IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2024:PHHC:172142-DB

CWP-11498-2019 (O&M) and other connected cases

State of Haryana and another ……Petitioners

Versus

Nishabar Singh and others ……Respondents

Reserved on: 07.11.2024
Pronounced on: 20.12.2024

CORAM : HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Ms. Sidhi Bansal, Ms. Ridhi Bansal and Mr. Viney Kumar, Advocates, for petitioners in CWP-26394-2021.

Mr. M.L. Sarin, Sr. Advocate with Mr. Ritesh Aggarwal, Advocate for the petitioner(s) in CWP Nos.9622 & 30210 of 2019.

Mr. Ashwani Kumar Chopra, Senior Advocate with Mr. Brahamjot Singh Nahar, Advocate, for the petitioner (s) in CWP No.22579 of 2019.

Mr. Shailendra Jain, Senior Advocate with Ms. Richa Sharma, Advocates, for the petitioner (s) in CWP Nos.26227 & 31380 of 2019.

Mr. Puneet Bali, Sr. Advocate with Mr. Sachin Jain & Ms. Niharika Mittal, Advocates, for the petitioner(s) in CWP No.30727 of 2018.

Mr. Sandeep Sharma & Mr. Rohan Moudgil, Advocates, for the petitioner(s) in CWP Nos.32764 & 16532 of 2019 and CWP Nos.1489, 1696, 1018, 315, 749,779 and 3287 of 2021.

Mr. M.L. Sharma, Advocate, for the petitioner (s) in CWP-24404-2021.

Mr. P.R. Yadav, Mr. Jayant Yadav, Advocates, for the petitioner (s) in CWP-25790-2023.

Mr. Rajesh Sethi, Mr. Arun Kumar Biriwal, Mr. Anshuman Sethi & Mr. Paramdeep Singh, Advocates, for the petitioner (s) in CWP Nos.13782, 13791 & 13800 of 2023.

Mr. Mahipal S. Yadav, Advocate,
for Mr. J.S. Yadav, Advocate,
for petitioner in CWP-14957-2020.

Mr. Chanchal K. Singla, Advocate,
with Ms. Kavita Joshi, Advocate,
for the petitioner(s) in CWP-8755-2021.

Mr. Hemant Saini, Advocate,
for the applicant in CWP-21112-2019.

Ms. Darika Sikka, Advocate,
for petitioners in CWP-21066-2021.

Mr. Anil Chawla, Advocate,
for HSVP (in CWP Nos.2338 and 3111 of 2021).

Mr. Ankur Mittal, Addl. A.G., Haryana,
with Mr. Saurabh Mago, DAG, Haryana,
and Mr. Karan Jindal, AAG Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Mr. Siddhant Arora
and Ms. Naina Jindal, Advocates,
for HUDA/HSVP.

Mr. Arvind Seth, Advocate,
for respondent-HSVP in CWP-22122-2019.

Mr. Anupam Gupta, Sr. Advocate,
with Mr. Rajeev Godara, Mr. Gautam Pathania,
and Mr. Sukhpal Singh, Advocates,
for respondents in CWP-11498-2019.

Ms. Vasu Gupta, Advocate,
for Mr. Prateek Mahajan, Advocate,
for respondents no.3 & 4 in CWP-26394-2021.

Mr. Satya Pal Jain, Assistant Solicitor General of India,
with Mr. Dheeraj Jain, Advocate.

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G.S. Sandhawalia, J.

1. The present judgment shall dispose of 39 above referred writ petitions i.e. CWP-11498-2019, CWP Nos.25300 & 30727 of 2018, CWP

Nos. 30210, 21650, 22122, 20567, 32764, 26227, 16532, 21112, 22176, 31380, 2999, 8897, 9622, 22579, 28689 & 31168 of 2019; CWP No. 14957 of 2020; CWP Nos.1489, 1696, 21066, 1018, 24404, 8755, 2338, 315, 749, 779, 3287, 3111 & 26394 of 2021;CWP No.1409 of 2022 and CWP Nos.13782, 13791, 13800, 25790 & 15831 of 2023, wherein the issue which arises for consideration is the vires of Section 101A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Central Act'), which has been inserted by the Haryana Act No.21 of 2018 on 24.05.2018 by way of State Amendment with retrospective effect from 01.01.2014, the date the 2013 Central Act came into force.

2. By virtue of the said provisions, the State has been given power to de-notify the land, on account of the fact that the public purpose for which the land was acquired under the Land Acquisition Act, 1894 (for short '1894 Act') becomes unviable or non-essential, on such terms as considered expedient by the State Government. The payment of compensation on account of the damages, if any, sustained by the landowners due to such acquisition has, thus, been kept within the ambit of the State as such to assess. The proviso further provides where a part of the acquired land has been utilized or any encumbrances have been created, the landowners may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government. In pursuance of the said amendment, policy dated 14.09.2018 has also been formulated, which prescribes the procedure for

de-notifying the land acquired under the 1894 Act on the prescribed terms. The said Section 101A reads as under:-

> "**101A. Power to denotify land.-** When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:
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> Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government."

3. Challenge has been raised on various grounds, primarily on the fact that Section 101 of the Central Act of 2013 itself talks about the return of un-utilized land which was acquired under the 2013 Central Act and the fact that there is no reference as such to the return of land acquired under the 1894 Act. Secondly that under Section 24 of 2013 Central Act there is a specific provision that any award which has been made under the 1894 Act and where proceedings had been initiated under the said Act, the proceedings would have to continue under the provisions of the said Act, as if the Act has not been repealed as per Section 24(1)(b). In such circumstances, the said amendment being in derogation of the Central Act has also been challenged, apart from the fact that Section 101A is based on complete arbitrariness and the provisions being manifestly arbitrary and violative of Article 300A of the Constitution of India (for short 'Constitution') and is *dehorse* the legislative intent of 2013 Central Act,

which saves all the acquisitions of 1894 Act and the law has been crystallized regarding the said savings and the contrary stand taken by the State of Haryana in defending the provisions of the 2013 Central Act, which would be clear from the judgment of the Constitution Bench in **Indore Development Authority Vs. Manoharlal and others, (2020) 8 SCC 129.** Thus, the colorable exercise of power has been challenged, which has been given retrospective effect and where land has already been vested in the State of Haryana and the fact that it is a exercise of non-application of mind by the State authorities by resorting to the said provisions without keeping in mind the methodology prescribed under the policy framed.

4. In order to appreciate the challenge to the provisions as such, the narration of factual matrix is necessary. The issue came to the forefront when one of us (i.e. G.S. Sandhawalia, J.) was sitting in Single Bench and dealing with the regular first appeals pertaining to the enhancement of compensation and the references decided under Section 18 of the 1894 Act regarding the compensation to be paid qua the land falling in village Vaidwala, Tehsil and District Sirsa which was acquired for the development of residential and commercial Sectors 21 and 22(part), wherein 350.53 acres was the subject matter of acquisition of the notification dated 15.01.2008 issued under Section 4 of the 1894 Act. The Collector vide Award dated 12.01.2011 had assessed the market value @ Rs.50 lakhs per acre, which the Reference Court enhanced to Rs.83,18,000/- per acre, vide Award dated 28.09.2013. The matters had been carried to this Court in regular first appeals and a remand had taken

place in **RFA No.583 of 2014 'Balbir Kaur Vs. State of Haryana and others'** on 04.09.2015 and the market value was assessed @ Rs.96,80,000/- per acre on 10.03.2017 by the Reference Court. The landowners then filed the regular first appeals for enhancement and vide order dated 14.03.2018 in the State appeals, State was directed to deposit Rs.84,70,000/- per acre within a period of 3 months. The State, instead of filing any appeal against the interim order before the Apex Court, filed an application for extension of time for making payment. The same was allowed on 20.07.2018 while noting that the benefit of the stay had been granted for the last 4 months, however, the amount being substantial the indulgence was granted till 31.08.2018. The order dated 20.07.2018 passed in CM-6820-CI-2018 in RFA-3816-2017 reads as under:-

> "Application has been filed for extension of time for compliance of the order dated 14.03.2018, whereby the State was directed to deposit the amount after giving part interim relief in the stay application.
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> The amount had to be deposited within a period of 3 months with the Executing Court for necessary disbursal, which has not been done, on account of the fact that amount is substantial and request for funds have been sent. The prayer for extension by six months, in such circumstances does not seem to be justified in any manner. The State has got the benefit of stay for the last 4 months. However, keeping in view the fact that the amount involved is substantial, indulgence is granted till 31.08.2018, on the assurance given by Mr. M.K. Ahuja, Director Urban Estate and Mr. Rajesh Jindal, Chief Controller of Finance, HSVP, who are present in the Court.
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> Accordingly, the application for extension of time is partly allowed.
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> CM stands disposed of."

5. Thereafter, the State had filed an application for recalling the order dated 20.07.2018, whereby extension had been given to make payment till 31.08.2018. Reference has been made to the notification dated 10.01.2019, wherein de-notification of the acquired land had been done by virtue of Section 101A and the policy dated 14.09.2018. It is pertinent to notice that the State in pursuance of de-notification issued notice to one of the land losers for claiming a sum of Rs.3,35,446/- as on 31.03.2021, which was the amount quantified alongwith interest on the amount of compensation received for the land which was in principal Rs.1,36,080/- on 01.02.2011 with another 20% amount which was on account of non-litigation policy and the said notice is also subject matter of challenge in CWP No.13782 of 2023.

6. Resultantly, reference was drawn up by one of us (i.e. G.S. Sandhawalia, J.) on 08.04.2019 in **CM-2133-CI-2019 in RFA-3816-2017 'State of Haryana and another Vs. Nishabar Singh and others'** as to whether the action of the State was malafide and whether the policy as such was sustainable on account of dropping of proceedings arbitrarily and on account of the increase in acquisition cost due to Court orders and same was beyond the scope of Section 101A once the land was acquired under the principle of eminent domain. The complete arbitrariness on the enforcement of Section 101A and the clash with Article 300A of the Constitution was also highlighted while framing the 4 questions and referring the matter to the Division Bench, vide order dated 08.04.2019, which reads as under:-

> "The interesting question which has arisen is regarding the conduct of the State and vires of Section

101A as incorporated by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017 (for short '2017 Act'), which provides for de-notification of the land acquired, even though possession has already been taken. The said section reads as under:-

> "101A. Power to denotify land. When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non- essential, the State Government shall be at liberty to denotifysuch land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:
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> Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government."

2. In pursuance of the said amendment, notification dated 14.09.2018 has also been issued, whereby a policy has been framed which provides that if the land acquired become non-viable or with an increase in acquisition costs as a result of any reason including enormous enhancement, the Government for reasons to be recorded not continue with the acquisition. The terms of the policy as such under Clause 14 whereby the via media has been worked as what is the amount payable by the landowner regarding the land which has been denotified and the payments which have to be made and recoveries from the landowners and the damages aspect for which the landowners have to approach the relevant authority under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 have been specified. Clause 14 & 15 of the notification dated 14.09.2018 reads as under:-

> "14. (1) The original owner or owners or their legal heirs shall return the compensation excluding solatium paid to them along with simple interest payable on deposits from the date of receipt of compensation by them till the date of return of compensation by depositing the same in the designated account as specified in the order under clause 13 before taking possession of the land.
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> **(ii) In case (s) the original owner or owners or their legal heirs, as the case may be, fail to return the compensation in terms of sub-clause (i), the same shall be recoverable as arrears of land revenue from the returned land or from any other immovable property.**
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> (iii) The land shall continue to vest in the Government till the return of compensation in terms of clause 14, by the landowner to the Government
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> 15. Any party aggrieved by the decision of the Government determining the compensation to the land owner (s) on account of damages, if any, sustained by him (them) due to acquisition of land and/or the extent of compensation of being provided alternate land [along with payment of damages, if any, as applicable], in case of part utilization of acquired land or in case of any encumbrances created on/against the acquired land or part thereof, they shall be entitled to make a claim for the same before the Land Acquisition, Rehabilitation and Resettlement Authority, as notified by the State Government under Section 51 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of 90 days from the date of de-notification or from the date of applicability of the present policy.

> The provisions of Limitation Act, Code of Civil Procedure and the Evidence Act shall apply to such proceedings."

3. The background of the case makes it interesting which is to be noticed, as to whether the State Government as such having taken possession more than a decade earlier can resort to the said amendment on account of being un-successful in getting the market value as per the assessment made by The Land Acquisition Collector (for short 'the Collector) upheld.

4. The notification in question under Section 4 of the Land Acquisition Act, 1894 (for short '1894 Act') was issued on 15.01.2008, whereby land measuring 350.53 acres falling in villages Vaidwala, Khairpur and Nejadela, Tehsil &District Sirsa was acquired for public purpose i.e. for the development of residential and commercial sectors Sector 21 and 22 (part), Sirsa. The Collector vide Award dated 12.01.2011 had awarded a sum of 50 lakhs per acre. The Reference Court further enhanced the market value to 83,18,000/- per acre vide Award dated 28.09.2013.

5. The matters were remanded in **RFA No.583 of 2014 'Balbir Kaur Vs. State of Haryana and others'** on 04.09.2015. Resultantly, enhancement has now taken place to 96,80,000/- per acre, vide Award dated 10.03.2017 by the Reference Court while dealing with 116 reference petitions.

6. The State resultantly, filed appeals and could not get the benefit of interim protection and were asked to deposit a sum of 84,70,000/- within a period of 3 months, vide order dated 14.03.2018, while noting that the landowners are already herein in appeal seeking further enhancement. It is also to be noticed that the State has chosen not to appeal against this interim order and whether in the facts and circumstances on account of the litigation not to its suitability and liking can take such a drastic stage.

7. An application was also filed for extension of six months for making the payment and indulgence was granted by this Court in CM-6820-C1-2018 on 20.07.2018 and time was given till 31.08.2018 on the assurance given by Mr. M.K. Ahuja, Director Urban Estate and Mr. Rajesh Jindal, Chief Controller of Finance, HSVP, who were present in the Court. Thereafter, the present application was filed for recalling the order dated 20.07.2018 and for placing on record the notification dated 10.01.2019 (Annexure R-1), whereby do-notification has been done by virtue of Section 101A and the policy as noticed above.

8. Prima facie, this Court is of the opinion that vires of Section will necessarily have to be gone into, keeping in view the above background as under the 1894 Act also it is a settled principle that once the land was acquired and possession had been taken, the Government could not withdraw from acquisition. Reference can be made to the judgment of the Apex Court passed in **State of M.P. Vs. Vishnu Prasad Sharma, AIR 1966 SC 1593, Lt. Governor of H.P Vs. Sri Avinash Sharma, AIR 1970 SC 1576, Balwant Narayan Bhagde Vs. M.D. Bhagwat, AIR 1975 SC 1767, Satendra Prasad Jain and others Vs. State of U.P. and others, 1993 (3) RRR 597, Pratap Vs. State of Rajasthan, (1996) 3 SCC 1, State of Kerala Vs. M. Bhaskaran Pillai, (1997) 5 SCC 432, Mohan Singh Vs. International Airport Authority of India, (1997) 9 SCC 132, Printers (Mysore) Ltd. Vs. M.A. Rasheed, (2004) 4 SCC 460, Govt. of A.P and another Vs. Syed Akbar' AIR 2005 SC 492, Mandir Shree Sitaramji @ Shree Sitaram Bhandar Vs. Land Acquisition Collector and others, AIR 2005 SC 3581** and **"Mahadeo (dead) through L.Rs. and others v. State of U.P and others' (2013) 4 SCC 524**. Accordingly, the following questions would arise:-

(i) As to whether the action of the State Government is tainted with malafide action having failed to get the requisite relief of interim protection by this Court and having failed to seek further redressal.

(ii) Whether the policy dated 14.09.2018 is sustainable, whereby under Clause 7, on account of increase in acquisition cost due to Court orders, it can drop acquisition process and whether the same is beyond the scope of Section 101A.

(iii) Whether under Clause 14 (ii) of the policy, the landowners can be forced to return the compensation in terms of sub-Clause (i) once the land has been acquired under the principle of eminent domain and whether the State can recover the amount of compensation as arrears of land revenue alongwith Interest under Clause 14 (1).

(iv) Whether enforcement of Section 101A can be sustained on account of complete arbitrariness on behalf of the State which would be violative of Article 300A of the Constitution of India.

9. Resultantly, papers be put up before Hon'ble the Chief Justice for referring the matter to the Hon'ble Division Bench for consideration on the above legal aspects."

7. Resultantly, case been re-numbered as **CWP-11498-2019 'State of Haryana and others Vs. Nishabar Singh and others'**.

8. The Policy in question dated 14.09.2018 (Annexure P-9) is called as" 'The Policy for Return of Un-utilized Land' under the provisions of Section 101 A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017" and same reads as under:-

"1. In order to maintain transparency and consistency in de-notifying the acquired land and to regulate the procedure of such de-notification in implementing the provisions of Section 101 A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017, the present policy is being framed.

This Policy may be called, as 'the Policy for Return of Un-utilized Land' under the provisions of Section 101 A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017.

2. This policy aims at prescribing procedure for de-notifying land, acquired under the Land Acquisition Act, 1894 becomes unviable or non-essential on such terms as may be decided by the State Government.

3. If the acquiring department is of the opinion that the land acquired under the Land Acquisition Act, 1894 (Act No. 1 of 1894) is un-viable or non-essential for the public purpose for which it has been acquired and that the land should be de-notified from acquisition, it will inform the Government about its opinion and seek approval of the Government before proceeding further in accordance with the provisions given hereafter.

4. The opinion of the acquiring department after preliminary examination shall be referred to the concerned District Level Sub-Committee, as specified in clause 5 or 6 below, not later than a month from its receipt.

5. In case, the acquired land is within jurisdiction of one district, the sub-committee referred in clause 4 will be headed by the Deputy Commissioner of the district and shall consist of the following members:

(i) Sub Divisional Officer (Civil) of the concerned Sub-Divisions

(ii) District Revenue Officer

(iii) Concerned Executive Engineer PWD (B&R)

(iv) Deputy Director, Agriculture

(v) Senior Most Officer of the acquiring department posted in the districts, as Member Secretary.

6.In case the acquired land falls within jurisdiction of more than one district, the Committee shall be headed by the senior most Deputy Commissioner out of the Deputy Commissioners of the districts involved and shall consist of the following members:

(i) Sub Divisional Officers of the concerned Sub-Division.

(ii) District Revenue Officers of all the Districts.

(iii) Concerned Executive Engineers PWD (B&R) of all the Districts.

(iv) Deputy Directors (Agriculture) of all the Districts.

(v) Senior Most Officer of the acquiring department posted in the districts and the senior most amongst them as Member Secretary.

7. The District Level Sub-Committee constituted under clause 5 or clause 6, as the case may be, shall while examining the 'opinion' of the acquiring department consider the following issues:

(i) if the acquired land has become non-viable land or non-essential land.

(ii) extent of payment of compensation, if any, to the land owner(s) on account of damages, if any, sustained by them due to acquisition of land.

(iii) extent of compensation by providing alternate land along with payment of damages, if any, in case of part utilization of acquired land or in case of any encumbrances created on/against the acquired land or part thereof.

Explanation: -

(1) Unviable land means the whole or part of the acquired land which has become unsuitable for utilization for the purpose for which it was acquired due to act of Nature, or increase in acquisition cost as a result of any reason

including any enormous enhancement in compensation amount payable on such a land due to court orders, or material or drastic change in policy of the Government wherein such extenuating circumstances have emerged where in the opinion of the Government to be recorded with reasons, it would not be in public interest to continue with acquisition, or change in socio-economic and geographical factors in respect of the acquired land or for any other reasonable cause.

(2) Non-essential land means the whole or part of the acquired land which cannot be practically utilized for the purpose for which it was acquired to any of the reasons enumerated in explanation (1) or better alternatives have become available for the project and it is not possible to continue with any alternative public purpose in respect of acquired land.

8.The District Level Sub-Committee, after examining the matter as per clause 7 shall give its clear recommendations and reasons as to whether the 'opinion' of the acquiring department referred to it for consideration deserves to be accepted or not.

(i) If the District Level Sub-Committee decides to recommend acceptance of the 'opinion' of the acquiring department, it will also specify the terms and conditions, if any, emerging from its examination of the matter especially with regard to sub-clauses (ii) and (iii) of clause 7 including quantification of damages.

9. The District Level Sub-Committee will submit a report in accordance with clause 8 to the Administrative Secretary of the acquiring department who shall, after taking approval of the Government place the matter before the Ministerial Sub-Committee as specified in clause 10.

10. A Ministerial Sub-Committee shall be constituted to decide on the matter placed before it in accordance with clause 9. The Sub-Committee shall:-

(i) consider and decide the matter in the manner provided under clause 7.

(ii) be competent to take into consideration any other factor not specified in clause 7 in arriving at the decision as to whether de-notification of the proposed acquired land should be allowed or not.

(iii) recommend terms and conditions as regards compensation to be paid/provided in accordance with these rules.

11. The report of the Ministerial Sub-Committee shall be put up for consideration and decision by the Cabinet at the earliest possible.

12. The Cabinet may upon consideration of the report of Ministerial Sub-Committee, allow de-notification of the acquired land.

13. In case the Cabinet allows de-notification of the acquired land, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, after publishing a notification in the Government Gazette by the concerned Administrative Secretary of the Department. He shall also pass an order in this regard and inform the original owners or their legal heirs, as the case may be, about the decision to return the land.

14. (i) The original owner or owners or their legal heirs shall return the compensation excluding solatium paid to them along with simple interest payable on deposits from the date of receipt of compensation by them till the date of return of compensation by depositing the same in the designated account as specified in the order under clause 13 before taking possession of the land.

(ii) In case(s) the original owner or owners or their legal heirs, as the case may be, fail to return the compensation in terms of sub-clause (i), the same shall be recoverable as arrears of land revenue from the returned land or from any other immovable property.

(iii) The land shall continue to vest in the Government till the return of compensation in terms of clause 14, by the landowner to the Government.

15. Any party aggrieved by the decision of the Government determining the compensation to the land owner (s) on account of damages, if any, sustained by him (them) due to acquisition of land and/or the extent of compensation of being provided alternate land [along with payment of damages, if any, as applicable], in case of part utilization of acquired land or in case of any encumbrances created on/against the acquired land or part thereof, they shall be entitled to make a claim for the same before the Land Acquisition, Rehabilitation and Resettlement Authority, as notified by the State Government under Section 51 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of 90 days from the date of de-notification or from the date of applicability of the present policy.

The provisions of Limitation Act, Code of Civil Procedure and the Evidence Act shall apply to such proceedings.

16. This policy shall become effective from the date of its notification."

9. The perusal of the original file produced by the State for the Sirsa acquisition would go on to show that only on account of an interim order dated 14.03.2018 passed in **RFA No.3816 of 2017 'State of Haryana and another Vs. Nishabar Singh and others'**, since the State had been directed to make payment of Rs.84,70,000/- on 20.08.2018, the opinion was given that either to make payment as per the interim order or to return the land to the landowners or give them alternative land as per Section 101A while noting that the acquisition proceedings were complete and it was left to the HSVP to take a decision. On 27.08.2018 the CCF, HSVP proposed that the Award No.7 passed on 12.01.2011 may be de-notified as the land is not financially viable for flotation of sectors. It

was also noticed that out of Rs.254.51 crores, the amount of Rs.229.58 crores have been paid to landowners, which has to be recovered from the landowners. Resultantly, in anticipation of approval of the Government, a proposal was put that compensation amount already paid may be ordered to be recovered within 30 days from the issuance of the notification and publication and recovery be effected as arrears of land revenue. Thereafter, the then Chief Minister had asked for the benefit of the advise of the learned Advocate General. As per the opinion of the Addl. Advocate General dated 04.12.2018, the notification was slightly to be re-worded and amended, but no reference was made to the Policy dated 14.09.2018, which had been duly notified. On 13.12.2018, it was noted that there was a procedure laid down as per the notification/policy dated 14.09.2018 and, therefore, ex-post facto approval of the Government/Ministerial Sub-Committee may be obtained before issuing the instant notification. On 20.12.2018, it was noted that the proposal was given by the Hon'ble Chief Minister and as per the opinion of the Advocate General, the modification be made, subject to the quantification of the damages and legal compliance and resultantly, a draft notification was put up. Resultantly, the de-notification was done on 10.01.2019. Apparently, a representation was received regarding the process which had been followed, that the landowners have no money to return and various difficulties were being faced by them and that part of the land was falling within the licensed area and again legal advise as such was sought regarding the issue of the return of compensation. It was noticed that the matter regarding compensation was pending before this Court in RFA

No.3816 of 2017. Thereafter, since the land had already been de-notified, on the opinion of the Advocate General the application was filed, after the Chief Minister had perused the same.

Pleadings in CWP-26394-2021 'Khazan Singh and others Vs. State of Haryana and others'.:

10. The acquisition of the land was for the development and utilization of the land for 66KV & 220 KV Electric Sub-Station Sites and other public utility purposes in Section 76 to 78 and Sectors 81 to 95, Gurugram by the Haryana Urban Estates Department. The sites were in 9 villages and we are only concerned with village Shikohpur, Hadbast No.160. The land measuring 18.37 was sought to be acquired falling in Tehsil Manesar, District Gurugram by issuing notification dated 12.06.2012(Annexure P-1) under Section 4 of the 1894 Act. Section 6 notification was issued on 10.06.2013 (Annexure P-2) reducing the area to 15.5221 acres and vide Award No.81 dated 31.07.2013 (Annexure P-3) the market value was assessed @ Rs.1,55,00,000/- per acre alongwith other statutory benefits by the Land Acquisition Collector, Urban Estates, Haryana. The possession was accordingly taken vide Rapat No.663 dated 31.07.2013 and infrastructure was raised on it in the form of construction of sub-station and setting up of the Electric Towers and connecting it with the wires and walling of the acquired area. Reference petition under Section 18 of the 1894 Act was decided on 18.07.2019 (Annexure P-5) and vide the said order the market value was enhanced to Rs.18,38,17,146/- per acre while place reliance upon a judgment passed in **RFA No.5316 of 2014 'Pushpender Kumar and others VS. State of**

Haryana and another' and the order of the Apex Court passed in **Civil Appeal Nos.11913 to 11945** decided on 05.09.2017. The landowners filed representation for payment of the said amount on 26.07.2019 (Annexure P-6) and, thereafter, filed the execution proceedings. The Director General, Urban Estates, Haryana vide letter dated 22.11.2019 (Annexure P-7) informed the Land Acquisition Officer, Gurugram and Zonal Administrator, HSVP that the Government had decided to drop the land from the acquisition proceedings and to return the land to the landowners upon return of compensation to the account of HSVP. Directions were issued that draft be prepared for dropping the land as per the revenue record and Government orders and the same be sent to the said office. Resultantly, the said letter dated 22.11.2019 (Annexure P-7) is also subject matter of challenge alongwith the provisions of Section 101A of the 2013 Act and the Policy dated 14.09.2018 (Annexure P-9).

Development by way of interim orders:

11. The Co-ordinate Bench while issuing notice of motion on 22.12.2021 had stayed the operation of the said order dated 22.11.2019. The landowners also relied upon the noting portion of the file (Annexure P-10) as to how the decision was taken dehors the policy in question, while placing reliance upon Section 48 of the 1894 Act, which barred the dropping of proceedings once possession has been taken and also placed reliance upon the judgment of the Constitution Bench passed in **Indore Development Authority (supra)**.

12. Vide order dated 20.02.2023, we had asked the learned Chief Secretary, Haryana as to why the regular first appeal was not filed, once

the electric machinery worth Rs.42 crores had been put in place and once the order of the Reference Court was subject matter of challenge in other RFAs. The cost of Rs.58.33 crores was entailed for installation of 220 KV GIS Sub-Station, which has not been energized, though two incoming lines of 220 KV and down lines of 33 KV sub-station had also been installed and the material was getting obsolete. An option was given to the State whether some portion of the land can be put to some other public purpose, if it is not economically feasible.

13. The Status report by Shri Sanjeev Kaushal, the then Chief Secretary, Haryana dated 30.06.2023 has been filed, admitting that the inventory of Rs.42,10,65,011/- was available and out of the same, the equipment worth Rs.39,67,42,736/-was to be shifted to the other site. The enhancement of compensation was to be Rs.568 crores, whereas costs of re-location of the sub-station to the alternate site was Rs.123 crores and, therefore, Rs.445 crores would be saved and it has been further reported that the State did not want to use the impugned site for some other public purpose and, thus, the justification was made.

14. Nothing was brought on record as to whether the policy had been invoked or had been kept in mind. Resultantly, the original files were also called for. The HVPN Ltd. had also been impleaded as respondent No.7 on its application bearing CM-2656-CWP-2023 on 20.02.2023.

Pleadings of the State and HVPN Ltd.:

15. Reply filed on behalf of respondent No.5-Land Acquisition Collector, Gurugram would go on to show that as per the opinion of District Attorney, Gurugram and the Legal Remembrancer, Haryana, it was not a fit case for filing appeal and, therefore, no further appeal was filed against the order of enhancement of compensation. It was pleaded that the matter was placed before the Chief Administrator-cum-Chairman Haryana Shehri Vikas Pradhikaran and, accordingly, vide memo No.A1/2019/8625-8627 dated 12.11.2019 proceedings had been initiated for dropping of the land from acquisition. Reliance was placed upon Section 101A which had been inserted vide notification dated 24.05.2018 and had given power to the State to return the land and the landowners had absolute right to claim any damages sustained by them due to dropping of acquisition proceedings, if they were not intending to challenge the decision of the Government. The judgment of the Constitution Bench in **Indore Development Authority (supra)** was sought to be distinguished while pleading that the provisions of Section 101A had not been considered and that Section 24(1)(b) was not applicable. Reliance was placed upon the judgment passed by the Madras High Court in **Anti Corruption Movement Vs. The Chief Secretary to Government of Tamil Nadu, Co-operation, AIR 2015 (Madras) 119** wherein the amendment made by the State had been challenged and provisions of Section 48B had been upheld. Resultantly, fall back on the policy dated 14.09.2018 was made that the landowners have right to claim damages sustained due to dropping of acquisition or de-notifying the land. It was submitted that the enhancement amounting to Rs.44.24 crores per acre

alongwith other statutory benefits was too high and unacceptable for the Government.

16. The beneficiary department-HVPNL held out that the allotment which was made vide memo dated 09.12.2013 and creation of the 220 KV with installed capacity of 2x100 MVA, 220/33 KVT/s was planned and awarded to M/s Kalpataru Power Transmission Limited, Noida on 09.12.2017 on turnkey basis. On the revised possession, 11.20 acres of land was handed over to HVPNL by HSVP vide letter dated 24.05.2017. The work of the sub-station was completed to the extent of 95%. On account of the enhancement by the Reference Court on 18.07.2019, a meeting had been conveyed on 22.11.2019 under the Chairmanship of the Principal Secretary to the Government of Haryana, Town & Country Planning Department, wherein a decision was taken to drop the land from acquisition proceedings in Sector 77 and one 66 KV Electric Sub-Station in Sector-83, Gurugram. The sub-station was never commissioned subsequently and a decision was taken to dismantle the sub-station by HVPNL and due to operation of the interim order, the dismantling had not been carried out. It was admitted that costs of Rs.58.33 crores for establishment of sub-station had taken place and expensive equipment installed was becoming obsolete. The costs as such was to be shared in 50:50 ratio between HVPN and HUDA and, thereafter the market price had gone to Rs.500 crores and the feeding transmission lines would come to Rs.616 crores, which would cause a financial burden. The sub-station would be constructed on the other site allotted by HSVP vide allotment letter dated 30.06.2016.

17. The original file produced by the State counsel would go on to show that on 19.11.2019 after the proposal was put that since in the connected matter of **Pushpender Kumar (supra),** the costing of the acquisition would come to Rs.44 crores per acre, the HSVP being the custodian of the acquired land, would also be required to comment. On 20.11.2019, Shri A.K. Singh, PSTCP recommended that acquisition, in principle, be dropped and land be returned to the landowners and suitable sites be identified as per revised norms. The Gurugram Municipal Development Authority was to be informed of the exercise, which order was blanketly approved by the then Chief Minister on 21.11.2019 without there being any reference to the policy in question or any reference to the Cabinet. Resultantly, the letter dated 22.11.2019 was thus issued, leading to the filing of the writ petition and passing of the interim orders.

Facts and Pleadings of CWP No.9622 of 2019 ''Rajinder Pal Singh and others Vs. State of Haryana and others'.

18. Challenge herein is to the notification dated 03.08.2018 (Annexure P-13) published in the official gazette, whereby the acquisition of the land of the landowners was de-notified. The State had earlier issued notification dated 20.09.2004 (Annexure P-1) under Section 4 of the 1894 Act read with the emergency provisions under Section 17 of the 1894 Act for acquiring 308.347 acres of land various villages including Village Khera, Tehsil Jagadhri, District Yamuna Nagar. The public purpose was for construction of Shahbad-Nalvi Irrigation Scheme (Shahbad Feeder). Section 6 notification was, thereafter, issued on 18.03.2005 and acquisition proceeding was subject matter of challenge in **CWP No.20042 of 2004**

'Jatinder Pal Kaur & others Vs. State of Haryana &others' and the lead case was **CWP-5078 of 2005 'Mani Ram & others Vs. State of Haryana & others'**, which was dismissed on 26.09.2005 (Annexure P-2). The acquisition, therefore, had been upheld for the public purpose, which had been initiated for recharging the water table. The said order was affirmed by the dismissal of the SLP No.26503 of 2005 on 06.01.2006 (Annexure P-3). In the meantime, the Award came to be passed on 02.12.2005 and led to the filing of the Reference Petitions under Section 18 of the 1894 Act by the landowners. The District & Sessions Judge, Yamuna Nagar assessed the market value @ Rs.8 lakhs per acre for *chahi* land and Rs.14 lakhs per acre for prime land. The landowners preferred RFA No.3078 of 2010 and resultantly, the market value of the land was assessed @ Rs.2887/- per square meter (Rs.1,16,83,000/- per acre) in a bunch of cases, lead case of which **RFA No.3356 of 2010 'State of Haryana and another Vs. Santokh Singh and others'**decided on 05.05.2016 and was followed by a decision in **RFA No.3894 of 2010 'Sardool Singh and others Vs. State of Haryana and others'**on 19.01.2017. The State challenged the said quantification by way of filing **SLP No. 14338-14372 of 2018 'State of Haryana and others Vs. Sardool Singh and others'**, which was filed against the judgment dated 19.01.2017 passed in **RFA No.3894 of 2010 'Sardool Singh and others Vs. State of Haryana and others'** and other connected matters. The Apex Court on 15.05.2018 (Annexure P-10) directed that the State would deposit Rs.50 lakhs per acre before the Reference Court, so that the landowners could withdraw the same. The said order reads as under:-

> "Delay condoned. Issue notice.
>
> There shall be stay of operation and implementation of the impugned Judgment on condition that the petitioners provisionally deposit at the rate of Rs. 50 Lakhs per acre, which is inclusive of all statutory benefits, within a period of three weeks from today, before the Reference Court. On such deposit, it will be open to the claimants before the Reference Court to withdraw the same."

19. Meanwhile, after getting assent of the President on 09.05.2018 by Haryana Act No.21 of 2018, on 24.05.2018 the notification of the State amendment was done, incorporating Section 101A with retrospective effect from 01.01.2014.

20. Vide the impugned notification dated 03.08.2018 (Annexure P-13), the Government withdrew from the acquisition invoking the power under Section 101A and retained only 5.906 acres, which was for the purpose of construction of a road. The de-notification of the land of the villages as given in the table T2 of the said notification provided that any landowner to whom the land is to be returned within a period of 30 days of publication of the notification, can submit his claim in writing before the Land Acquisition Officer, Ambala to complete the process of reversion of the land. The total amount already paid by the Government to the landowners was to be returned alongwith such interest as decided by the Government before delivery of the possession. The landowners, however, were entitled for compensation on account of damages sustained by them as a result of aforesaid land acquisition on such rates as fixed by the Government. Thereafter, on 17.08.2018, the Haryana Government withdrew its SLP Nos.14338-14372 of 2018 (Annexure P-14). The said order reads as under:-

> "These are the applications for withdrawal of the Special Leave Petitions, which are taken on record. The petitioners are directed to file the same in the Registry.
>
> Permission to withdraw the Special Leave Petitions is granted.
>
> The Special Leave Petitions are, accordingly, dismissed as withdrawn as having become infructuous."

21. Similarly, another set of SLPs were also withdrawn on 03.10.2018 (Annexure P-16) leaving the landowners in a lurch. The landowners filed objections dated 28.08.2018 (Annexure P-15) against the de-notification and served a legal notice and claimed damages as such sustained by them and also asked the respondents to remove the electric power line which was installed alongside the canal and petitioned to restore the land to its original condition by filling it with fertile earth and by way of leveling and make it cultivable, apart from leaving their right as such open to challenge the said de-notification process. Resultantly, the arbitrary exercise of power and the hardship as such of the expropriatory legislations twice for the same piece of land and to return the acquired land after a period of 14 years despite utilization since the year 2011 was challenged on the ground of arbitrariness. The provisions of Section 107 was also referred to regarding the power of said legislation regarding the entitlement of the compensation then payable and for re-settlement, apart from the procedure resorted to under Article 254(2) of the Constitution, while placing reliance upon the judgments of the Apex Court passed in **Yogendra Kumar Vs. State of Bihar, (2016) 3 SCC 183** and **Innoventive Industries Limited Vs. ICICI Bank & another, (2018) 1 SCC 407.**

22. The stand of the State in the written statement filed by respondent No.2 was that the President has given the assent on 09.05.2018. It was admitted that under the 1894 Act, there was a bar under Section 48 and a restriction to release the land, once the possession has been taken. It was admitted that procedure has been completed under the old Land Acquisition Act, 1894, which was being revived and allowed under the provisions of Section 24(2) of the 2013 Act. The un-viability of the acquisition because of the enormous cost of the land had saddled the State Government with a huge liability and, therefore, it did not want to continue with the acquisition.

Arguments on behalf of the landowners:

23. The argument raised on behalf of Mr. Anupam Gupta, Senior Counsel thrust up the issue of Article 254 (2) of the Constitution, therefore, to contend that once there was inconsistency between the laws made by the Parliament and the laws made by the Legislature of the State and that once the proper assent of the President had not been taken under Clause(2) for the law made by the Parliament, it would prevail over the law made by the Legislature of the State and would not be as such saved. It was pointed out that the Bill had been sent to the Central Government on 24.03.2017 and the assent had been given to it by the President on 09.05.2018. The Ministry of Agriculture as per the original files produced had given its express reservation on 11.08.2017 regarding the conflict between the Central Act and the proposed amendment by the State. On 16.03.2018, the Department of Legal Affairs had also expressed its reservation in similar fashion and similarly, on 03.04.2018 the Ministry of

Home Affairs had asked the State to re-visit the said provision. Resultantly, Mr. Gupta has placed reliance upon the judgment of the Constitution Bench in **Kaiser-I-Hind Pvt. Ltd. and another Vs. National Textile Corporation (Maharashtra North) Ltd. and others, (2002) 8 SCC 182** to contend that there has to be consideration of the relevant material and it was not an idle formality and the President had to be apprised of the reason as to why his assent was sought. It was, accordingly, argued that while falling back on the judgment of the Apex Court passed in **Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and others, (1985) 3 SCC 661,** that the law made by the Parliament could not have been nullified in the manner in which the State has done.

24. It was also pointed out from the Constitution Bench judgment of the Apex Court in **Indore Development Authority (supra)** that the State had projected that once the possession has been taken and even if the land has not been utilized, the land cannot be restituted to the owner after the stage of possession is over, which was the legislative intent of the Central Act of 2013. It was, accordingly argued that where compensation has been accepted and possession handed over and projects have come up in part and even if possession was not taken, it would be against public policy to give the land back to the landowners. The fact that concluded acquisitions could not be reopened at the hands of the State and the whole intent of the judgment of the Constitution Bench was to save all the acquisitions of 1894 and now the State could not hold out to the contrary. While placing reliance upon Article 300A of the Constitution incorporated under Chapter-IV, it was argued that no person can be deprived of his

property save by authority of law and, accordingly, contended that it may not be a fundamental right but a Constitutional right which has been read as the right to shelter and employment.

25. Reliance upon the judgment passed in **K.T. Plantation Private Limited Vs. State of Karnataka, (2011) 9 SCC 1** was placed, wherein it was held out that the legislation providing for deprivation of property should be just, fair and reasonable and could be questioned by way of judicial review. Any such provision which was not reasonable and which was arbitrary or excessive was accordingly stressed on and that impugned provisions of Section 101A and the policy as such were challenged under the rule of eminent domain, and if there was any violation which undermines the basic structure and the democratic principles of the Constitution, it would be a good ground to strike down the statute. It was, accordingly, argued that there is no other amendment by the Parliament in the 2013 Act apart from the State amendment and the manifest arbitrariness in introducing the said amendment was highlighted while referring to Question No.(iv) which had been formulated in the reference order, as reproduced above. It was accordingly, pointed out that after the land had vested by issuing of a declaration under Section 6 (3) of the 1894 Act, the same was conclusive evidence as the need was made out as held out in **Smt. Somawanti and others Vs. State of Punjab and others, AIR 1963 SC 151.** Once there was a declaration made with conclusiveness and satisfaction that the land was needed for the public purpose, the same was established and complete. Once such an exercise had been completed, the Government could not, by a self-serving

capricious decision, which was a one-sided decision, come to the conclusion that the land was not required for the intended public purpose, without taking into consideration the interest of the landowners, once it stood vested with the State. It was, accordingly, contended that once the land stood vested, by passing of the Award on 12.01.2011 (in the Sirsa acquisition), the acquisition proceedings could not be dropped 8 years later in the year 2019 having taken possession vide Rapat.

26. Reliance was also placed upon the judgment of passed in **Shayara Bano Vs. Union of India and others, (2017) 9 SCC 1,** wherein the Constitution Bench was dealing with the issue of *Triple Talaq,* highlighting the arbitrary power and the fact that rule of law would mean the exercise of powers of Government which would be conditioned by law and equality before the law or the equal subjection of all was stressed upon, while referring to the judgment passed in ***Indira Nehru Gandhi Vs. Raj Narain, AIR 1975 SC 2299.*** Resultantly, it was contended that doctrine of arbitrariness had been highlighted in **Maneka Gandhi Vs. Union of India,** ***(1978) AIR 597*** and can be used to negate the legislation, subordinate legislation and executive action. The manifest arbitrariness was pointed out that the policy of return of land was a one-way traffic and a "*farman"* and decree without any provision of hearing being provided to the landowner, which was the basic requirement and also given under Section 5A of the 1894 Act and had been noticed in detail in the case of **Surinder Singh Brar and others etc. Vs. Union of India and others, 2012 (12) SCR 1077.** The dignity to the owner of the land acquired and the lack of balancing and the act by the State being "princely" in nature

and not of a democratic State was stressed upon and the fact that it was a self-serving provision. Reliance was also placed upon the judgment of the Constitution Bench in **Joseph Shine Vs. Union of India, (2019) 3 SCC 39** to contend that the constitutional validity of Section 497 IPC had been rightly held out to be discriminatory and arbitrary, as it treated a married woman as a property of her husband and it was test of a manifest arbitrariness which was inconsistent with the ethos of the Constitution, which led to the striking down of the said provision.

27. Ms. Sidhi Bansal and Ms. Ridhi Bansal, counsel for the petitioners in CWP-26394-2021 highlighted the fact that retrospective power had been exercised to bring the amendment into force from 01.01.2014 and pointed out that possession had been taken on 31.07.2013(Annexure P-3) when the Award was passed and by Rapat Roznamcha No.663 and the land stood vested in the State, in view of the provisions of Sections 16 and 48 of the 1894 Act. It was, accordingly, pointed out from Section 24(1) (b) of the 2013 Central Act that it contained a notwithstanding *non-obstante* clause provision and specifically provided that the 1894 Act would govern the proceedings. Sub Clause 24 (2) provided other notwithstanding provisions, which provided the applicability of the 2013 Central Act and which was also subject matter of controversy before the Constitution Bench in **Indore Development Authority (supra).** It was, accordingly, contended that there was no such specific provision under Section 101 for dropping of land acquired under the 1894 Act and therefore, Section 24(1) (b) would prevail over the proceedings and, therefore, in view of Section 101 the only power to

return was of un-utilized land acquired under the 2013 Central Act and it was silent as such qua the Act of 1894. The said provisions had also been noticed by the Apex Court in **Indore Development Authority (supra)** while repelling the argument that the said provision only dealt with the acquisitions made under the 2013 Act.

28. It was, thus, pointed out that once Section 48 of the 1894 Act itself bars the de-notification of the land of which possession has been taken and, therefore Section 101A was in contradiction to the acquisition proceedings initiated under the 1894 Act which would govern, as per Section 24(1) (b) of the 2013 Central Act. The State could not as such choose to apply it arbitrarily and whimsically as and when it so felt. It was, accordingly contended that once an award had been made under the 1894 Act, the proceedings would be governed by the said Act. Reference was made to the provisions of policy in question to point out that under Section 101A issue was regarding public purpose for which the land was becoming unviable or non-essential and said terms had not been defined and, thus, also would come under the ambit of arbitrariness.

29. The policy in question had been termed the policy for the "Return of Un-utilized Land" and there was no mention of the same regarding non-viability of the public purpose for which it was acquired. Reliance was placed upon Article 31A of the Constitution regarding the extinguishment of the right by the State by way of acquisition. It was pointed out that the dropping of acquisition was on account of the enhancement of the land price, as apparently as per Clause 7 of the Policy, which was further to be done by a District Level Committee as constituted

under Clause 5 & 6. It was a one-way traffic without the landowner being kept in the picture and the explanation also further provided that the un-viable reasons could be the enormous enhancement in compensation payable due to Court orders or better alternative having become available for the project. It was further pointed out that policy was in force but was never followed and the report of the District Level Committee had to be submitted to the Administrative Secretary of the acquiring department after taking approval of the Ministerial Level Sub-Committee, as per Clause 9 and thereafter, it was only for the Cabinet to take a call and allow the de-notification, as per Clause 12. Neither any Cabinet approval had been taken and only the Chief Minister had given his approval which would be clear from Annexure P-10.

30. Reference was also made to the communication dated 22.11.2019 (Annexure P-10) to submit that there was no reference to the policy and the affidavit filed by the Chief Secretary, which pointed out about the decision dated 20.11.2019. It was thus, submitted that there was no redressal provided except under Clause 15 before the Land Acquisition, Rehabilitation and Resettlement Authority as notified by the State Government under Section 51 of the 2013 Act, which was limited to the issue of compensation payable. The onerous condition to return the compensation after excluding solatium alongwith simple interest from the date of the receipt of the compensation till the date of return of compensation by depositing the same in the designated account as per Clause 14 had been provided. The right of the State to enforce the recovery by way of Land Revenue Act to recover the compensation from

the landowners or their legal heirs was stressed upon to point out the manifest arbitrariness to recover the amount from the unwilling landowner, who would have invested elsewhere for the compensation received and might not be interested in getting the land back and the one sided policy in favour of the State which was using the sledge hammer against the landowner not once but on two occasions.

Arguments by the State in Defence

31. Mr. Ankur Mittal in defence has submitted that provisions of Section 101 were introduced on account of the fact that un-viable or non-essential were important factors as on various accounts the public purpose could not be fulfilled and, therefore, the enhancement of land value could be one of the reasons. It is, accordingly, pointed out from the policy in question that it could be due to act of nature, material or drastic change in policy of the Government or change in socio-economic and geographical factors etc. It was contended that certain directions due to quashing of the acquisition proceedings by virtue of Court order and there would be reason when the public purpose was frustrated and it was not viable and the State was not in a position to carry out the said public purpose.

32. It was further contended that the proceedings could be dropped under the 1894 Act at several stages including Section 4, 6 and even if the Award was not passed under Section 11A within a period of 2 months and vesting would only take place on account of the possession of the land after making an Award under Section 16. The argument raised by Mr. Mittal was that the section could only be struck down, on account of lack of legislative competency and, if there is any violation of Part-III of

Constitution, as per the settled principles. It was submitted that Entry 42 of the concurrent list as such gave the power to the State as mentioned in the same as acquisition and requisitioning of property and, therefore, the State had the power to enact the provision and there was no inconsistency nor any repugnancy and Article 254(2) would protect the amendment made. It was further submitted that the principle of manifest arbitrariness has only been propounded thereafter, in view of the law laid down in **Shayara Bano (supra).** Reference was made to the judgment passed in the case of **K.T. Plantation (supra)**to contend that only if both the laws were fully inconsistent or absolutely irreconcilable and it was impossible without disturbing the other, or conflicting results were produced, the Court would step in and, therefore, the examination had to be done from that limited aspect. Attention was also drawn to the judgment passed in **Deep Chand and others Vs. State of U.P. and others, AIR 1959 SC 648** that there should a direct conflict between the two provisions and also brought to our notice the judgment passed in **M. Karunanidhi Vs. Union of India and others, (1979) 3 SCC 431** that there had to be a clear and direct inconsistency between the Central Act and the State Act and the presumption always lay in favour of the constitutionality of a statute. It was submitted that nothing had been argued that two enactments contained any inconsistency and irreconcilable condition and, therefore, this Court would be loath as such to interfere. While placing reliance upon the judgment passed in **West Uttar Pradesh Sugar Mills Association and others VS. State of Uttar Pradesh and others, (2020) 9 SCC 548,** Mr. Mittal contended that the dominant intention of both the enactments had to be seen and, therefore, the provisions as such were in fine tune with the Central Act.

33. It was further submitted that there was no provision contrary to the 2013 Act and neither there was any pre-occupied field nor any operational incompatibility, which would compel this Court to strike down the provision. Reference was made to Section 93(3) of the Central Act 2013 which provided that in cases of incomplete acquisitions where the Government withdraws from acquisition and possession of land had not been taken, the Collector was to determine the amount of compensation due to the damage suffered and it was in such similar circumstances by virtue of the provision under Section 101A, the State Government would look after the said aspect. It was submitted that this was *pari materia* to Section 48 of the 1894 Act, which also provided for determination of the compensation due to the damage suffered by the owner in consequence of the notice or of any proceedings there under. It was, accordingly, argued that misuse of a section is not a ground to hold that the provision is bad and merely on account of the policy which was bad, the provisions could not be struck down. Mr. Mittal has, however, conceded the fact that the policy as such was in derogation of the principal object of the section and was not in a position to defend the same. It is to be noticed also a year earlier the State had undertaken to withdraw the said policy dated 14.09.2018 before the Co-ordinate Bench, but has not done so till now, which will be discussed in Question No.(iii). Resultantly, reference was made to judgment of the Apex Court passed in **Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and others, (2010) 5 SCC**

246 to contend that both the enactments could stand together and there was no such conflict between the two. Fall back was made on the judgment passed in **Vijay Kumar Sharma and others Vs. State of Karnataka and others, (1990) 2 SCC 562,** which was a case where the vires of the Motor Vehicles Act as amended by the State of Karnataka was subject matter of consideration in context to the enforcement of Motor Vehicles Act, 1988. It was, accordingly, argued that ascertainment of the dominant object of two legislations had to be kept in mind and the pith and substance of the objects and reasons of the enactment had to be seen once both the legislations are substantially on the same subject. The State occupied field and the operational incompatibility were highlighted and held that merely on account of the word "notwithstanding" used in Section 24 would not as such block the field of Section 101A and act as a bar. Reliance was placed upon Section 48 of the 1894 Act and relevant judgments to contend that even if the exercise of power by the State was arbitrary, the same could be set aside, but it was not a ground to hold that the provisions are bad. It was, accordingly, submitted that Section 101 was a discretionary provision and one of the two conditions had to be fulfilled, which was within the competence of the State to exercise the power to de-notify the land, which could be the issue of non-viability or non-essentiality.

34. Reliance was, accordingly, placed upon the judgment passed in **Hari Ram & another Vs. State of Haryana and others, (2010) 3 SCC 621** to contend that the power was given under the statutory provision to withdraw before possession and it did not provide any particular procedure for withdrawal from acquisition. While placing reliance upon the

judgment passed in **Special Land Acquisition Officer, Bombay and others Vs. M/s Godrej and Boyce, (1988) 1 SCC 50,** it was pointed out that the State has ample power and the Apex Court as such had held that if the State had withdrawn from the acquisition, no mandamus could be issued. While referring to judgment passed in **V. Chandrasekran and another Vs. Administrative Officer and others, (2012) 12 SCC 133** it was submitted that the land vested in the State could be divested, if a statutory amendment had been made and as has been noticed in the said judgment and, therefore, the said provisions were justified. While placing reliance upon the judgment passed in **Tamil Nadu Housing Board Vs. Keeravani Ammal and others, (2007) 9 SCC 255,** it was contended that any bad or capricious action taken by the executive would not make the provision bad and the action taken, could be struck down and on the said principle this Court would not strike down the provision, keeping in view the facts and circumstances of the cases projected and examples given. Reliance was also placed upon the judgment passed in **Mafatlal Industries Ltd. Vs. Union of India, (1997) 5 SCC 536** regarding the principle that a power under Article 226 has to be exercised, to effectuate the regime of law and not for abrogating it and that mere possible views of usage of a provision by a person incharge would not be a ground to strike down the provision.

35. The lack of operational incompatibility in light of Section 24(1)(b) was sought to be highlighted and, thus, it was submitted that Section 24(1)(b) contemplates the word proceedings shall continue under the 1894 Act, if it has not been repealed. It was, accordingly, argued that

it was only relate to pending proceedings. Reference was made to the word proceedings under Section 24(2) referred to in the judgment of the Constitution Bench in **Indore Development Authority (supra)** and accordingly, while placing reliance upon the provisions of Section 114 of the Central Act 2013 the repeal clause of the Land Acquisition Act, it was argued that Section 6 of the General Clauses Act, 1897 (for short '1897 Act') would also come into force. Once the Award had been passed then the proceedings stood concluded, as compensation was deposited and possession had been taken and, therefore, it was submitted that thereafter, merely if a reference was pending, it would not relate to the proceedings under Section 24(1)(b).

36. It was further contended that Section 114(2) provided that save as otherwise provided in this Act the repeal under sub-Section (1) shall not be to prejudice or affect the general application of Section 6 of the General Clause Act, 1897. Thus, the whole intention was on Section 101 to de-notify the land which became unviable or non-essential under 1894 Act. Resultantly, it was argued that non-obstante clause and Section 24(1) (b) which have been referred to by the counsel for the petitioners had to be given a restrictive meaning and the intent was to be gone into and could not override Section 101A. Reliance was placed upon the judgment passed by the Apex Court in **Dominion of India and another Vs. Shrinbai A. Irani and another, AIR 1954 SC 596** in this context that the said non-obstante clause was to be read as clarifying the whole position and incorporated by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment. Similarly,

while placing reliance upon the judgment passed in **R.S. Raghunath Vs. State of Karnataka and another, (1992) 1 SCC 335,** it was argued that the enacting part of the Section which provided for the fair construction of the words used according to their natural and ordinary meaning is to be seen and non-obstante clause is not to be understood as operating to be cut down to resorting to the same. The words of the enactment being clarified for clear interpretation on the plain and grammatical construction had to be seen and non-obstante clause had to be seen by limiting the ambit and scope.

37. While placing reliance upon the judgment passed in **A.G. Varadarajulu and another Vs. State of Tamil Nadu and others, (1998) 4 SCC 231,** it was submitted that search had to be made with a view to determine which provision answers the description and which does not, and the scope of the provision has to be construed strictly. Resultantly, reference was made to the judgment passed in **Geeta Vs. State of U.P. and others, (2010) 13 SCC 678** that intent of the legislature must be interpreted in line with the scheme of the Act and the purpose for which it was enacted. Accordingly, it was contended that restricted meaning has to be given under Section 24(1)(b) and it could not override Section 101A and does not fall under any manner to ascertain the operational incompatibility. The argument that repeal by implication was one of the grounds for striking down would not be applicable and Section 101A added alongwith Section 24 was because of practical difficulties by the State legislature, which was competent to enact the law under Entry

No.42. Reliance was placed upon the objects and reasons of the bill introduced in furtherance of the said argument.

38. It was, accordingly, argued that objects and reasons of the Bill as such are not liable to be taken into consideration and the argument which has been sought to be raised was that there was a reference of Section 101A while making a major amendment, which was in contradiction to the 2013 Central Act. It was further contended that the limited extent to which the objects and reasons could be examined was in context to see the validity of the provision. Merely, because the manner in which the events had unfolded would not impute any inference, which could be put on the legislature and the problems were being faced on account of lapsing provision and the amendment had been made. Reliance had been placed upon the judgment passed in **Aswini Kumar Ghose and another Vs. Arabinda Bose and another,(1952) 2 SCC 237**to contend that the statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute and the objects thereby sought to be achieved may not remain the same throughout till the Bill emerges from the House as an Act of the Legislature. The construction of an Act and the debates have to be excluded from consideration and the statement of objects and reasons annexed to a Bill were not to be referred to while laying out a challenge to the Constitutional validity. While referring to the judgment passed in **State of West Bengal Vs. Subodh Gopal Bose, (1953) 2 SCC 688** it was argued that what actuated the sponsor of the Bill and the urgency of the evil which was sought to be remedied, were kept to be in mind.

39. While relying upon the judgment passed in **Jia Lal Vs. The Delhi Administration, AIR 1962 SC 1781,** it was submitted that the objects and reasons could not be considered as admissible in evidence for construing the validity of statute and said proceedings could not be called in aid for constructing a section. The judgment in **K.S. Paripoornan Vs. State of Kerala, (1994) 5 SCC 593** was also referred to, wherein it has been held that the statement of objects and reasons appended with the Bill were to be seen for limited purpose of understanding the background and the state of affairs leading to the legislation and it could be used as an aid for the construction of the statute. While relying upon the judgment in **State Bank's Staff Union (Madras Circle) Vs. Union of India and others, (2005) 7 SCC 584,** it was argued that the amendment of the statute by its ordinary language, if being obscure or ambiguous, then the objects and reasons given were to be examined and it was not appropriate for the judicial preserve to invalidate a valid law competently made and smooth balance built with the delicacy had to be maintained. While relying upon the judgment passed in **State of Tamil Nadu and others Vs. K. Shyam Sunder and others, (2011) 8 SCC 737,** it was contended that it could not be for ascertaining the condition which prevailed at that time which necessitated the making of the law. The reasons may be relevant to find out what was the objective of any given statute passed by the legislature and the mischief which was sought be remedied by the statute was to be appreciated with true intent of the legislature and objects stated to be achieved by enactment of the particular act.

40. Resultantly, the judgment of the three Judges Bench in **Union of India and others Vs. Exide Industries Limited and another, (2020) 5 SCC 274** was relied upon, whereby the Apex Court was examining the amendment in the Income Tax Act as inserted by the Finance Act, 2001 that it was settled canon of interpretation to deduce the true intent of the legislature and the objects and reasons would be useful in understanding the import of an enacted provision. However, in the absence of any ambiguity, fall back on the same was not required. The proactive examination by the Court offering multiple avenues and methods to achieve the ultimate purpose of interpretation and the presence or absence of objects and reasons had no impact upon the constitutional validity of a provision as long as the literal features of the provision enabled the Court to comprehend its true meaning with sufficient clarity. Accordingly, it was contended that malice and malafide intent cannot be attributed to the legislature while placing reliance upon the judgment passed in **K.C. Gajapati Naryan Deo Vs. State of Orissa (1953) 2 SCC 178; K. Nagaraj and others Vs. State of Andhra Pradesh and another, (1985) 1 SCC 523; G.C. Kanungo Vs. State of Orissa, (1995) 5 SCC 96; State Bank's Staff Union (supra); State of Himachal Pradesh Vs. Narain Singh (2009) 13 SCC 165; State of Kerala and another Vs. Peoples Union for Civil Liberties Kerala State Union and others, (2009) 8 SCC 46** and **K. Shyam Sunder (supra).**

41. Relevant provisions of Articles 21, 39 (a)&(b), 254 and 300A of the Constitution of India read as under:-

> **21.**No person shall be deprived of his life or personalliberty except according to procedure established by law.

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39. The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

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254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State *** with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

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

42. Relevant provisions of Section 6 (3), Section 16 and Section 48 of the 1894 Act read as under:-

> "**6 Declaration of intended acquisition**
>
> xxxxxxxxxxxxxxxxxxxxxxxx
>
> (3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.
>
> **16. Power to take possession. -** When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances.
>
> **48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.**–
>
> (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.
>
> (3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

43. Similarly, relevant provisions which have to be kept in mind of Section 24(1)(a) (b) and Section 99, Section 101 and Section 103, 107, 108 of 2013 Act, read as under:-

" **24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases**.–

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

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99. No change of purpose to be allowed.-- No change from the purpose or related purposes for which the land is originally sought to be acquired shall be allowed.

Provided that if the land acquired is rendered unusable for the purpose for which it was acquired due to a fundamental change because of any unforeseen circumstances, then the appropriate Government may use such land for any other public purpose.

101. Return of un-utilised land.– When any land acquired under this Act remains un-utilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation.—For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, un-utilised acquired lands and tax-delinquent properties into productive use.

103. Provisions to be in addition to existing laws.--The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

104 to 106. xxx xxx xxx

107. Power of State Legislatures to enact any law more beneficial to affected families.-- Nothing in this Act shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act.

108. Option to affected families to avail better compensation and rehabilitation and resettlement.-- *(1) Where a State law or a policy framed by the Government of a State provides for a higher compensation than calculated under this Act for the acquisition of land, the affected persons or his family or member of his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such State law or such policy of the State.*

Section 24 as amended by Haryana Act:

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed

[Explanation.- For the purpose of this sub-Section, a land acquisition proceeding shall be deemed to have been initiated under the Land Acquisition Act, 1894 (Central Act 1 of 1894 where notification under Section 4 of the said Act has been published in any form under sub-section (1) of the said section.]

(2) Notwithstanding anything contained in sub-section(1),in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the 1[---] possession of the land has not been taken [and] the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

[Provided further that in computing the period referred to in this sub-section, any period during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by order of any court, shall be excluded:'

Provided further that the entry in rapat roznamcha regarding taking or handing over possession recorded by the Land Acquisition Officer or Revenue Official shall be treated as possession taken for all intents and purposes.]"

44. Keeping in view the above, the following questions of law arise for consideration:-

(i) Whether the assent given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State Legislation with the

Central Act, 2013 was liable to be judicially reviewed and the records to be scanned whether the President was correctly apprised and effective consideration as envisaged by the Constitution had been done and whether the procedure prescribed by the Constitution before enacting the law was followed or not?

(ii) Whether the State amendment of incorporating Section 101A is liable to be declared ultra vires and suffering from the vice of arbitrariness?

(iii) Whether the Policy dated 14.09.2018 was a manifestly arbitrary policy and not sustainable and whether the landowners could be put twice to the pain of litigation at the convenience of a welfare State and whether the State could recover the amount of compensation against a un-willing landowner by resorting to the forcible method of recovery under the Land Revenue Act without any right of option or participation or willingness?

(iv) Whether the action of the State Government in de-notifying was tainted being malafide and manifestly arbitrary action, on account of having failed to pursue its legal remedies regarding the increase in cost of acquisition and liable to be struck down on the ground of being violative of Article 21 read with Article 300A of the Constitution having also not followed the procedure laid down in the policy dated 14.09.2018?

Question no.(i):

Whether the assent given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State Legislation with the Central Act, 2013 was liable to be judicially reviewed and the records to be scanned whether the President was correctly apprised and effective consideration as envisaged by the Constitution had been done and whether the procedure prescribed by the Constitution before enacting the law was followed or not?

45. The original files have been perused as to whether the President was correctly apprised, keeping in view the fact that if one is to see that the object and reasons of Section 101A apparently is projected as benefit, which was given to the landowners for de-notification of the land and the payment of compensation, on account of damages, if any, sustained by landowners, due to non-viability or non-essentiality of the land acquired under the 1894 Act for the public purpose in question. The terms and conditions as considered were to be expedient by the State Government. No such provision had been laid out as provided under Section 48 of the old Act that damages would be assessed by under Section 48(3), as per the provisions contained in Chapter-III of the Act, which provides that the Reference Court was to assess the damages and, thus, a judicial forum had the jurisdiction to assess the damages of the land losers which is absent in the present case and the fiat lies with the State.

46. The original file now summoned would go on to show that a meeting was held on 22.11.2016 under the Chairmanship of the then Hon'ble Chief Minister of Haryana, which was followed up by various meetings including one held on 05.12.2016, wherein the then Legal Remembrancer took part with various officials of the Advocate General Office, including the then Chief Secretary. The status regarding various cases under litigation apparently before this Court on the number of projects etc. and the financial burden were part of the tables prepared. On 02.03.2017, it was noticed that it would be necessary to reserve the Bill for consideration of the President of India, after it having been passed by the State Legislature as required under Clause (2) of Article 254 of the Constitution. It was relatable to Entry 18 of the State List and Entry 42 of the Concurrent List in the Seventh Schedule and that the proposed measure would not be inconsistent with the provisions of the Constitution of India. The Revenue Minster, vide communication dated 07.03.2017, communicated to the Speaker of the Haryana Vidhan Sabha for sponsoring the Bill. The Bill was passed on 10.03.2017 after various changes had been made by the office of the Advocate General. The Statement of the Objects and Reasons was that it would ensure that the farmers who part with the lands were enabled to share the benefits of progressive development and various acquisitions had been held up by lapsing provisions and reference was also made to the various provisions of the 2013 Central Act. On 24.03.2017, the State Bill, including the copies of notes on clauses of the proposed legislation, were sent to the Ministry of Home Affairs (for short 'MHA'), for consideration of the President of India under Clause (2) of

Article 254 of the Constitution. The MHA vide letter dated 30.03.2017 sent it to three Ministries i.e. the Ministry of Rural Development (for short 'MRD'), the Ministry of Home Affairs and the Ministry of Agriculture.

47. On 08.05.2017, Ministry of Rural Development, Department of Land Resources raised various issues, whether there was any conflict with the existing Central Law and that various areas need to be examined in consultation with the Government of Haryana and the Ministry of Law & Justice. Similarly, the Ministry of Home Affairs (Judicial & Political Pensions Section) on 26.05.2017 also directed Secretary to Governor (SG) that in view of the said comments of the Ministry of Rural Development, requisite clarifications of the State Government may be given expeditiously to enable the Ministry to process the Bill further. On 05.06.2017, the SG forwarded the said communication to the Additional Chief Secretary to Government of Haryana and Financial Commissioner & Secretary, Revenue & Disaster Management and Consolidation Departments, Haryana (ACS, Revenue) that requisite information alongwith the State Government views with regard to the observations of the Ministry on the Bill may be sent directly to the Government of India, MHA (Judicial & PP Section). The ACS (Revenue), on 06.06.2017, then wrote to the Advocate General, Haryana that the MRD had made some observations on the amendment proposed by way of Bill and advice was sought on the reply. Accordingly, the draft was prepared by the Additional Advocate General, Haryana and approved by the learned Advocate General Haryana on 14.06.2017 and forwarded to the concerned quarters. Resultantly, on 14.07.2017, the ACS (Revenue) had written to the MHA

regarding the comments which had been sought from the MRD. As per the comments, it would be clear that as mentioned that introduction of Section 101A was for the reason that in a large number of cases, the project became unviable to continue with the acquisitions because of enormous cost of land and had saddled the State Government with huge liability and Government did not wish to continue with such acquisitions. The fact that there was no prohibition in the Central Act limiting the power of the State Government to drop the unwarranted acquisitions would be clear from Clause 21 of the comments, which had been attached with the said letter. The conflict to the Central law was also reflected upon and that it was not carefully examined by the State Government and Ministry of Law and Justice.

48. On 11.08.2017, the Ministry of Agriculture also gave its comments that the second amendment would cause extreme distress to the farmers and removing the word 'physical' from Section 24(2) would make the existing proviso exploitable and raised various issues. On 14.09.2017, the MHA again wrote to the SG, Haryana forwarding the comments of the Ministry of Agriculture & Farmers Welfare, Department of Agriculture, Cooperation & Farmers Welfare (MOA). On 20.10.2017, another communication was sent to the SG, Haryana that the letter of the MHA had not been replied to and reply of the State Government was still awaited, to enable the Ministry to process the Bill further. On 17.11.2017, the said letter was forwarded by SG, Haryana to the ACS (Revenue) that requisite information alongwith the views of the State Government with regard to it be sent directly to the Government of India (GOI), MHA. On

04.12.2017, the ACS (Revenue) wrote to the MHA regarding the information which was desired by the MOA. In the comments given by the State of Haryana, it was observed that there was a conflict with the existing Central Laws and that it was in such a manner which was taking away the rights sought to be conferred upon the landowners under the Principal Act of 2013 by the Central Legislation. Reference was made to the initiation of proceedings under Section 24 and that the proceedings under Section 24 would be deemed to have lapsed and that Section 24(1) shall save the acquisition under the 1894 Act. Reference was made to the expression "initiated" under Section 24(1) which would show that the proceedings have to be completed under the 1894 Act and, therefore, the purpose of the 2013 Central Act was to ensure that the earlier proceedings were concluded under the said Act and the word 'completed' had not been used. Similarly, justification was given to the retrospective amendment and it was expressly held out that the Section 24(1) proviso dealt with the old acquisition made under the 1894 Act and since the physical possession having not been taken, therefore, the amendment was being proposed. The data had been secured which was to be necessary and essential and germane and, therefore, the State of Haryana having screened the pending acquisitions would save the pending infrastructures and the proposed amendment was necessary for the State.

49. On 04.01.2018, the ACS (Revenue) wrote to MHA that there was a discussion with the officials of the Union of India under the Chairmanship of the Secretary, MOA and some observations had been raised and replied in the meeting and a detailed note/comments were

enclosed. Again, specific reference was made that Section 24(2) dealt with old acquisitions made under the 1894 Act and since physical possession had not been taken, therefore, the amendment was required. The initiation of the proceedings under the old Act was highlighted to emphasis that the proceedings as such would continue under the old Act and the starting point of acquisition in relation to such past acquisitions to save various infrastructure projects, which were in the pipeline. The balance maintained under the 2013 Central Act with regard to such past acquisitions and that the landowners would be given compensation under the provisions of 2013 Central Act, was also held out, in view of the provisions of Section 24. On 03.04.2018, the MHA asked the State Government to revisit the Bill and advise if the State Government was willing to present a fresh Bill duly incorporating the views of the Ministry of Law & Justice (Department of Legal Affairs), keeping in view the comments of the said department. On 05.04.2018, the MHA wrote to the SG, Haryana that a meeting was to be held with the ACS, MHA on 12.04.2018 to discuss the amendments on the Bill and a senior official was to be deputed. The said communication was then forwarded by the office of the Secretary to the Governor on 10.04.2018 to the ACS(Revenue) and apparently on 11.04.2018, the concerned Additional Advocate General, who had given the legal advice, was deputed to attend the meeting, which had taken place on12.04.2018. The ACS(Revenue) had also written to the Presiding Officer, Shri O. Venkateswarlu, Deputy Legal Advisor, GOI, on 12.04.2018, who was to preside over the said meeting that the State should have a power to return such lands on account of being saddled with huge financial liability in a large number of cases, wherein the Court had enhanced the compensation manifold in respect of acquisitions having been made even decades ago. Thus, Section 101A amendment giving power to return such lands, which become unviable or non-essential was stressed upon.

50. On 13.04.2018, the Office of the SG, Haryana wrote to the ACS(Revenue), referring to the letter dated 03.04.2018 that on account of need of revisiting the Bill, the advice was to be given, if the State Government was willing to present a fresh Bill duly incorporating the views of the Ministry of Law & Justice (Department of Legal Affairs) and requisite clarification and comments be given and a copy be marked to the said office.

51. Accordingly, during the course of arguments on 25.10.2024, we directed Mr. Satya Pal Jain, Additional Solicitor General of India to produce the relevant record which led to said amendment coming into force, especially proceedings of the meeting which was held on 12.04.2018, since it was argued vehemently by Mr. Mittal that everything was thrashed out in all the relevant meetings and the Central Government was duly informed and kept well versed regarding all the issues including the effect of repugnancy. He had, accordingly, submitted that once the Presidential assent had been accorded, it cured the repugnancy factor and the jurisdiction of this Court would be limited while sitting in the judicial review as to what extent and for what purpose and not to find faults in the Presidential assent. Once the President's attention had been drawn to the Central Act and to each and every provision of the amendment, then only

assent had been granted and resultantly reliance was placed upon the judgment passed in **Gram Panchayat of Village Jamalpur (supra)** that *prima facie* by reason of the assent the amendment would prevail over the Central Act. The efficacy of the assent given would be limited in judicial review to that purpose and could not be extended beyond it. While relying upon the judgment passed in **P.N. Krishna Lal Vs. State of Kerala, (1995) Suppl.2 SCC 187,** it was accordingly contended that even if there is some incidental entrenchment in some of the provisions, it was enough that assent of the President had been sought and given and inconsistency of the repugnancy factor would cease to operate as per the settled provisions of Article 254(2).

52. From the record produced by Mr. Jain, it would be clear that on the receipt of the bill from the Secretary to the Governor, comments were sought from the Ministry of Law (Legislative Department), Ministry of Rural Development (Department of Land Resources) and Ministry of Home Affairs (Judicial Cell). It was noticed that the Department of Agriculture had made strong observations which had been shared by the State Government and the Government clarification was awaited. The Ministry of Rural Development had furnished its no comments and requested to holisticaly examine the clarifications of the State Government with the Ministry of Law and Justice and as noticed, the Deputy Legal Adviser, on 16.03.2018, raised the issue whether the land was acquired and vested in the State which would bar the State from reconveying the land to the persons interested while referring the judgment of the Apex Court in *V. Chandrasekran's case (supra).* Resultantly, it was pointed out

that in view of the observations contained in Para Nos.3 and 4, there appeared no legal or constitutional objection if assent of the President is not accorded to the Haryana Bill, 2017. Apparently, on 11.04.2018, the matter was discussed with the Hon'ble Minister of State, Law and Justice regarding the insertion of Sections 101A and Section 24(2) of the Central Act and it had been noted that the appropriate Government neither had the requisite power to reconvey the acquired land under the 1894 Act nor could such person claim any right of restitution on any ground. Resultanly, it was noticed that there was no legal or constitutional objection if assent of the President is accorded to the Haryana Bill, 2017 vide noting dated 13.04.2018. The matter was then placed before the Home Minister and vide noting dated 03.05.2048, it was noticed that the approval has been given to the proposal and a summary for the President has been placed in the file. It is also a matter of record that the Bill was given assent on 09.05.2018 by the President and formally notified on 24.05.2018 with retrospective effect from 01.01.2014.

53. While referring to the judgment passed in **Kaiser-I-Hind Pvt. Ltd. (supra)** it was, accordingly, contended that giving of assent was law making process and steps taken in such process cannot be examined by the Court. The perusal of the said judgment would go on to show that the assent was given after considering the extent and nature of the repugnancy between Bombay Rent Act and Transfer of Property Act as well as the Presidency Small Cause Courts Act and in such circumstances, it was held that once assent was granted, the State law would prevail and a finding

was recorded that the High Court had committed no error in looking at the correspondence.

54. In the case of **Rajiv Sarin and another Vs. State of Uttarakhand and others, (2011) 8 SCC 708,** the Constitution Bench noted that the pointed attention of the President would be required to be drawn to the repugnancy and the reasons for having such a law, despite the enactment by Parliament. Resultantly, it was held that awarding no compensation attracts the vice of illegal deprivation of property even in the light of the provisions of the Act and therefore amenable to writ jurisdiction. Accordingly, directions were given to determine and award compensation to the appellants by following a reasonable and intelligible criteria on the principles laid down, while partly allowing the appeal against the dismissal of the writ petition, whereby it was held that the appellants were not entitled to any compensation even when their forest land was acquired by the Government.

55. In ***Yogendra Kumar's case (supra)***, the Apex Court had noticed that the inherent inconsistency between the Acts has to be seen for noticing the repugnancy, which sets in and it was noticed that the Bill had been sent for assent and there was correspondence thereafter and taking note of the fact that the entire Bill was sent to the President for obtaining assent, it could be safely concluded that the President was apprised of the reason when the assent was sought, which is sought to be highlighted in the present case by Mr. Mittal and relied upon.

56. A perusal of the judgment, however, would go on to show that the Apex Court was examining the repugnancy of the State

amendments made under the P.C. Act and held that where two enactments come into the field, obedience to each of them may be possible without disturbing the other. The repugnancy may, however, come if one statute commands anything to be done and the other enactment may say to the contrary and even both laws cannot co-exist together. It was accordingly held that in ***M.P. AIT Permit Owners Association and another vs. State of M.P., (2004) 1 SCC 320***, the law made by Parliament shall prevail over the State law and reliance was also placed upon ***Govt. of A.P. and another vs. J.B. Educational Society and another, (2005) 3 SCC 212.*** It was accordingly held that when there is clear and direct inconsistency between the Central Act and the State Law, such inconsistency is irreconcilable and once there is direct collision with the Central Act and it brings a situation where one would lead to disobeying the other, then the provision of law made by the State Legislature will be void. Relevant portion from the judgment of Yogendra's case (supra) reads thus:-

"54. Thus viewed, repugnancy arises when there is a clear and direct inconsistency between the central law and the State law and such inconsistency is irreconcilable. It is because in such a situation there is a direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. In Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.26*, (2007) 9 SCC 109 it has been spelt out that clause (2) of Article 254, however, provides that where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by*

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Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can coexist and operate without repugnancy with the provisions of the existing law."

57. It is in such circumstances, the conflict as such has to be addressed keeping in mind the principles laid down. It would be also profitable to refer to judgment of the Apex Court in *M/s. Innoventive Industries Ltd.'s case (supra)* wherein, a two-Judge Bench was examining the provisions of the Insolvency and Bankruptcy Code of 2016 and the Maharashtra Relief Undertaking (Special Provisions) Act, 1958. While referring to the judgment in ***Zaverbhai Amaidas vs. State of Bombay, (1955) 1 SCR 799,*** it was noticed that where Legislation covers the same ground, both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State. It was accordingly held that where two enactments contained inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field, repugnancy may arise and the two cannot possibly stand together and the State law would be *ultravires* because of the *non-obstante* clause of Article 246(1) read with the opening

words "subject to" in Article 246(3). The following principles were accordingly laid down:-

> *"49. It will be noticed that the Constitution Bench judgment in Rajiv Sarin (supra) does not at all refer to Tika Ramji (supra). Tika Ramji (supra) had clearly held that the doctrine of pith and substance cannot be referred to in determining questions of repugnancy, once it is found that both the Parliamentary law and State law are referable to the Concurrent List. Therefore, the statement in paragraph 53 in Rajiv Sarin (supra), that the doctrine of pith and substance has utility in finding out whether, in substance, the two laws operate and relate to the same matter, may not be a correct statement of the law in view of the unequivocal statement made in Tika Ramji (supra) by an earlier Constitution Bench decision.*
>
> *However, the following sentence is of great importance, which is, that the two laws, namely, the Parliamentary and the State legislation, do not need to find their origin in the same entry in List III so long as they deal, either as a whole or in part, with the same subject matter. This clarification of the law is important in that Ranganath Misra, J.'s separate concurring opinion in Vijay Kumar Sharma (supra) seems to point to a different direction. However, Hoechst Pharmaceuticals(supra), also does not agree with this view and indicates that so long as the two laws are traceable to a matter in the Concurrent List and there is repugnancy, the State law will have to be yield to the Central law except if the State law is covered by Article 254(2).*
>
> *50. The case law referred to above, therefore, yields the following propositions:*
>
> *i) Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.*

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> *ii) In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.*
>
> *iii) The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254 speaks of repugnancy not merely of a statute as a whole but also "any provision" thereof.*

iv) Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy – care should be taken to see whether the two do not really operate in different fields qua different subject matters.

v) Repugnancy must exist in fact and not depend upon a mere possibility.

vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

vii) Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, <u>because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way.</u> One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the <u>Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute.</u> Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand <u>together, then the State legislation will be said to be repugnant to the</u> Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

> *x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."*

58. While referring to the judgment passed in **G. Mohan Rao and others Vs. State of Tamil Nadu and others, (2022) 12 SCC 696,** it was argued that challenge as such to the amendment of the Central Act, 2013 made by the State of Tamil Nadu had been upheld and if once the repugnancy had been pointed out to the President, not every provision is to be pointed out. A perusal of the said judgment would go on to show that the Apex Court had noticed that the legislature had made no attempt to hide the provisions of the 2019 Act and the Statement of Objects and Reasons depicts the background, which was to save the land, which had already been put to use and to validite the action taken on the said Acts. It was in such circumstances, it had been held that the High Court did not point out any repugnancy and only the retrospective effect had been examined and in such circumstances it was held that the Act was a legitimate legislative exercise and had found it to be consistent with the Article 254 of the Constitution of India and, therefore, the same is of no assistance to Mr. Mittal.

59. Rather, the judgment would go on to show that the State was making the amendments to give higher compensation and the saving of

acquisitions made earlier, which is the anti-thesis of Section 101A, which is the subject matter of consideration. It was in such circumstances, the Apex Court held that Article 254 contemplates co-existence of Union and State Laws, even if repugnant, but after the repugnancy is assented to by the President and is a manifestation of de-centralized law making and recognition of the State Legislature to modulate dispensation as may be expedient to that State, upon seeking presidential assent for such deviation. It was in such circumstances held that there was compliance of Section 254(2) and while falling back on the statement of objects and reasons of the 2019 Act, wherein it has been noticed that heavy monetary loss would fall upon the State exchequer while derailing many development projects and causing significant negative impact on the state economy, the bill had been introduced. In such circumstances, it was held that the judgment impugned by the High Court did not mention the exact provisions of the State enactments which are repugnant to the law made by the Parliament and the Constitution envisages judicial review of the existence of legislative competence and use of such competence to enact something that does not violate Part-III or other provisions of the Constitution. It is in such circumstances, the 2019 Act was to be held to be a legitimate legislative exercise and consistent within the four corners of Article 254.

60. Reference can be made to the judgment of the Apex Court in ***Forum for People's Collective Efforts (FPCE) and another vs. State of West Bengal and another, (2021) 8 SCC 599*** wherein while examining the Statement of Objects and Reasons for introducing the Real Estate (Regulation and Development) Bill, 2016, the constitutional validity of the

State Legislation namely the West Bengal Housing and Inter Regulation Act, 2017 was under challenge, the issue discussed was regarding the concurrent list and the constitutional impermissibility of the State Legislate to enact a law over the same subject matter by setting up parallel Legislation. It was held that the State Act was repugnant to the Central Legislation and was declared unconstitutional. Accordingly, the three principles of repugnancy were laid down which read thus:-

> **"132**. The initial part of Clause (1) alludes to a law enacted by a state legislature being "repugnant" to a law enacted by Parliament or to an existing law. The concluding part of clause 1 provides for a consequence, namely that the State law would be void "to the extent of the repugnancy" and the Parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court which have elaborated on the context of clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression "repugnant" while providing that a law enacted by the legislature of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:
>
> **132.1** The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a Parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behavior or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other;
>
> **132.2** The second situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field

emerges when a Parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a Parliamentary enactment not because of an actual conflict with the absolute terms of a Parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject; and

132.3 The third test of repugnancy is where the law enacted by Parliament and by the State legislature regulate the same subject. In such a case the repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject."

61. The perusal of the files would go on to show that the whole object as such of the State was that enormous cost had saddled the State Government with huge liability and the State Government wished to have discretionary power to drop the acquisition, which it did not wish to pursue with regard to acquisition made under the 1894 Act. Thus, it would be clear from the response, which was given on 14.07.2017 to the Ministry of Home Affairs from the Additional Chief Secretary and Financial Commissioner to the Government of Haryana. It is in such circumstances sought to be argued that the assent was a total nullity and contrary to the advise of the Central Government. Even three different departments had objected to the said modification, which was being adopted and for the reasons the amendment was sought to be incorporated.

62. It was submitted that the assent is nullity, as the President had not taken the advice of the Council of Ministers, as provided under Article

74 of the Constitution and manifestly exercised powers, which not vested with it. Article 74 of the Constitution reads as under:-

> "74. [(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]
>
> [Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]
>
> (2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

63. It was, accordingly, submitted that advice of the Council of Ministers was not taken and it was only the Prime Minister, who has the power as such and in spite of the fact that the proceedings are repugnant to the Central Act of 2013, the amendment had been carried through, which is contrary and is manifestly arbitrary. Reliance was, accordingly, placed upon the judgment of the Apex Court passed in the case of **Shamsher Singh and another Vs. State of Punjab, (1974) 2 SCC 831**, wherein it was held that the Indian Constitution envisages a parliamentary and responsible form of Government at the Centre and in the States and not a Presidential form of Government, and the powers of the Governor as the Constitutional head are not different. The President is the formal or constitutional head of the executive, and the Council of Ministers, with the Prime Minister as the head, aid and advise the President in the exercise of his functions and it had been held that neither the President nor the Governor is to exercise the executive functions personally and functions of the President cannot be delegated. It was further submitted that the

Presidential assent was not given for recovery from the landowners and it was only qua return of land or the compensation payable or providing alternate land and thus, coupled with the object and reasons which are stated to be a beneficial piece of legislation. It was, accordingly, rightly submitted that this is what was presented before the President when the assent was sought to be taken, but the aspect that the land losers were to be adversely affected by the methodology adopted by the State Government, which was the whole purpose of the amendment was never projected.

64. However, in view of the record produced by the Union of India, it is apparent that State has followed the procedure and the Union of India has forwarded the Bill to the President and in view of the provisions of Section 254(2), where a law is made by the Legislature of the State in respect of one of the matters contained in the concurrent list and which is repugnant to the provisions of an earlier law made by the Parliament on existing law, then the law made by the State, if it had been reserved for consideration of the President and has received its assent, shall prevail in that State. Once the needful has been done, it would not lie in the mouth of the petitioners to say that the President was not apprised of the repugnancy factor. As noticed, the matter has been put up at the highest level of the Law Minister and also with the Union Home Minister and then forwarded to the President and even if there is some incidental entrenchment, once the assent of the President has been sought and given, the argument raised that it is in the teeth of the Central Act, would no longer sustain.

65. Mr. Gupta has not pressed the argument to that extent that the power of judicial review as such could further be undertaken to strike down the provision keeping in view the fact that it is still within the purview of the Parliament as such under the 254(2) proviso from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the Legislature of the State.

66. In such circumstances, ***we answer Ques. No. 1 in favour of the State*** that the President was apprised and effective consideration as such envisaged by the Constitution had been done and procedure prescribed by the Constitution before enacting the law was followed.

Question No.(ii):

> (ii) Whether the State amendment of incorporating Section 101A is liable to be declared as ultra vires and suffering from the vice of arbitrariness?

67. Section 24 of the Central Act, 2013 as noticed and reproduced above would go on to show that it starts with a non-obstante clause that anything contained in this Act, in any case of land acquisition proceedings initiated under the 1894 Act would, thus, be primarily of grave importance, since Section 24(1)(b) itself provides that where an Award under Section 11 has been made, thus such proceedings shall continue under the provisions of the Land Acquisition Act as if the said Act has not been repealed. Even the State amendment does not tinker with the original version as such as incorporated in the 2013 Central Act and only an explanation has been added which, in sum and substance, was regarding

the initiation of proceedings under the 1894 Act and where any notification under Section 4 of the said Act has been published in any form under sub-Section (1) of the said section. Thus, the State never chose to amend the Act and to variate it from what the 2013 Central Act had conceived and rather wished to protect the 1894 proceedings initiated. It is not disputed that in the present case the Awards in question for Sirsa acquisition was passed on 12.01.2011, in the case of Shikhopur on 31.07.2013 and in the case of Shahbad Feeder on 02.12.2005, well before the 2013 Central Act came into force on 01.01.2014. Thus, a plain reading as such of the Section would go on to show that the proceedings had to continue under the 1894 Act.

68. The word "initiation" was a subject matter of discussion by the Apex Court in **HSIIDC Vs. Deepak Aggarwal and others (2023) 6 SCC 512.** The Apex Court in the said case was considering the Full Bench judgment of this Court to hold that the initiation process starts when Section 4 notification is issued and reversed the Full Bench judgment wherein the view taken was that initiation starts at the stage of declaration under 6 of the 1894 Act. The Apex Court noticed that the legislative intent in formulating Section 24 was that the land acquired under the 1894 Act had already been used for several public purposes and for infrastructural projects and, therefore, the said public purposes were in progress at various stages and lapsing would be seriously detrimental to public interest. The consideration of the relevant aspects and the pros and cons were discussed to hold that the legislature had to come up with the balancing provision for controlling the extent of retrospectivity and for

curtailing the erosion of rights of landholders. Resultantly, it was held that the word 'initiation' has been used, so that the proposed projects would remain protected and that if the declaration under Section 6 was to be taken as the initiation, it would entail annulment of the notifications and the acquisition proceedings. It was, accordingly, held that uniform procedure has to be followed in respect of such proceedings and the acquisition initiated for public purpose should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and the persons affected should have definite idea about the manner in which the procedures would be conducted. This was more so, in lieu of Section 24(1)(a), which provided the determination of compensation to be done in the cases where no award under Section 11 of the 1894 had been made, then the same was to be under the 2013 Act. Resultantly, it was held that restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1)(a) unworkable.

69. It is, thus, apparent that the State before the Apex Court was projecting the defence that the public projects had to be saved under the 1894 Act. The principle of rule of law would not permit the State to take a contrary stand in order to defend the provisions of Section 101A before the Constitutional Courts and it cannot be treated as a validation of Statutes and is not a corrective measure, on account of any judgment. Rather, it is apparent that there is an interference with the judicial process and the breach of separation of powers is threatened, as the main consideration before the Legislature is the huge financial liability, which is mentioned in

the correspondence itself of the State while communicating with the Union of India. In the letter dated 12.04.2018 addressed to Deputy Legal Advisor, Government of India, it has been mentioned that *"the State must have the power to de-notify, on account of the financial liability"*. The same has been incorporated in the policy as noticed and reproduced above, wherein under Clause 7 and the explanation that the unviable factors which have been mentioned also is on account of the increase in the acquisition cost, as a result of any reason including any enormous enhancement in compensation amount payable on such land due to Court orders.

70. A perusal of the judgment passed in *Indore Development Authority (supra)* would go on to show that Question No.2 framed was that whether the proviso of Section 24(2) of the 2013 Central Act has to be construed as part thereof or proviso to Section 24(1)(b). In that context, various objections had been made regarding the aspect of the repeal clause and the general application of Section 6 of the General Clauses Act. Specific reference has been made by the Constitution Bench that once the Award had been passed under Section 11 in terms of Section 24(1), then such proceedings shall continue under the provisions of 1894 Act and that it contemplates such pending proceedings when the 2013 Central Act came into force and shall continue and would be taken their logical end. It was also held that the exception of Section 24(1)(b) is provided under Section 24(2) and where the award had been passed five years or more prior to the enforcement of the 2013 Central Act and the physical possession had not been taken or compensation had not been paid, such

proceedings will be deemed to have lapsed and cannot continue as per the provision of Section 24(1)(b) of the 2013 Central Act. It was, accordingly, held that it was an exception carved out to Section 24(1)(b) and where the proceedings were pending. Resultantly, it has been specifically held that where an Award has been made, such proceedings shall continue and thus, such proceedings shall continue as per the terms used in Section 24(1)(b) under the provisions of 1894 Act, which means that proceedings were pending in praesenti as on the date of enforcement of 2013 Act and were not concluded and it was an exception as has been carved out in Section 24(2). The applicability of Section 24 was held to be given full effect and 24(2) was only an exception to the otherwise general applicability of the provisions contained in Section 6 of the 1894 Act and 24(1) (a) and (b) applied to the proceedings.

71. A perusal of para 173 would go on to show that the observations are also there that where an Award has been passed under Section 11 of the provisions of 1894 Act, then such proceedings shall continue, if the same has not been repealed and there was only the exception provided under Section 24(2) and referred to Section 24(1). It was also held that there was an exception under Section 24(1)(b) which was a self-contained provision and Parliament worked out an exception by providing a non-obstante clause in Section 24(2) to under Section 24(1) and any other interpretation would be derogatory and there was no need to add it as the proviso under Section 24(1)(b), as it had not been done by the legislature. Reference was made to usage of 'Full Stop' and deliberately put in a particular sentence and has only been attached with Section 24(1)

(b) and it would destroy the very provision whereby the proceedings have to continue under the 1894 Act and thus, could not cause repugnancy with the main provision and supersede the main provision and destroy it. It was held that the old regime is provided for under Section 24(1)(b) and the proviso was an exception to Section 24(2) and could not nullify the provisions of Section 24(1)(b) but only provide higher compensation. Similarly, it was held that where projects had come up and litigation was being initiated, the proceedings had to continue under the provisions of the old act, which would be in the spirit of Section 24(1)(b) of the 2013 Central Act and Section 6(b) of the General Clauses Act, 1897 read with Section 6(c) which provided that the repeal or anything contained in it, would not affect the previous operation of any enactment or anything duly done and also would not affect any right, privilege, obligation or liability acquired, accrued or incurred.

72. The factual matrix has already been noticed that the State predominately in all the acquisitions having failed to get relief as such and rather not even having pursued its legal remedies to the fullest, has chosen as a litigant to scuttle the settled rights of the other party in a Court of law, whereby the statutory relief granted for the compensation as assessed under the provisions of the 1894 Act are sought to be nullified. The Constitution Bench in **Indore Development Authority (supra)** while examining the provisions of Section 24(2) also noticed the provisions of Section 24(1)(a) & (b) and the fact that under Section 24 (1)(b) that the pending proceedings, as on the date on which the 2013 Central Act came into force, shall continue and be taken to their logical end and the fact of

lapsing was also noticed. Relevant observations of the Constitution Bench made in the said judgment read as under:-

> "95. Section 24(1)(a) of the Act of 2013 read with the non-obstante clause provides that in case of proceedings initiated under the Act of 1894 the award had not been made under Section 11, then the provisions of the Act of 2013, relating to the determination of compensation would apply. However; the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award under Section 11is made, then such proceedings shall continue under the provisions of the Act of 1894. It contemplates that such pending proceedings, as on the date on which the Act of 2013 came into force shall continue, and taken to their logical end. However, the exception to Section 24 (1)(b) is provided in Section 24(2) in case of pending proceedings; in case where the award has been passed five years or more prior to the commencement of the Act of 2013, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the Act of 2013.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 112. Section 24(2) of the Act of 2013 is, in our opinion, a penal provision - to punish the acquiring authority for its lethargy in not taking physical possession nor paying the compensation after making the award five years or more before the commencement of the Act of 2013 in pending proceedings, providing that they would lapse. The expression where an award has been made, then the proceedings shall continue used in Section 24(1)(b) under the provisions of the Act of 1894 means that proceedings were pending in praesenti as on the date of enforcement of the Act of 2013 are not concluded proceedings, and in that context, an exception has been carved out in section 24(2)."

73. It was in such circumstances, the Apex Court read the expression and to save the acquisitions under the 1894 Act, keeping in view the principle that the land vested in the State under Section 16 and that possession could be taken by way of Rapat Roznamcha and not physical possession. The purportive intent behind the Constitution Bench and as successfully defended by the State of Haryana was on the strength of Section 48 of the old Act that once possession had been taken, it could not withdraw from acquisition of any land. Relevant judgments have already been referred to in the reference order dated 08.04.2019, as reproduced above, pertaining to Section 48 of the 1894 Act and, therefore, to avoid the duplication the said judgments are not referred to. The Constitution Bench relied upon another set of cases, wherein the said principle was kept in mind. The amendment in the Act is thus, to benefit one of the two litigants, namely the State through the legislation to negate the rule of law and the State cannot be permitted to take the said latitude, which could not be given to a private litigant, who would have perforce to comply with the decree of the Court. The incursion in the judicial process, thus, amounts to a trespass in a field not permitted and would be the violation of the basic structure of the Constitution of India and coupled together with the flagrant, manifest violation of Article 14 and 300A of the Constitution and is manifestly arbitrary.

74. In *Deepak Aggarwal's case (supra),* the Apex Court specifically noticed that the legislative intent behind in bringing up the 2013 Act was to have a unified enactment, facilitating land acquisition for industrialization, infrastructure and urbanization projects, in a timely and

transparent manner and for providing for just and fair compensation, and the intention of the legislature as such regarding initiation of proceedings was not to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will and a uniform procedure has to be followed in the face of such proceedings, while discussing the word 'initiated' as provided under Section 24 (1). Relevant portion of the said judgment reads as under:-

> "29. For a proper and purposive construction of the word 'initiated', in the contextual situation it will not be inappropriate to look into the legislative history of Section 24 of the 2013 Act as well, as explained in the written submission filed on behalf of HSIIDC/ STATE/ COMMITTEE dated 11.04.2022. However, we do not deem it necessary to refer to or to deal with it, in detail. In short, it is stated therein that the events happened prior to the drafting of Section 24, as it exists on the statute book today, is a safe guide to cull out the legislative intent in formulating Section 24 in the 2013 Act, by the legislature. Furthermore, it is stated therein that the legislature was fully aware of the fact that lands acquired under the L.A. Act were already being used for several public purposes and more particularly for infrastructural projects and large number of acquisition proceedings under the L.A. Act, relating large number of public projects for various public purposes, are in progress at various stages. Hence, lapsing of everything would be seriously detrimental to public interest and at the same time, the interest of land holders is also taken into account. The consideration of all such relevant aspects and the pros and cons made the legislature to come up with a balancing provision under Section 24(1)(a) and clauses therein, in the 2013 Act. This was incorporated as a balancing provision for controlling the

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extent of retrospectivity and for curtailing the erosion of rights of land holders.

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32. Bearing in mind the twin purposes mentioned hereinbefore, we are of the view that they can only be achieved if the word 'initiated' is taken as the point of time when section 4 (1) notification is issued and published under the L.A. Act, in the Official Gazette. Such a construction would embrace more number of affected persons within the fold of affected persons entitled to higher amount of compensation by application of the 2013 Act in the matter of determination of compensation. As a necessary sequel more extent of land in respect of which acquisition proceedings have been initiated, for public purposes, under the L.A. Act for the various ongoing and proposed projects, would remain protected from lapsing. In this context, it is to be noted that all the parties in all the appeals in unison would admit the fact that determination of compensation based on the 2013 Act would be beneficial to the persons affected by acquisition and entitled to be compensated. The words 'initiate' or 'initiated' are not defined under the L.A. Act and also under the 2013 Act. Hence, to ascribe its meaning the dictionary meaning of the word has to be looked into.

In Webster's Third New International Dictionary. The word "initiate" has inter alia been defined thus:-

"to begin or set going; make a beginning of; perform or facilitate the first actions, steps, or stages of;"

In Shorter Oxford English Dictionary the word "initiate" is defined as:

"to begin, commence, enter upon, to introduce, set going, originate."

33 to 37. xxx xxx xxx

38. We think that while considering those questions we will have to bear in mind the purposes and the legislative history of the 2013 Act and also the intention of the legislature in

drafting the same in the manner in which it now exists. We have already dealt with those aspects. One crucial aspect discernible from Section 24(1)(a) has also to be taken note of in this context. The combined effect of Section 24(1) and clause (a) thereof is that if land acquisition proceeding under the L.A. Act was initiated prior to 01.01.2014, the date of coming into force of the 2013 Act, and if it was not culminated in an award under Section 11 of the L.A. Act, then all the provisions of the 2013 Act relating to the determination of compensation should apply to such acquisition proceedings. Thus, it is obvious that in case of non-passing of an award in terms of Section 11 of the L.A. Act where the acquisition proceedings have been initiated prior to 01.01.2014, all provisions under the 2013 Act relating to the determination of compensation alone would apply to such acquisition proceedings. In other words, it would mean that in such circumstances the land acquisition proceedings should continue, but all the provisions relating to the determination of compensation under the 2013 Act alone will be applicable to such proceedings, meaning thereby, the 2013 Act would come into play only at that stage. There can be no doubt with respect to the position that between the initiation of land acquisition proceedings by issuance and publication of notice under Section 4(1) of the L.A. Act and the stage at which compensation for the acquisition calls for determination, there are various procedures to be followed to make the acquisition in accordance with the law. The question is when Section 24(1) of the 2013 Act makes it clear with necessary implication that all provisions of the 2013 Act relating to the determination of compensation alone would be applicable to such proceedings initiated under the L.A. Act but, not culminated in an award, how the procedures are to be regulated during the intervening period till the proceedings reach the stage of determination of compensation. <u>There cannot be any uncertainty on that</u>

aspect. The procedures to be undertaken and the manner in which they are to be regulated cannot remain uncertain. They are conducted either in the manner provided under the L.A. Act or in the manner provided under the 2013 Act. But then, in view of Section 24(1)(a), the provisions relating to the determination of compensation alone can be applied to such proceedings or in other words, there is only a restricted application of the provisions of the 2013 Act in relation to such proceedings. The inevitable conclusion can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the L.A. Act. We have no doubt that without such a construction, the provisions under Section 24(1)(a) would not work out, in view of the restrictive application of the 2013 Act. It is in this context that the decision in Ambica Quarry Works' case (supra) assumes relevance. Any construction of the said provision without taking into the legislative intention, referred hereinbefore would defeat the legislative intention as also the very objects of the 2013 Act. Certainly, it would not be in public interest to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will. A uniform procedure has to be followed in respect of such proceedings. The acquisitions initiated for public purposes should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and at the same time, the persons affected shall have definite idea about the manner in which procedures would be conducted. The Party 'B' would not be justified in describing such situations of necessity and the consequential application of provisions which are actually saved on account of the construction of Section 24 as an attempt to bring the words expressly employed in Section 24(1)(b) and absent in Section 24(1)(a), by indirect method to Section 24(1)(a) of the 2013 Act. The aforesaid

> conclusions and findings would make the contentions of Party 'B' that Section 4(1) notification issued prior to 01.01.2014 could not survive after 01.01.2014 and also that Section 6 notification under the L.A. Act could not be issued after 01.01.2014, unsustainable. In fact, all such procedures and formalities shall be continued till the determination of compensation by applying all the provisions for determination of compensation, under the 2013 Act. A contra-construction, in view of the restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1)(a) of the 2013 Act unworkable."

75. Similarly, in **The Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corpn. Vs. Mahesh & others, (2022) 2 SCC 772,** while examining the provision of Section 24(1), the Apex Court while taking into consideration the observations made by the Constitution Bench in **Indore Development Authority (supra)** held that the perseveration of the determination date for the computation of compensation for the awards made under Section 24(1)(a) of the 2013 Act is a thought, through legislative invocation, to ensure that the landowners are entitled to the benefit of the enhanced compensation as per the 2013 Act. While referring to Section 114 of the Central Act, it was noticed that it effects repeal but with certain savings, in accordance with Section 24 and where an Award had not been made, the provisions relating to determination of compensation under the 2013 Act would apply and where the award is made, proceedings would continue under the provisions of the 1894 Act, if the said Act has not been repealed and held that Section 24(1) deals with two specific situations and is a *non-obstante* clause. Resultantly, it was held that Clause (b) to Section 24 (1)

protects the vested rights of the parties and full effect has to be given to the provisions contained in Section 24, as it is not for the court to legislate. The courts can and do, in appropriate cases, only clarify ambiguity in legislations. Relevant portion of the said judgment reads as under:-

> "8. Section 114 of the 2013 Act repeals the 1894 Act, which ceases to be effective and applicable from the date of enforcement of the 2013 Act. In terms of sub-section (2) to Section 114, the repeal shall not act so as to prejudice or affect application of Section 6 of the General Clauses Act. However, the application of Section 6 of the General Clauses Act is subject to "save as otherwise provided" by the 2013 Act. In other words, when it is commanded or imperative by the provisions of the 2013 Act, Section 6 of the General Clauses Act is not to be given legal effect.
>
> 9. Sub-section (1) to Section 24 of the 2013 Act is a non-obstante clause. It confers the provision with an overriding status over other provisions. Accordingly, in terms of Sections 24(1) of the 2013 Act, Section 114 of the 2013 Act as well as Section 6 of the General Clauses Act will not apply to the extent hindered by Section 24(1) of the 2013 Act. The reason is that Section 114 of the 2013 Act, while accepting the applicability of Section 6 of the General Clauses Act, makes its application subject to "save as otherwise provided" in the 2013 Act. Further, Section 6 of the General Clauses Act itself states that the general savings will not apply when the legislative intent is contrary.
>
> 10. Section 24(1) deals with two specific situations where the land acquisition proceedings were initiated before the

repeal of the 1894 Act, namely: (i) where an award has been made, and (ii) where an award has not been made. As per clause (b) to Section 24(1) where an award under Section 11 of the 1894 Act has been made, the proceedings would continue under the repealed 1894 Act, notwithstanding its repeal. In such cases, the 2013 Act will not apply. Clause (b) to Section 24(1) is not applicable in the case at hand as it is admitted that no award was made on or before 31st December 2013. In the present case, we are not required to examine Section 24(2) of the 2013 Act, which provision when applicable prevails over sub-section (1) to Section 24 of the 2013 Act and has been interpreted in Indore Development Authority v. Manoharlal and others (lapse – 5 Judges).

11. In the present case, clause (a) to Section 24(1) of the 2013 Act would apply as the land acquisition proceedings initiated under the 1894 Act had not culminated into an award till the repeal of the 1894 Act. Section 24(1)(a) partly nullifies the legal effect of savings under Section 6 of the General Clauses Act as it hybridizes application of the 1894 Act and the 2013 Act. While preserving validity of the acquisition proceedings by issue of declarations under the 1894 Act, it states that all the provisions for determination of compensation under the 2013 Act shall apply. The section consciously saves the legal effect of the notifications issued under Section 4 and/or Section 6 of the 1894 Act and obviates the necessity to issue a fresh notification under the 2013 Act. This 'perseveration of the determination date' for the computation of compensation for the awards made under Section 24(1)(a) of the 2013 Act is a thought through legislative invocation that curtails time delays and cost escalation of infrastructure projects, as well as checks the post-acquisition notification malpractices, and at the same time ensures that the landowners are entitled to

the benefit of the enhanced compensation as per the 2013 Act.

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12. In Indore Development Authority v. Manoharlal and Others4 (Lapse - 5 Judges), a Constitution Bench held that where proceedings for acquisition had been initiated under the 1894 Act but no award under Section 11 of the 1894 Act had been made, the provisions of the 2013 Act would apply limited to determination of compensation. Where, however, an award had been made under the 1894 Act, clause (b) to Section 24(1) protects the vested rights of the parties. We need not, for the purpose of the present case, elucidate the ratio of the aforementioned judgment on interpretation of Section 24(2) of the 2013 Act, but it is apposite to notice that the Constitution Bench has emphasised that the 2013 Act provides for higher compensation along with provisions for rehabilitation, and that this intended benefit, wherever applicable, should not be taken away. At the same time, on the aspect of legal interpretation, it is observed that full effect has to be given to the provisions contained in Section 24 as it is not for the court to legislate. The courts can and do, in appropriate cases, clear ambiguity in legislations.

13. xxx xxx xxx

14. In paragraph 195 in Indore Development Authority (supra), the Constitution Bench held that the 2013 Act operates prospectively. Further, Section 114 of the 2013 Act effects a repeal but with certain savings, in accordance with Section 24. Thus, the acquisition proceedings are preserved under the 1894 Act till the stage of making of the award. Where an award is not made, the provisions relating to determination of compensation under the 2013 Act would apply; <u>where the award is made, proceedings would continue under the provisions of the 1894 Act as if the said</u>

> Act has not been repealed. Our interpretation of Section 24(1) of the 2013 Act respectfully follows this precedent.”

76. The said observations would be totally applicable to the facts and circumstances of the present case and the argument raised by Mr. Mittal that Section 24 only provides for pending proceedings is without any basis. Once the Award had been made and proceedings had become final, only the 1894 Act would be applicable and, therefore, resorting to dropping of proceedings by amending the Act was a patent arbitrary action and was in contradiction to the rights of the landowners, which has been protected by the Central Act of 2013 and also by the Constitution Bench.

77. The principle of manifest arbitrariness was sought to be distinguished on the ground that it was the third ground after legislative competence and violation of fundamental rights. It was submitted that the enactment was reasonable and it could not be said to be arbitrary minus the policy, which was not defended and submitted that it was the enabling provision and once certain type of land, like for the purpose of canal, could not be put to use the same can be returned to the landowners. While placing reliance upon the judgment passed in **Dharani Sugar and Chemicals Limited Vs. Union of India and others, (2019) 5 SCC 480,** it was argued that random defects could not be pointed out and the purpose of the law was directing return of the land, which would be clear from the Statement of Objects and Reasons and also from the provisions. While referring to the judgment passed in **Manish Kumar Vs. Union of India, (2021) 5 SCC 1,** wherein the three Judges Bench dealt with the Insolvency and Bankruptcy Code, Mr. Mittal had submitted that only if a provision is manifestly arbitrary, this Court would step in to declare the same

ultravires which had been made by a Body of Elected Representatives of the people.

78. While referring to the another Constitution Bench judgment in **'Re: Section 6A of the Citizenship Act, 1955', 2024 INSC 789,** whereby the principle of manifest arbitrariness had been discussed and the constituents and extent of judicial review were referred and the limitations of the Court, it was held that if patently infeasible on the face of it, the same which would necessitate interference.

79. Reliance can be placed upon the Constitution Bench judgment passed in **State of Tamil Nadu Vs. State of Kerala, (2014) 12 SCC 696,** wherein the Apex Court had given a decision permitting the water level in Mullaperiyar dam to be raised to 142 feet and that the independent experts would examine the safety angle before the water level is permitted to be raised up to 152 ft. and the State of Kerala had been restrained from causing any obstruction to the same. The State of Kerala had amended the Kerala Irrigation and Water Conservation Act, 2003 by the Kerala Irrigation and Water Conservation (Amendment) Act, 2006 and reduced the height of the dam and the same was fixed at 136 feet and, thus, was challenged by the State of Tamil Nadu. The Apex Court held that the legislature cannot by mere declaration and enactment overrule and nullify a judicial decision and the direct object and effect of the impugned legislation was to overturn the judgment of the Apex Court and to arrogate to Kerala the power to prevent Tamil Nadu from exercising its legal rights which have already been upheld by the Court. Resultantly, it was held while discussing the issue of separation of powers under the Indian

Constitution that a legislation could be invalidated on the basis of breach of the separation of powers, if the same is in negation of equality under Article 14 of the Constitution. It was, thus, held that once a law is enacted, though by its competence, it could be invalidated being in breach of doctrine of separation of powers. Resultantly, it was held that once a judicial decision has been rendered by recording a finding of fact, then under the pretence of power, the legislature cannot neutralize the effect of the judgment given after ascertainment of fact and, therefore, it was held that Kerala legislation was revising the final judgment of this Court in utter disregard of the constitutional principle. Relevant observations of the Constitution Bench in the said judgment read as under:-

> "126.3. Separation of powers between three organs – legislature, executive and judiciary – is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution. xxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 126.7. The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely, having

> regard to legislative prescription or direction. The questions to be asked are;
>
> > (i) Does the legislative prescription or legislative direction interfere with the judicial functions?
> >
> > (ii) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided?
> >
> > (iii) What are the terms of law; the issues with which it deals and the nature of the judgment that has attained finality?
>
> If the answer to Questions (i) to (ii) is in the affirmative and the consideration of aspects noted in question (iii) sufficiently establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional."

80. Similar is the position herein, having faced the enhancement, the State has chosen to introduce the provision of Section 101A, which would be apparent from the record, which has been produced. The permissibility for the State to do so would, thus, effect the rule of law to the detriment of the land loser. The State is also an equal litigant before the Constitutional Court and has to be placed on the same pedestal as the private litigant. Merely because of an adverse order passed by a Court, it cannot be permitted by legislation to nullify the same, but is required to satisfy the decree under the statute mainly to pay the compensation under the 1894 Act. If this is permitted, the governance would be a series of judgments to be nullified and could such a liberty to be given to a private litigant. Thus, the decision can be termed as a despotic decision, which

cannot be approved in any manner. Reliance can be placed upon the observations made in the judgment of **Indira Nehru Gandhi (supra)**, wherein the amendment made in the election law and the Constitution (Thirty-ninth amendment) Act was subject matter of consideration.

81. The Apex Court in the said case while examining the issue of separation of powers between the judiciary, legislature and the executive held that the legislature cannot be given the power of decision making of Courts and if permitted to do so, it would be in violation of basic concept of the Constitution and once an election dispute has been decided, if it was so permitted to be decided by the amending body, it would be a repudiation of rule of law by putting the State on a higher pedestal. Resultantly, it was held that law prescribes the abstract principles by the application of which individual cases are to be decided and is not a sentence and that the constitutional law is as much law as ordinary law and that the decision was a despotic decision without ascertaining the facts of a case and applying the law to them, though dressed in the garb of law, like a "bill of attainder". It was, accordingly, held that the decision of the amending body, to hold the election of appellant valid, would destroy the essential feature of democracy and by ascertaining the adjudicative facts and applying relevant law for determining the real legislation intent of the people. The decision of the amending body could not be exercised. The legislative validation by changing the law alone, without ascertaining the adjudicative facts by judicial process, would not be done, as generality and equality are two indelible characteristics of justice administrated according

to law, and equality is the faith and creed of our democratic republic. Relevant portions regarding the said principle read thus:-

> "686. The political usefulness of the doctrine of separation of powers is now widely recognised though a satisfactory definition of the three functions is difficult to evolve. But the function of the Parliament is to make laws, not to decide cases. The British Parliament in its unquestioned supremacy could enact a legislation for the settlement of a dispute or it could, with impunity, legislate for the boiling of the Bishop of Rochester's cook. The Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed. Princely India, in some parts, often did it.
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> 687. xxx xxx xxx
>
> 688. I do not suggest that such an encroaching power will be pursued relentlessly or ruthlessly by our Parliament. But no Constitution can survive without a conscious adherence to its fine checks and balances. Just as Courts ought not to enter into problems entwined in the "political thicket", Parliament must also respect the preserve of the courts. The principle of separation of powers is a principle of restraint which "has in it the precept, inmate in the prudence of self-preservation (even if history has not repeatedly brought it home), that discretion is the better part of valour". Courts have, by and large, come to check their valorous propensities. In the name of the Constitution, the Parliament may not also turn its attention from the important task of legislation to deciding court cases for which it lacks the expertise and the apparatus. If it gathers facts, it gathers facts of policy. If it records findings, it does so without a pleading and without framing any issues. And worst of all, if it decides a court case, it decides without hearing the parties and in defiance of the fundamental principle of natural justice."
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> 689. xxx xxx xxx
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> 690. I find it contrary to the basic tenets of our Constitution to hold that the amending body is an amalgam of all powers -legislative, executive and judicial."Whatever pleases the emperor has the force of law" is not an article of democratic faith. The basis of our Constitution is a well-

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planned legal order, the presuppositions of which are accepted by the people as determining the methods by which the functions of the government will be discharged and the power of the State shall be used.

82. Thus, the provisions of Section 101A have been introduced only to put the State at a higher pedestal and give a sentence to the landowner and make his legal remedy a futile one, which would be clear from the fact that on account of the de-notification of the land, the State withdrew its SLPs in the case of acquisition pertaining to Shahbad Feeder, rather than pursuing its remedies and getting the compensation pegged at a reasonable rate. If such an exercise is to be permitted, then it would open a Pandora's box for the executive to firstly not pursue its legal remedies and having lost the statutory battle which is based on factual matrix of the market value assessed on the basis of sale deeds produced by the landowners, who were seeking their legal right of adequate compensation as assessed under the principle of Section 23 of the 1894 Act and to get them nullified by resorting to the provisions of Section 101A. Therefore, they cannot be permitted to proceed in the manner in which the State has chosen to do so.

83. We are of the considered opinion that such a course of action could not have been resorted to by the State Government, who is one of the litigants and, thus, the rule of law has been violated and latitude which has been taken by the State by introducing the said provisions, can never be given to a private litigant. The whole exercise is gross violation of separation of powers and the dimension of Article 14 of the Constitution creeps in and therefore, it is a incursion in the judicial process. The legislature has no right to take a decision and become an adjudicatory

forum, taking over the power of the Courts. It militates against the basic structure of the Constitution of India and it is coupled together with the flagrant, manifest violation of Article 14 and 300A of the Constitution and if it is permitted to be done by the State, the rule of law would suffer and a private litigant who has a decree would be left with a piece of paper, which has happened in the present case, as the SLPs of the State Government had been withdrawn on the ground that the land had been de-notified. The execution as such is, thus, stalled on account of de-notification process, which the State cannot be permitted to do so. It would only lead to a cascading effect, if such a methodology is permitted and if such State is permitted to nullify all judicial judgments, it can be termed as a manifestly arbitrary decision of the State and such liberty cannot be given. If such liberty cannot be given to a private litigant, how can the State steal a march over the same. Reliance has rightly been placed upon the judgment passed in **Indira Nehru Gandhi (supra),** wherein it was held that the Prime Minister and Speaker's power were sought to be judicially reviewed by amendment of the Constitution to protect the result of the election. The effort to put it beyond the pale of litigation and the challenge was, thus, raised on the ground of separation of powers.

84. If one has to look at the Statements of Objects and Reasons by which the Act was introduced, it would go on to show that the whole purpose of the amendment was to give a new approach to the issue of land acquisition for development purposes, with a view to ensure that the farmers who part with their lands are enabled to share the benefits of progressive development. Similarly, for the essential acquisitions which

had been planned long back under the 1894 Act, third party rights had been created and, therefore, a fine balance must be struck between goals of development and rights of the individuals, especially to protect the old essential acquisitions under the 1894 Act. There was only a slight mention that to ensure that the land is to be returned by the Government in due process, in case land was acquired under the old Act of 1894. The said final Statement of Object and Reasons read as under:-

> "The enactment of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' (hereinafter referred to as the Act of 2013) by the Parliament has given rise to a new approach to the issue of land acquisition for development purposes with a view to ensure that the farmers who part with their lands are enabled to share the benefits of progressive development. The acquisitions instead of putting them at a disadvantage make them a stakeholder as well as a shareholder in the development process. The Act envisages a number of provisions not only as regards payment of compensation but also for rehabilitation and resettlement of the farmers/landowners.
>
> In the past acquisitions, however, serious issues are being faced by the State of Haryana in completing the existing essential infrastructure projects, which have been held up due to writ petitions/applications seeking lapse of acquisition proceedings in terms of Sections 24(1) & 24(2) of the Act of 2013. These essential acquisitions had been planned long back under the 1894 Act for public purposes, and in some cases, even third party rights have already been created. Since these old acquisitions have come to be adversely hit by lapsing provisions under the Act of 2013, it has been deemed expedient to create a fine balance between goals of development and rights of the individuals especially to protect the old essential acquisitions under

> 1894 Act in minimal number of cases. Hence, to protect the overall public interest to serve the deprived sections and to avoid lapsing of acquisition in essential cases, it is proposed to amend certain provisions of the Act of 2013. Besides, it is also felt necessary to amend certain other provisions of the Act of 2013 considering the state specific circumstances of the State of Haryana, while retaining the beneficial provisions of the Act of 2013.
>
> As a result, besides, Section 24(1) & 24(2), other section requiring amendment is Section 46(6). New sections 87A and 101A are proposed to be added in order to strike a balance between the needs of acquiring land and providing fair compensation to the landowners.
>
> There is also a need to ensure that the land is returned back by the Government as per due process in case land acquired under the old Act of 1894 becomes unviable or non-essential. Hence, section 101 A is proposed to be added to provide for this expediency.
>
> Hence, this Bill to amend 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' in its application to the State of Haryana."

85. The proactive approach as such for the benefits of landowners apparently was left out and the State being given exclusive right to decide the issue of essentiality or viability without giving any right to the landowners. It further facilitates the factum of the argument that it amounts to a manifestly arbitrary provision.

86. It is to be noticed that in *Ashwani Kumar Ghosh's case (supra),* which has been relied upon by Mr. Mittal, the view as such was as pointed by him that reference should not be made to the Objects and Reasons. However, a three-Judge Bench in ***S.R. Chopra vs. State of Punjab and others*** held that constitutional provisions are required to be

understood and interpreted with an object oriented approach and debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision, since the same indicate the thought process as such of the amendment. In ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and others, (2005) 8 SCC 534,*** the seven-Judge Bench of the Apex Court was examining the provisions of the Bombay Animal Preservation Act, 1948 and reference to the State of Objects were accordingly made by holding that the reasons for the purposes of understanding the background and the antecedential state of affairs leading upto the Legislation have to be kept in mind. These constitute important factors and have to be taken into consideration by Courts while judging the reasonableness of any restriction imposed on the fundamental rights of the individuals. The facts stated in the Statement of Objects and Reasons and Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved. The relevant paragraphs read thus:-

"69. Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the statute, and the evil which the statute was sought to remedy. In State of West Bengal v. Subodh Gopal Bose and Ors., 1954 SCR 587, the Constitution Bench was testing the constitutional validity of the legislation impugned therein. The Statement of Objects and Reasons was used by S.R. Das, J. for ascertaining the conditions prevalent at that time which led to the introduction of the Bill and the extent and urgency of the evil which was sought to be remedied, in addition to testing the reasonableness of the restrictions imposed by the impugned provision. In his opinion, it was indeed very unfortunate that the Statement of Objects and Reasons was not placed before the High Court which would have assisted the High Court in arriving at the right conclusion as to the reasonableness of the restriction imposed. State of West Bengal v. Union of India, (1964) 1 SCR 371, 431-32 approved the use of Statement of Objects and

Reasons for the purpose of understanding the background and the antecedent state of affairs leading upto the legislation.

70. xxx xxx xxx

71. The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved.

72. In Sardar Inder Singh v. The State of Rajasthan, 1957 SCR 605, a Constitution Bench was testing the validity of certain provisions of the Ordinance impugned before and it found it to be repugnant to Article 14 of the Constitution and hence void. At page 620, Venkatarama Aiyar, J. speaking for the Constitution Bench referred to the recitals contained in the Preamble to the Ordinance and the object sought to be achieved by the Ordinance as flowing therefrom and held:

> "that is a matter exclusively for the legislature to determine, and the propriety of that determination is not open to question in courts. We should add that the petitioners sought to dispute the correctness of the recitals in the Preamble. This they clearly cannot do".

87. The Constitution Bench in ***M. Nagraj and others vs. Union of India and others, (2006) 8 SCC 212,*** while examining the 77th Amendment Act, 81st Amendment Act and the 85th Amendment Act looked at the Statement of Objects and Reasons. In ***Janhit Abhiyan vs. Union of India, (2023) 5 SCC 1,*** while examining the issue of the EWS reservation, the Statement of Objects and Reasons were kept into consideration. In ***Tata Power Company Ltd. vs. Reliance Energy Ltd.,***

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(2009) 16 SCC 659, the Apex Court held that the Statement of Objects and reasons could be looked into for the purposes of deciphering the object and purport of the Act for true and correct construction alongwith the principle of harmonious construction are required to be resorted to. A similar view was taken in ***State of Tamil Nadu and others vs. K. Shyam Sunder and others, (2011) 8 SCC 737*** that the opinion of the Legislature has to be seen. In ***Novartis A.G. vs. UOI, (2013) 6 SCC 1,*** it was held that Objects and Reasons shows what were the issues the Legislature tries to address and what the mischief Parliament wanted to check and what were the objects it intended to achieve while discussing the issue of patents. In ***Khalsa University and another vs. State of Punjab and another, decided on 03.10.2024,*** the Apex Court also examined the objects and reasons as such while falling back on the principle of manifest arbitrariness while striking down the Khalsa University (Repeal) Act, 2017.

88. It is, in such circumstances, rightly argued that the Objects and Reasons which had been put forward by the Revenue Minister to the Speaker of the Haryana Vidhan Sabha for sponsoring the bill never mentioned that the reasons as such for drawing of the bill which has come out from the record for financial exigencies and difficulties being faced by the State. The reading of the Objects would go on to show that the purpose was for saving the acquisitions in principle, which is also the primary intention of the Central Act and the repugnancy as such was apparent. That is why the matter had been sent by the Governor to the President for his assent under Article 254 (2). The objects and reasons, thus, suppressed the fact of heavy compensation payouts and it would

amount to constitutional immorality. It is to be noticed that Section 24 of the Central Act provides the word 'notwithstanding' at two places in Section 24 itself if the same is to be read with Section 114, the repeal provision. The whole purpose as such is to protect the acquisitions of 1894 Act. The State amendment under Section 101A undoes everything what the Central Act provides. Thus, there is a fundamental incompatibility between the two provisions and in no manner can they co-exist. Even under Section 24(2), the acquisitions cannot be protected if the twin conditions of deposit of compensation and taking off possession is not done, as held by the Constitution Bench in *Indore Development's case (supra)*. The plain statutory context of Section 24, thus, is destroyed by resorting to the State amendment under Section 101. The mischief has, thus, to be set right which is sought to be addressed by the Central Act to save the acquisitions under the 1894 Act. Section 99 of the 2013 Act also limits the right of the State to change the use of land for which it is acquired and only if it is rendered useless due to a fundamental change or because of unforeseen circumstances, the appropriate Government may use such land for any other public purpose. Section 101 of the Principal Act also talks about the land remaining unutilized and it can be returned whereas under Section 101A, new terminology is unviable or non-essential which had been introduced. The provisions of 2013 Act further go on to show that the said Act is to be in addition to and not in derogation with any other law for the time being in force, if reference is made to Section 103 whereas, under Section 107, it provides the State power to enact any law to enhance or add to the entitlements enumerated under the Act, which confer higher compensation than payable under the Act or making provisions for rehabilitation and resettlement, which is more beneficial under the Act. The State, thus, by virtue of the amendment, is doing exactly the opposite by bringing in a provision which is in derogation of the Central Act. Similar provision under Section 108 also gives the options to the State to frame a policy for higher compensation than provided for under the Central Act. Thus, by virtue of the State amendment, an unlimited and unfettered enabling power has been given to the State to provide for lapsing of acquisitions which was beyond what was limited under Section 24(2), which the Apex Court limited on account of the twin conditions being violated. Thus, the 1894 Act being repealed was given a fresh lease of life as such by the amendment on the grounds of land to be de-notified on account of being unviable or non-essential and the State gave life to the dead Statute by statutory amendment of a repealed Act and it can only be called as dexterous exercise the Legislature could ill afford to tread.

89. Thus, it is contrary to the Sections 16 & 48 of the 1894 Act, provisions of which would prevail as per the issues framed under Question No.(ii). It was, thus, rightly contended that the amendment has thus, destroyed the entire structure and scheme of the 1894 Act.

90. Resultantly, we are of the considered opinion that once an award had been made under the 1894 Act and under Section 24(1)(b) the State could not have resorted to return of the land acquired under the 1894 Act. More so, when Section 101 of the Central Act 2013 itself provides that only the land acquired under the said Act remains un-utilized for a

period of 5 years, the same was to be returned to the landowner or the legal heirs, as the case may be, or to the appropriate Government, but did not refer to the acquisition done under the 1894 Act. The said aspect was also kept in mind by the Constitution Bench in the case of **Indore Development Authority (supra).** Reliance can be placed upon the para No.361 of the said judgment, which is reproduced as under:-

> "361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2)."

91. It is also important to note that the provisions of Section 101 of the Central Act provides twin conditions for the return of the un-utilized land, which is not provided under Section 101A. The mandatory provisions, thus, are:- firstly, the land has to be acquired under the Central Act of 2013 and secondly, it has to remain un-utilized for a period of 5 years from the date of taking over of possession and the same shall be

returned to the original landowner or, as the case may be, to the land bank. Thus, a protection is provided that un-utilization is for a period of 5 years and there is no short term backing out of the acquisition process. There is no such protection provided regarding un-utilization and the power under Section 101A is further absolute as could be noticed in the cases of land acquired for the sub-station, which had been duly utilized, but in spite of that on account of enhancement, the State has chosen to denotify the land, after having raised construction on it and also erected a sub-station. Similar is the case of Shahbad Feeder, whereby after digging the canal and divesting the landowner of the possession, the land is sought to be returned after a period of 13 years. Thus, even on that account Section 101A provides no protection to the landowners. Rather it does not even provide any time limit to curtail the Government from declaring the land unviable or non-essential and gives the free play to the Government to denotify at any point of time and, thus, can also be termed as arbitrary to the extent that, as noticed above, the longer the Government keeps the land, more the interest liability against the landowner, as per the policy. Therefore, the manifestly arbitrary right to denotify the land on its own terms and conditions, as expedient by the State Government, without even providing the methodology of payment of compensation, on account of damages is a ground to strike down Section 101A of the State Act.

92. Thus, in view of the above discussion, keeping in view the objects and reasons of the Act and that the purpose was for giving benefits to the land owners under the 2013 Act and to ensure that the earlier acquisitions do not lapse which had been done under the 1894 Act and the

non-mentioning as such in the objects and reasons that the reason for amendment was for the financial exigencies without involving the land owner as such who had Court orders in his favour and, therefore, acting as a Judge in its own manner, the State acted arbitrarily in getting the amendment made under Section 101A and has thus, put the land owners to total disadvantage. The said action of the State can, thus, be safely termed as a manifestly arbitrary action, which is a good ground to strike down the Legislation and resultantly, ***we answer question No.(ii) against the State*** and strike down Section 101A of the State Act and declare it *ultra vires.*

Question No.(iii):

> Whether the Policy dated 14.09.2018 was a manifestly arbitrary policy and not sustainable and whether the landowners could be put twice to the pain of litigation at the convenience of a welfare State and whether the State could recover the amount of compensation against an un-willing landowner by resorting to the forcible method of recovery under the Land Revenue Act without any right of option or participation or willingness?

93. A perusal of the policy dated 14.09.2018 would go on to show that the same was notified to maintain the transparency and consistency to implement provisions of Section 101A of de-notifying the acquired land and to regulate the procedure as such on account of the amendment made in the State Act. The factum of the provisions of Section 101A, providing that the twin condition of un-viable or non-essential could be the reason with the State to de-notify the land on such terms, which was being acquired under the 1894 Act for the public purpose. The terms have

also been left to the discretion of the Government, as considered expedient, including the payment of compensation on account of damages. Under the amendment, the definition of un-viability or non-essentiality has not been provided in the Act by the legislature of the State Government and it has left it open to the discretion of the Executive. As per the explanation of Clause 7 of the Policy in question, wide ranging and all encompassing definitions have been given for the un-viability of the acquired land which has become non-suitable for the utilization (i) including due to act of nature or; (ii) increase in acquisition cost as a result of any reason including any enormous enhancement due to Court orders; (iii) material or drastic change in policy of the Government wherein such extenuating circumstances would emerge in the opinion of the Government to be recorded as reason that it would not be in the public interest to continue with the acquisition and (iv) change in socio-economic and geographical factors in respect of the acquired land or for any other reasonable cause. Under the heading of non-essentiality, the whole or part of the acquired land which cannot be practically utilized for the purpose for which it was acquired to any of the reasons enumerated in explanation (1) or better alternatives having become available for the project and it being not possible to continue with any alternative public purpose in respect of acquired land was a ground as such for de-notifying the land in question.

94. As noticed the un-viability was on account of the enhancement in compensation and as being answered in question no.(iv) on account of the un-willingness of the State to pursue its legal remedies to

its logical end and the policy was a one-way traffic as the interest of the landowner was never kept in picture at all, which was never the concept of Section 101A, as per its objects and reasons, except for the fact that they were not liable to return the solatium, which would amount to 30% under the 1894 Act. The balance amount was liable to be paid back alongwith simple interest would be more detrimental than the fact of retaining 30% solatium. In similar circumstances, Section 48-B of the Amendment made by the State of Tamil Nadu in 1894 Act was subject matter of challenge in **Anti Corruption Movement (supra)**. It is important to note that the said amendment was upheld by noticing that it was worded in such a manner that the land could be re-transferred to original owner, who was willing to repay the amount paid to him under the Act and, therefore, it was not a unilateral action as such, but a bilateral understanding between two persons. Section 48-B of the Land Acquisition (Tamil Nadu Amendment) Act, 1996 reads as under:-

> "48-B. Transfer of land to original owner in certain cases Where the Government is satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section(1-A) and (2) of Section 23, if any paid under this Act."

95. The Division Bench in the said case had noticed that there has to be willingness of both sides and whether it causes hardship or not and it was case of mutual agreement, while referring to the judgment in **Southern Railways vs. S. Palaniappan, 2005 (2) CTC 721.** In the said

case, the Division Bench of the Madras High Court was dealing with the de-notification of acquired land, which was utilized for the public purpose of laying the railway track for Salem-Karur broad gauge railway line project by invoking the urgency clause, as provided for under Section 17 of the 1894 Act, which has also been done in the case of Shahbad Feeder. The height had been increased to/by about 40 ft to 50 feet by doing necessary escalation and resultantly, it was held that in view of the provisions of Section 48B of the Land Acquisition (Tamil Nadu Amendment) Act, 1996 that reconveyance could only be done if the original owner was willing to repay the amount and it could not be a unilateral action. The argument raised by the Advocate General was, thus, repelled by noting that the Section would read differently. Relevant portion of the said judgment reads as under:-

> “17. The learned Advocate General urged that Section 48-B permits the State Government to transfer back the land to the original land owner unilaterally even after the land stood vested in the State Government under Section 16 of the Land Acquisition Act. We do not agree. If the intention of the legislature in introducing Section 48-B was to permit unilateral re-conveyance by the State Government of the land which is already vested in it, then Section 48-B would have read as follows:-
>
> > "Where the Government is satisfied that the land vested in it under this Act is not required for the purpose for which it was acquired or for any other public purpose, the Government may transfer back such lands to the original owner and realise the amount paid as compensation to the original owner".

NAVEEN NAGPAL
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> 18. The fact that Section 48-B has not been worded in the above manner shows that it was not the intention of the legislature to permit a unilateral re-conveyance of land which has already been vested in the State Government under Section 16 of the Land Acquisition Act, without the willingness of the erstwhile land owner.
>
> 19. It is a settled principle that ordinarily we should go by the plain and literal meaning while interpreting a statute, and should not twist or distort its language. If we accept the submission of the learned Advocate General we will be twisting and distorting the language of Section 48-B of the Act and we will be recasting it as mentioned above. In our opinion, Section 48-B is very clear. However, if the interpretation canvassed by the learned Advocate General is accepted we will be deleting the words "original owner who is willing to repay the amount paid to him under this Act" from Section 48-B of the Land Acquisition Act."

96. It was, accordingly, held in case of **Anti Corruption (supra)** that Section 48-B not only protected the interest of the State, but also required the State to get the consent of the erstwhile landowner before it could re-convey the land to him under Section 48-B of the Act and the State Government could not act unilaterally.Resultantly, it was held that the amendment made could be struck down on two grounds (i) for lack of Legislative competence, and (ii) Violation of Fundamental Rights guaranteed under Part-III of the Constitution of India. Relevant portion of the judgment passed in the case of **Anti Corruption Movement (supra)** reads as under:-

> "34. We respectfully do not agree with the learned single Judge that Section 48-B has been introduced only to protect the interest of the persons from whom the land has been acquired. In our opinion, Section 48-B can also protect

> the interest of the State Government which wants to re-convey the land which it had acquired, but in such a case the State Government must get the consent of the erstwhile land owner before it can re-convey the land to him under Section 48-B. The State Government cannot act unilaterally in this connection as already held above."

97. The fact that clause 13 of the policy in question further provides that once an order has been passed, which has been approved by the Cabinet, on account of the decision of the Cabinet to allow the de-notification, the landowners or their legal heirs shall return the compensation, excluding solatium paid to them, alongwith simple interest payable on deposits from the date of receipt of compensation by them till the date of return of compensation, by depositing the same in the designated account as specified in the order under Clause 13. Under Clause 14 (ii), the owners or their legal heirs, in case, fail to return the compensation, the same was to be recovered as arrears of land revenue from the returned land or from any other immovable property. The land, even after de-notification, shall continue to vest in the Government till the return of the compensation, which further put the final nails in the coffin of the landowner and not only to him but to the next generation as well. Thus, in effect, it would mean that a person, who re-invested elsewhere after number of years, would be asked to deposit all the amount back with the State, alongwith interest excluding solatium and a land loser who might have invested elsewhere would have nothing in the hand, having been divested for the first time by the acquisition of land under the principle of eminent domain. For the second time, the principle had been put in place to recover the amount alongwith interest against the unwilling

landowner and then, in case not able to recover the amount, give a right to recovery against other immovable property of the landowner without any charge being created on the said land and, therefore, for all practical purposes, taking over the property of the individual, in furtherance to the State's benefit, who is an unsuccessful litigant.

98. The Division Bench in the case of **Anti Corruption Movement (supra)** had also noticed this argument raised and repelled the same only on account of the fact that the Section as such was only applicable and gave a right as such to the landowners to apply for the transfer, in view of the provisions and, therefore, the challenge was repelled. In the present case, it has already been noticed that the policy in question provides no such window to the landowner, of taking back the land at any point of time. The factual matrix in the Sirsa acquisition would go on to show that after the de-notification process, the landowners had approached the State that their land was acquired by the State in the year 2008-2009, against which they had, at that point of time, protested for three months. Now, after a period of 10 years, the State Government has de-notified the acquisition and asked them to return the compensation received by them alongwith interest, and both times the consent of the landowner had not been taken and now they have no money left to return. 50% of the land had been de-notified and there were some landowners who may be satisfied with the acquisition and the Government could not take a decision to return the land where the landowners were happy with the decision. At the time of acquisition, the price the landowners were getting was Rs.2 crore per acre as per the representation, but at present

there was no buyer, and the land was falling within the licensed area, the same was fully developed and the rate of the adjoining land of the farmers was below the reasonable price. It was also submitted that the authorities were planning to acquire the land again for grain market and timber market and, therefore, the land could be used for other public purposes and from the land which had been de-notified, the HSVP had already given the land to NHAI for construction of National Highway.

99. The said representation, as noticed, was brushed aside on the ground that the legal opinion had already been taken from the Advocate General, without again applying any mind, that the land could have been used for some other public purpose, which was permissible by law. Such an absolute and arbitrary power would, thus, violate the provisions of Article 39(b) of the Constitution, which provide that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The methodology which has been followed by the State, and the policy which has been framed, suffers from manifest arbitrariness, which will further be dilated in question No.4 and the judgments of the Apex Court have to be kept in mind and the said principle would also be directly applicable herein. Therefore, we feel that the policy which was framed, suffers from inherent arbitrariness, which gives the State the absolute power as such, which cannot be permitted, keeping in view the background why the State had decided to de-notify the land, in the present facts and circumstances.

100. The position is even worse in the acquisition which was done for the Shahbad Feeder in CWP No.9622 of 2019, wherein the Award had

been passed on 02.12.2005 and the de-notification was done after 13 years on 03.08.2018. The landowners had lost the challenge to the acquisition proceedings when the Division Bench of this Court came to the conclusion that the land was acquired for recharging of the water table and the matter was taken to the Apex Court without any success. Only on account of the enhancement in the market value, the Apex Court had directed to deposit a sum of Rs.50 lakhs per acre with the Reference Court, but the State chose to wriggle out of its liabilities by de-notifying the land and leaving land losers in a lurch by withdrawing the SLPs.The request of the landowners as such was that a canal had already been constructed and fertile earth be put in it and the land be levelled and even an electric line had been raised alongside the canal.

101. Another factor to be noticed is that the State has time and again, subject to its convenience, defended the litigation and then gone on to hold that there is no such legal right for the return of land under Section 101A. The Division Bench of this Court in **CWP No.15174 of 2023 'The Press Employees and Friends Co-operative Group Housing Society Ltd. Vs. State of Haryana and others'** decided on 19.07.2023, was considering the case of the land losers, who sought the release of the land under the policy dated 14.09.2018 on the ground of un-viability and non-essentiality, apart from the fact that the ground of parity was also raised. It was, accordingly, held that the power of the State Government to exercise de-notification had been curtailed and did not vest as discretionary power with the State Government and, therefore, no mandamus could be issued,

since the acquisition proceedings had already been terminated way-back in the year 2003.

102. It is pertinent to notice that in another bunch of petitions, the lead case of which was **CWP No.12432 of 2023 'Anil Suri & another Vs. State of Haryana & others',** when a similar relief had been sought by the landowners for release of land, a finding was recorded that the State has extended the scope of Section 101A, which was wholly impermissible, by way of issuance of policy, and in such circumstances, the State Government had undertaken before the Division Bench that they would recall the policy and scheme. Even a letter dated 21.09.2023 had been placed on record, from the Financial Commissioner, Revenue and Additional Chief Secretary to the Government of Haryana, Revenue and Disaster Management. The writ petition, thus, was disposed of, keeping in view the stand of the State, way-back on 20.10.2023. Now, we are informed that the policy still stands and rules are yet to be framed. It is, thus, apparent that the State is taking a contrary stand wherever it suits them and, thus, misusing the policy blatantly, to grant relief where it so wishes. Relevant portion of the judgment passed in case of **Anil Suri (supra)** reads as under:-

> "69. Pursuant to the above extracted order, the learned State counsel, on 21.09.2023, has placed on record a letter addressed to the office of Advocate General, Haryana by the office of Financial Commissioner, Revenue and Addl. Chief Secretary to the Government of Haryana, Revenue and Disaster Management, wherein, it is recorded that **the subject matter relating to withdrawal of the policy (supra) is under active consideration of the State**

> **Government and will be notified after approval from the Council of Ministers. (emphasize specifically).**
>
> 70. In such a situation, when the policy (supra) is in the process of being withdrawn by the State Government, thus it lacks any vigour to thereby sustain the writ claims."

103. In ***Raghubir Singh and another vs. State of Haryana and others, (2022) 4 SCC 728,*** the Apex Court examined the right of the land owner, as such, to get a decision from the State whether the land had become unviable or non-essential and the State would be obliged, in larger public interest, to de-notify such land on such terms and conditions. It was, accordingly, held that the provision was not in the nature of giving a vested right to the land owners regarding de-notification of the acquired land but it follow that upon de-notification, the land in question must be returned to the erstwhile owners. It was also noticed that the validity of the said Section was not subject matter of challenge for the time being. The relevant portion reads thus:-

> "7. The Statement of Objects and Reasons for inserting Section 101A of the 2013 Act by the State Legislature, makes it amply clear that there is also a need to ensure that land is returned back by the State Government as per the due process, in case the land acquired under the old 1894 Act becomes unviable or non-essential. Further, Section 101A of the 2013 Act is proposed to be added to provide for such expediencies.
>
> 8. Keeping in mind the intent and purport of the State amendment to the principal Act of 2013, the exposition of the Constitution Bench in reference to the issue of lapsing under Section 24 of the principal Act of 2013, will not affect the regime specified under Section 101A of the 2013 Act, enabling the State Government

to denotify the land acquired under the 1894 Act for stated reasons in public interest.

9. Notably, the validity of Section 101A is not the subject matter of challenge before us from any quarter, for the time being. As long as, the provision exists on the Statue Book, it enables the State Government to take appropriate decision in public interest on the factum of the lands in question, having become unviable or nonessential. This power vested in the State is, indeed, coupled with a duty to periodically evaluate the situation or at least soon after it is brought to its notice by the erstwhile land owners or by any public spirited person that the immovable public property is being wasted, unutilized or has become unviable or nonessential. After receipt of such representation, it would be the bounden duty of the State to examine the relevant facts and form suitable opinion as may be advised, regarding lands having become unviable or nonessential or not. If it is satisfied that the acquired lands have become unviable or non-essential, it is expected of the State, nay the State would be obliged in larger public interest to denotify such land on such terms and conditions as may be necessary.

10. Thus understood, there is no reason to assume that the land owners cannot request the State Government to consider such representation inviting a decision of the State, within the realm of Section 101A of the 2013 Act. This provision is certainly not in the nature of giving a vested right to the land owners regarding denotification of the acquired land nor does it follow that upon denotification, the lands in question must return to the erstwhile owners only. It will be open to the State Government to denotify the acquired land on such terms and conditions as may be expedient, in public interest. Thus, the provision empowers the State to denotify the lands acquired under the 1894 Act."

104. The said judgment was also discussed in ***SLP (Civil) No. 16421 of 2021, Ram Swaroop (D) through L.Rs. and another vs. State of Haryana and others,*** decided on 15.11.2021, by noticing that there was no

such vested right and once there was a rejection as such by the State, the litigation was only an attempt to continue to be in possession of the land, on one pretext or the other, to defeat the public purpose for acquisition of land for development and utilization in a planned manner since the acquisition was for Section 51, Gurugram by noticing that it was the third round of litigation, whereas the first round was pertaining to challenge on merits of the acquisition. In the second round, the issue of lapsing was dealt with and the third round was on the ground of dropping of acquisitions under Section 101A. It is to be noticed that the State, though has held out that it would withdraw the policy, continues to keep it in force and, strictly, contempt is made out as the co-ordinate Bench has already noticed that the policy was under active consideration for withdrawal way back in September, 2023. Even otherwise, if Section 101A goes, the policy would necessarily have to be quashed, as it has been issued to regulate the procedure as such under Section 101A.

Question No. (iv):

> Whether the action of the State Government in de-notifying was tainted, being malafide and manifestly arbitrary action, on account of having failed to pursue its legal remedies regarding the increase in cost of acquisition and liable to be struck down on the ground of being violative of Article 21 read with Article 300A of the Constitution having also not followed the procedure laid down in the policy dated 14.09.2018?

105. The factual matrix has already been noticed as how the State had proceeded in scuttling the right of the landowners to get the adequate market value awarded by a competent Court of jurisdiction in at least three

acquisition proceedings. The factum of Sirsa acquisition would go on to show that on account of the enhancement of the market value to the tune of Rs.96,80,000/- per acre by the Reference Court for which possession had been taken on 28.09.2013 vide the Award, the State did not file any SLP against the interim order dated 14.03.2018, whereby directions were issued in the appeals filed by the State to deposit the amount of Rs.84,70,000/- per acre with the Reference Court. Rather, an application had been filed for extension of time to make the payment and the matter was, thereafter, processed by the office and the options given were to make the payment as per the interim order or to return the land to the landowners or give them alternative land as per Section 101A. The Policy dated 14.09.2018 was already in force when the opinion of the Advocate General was taken on 04.12.2018 and the State was bound firstly having notified the said policy to inform the Government and seek approval from the Government for proceeding in accordance with the provisions given in the said policy. The matter was to be referred to the District Level Sub-Committee under Clause 4 of the Policy, which was to be presided over the Deputy Commissioner of the District and five members comprising of the Sub-Divisional Officer of the concerned Sub-Division; District Revenue Officer, concerned Executive Engineer, PWD (B&R); Deputy Director, Agriculture and the Senior Most Officer of the acquiring department posted in the district as Member Secretary. Thereafter, the District Level Sub-Committee had to see whether the land had become unviable or non-essential and also examine the extent of payment of compensation, if any, to the landowners, on account of damages, if any, sustained by them due to the acquisition of the land and also, to see the encumbrances created on or against the acquired land or part thereof, in case part utilization of the land was done. The reasons were to be given and a report was to be submitted while referring the matter to the acquiring department, as per Clause 9 of the policy and, thereafter, approval was to be given to place the matter before the Ministerial Sub-Committee, as per Clause 10. The report of the Ministerial Sub-Committee had also to keep in mind the factors laid out in Clause 7 and was to be put up for consideration and decision by the Cabinet at the earliest as per Clause 11 and the Cabinet, under Clause 12, may allow the de-notification. It was only in such circumstances, after publishing the notification by the concerned Administrative Secretary of the Department, the information was to be given to the landowners or the legal heirs. The said exercise having not been carried out, as noticed on the perusal of the original file and referred to above in paragraph Nos.9 and 10, we are of the considered opinion that the decision making for de-notification of the acquisition was vitiated on account of not following the procedure laid down and was violative as such the provisions of Article 19 and 300A of the Constitution.

106. It is to be noticed that the State had taken possession of the land way-back on 12.01.2011 and thus, de-notification process on 10.01.2019 eight years later, would put the landowners to extreme hardship, who would have proceeded to invest the amount received from the State elsewhere, as it is not disputed that Rs.229.58 crores had been paid to the landowners out of Rs.254.51 crores. The factum of the landowners of having re-invested elsewhere and now having been asked to

return the amount, which is, on the face of the order, an arbitrary action of the State and for their own mistake, due to not able to contest the enhancement matter in a proper manner, the landowners as such cannot be asked to pay back the amount along with simple interest after exclusion of solatium. Thus, in effect, the longer the State would delay, the more the adverse effect on the landowner, as the interest element would then rise. The power of recovery of the compensation amount, by way of resorting to the Land Revenue Act, is another drastic, manifestly arbitrary provision incorporated in the policy, in furtherance of its inability and lack of will, as such, even to pursue the legal remedy in a proper manner and for its own negligence, put its loss upon the poor landowner, who had already been deprived of his prime agriculture land at the first instance and was helpless under the principle of eminent domain.

107. Similarly, if one examines the factual matrix of the land acquired in village Shikhopur, the Award was passed on 31.07.2013 and Government sought to withdraw from the notification after six year later on 22.11.2019, only on account of the fact that the market value had gone up. The allotment had also been made to the beneficiary department-HSVPN and the State could not cancel the same, as it was no longer the owner of the land in question. Reliance can be placed upon the judgment passed in **Tamil Nadu Housing Board Vs. L. Chandrasekaran, (2010) 2 SCC 786.** In the said case, the Apex Court noticed that once the land had been allotted to the Board, the Court could not exercise its power under Section 48B Act of the Tamil Nadu Land Acquisition (Amendment) Act, 1997 and it could not be compelled to reconvey the land to the original

owner, since the land had already been transferred to the Board and the latter had utilized substantial portion thereof, for execution of the housing scheme and other public purposes. The judgment of the learned Single Judge was restored, while setting aside the judgment passed by the Division Bench, whereby it had directed such reconveyance. It was, accordingly, held that once the Government had transferred the acquired land to the appellant-Board, the allotment could not be cancelled as such by reconveying the land, which is also applicable in the facts and circumstances of the present case, since it has come on record that allotment was made to the HVPNL.

108. In the meantime, the work on the sub-station had also been completed, as noticed, and all expensive machinery had been installed at the cost of almost Rs.60 crores. Instead of proper application of mind, on a short note the matter was put up before the Chief Minister by the then PSTCP on 19.11.2019 and the landowners were again put in a lurch and within two days the decision was taken to denotify on 22.11.2019 again without any reference to the policy dated 14.09.2018, which was already in force. Thus, the procedure prescribed was never followed and smudges of total non-application of mind and the arbitrary action of the State choosing to use the same against the landowners for its lack of will, without any effort to resort to the legal remedies and it could have attempted to at least distinguish the cases and peg down the market value at the reasonable rate, if possible. Unfortunately, in spite of directions in a form of suggestions issued to the Chief Secretary, also show the attitude of the State, who chose to stand by its arbitrary action and at the highest

level, failed to notice that the procedure prescribed had not been resorted to. Once there is a statutory policy in force, again shows total lack of application of mind and disregard to the plight of the landowners and the one-way traffic use of principle of eminent domain in the reverse to return the land to the landowners and seek to recover the amount paid alongwith interest has been resorted to. Resultantly, the said action cannot be sustained in any manner. It was always open to the State to see that out of the 15 acres of the land, how much of the land it needs for the electric sub-station and whether balance land could be used for some other public purpose, as per settled principles of law, which it was unwilling to examine, therefore, we have no option but to strike down the action of the State, even for village Shikhopur for which land acquisition proceedings had been dropped vide order dated 22.11.2019.

109. It has already been noticed in the factual matrix of the ***Shahbad Feeder*** that the notification was issued on 20.09.2004 under Section 4 of the 1894 Act read with the emergency provisions under Section 17 of the 1894 Act for acquiring 308.347 acres of land. The challenge was repelled by the Division Bench on 26.09.2005 in the case of Mani Ram (supra). The SLP was dismissed on 06.01.2006 and in the meantime the Award was passed on 02.12.2005. The enhancement was done from Rs.8 lakhs per acre for *chahi* land and Rs.14 lakhs per acre for prime land to Rs. Rs.1,16,83,000/- per acre on 05.05.2016. The State had challenged the same by filing the SLPs in Sardul Singh's case, whereby the Apex Court had directed to deposit Rs.50 lakhs per acre on 15.05.2018. The withdrawal from the acquisition was done on

03.08.2018, on account of Section 101A being notified on 24.05.2018. After 13 years and despite utilization of the land for the construction of the canal, the de-notification had been done.

110. Mr. Mittal has submitted that the viablity of the project was a valid reason on account of the decision of the State Government, as the acquisition was for three sets of irrigation channels i.e. Shahbad Feeder, Nalvi Distributary and Shahbad Distributary, whereby the water was to be taken from Yamuna towards the SYL Canal and also to be put in the Saraswati-Markanda River. The record would go on to show that 1020.0313 acres was constructed for three distributaries and Rs.192.33 crores had been paid to the landowners for the said land. The expenditure of Rs.111.167 crores of three channels was done. The channel was to irrigate 92532 hectares area and on account of the resistance of farmers, the abandonment was done of the scheme and the area was reduced to 46266 hectares of land. On account of the assessment being Rs.2887 square meters by this Court, the State Government apparently shied off to further acquire the land. Thereafter, on account of the legal opinion taken from the Advocate General Office, the matter was put up before the Cabinet on 26.09.2017 to approve the land being de-notified. It was also noticed that the amendment in the Act was also sent to the Government of India. Accordingly, it was proposed that the land be handed back to the farmers after putting it in original shape, in spite of paying compensation and by filling the dug portion of channel by taking earth from nearest Panchayat land to avoid any dispute at a later stage. Thus, from the factual matrix, it would be clear that only on account of heavy compensation and

the State being unable to defend its case and the Apex Court asking them to deposit Rs.50 lakhs per acre, was the primary reason, whereby the project was sought to be dropped, in the absence of any such provision. At that point of time on 20.03.2017, the Principal Secretary of the Irrigation Department had opined that there was no such provision for dropping the proceedings, since the 1894 Act was in play.

111. A Committee comprising of two Chief Engineers and one Engineer-in-Chief of the Irrigation Department had also been constituted, which had also given its opinion that after the decision of the Apex Court in the SLP not in favour of the State, the land of the Shahbad-Nalvi Scheme may be de-notified. On 03.05.2017, an Additional Advocate General gave opinion contrary to the provisions of the Act that there was no clear mandate of the provision for releasing the land in question, but on account of the high compensation suggested that the notification be issued under Section 101 of the 2013 Act. It was mentioned that the matter be put up before the Chief Minister, who further desired to put up the same before the Council of Ministers for its consideration. The Council of Ministers had met on 27.09.2017 and approved the decision for de-notifying the land. It was noticed that the amendments had not been approved by the Government of India and the request was made that the Government decision be extended upto 27.03.2018. It was also noticed that the amendment was likely to be approved by the Government of India shortly. On 22.02.2018, it was noticed that the Executing Court had attached the DDOs of the Heads of the Judgment Debtors. Thus, it would be apparent that the sole consideration which was bothering the State was

the heavy compensation which had to be deposited in view of the directions of the Apex Court and was the reason to push through the amendments as such.

112. The Expert Committee from the Irrigation Department of the Four Chief Engineers had also given another report dated 20.07.2018, wherein it was noted that in the absence of any relief granted from the Apex Court and the Cabinet decision for de-notifying the Dadupur-Nalvi Scheme, the land could be utilized by transferring to the Forest Department for construction of upstream storage dams and to fill the same was not feasible and also recommended that some portion of the land was required for the construction of the road approximately 29 acres. Relevant portion of the said report reads as under:-

> "Accordingly "Recommendations of the Committee on the issue regarding de-notfication of Dadupur Nalvi Irrigation Scheme are as under:-
>
> > It is found that the land acquired before 2004 i.e. from 1987-1990 is not under any kind of litigation in any Court and the same may be retained with the Department. The total land acquired during 1987-1990 is about 190.67 acres and this land can be better utilized for recharging of ground water or can be transferred to Forest Department in lieu of land required for construction of upstream storage dams, which is a prestigious project of Government and Department has given an undertaking to Forest Department for transfer of about 550.00 acres of land in lieu of construction of these dams.
> >
> > It has been observed that huge quantity of earth may be required to bring the land of Dadupur Nalvi Scheme to its original shape l.e. to fill the entire

existing section of Shahabad Feeder, Shahabad Distributary and Nalvi Distributary upto Natural Surface Level (NSL). If the land is to be brought to its original shape by department then it may be an unending process, as the complete land may not be returned to all the original owners in one go, as the land is to be returned to the original owners oply if they are willing to take their land back at the terms & conditions to be decided by Government.

So, it is decided that damaged compensation may be provided to the original land owners, who are willing to take their land back at a rate keeping in view the availability of earth at the nearest location and cross sectional area of the channel.

The Committee observed that a road from RD 8.964 km to RD 14.933 km of Shahabad feeder has been constructed by: PWD (B&R) Department and is serving as a Bypass for Jagadhri Town, Connecting Jagadhri Chhachhrauli road with Jagadhri - Ambala Road. It is found that at present heavy traffic is plying on the road and Jagadhri Town has got relieved from heavy traffic due to construction of this road. A total of about 29.0 acres of acquired land of Dadupur Nalvi Scheme has been utilized for construction of this road. Out of this about 23.0 acres land was acquired during 1987-1990 and about 6.0 acre land was acquired from 2004 onwards. The committee is of the view that this 6.0 acres land which was acquired from 2004 onwards may also be retained by Department as the same is being used for public purpose and heavy traffic is plying on this road at present.

Committee is also of the opinion that the land owners of this 6.0 acres land may be compensated by providing equivalent land from within the land acquired during 1987-1990, if the same is to be

> retained by Government. Further an approach road connecting this 6.0 acres compensated land with the nearby existing road may also be retained by the department for providing smooth access to the farmers as shown in map attached at Annexure-l.
>
> The above recommendations of the Committee are submitted for perusal and consideration of the Government.

113. Apparently, no such heed was paid to the said recommendations and on account of the amendment taking place on 24.05.2018, the action was taken to de-notify the land on 03.08.2018 under Section 101A. The factual matrix, thus, would go on to show that the arbitrary manner in which the de-notification was processed from the initial dates, in the absence of any such provision would go to show that the only motivating reason behind the State Legislature to bring the amendments as noticed in Question No.(i) and (ii), was financial exigencies and, therefore, the sole consideration was, being a litigant, who was not able to achieve its target through the Courts of Competent jurisdiction and having failed to peg down the price of the land at a reasonable rate. Rather, no attempt was made to get the SLP decided and only interim orders had been passed by the Apex Court to deposit Rs.50 lakhs per acre, which weighed with the competent authority to de-notify the whole process after a period of 13 years and the arbitrariness of the action on account of the law being framed to suit the litigant has already been discussed in Question No.(ii) and (ii) and, therefore, it can be safely said that the action was manifestly arbitrary.

114. The Apex Court in the case of **Indira Nehru Gandhi (supra)** held that rule of law is to be conditioned by law and no one can be exposed to the arbitrary will of the Government and while comparing equality and arbitrariness, it was held that there are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. The discussion above would go on to show that the absolute monarch power has been exercised by the State under the whims and fancies of the Executive, without paying any heed to the Policy framed and, thus, it is the duty of the Constitutional Court to ensure that the arbitrary, fanciful or oppressive actions are struck down, as the landowners cannot as such be put to loss of land being acquired and forced to be bought back alongwith interest.

115. In **Sunil Batra Vs. Delhi Administration and others, (1978) 4 SCC 494,** the Apex Court held that for what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive, unarguably unreasonable and arbitrary and inflicts the procedural unfairness would, thus, fall foul of Article 21 of the Constitution. In such circumstances, the observations flowed in the case of **Shayara Bano (supra)** that the statutory law would be struck down, if it is found to be arbitrary and in the present case the following observations would be directly applicable:-

> "87. The thread of reasonableness runs through the entire fundamental rights Chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three Judges' Bench decision in

McDowell (supra) when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.

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95.On a reading of this judgment in Natural Resources Allocation case, it is clear that this Court did not read McDowell (supra) as being an authority for the proposition that legislation can never be struck down as being arbitrary.Indeed the Court, after referring to all the earlier judgments, and Ajay Hasia (supra) in particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary"; i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favoritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.

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100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In Cellular Operators Association of India v. Telecom Regulatory Authority of India, (2016) 7 SCC 703, this Court referred to earlier precedents, and held:

> "Violation of fundamental rights
>
> 42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation.
>
> (See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641: 1985 SCC (Tax) 121], SCC at p. 689, para 75.)
>
> 43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304], this Court held: (SCC p. 314, para 13)
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> > "13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action.However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do

not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

44. Also, in Sharma Transport v. State of A.P. [(2002) 2 SCC 188], this Court held:

(SCC pp. 203-04, para 25) "25. … The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has

> to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone." (at pages 736-737)
>
> 101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14.
>
> The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.

116. Resultantly, we answer question No.(iv) against the State and in favour of the landowners and hold that action of the State is totally malafide and manifestly arbitrary and the State has failed to pursue its legal remedies and, therefore, the State had never followed the procedure

as laid down in the policy dated 14.09.2018 and, therefore, could not de-notify the lands already vested in it by law as explained above.

Harpreet Kaur Jeewan, J. (Concurring View):-

117. Having the advantage of perusing a draft copy of the judgment prepared by my learned Brother, G.S. Sandhawalia, J., I am in respectful agreement with the reasons and the conclusions on Questions of Law at (i), (iii) and (iv) and I do not wish to give additional reasons to the same. I am also in respectful agreement with the conclusions on Question of Law No.II, however, I wish to add to the reasoning.

118. We are dealing with a question as to whether the Government shall have the liberty to withdraw from compulsory acquisition of the land made. The scheme of the 1894 Act provides a limited liberty to the Government to withdraw from the acquisition under Section 48 where the possession has not been taken. Similarly, under the Central Act of 2013, Section 101 has the provisions for return of un-utilized land which was under compulsory acquisition. However, such an option could have been exercised after a period of 5 years from the date of taking over the possession. So, the scheme of both the Acts of 1894 and the Central Act of 2013 provides liberty to the State to withdraw from the acquisition. However, such a liberty has to be exercised while respecting the scheme of constitutional rights guaranteed to the citizens under Article 300A of the Constitution of India.

119. The factual matrix has already been noticed by my brother in the three instances of acquisition. For the following reasons, the provisions of Section 101A of the Central Act of 2013 is inherently prone to misuse:-

(a) no time limit in the form of any safeguard has been provided within which the State Government can withdraw from acquisition after initiation of the process of acquisition, after taking possession etc.

(b) it is violative of the principles of *audi alteram partem* and provides a unilateral decision at the hands of the State.

(c) no criteria is provided under the Section for exercising jurisdiction as the phrases “unviable” and “non-essential” have not been defined in the Section.

120. The plain reading of the Section indicates that it can create great hardship to displaced land owners and is totally unfair for the land owners whose land has been put to compulsory acquisition on the principle of eminent domain and even to their legal heirs. Usually, after the compulsory acquisition, the land owners try to settle down by spending the compensation amount, which is also received in installments and that too, after having waged a legal battle and without giving them any opportunity of participation or seeking their options, putting such displaced land owners and that too, some times their legal heirs to deal with the second round of litigation by such de-notification of the land by a unilateral act of the State

Government, is manifestly arbitrary. As such, in view of the totality of above circumstances, keeping such provision on the Statute Book, does not behove of the actions of a welfare State.

Conclusion

121. Keeping in view the above discussion, we come to the conclusion that the assent given by the President under Article 254(2) was as per the procedure prescribed by the Constitution and, therefore, Section 101A is not liable to be struck down on the said ground. However, in view of the findings recorded on Ques. No.(ii), we are of the firm opinion that ***Section 101A is liable to be struck down, suffering from the vice of manifest arbitrariness***. Similarly, the policy dated 14.09.2018, being a manifestly arbitrary policy, has been found to be non-sustainable and, therefore, under issue No.(iii), it is also struck down and it cannot sustain. Lastly, irrespective of the findings recorded above on issue No.(iv), we are of the considered opinion that the ***action of the State Government in denotifying was dehorse the policy at the highest level*** in spite of the same being in place and, therefore, even the ***action itself is liable to be struck down.***

122. Keeping in view the above findings, we dispose of the present petitions. Records received in terms of orders dated 28.10.2024 and 12.11.2024 be returned to Mr. Ankur Mittal, Advocate and Mr. Dheeraj Jain, Advocate, respectively.

123. Pending applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.12.2024
naveen/shivani

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No