii) to ensure early and expedited payment to the landowners by reducing the period from two years under Section 11-A of the 1894 Act to twelve months under Section 25 of the 2013 Act. In case of declarations issued in January 2012, on application of Section 11-A of the 1894 Act, the time to determine compensation under the 2013 Act would vary from a day to a month, and while in cases where the declarations were issued within twelve months of the repeal of the 1894 Act, the landowners would be at a disadvantage as an award beyond the twelve-month period specified in Section 25 of the 2013 Act would be valid. In the first set of cases, given the onerous factual and legal exercise involved in determination of compensation and the need to issue notification under Section 26(2) of the 2013 Act, publication of the awards would be impractical. Hasty and incorrect awards would be deleterious for the landowners. If the awards are not pronounced, the acquisition proceedings would

lapse defeating the legislative intent behind Section 24(1)(a) of the 2013 Act to save such proceedings. We would, therefore, exercise our choice to arrive at a just, fair and harmonious construction consistent with the legislative intent.

30. A rational approach so as to further the object and purpose of Sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24(1) of the 2013 Act there would be no notification under Section 19, but declaration under Section 6 of the 1894 Act. When the declarations under Section 6 are valid as on 1-1-2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act.

31. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1-1-2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1-1-2014. This dictum is subject to the caveat stated in paras 20 to 23 (supra) that a declaration which has lapsed in terms of Section 11-A of the 1894 Act before or on 31-12-2013 would not get revived.

50. Ordinarily, in terms of Section 25, the award ought to have been published up to 31-12-2014. However, as held by us, the period of 79 days, when interim stay order was in operation, needs to be excluded, in which case the award could be validly made until 20-3-2015. Given this date, in our opinion, even if it is

assumed that the award dated 30-10-2014 is backdated, it was duly made soon after the approval was accorded by the Commissioner on 20-11-2014, which was certainly without any doubt, before 20-3-2015.”

(emphasis supplied)

10. In the facts of the present case, as mentioned earlier, no Award was passed by the time the 2013 Act came into force. As per the decision of the Hon'ble Supreme Court referred to above, the Award in the present case under ordinary circumstances would have had to be passed by 31st December 2014. Since the notification dated 13th March 2014 was stayed by the Aurangabad Bench of this Court on 26-05-2014, the Hon'ble Supreme Court opined that the period of stay (i.e. 79 days) is to be excluded, and therefore, the Award had to be passed by 20th March 2015. In the present case, the Award was passed much later, namely, on 22nd April 2015 and therefore, not being within a period of 1 year from 1st January 2014 (even after exclusion of the period of stay) the present acquisition proceedings only qua the Petitioners' lands have clearly lapsed.

11. Having said this, we must now deal with the argument of Ms. Bane regarding invocation of the urgency clause [under Section 17 of the

1894 Act] and the effect it would have on lapsing, if any. For the sake of convenience and to understand the argument of Ms. Bane, it would only be appropriate to reproduce Section 17 of 1894 Act which reads thus:

“17. Special powers in cases of urgency.—(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the [appropriate Government], enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such bundling without unnecessary inconvenience.

(3) In every case under either of the proceeding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and

trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained,

(3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, sub-section (2),

and where the Collector is so prevented, the provisions of Section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the cases of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of the publication of the notification] under Section 4, sub-section (1).”

(emphasis supplied)

12. Section 17(1) contemplates that in cases of urgency, whenever the Government so directs, the Collector, though no Award has been made, may on the expiration of the 15 days from the publication of the notice mentioned in Section 9(1) of the 1894 Act, take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances. However, before the vesting takes place, the conditions of Section 17(3-A) have to be complied with and which stipulate that before taking possession of any land under Section 17(1) or 17(2), the Collector shall, without prejudice to the provisions of Section 17(3), tender payment of 80% of the compensation for such land as estimated by him to the persons interested and pay it to them, unless prevented by one or more of the contingencies mentioned in Section 31(2).

13. Therefore, on a holistic reading of Section 17, it becomes clear that for the urgency clause to become operative (i) payment of 80% of the estimated compensation of the said land has to be paid to the persons interested in the said land; (ii) taking over of possession comes thereafter; and (iii) vesting of the land in the Government then takes place. Absence of any one of these in sequence, and the urgency clause provision fails. It is true that if the urgency clause is invoked and complied

with then there is no question of any lapsing because the land already vests in the Government, but the vesting takes place only when the 80% of the estimated compensation is paid and thereafter possession of the land is taken over. This issue is also no longer *res integra* and is covered by a decision of the Hon'ble Supreme Court in the case of ***M/s. Delhi Airtech Services Pvt Ltd & Anr (supra)***. In fact, in this judgment, the Hon'ble Supreme Court has clearly held that if the urgency clause under Section 17 is made applicable and complied with, then Section 11-A of the 1894 Act (and which lays down the period within which an Award has to be passed), though applicable, would not take effect. In such a situation the right of the land loser would be to force the Government to pass an Award and include therein the balance 20% of the compensation payable, even if it is beyond the period of 2 years as stipulated under Section 11-A of the 1894 Act. The relevant portion of the decision of the Hon'ble Supreme Court in the case of ***M/s. Delhi Airtech Services Pvt Ltd & Anr (supra)***, and which was relied upon by Ms. Bane, reads thus:-

“12. So far so good, the question however is as to whether the rigour of Section 11A of Act, 1894 will apply when the appropriate Government exercises its special power in cases of urgency, which does not contemplate the same procedure as in the normal acquisition process noted above. In this regard also this Court

in Yusufbhai Noormohmed Nandoliya (supra) has held Section 11A is applicable to acquisition under Section 17, though without detailed discussion. From the provision of Section 17 reproduced supra, it is seen that the acquiring authority will be entitled to take possession without taking recourse to the procedure which is otherwise provided under Section 16 of Act, 1894 wherein it contemplates the passing of an award before taking possession. But under Section 17 of Act, 1894, possession is permitted to be taken even before the award is passed. Though such power was absolute earlier, sub-section (3A) was inserted by Act 68 of 1984, w.e.f 24.09.1984 whereby the precondition imposed before taking possession is that 80% of the estimated compensation is to be tendered and paid to the persons interested in the land. The tendered amount should be paid unless prevented by one or more of the contingencies mentioned in Section 31(2) of Act, 1894. It would necessarily mean that Section 31 will come into play and the 80% of the estimated compensation amount, though no award is passed, will have to be tendered and paid to the persons interested. If tendered, but not able to pay due to valid reasons, it is to be deposited in Court. The word employed in sub-section (3A) of Section 17 of the Act, 1894 is "shall" and it is to be tendered and paid "before taking possession". Hence it cannot be understood as providing any discretion to the acquiring authority. In fact, the last sentence of sub-section (1) of Section 17 uses the word "thereupon" with respect to vesting. This word "thereupon" is correlated to taking possession and payment in terms of sub-section (3A) is a sine qua non for taking possession. Therefore (1) payment of 80% (2) taking over possession thereafter and (3) vesting of land in the government take place in a sequence. Absent anyone of these in the sequence, the emergency provision fails. It is a prerequisite condition to acquire and take possession of the land since such acquisition is permitted by exempting the requirement of the procedure under Section 5A and possession is permitted to be taken prior to an award being passed under Section 11 of Act, 1894.

13. That apart, sub-section (4) to Section 17 of Act, 1894 provides the discretion to the appropriate Government to waive the application of the provisions of Section 5A and make the declaration under Section 6 in respect of the land at any time after the initial publication of the notification under Section 4 of Act,

1894. This makes it clear that even in a case where the appropriate Government exercises its power to invoke the special power in case of urgency, all other procedure contemplated under the Act except the requirement under Section 5A of Act, 1894 is to be complied. Therefore, after issue of the initial notification under Section 4 read with Section 17(1) and on taking possession after issue of notice under Section 9, the declaration under Section 6 of Act, 1894 is to be made so as to complete the process of acquisition, which indicates that the objection to acquisition of land shall alone stand muted and not the right to compensation which is to be paid in strict compliance of the requirement in that regard.

14. Hence, insofar as payment of compensation for the acquired land even if it is acquired under Section 17 of Act, 1894, it is evident that an award as contemplated under Section 11 of Act, 1894 is required to be passed so as to determine the compensation payable. Since sub-section (3A) to Section 17 mandates payment of 80% of the estimated compensation, such amount paid would get included in the amount to be determined and offered through the award. In that context it is clear that Section 17(4) contemplates, that the declaration is to be made under Section 6 even when an urgency provision is invoked and an award under Section 11 is to be passed to determine the compensation.

15. However, on a careful composite perusal of all the provisions noted above, it is evident that the requirement to tender and pay 80% of the estimated compensation before taking possession assumes significance so as to carve out an exception for non-applicability of 'lapsing' as contemplated under Section 11A of Act, 1894. This is so, since the terms "vesting absolutely" and "lapsing" cannot co-exist and cannot go hand in hand. Post amendment w.e.f 24.09.1984, two elements have been inserted in Section 17 for the land to vest absolutely in the Government for public purpose even before the award is passed. One, is that possession should be taken. The other is, by inserting sub-section (3A) it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, 80% of the estimated compensation, the payment of which only if tendered and paid, the vesting would become absolute and in such event

the consequence of lapsing in respect of absolutely vested land cannot occur and as such, in that circumstance alone Section 11A though applicable will not take effect. The right of the land loser would be to enforce passing of award which will include the balance 20% of compensation even if it is beyond two years and get adequately compensated in terms of Section 23 and 34 of Act, 1894 for the delay if any.

16. But it is a different matter altogether, when Section 17(1) is invoked but the requirement thereunder which is a pre-requisite condition is not complied. As noted, sub-section (3A) has been inserted w.e.f. 24.09.1984, whereunder it is made mandatory to tender and pay 80% of the estimated compensation before taking possession. Therefore, even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the pre-requisite condition for payment of 80% before taking possession is not complied. In such circumstance, by legal fiction it loses its character as an acquisition under Section 17 and since the absolute vesting does not take place, it will lapse if the further process is not complied and the award is not passed within two years from the date of declaration. However, even when the pre-condition is not complied, if the land loser does not challenge the acquisition and/or taking of possession as illegal, but concedes to the position, the possession taken does not become per-se illegal and the vesting will be absolute and in such event it cannot be considered to have lapsed until the land loser exercises the right. We consider it so, since, both Section 11A and sub-section (3A) to Section 17 of Act, 1894 were inserted in Act, 1894 to enable the land losers to exercise their right conferred on them. As such, the said right is to be exercised by the land loser and none other, not even the acquiring authority or beneficiary nor would the said provision become automatically applicable unless it is triggered by the land loser.

17. Therefore, we are of the considered view that Section 11A though applicable to the cases of acquisition initiated under Section 17(1) of Act, 1894 the consequence of it will not affect the case where the land has absolutely vested on compliance of sub-section (3A) to Section 17 of Act, 1894 and 80% of estimated compensation is tendered and paid. Hence, when there is a challenge by the land loser, each case will have to be considered

on its own merits to determine whether the pre-requisite condition to tender and pay as contemplated under sub-section (3A) is made before possession is taken. If in the case concerned the mandatory prerequisite is not complied, such acquisition will lose its character as being under Section 17 and if the award is not passed within two years from the date of the declaration, it will lapse and not otherwise. The benefit of said provision is available only to be invoked by the land loser and cannot be invoked by the acquiring authority to claim lapse by pointing to non-compliance since the 'vice' of non-compliance cannot be permitted to be converted into a 'virtue'."

(emphasis supplied)

14. In the facts of the present case, though the urgency clause was invoked at the time of the issuance of the Section 4 notification, until the passing of the Award, no compensation (estimated or otherwise) was paid to the Petitioners and neither possession of the lands was taken till the filing of the above Petitions. Once this is the case, as laid down by the Hon'ble Supreme Court in ***M/s. Delhi Airtech Services Pvt Ltd & Anr (supra)***, the urgency clause invoked by the State under Section 17 of the 1894 Act must fail. When one considers this, we find that in the facts of the present case, the decision of the Hon'ble Supreme Court in the case of ***M/s. Delhi Airtech Services Pvt Ltd & Anr (supra)*** in fact supports the case of the Petitioner and goes against the State. We, therefore, are unable to agree with the submission of Ms. Bane that because the State has invoked the urgency clause under Section 17 of the

1894 Act there is no question of the acquisition proceedings lapsing. In the facts of the present case admittedly there has been no compliance of Section 17(3-A) and once this is the case, the land does not vest absolutely with the State and hence if the Award is not passed within the time frame as stipulated by law, the acquisition would lapse.

15. As far as the argument of delay is concerned, we find that there is no inordinate delay in approaching this Court seeking the relief sought in the above Petitions. In the present case the Award has been passed on 22nd April 2015 and the present Petitions have been lodged from 31st January 2017 to 27th June 2019. We, therefore, do not think that there is any inordinate delay in filing the above Writ Petitions. Consequently, we do not find any impediment in entertaining the above Writ Petitions, especially when we find that there has been a breach of the statutory provisions of the not only the 1894 Act but also of the 2013 Act. The decision of the Hon'ble Supreme Court in ***Banda Development Authority, Banda (supra)*** relied upon by Ms. Bane is of no assistance to the State. This judgment has clearly held that though no limitation has been prescribed for filing a Petition under Article 226 of the Constitution of India, the High Court should not entertain Petitions filed after a long lapse of time because that may adversely affect the

settled/crystallized rights of the parties. In the present case, there are no settled/crystallized rights that would be affected by entertaining the above Writ Petitions or even allowing them. We, therefore, find that the argument of delay is one of desperation and can hardly be a ground for rejecting the above Writ Petitions.

16. For all the aforesaid reasons, we find that the impugned Award was not passed within the statutory period as required by law. In other words, it was not passed by 20th March 2015. In these circumstances, the acquisition proceedings only qua the Petitioners' lands have lapsed for non-passing of the Award within the statutory period.

17. We must mention that Mr. Shinde, the learned advocate appearing for MMRDA, submitted that the aforesaid project is one of great importance and has been planned to facilitate the decongestion of the island city by improving connectivity between the island city and the mainland (Navi Mumbai) and development of the Navi Mumbai region. He submitted that in fact 95% of the work of this project is already completed. If we hold that the acquisition proceedings have lapsed it would cause grave prejudice to the said project.

18. In answer to this, Mr. Thakur, the learned counsel appearing on behalf of the Petitioners, submitted that possession of the Petitioners lands have already been taken pursuant to orders passed by this Court. In fact, possession was handed over because even the Petitioners did not want to thwart this project. He submitted that all that the Petitioners are looking for is that they be paid compensation by the State by following the procedure of acquisition under the 2013 Act and pass an Award.

19. Once this is the statement made by Mr. Thakur, we hold that even though we have opined that the acquisition has lapsed, possession of the acquired lands shall not revert to the Petitioners, and they will only be entitled to compensation for their lands, and which shall be determined by the State by passing a fresh Award/s qua the Petitioners after following the procedure and the provisions as laid down under the 2013 Act. The State shall carry out this process as expeditiously as possible, especially considering that the Petitioners have lost their valuable property quite some time back and yet haven't received any compensation.

20. In view of the foregoing discussion, the Writ Petition succeeds, and Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

21. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]