IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISIDICTION

CIVIL APPEAL 4835 OF 2015

IN THE MATTER OF :

STATE OF HARYANA & ORS. ..... PETITIONERS

VERSUS

MAHARANA PRATAP CHARITABLE TRUST REG. ..... RESPONDENT

and other connected matters

CONSOLIDATED WRITTEN SUBMISSIONS ON INTERPRETATION OF SECTION 24 OF THE 2013 ACT ON BEHALF OF STATE OF HARYANA

[FOR INDEX OF LEGAL PROPOSITIONS PLEASE SEE INSIDE]

TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA

INDEX

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CONSOLIDATED WRITTEN SUBMISSIONS

1. It is submitted that before adverting to the legal submissions, it is necessary to encapsulate the judgments/orders of this Hon'ble Court leading up to the Constitution Bench. The following is an illustrative table that sheds light on the aforementioned orders/judgments :

JUDGMENTS/ORDERS OF THIS HON'BLE COURT ON THIS ISSUE		
DATE	CASE	RATIO
24.01.2014	*Pune Municipal Corporation v. Harakchand and Ors.,* (2014) 3 SCC 183	The phrase "compensation has not been *paid*" occurring in Section 24(2) would mean actual tendering of compensation to landowners/interested persons. The deposit of amount in government treasury is not enough. It is only when the tendering is refused, the deposit in court would be accepted to be "paid" to landowners.
14.03.2014	*Bimla Devi v. State of Haryana,* (2014) 6 SCC 583	The judgment follows Pune Municipal *supra.*
04.02.2014	*Bharat Kumar v. State of Haryana,* (2014) 6 SCC 586	Without taking note of Pune Municipal *supra*, the Court held that because the physical possession had not been taken, the compensation was not paid to the landowners nor *was deposited before the appropriate forum*, the proceedings have lapsed.

07.05.2014	*Union of India v. Shiv Raj*, (2014) 6 SCC 564	Relying upon Pune Municipal *supra*, the Court held that deposit with the revenue department, cannot be termed as '*deemed payment*'. A period of seven years had elapsed without there being a stay by the High Court therefore, the proceedings have lapsed.
23.09.2014	*State of Haryana v. Vinod Oil & General Mills*, (2014) 15 SCC 410	The matter was remanded to the High Court for decision in light of Pune Municipal *supra*
22.01.2015	*Karnail Kaur v. State of Punjab*, (2015) 3 SCC 206	The court placed reliance on Shree Balaji case to state that the period of stay granted by the High Court and the Supreme Court cannot be excluded in calculating the period of five period under Section 24(2).
10.09.2014	*Sree Balaji Nagar Residential Assn. v. State of T.N.*, (2015) 3 SCC 353	The period of stay granted by the High Court and the Supreme Court cannot be excluded in calculating the period of five period under Section 24(2).
25.11.2014	*Sita Ram v. State of Haryana*, (2015) 3 SCC 597	The Court, relying upon Pune Municipal *supra* and Shree Balaji *supra*, held that the acquisition had lapsed.
11.12.2014	*Velaxan Kumar v. Union of India*, (2015) 4 SCC 325	The, relying upon Pune Municipal *supra* and Shree Balaji *supra*, held that the acquisition had lapsed. The Court held that "*physical possession*" in S. 24(2) means actual physical possession and is bound by requirements of fair procedure.
27.11.2014	*Ram Kishan & Ors. V. State of Haryana*, (2015)4SCC347	The Court, relying upon Pune Municipal *supra* and Shree Balaji *supra*, held that the acquisition had lapsed.
10.03.2015	*Radiance*	The Ordinance clarifying that the period

	Fincap (P) Ltd. v. Union of India, (2015) 8 SCC 544	spent in litigation on account of stay order to be excluded from the period of five years under Section 24(2) is prospective in nature and would have no application in the present cases.
08.12.2015	*Rattan Singh v. Union of India*, (2015) 16 SCC 342	Compensation cannot be regarded as paid unless (a) compensation is literally paid to the landowners (b) offered to interested persons or (c) deposited in Court. The deposit in State revenue account cannot be said to be payment. Further, retention of the compensation amount by the Collector till the time the landowners made appropriate application also cannot be regarded as payment.
05.05.2015	*Karan Singh v. State of Haryana & Ors.*, (2015) 16 SCC 625	The Court, relying upon Pune Municipal *supra* and Shree Balaji *supra*, gave the right to the landowners to revive their appeals before the relevant forum.
12.01.2016	*Yogesh Neema & Ors. v. State of M.P. & Ors.*, Reference Order	The view in Shree Balaji *supra* and Shiv Raj *supra*, require reconsideration on the ground of maxim "*actus curiae neminem gravabit*" [act of the court cannot be understood to cause prejudice to any of the contesting parties].
12.05.2016	*Shashi Gupta v. State of Haryana*, (2016) 13 SCC 380	The Court, relying upon Pune Municipal *supra* and Shree Balaji *supra*, held that the acquisition had lapsed.
31.08.2016	*DDA v. Khusham Jain*, (2016) 16 SCC 254	The deposit made in Court without interest and without taking in to account the contingencies in Section 31 of the 1894 Act cannot be considered as deemed payment under Section 24(2) of the 2013 Act.
09.09.2016	*DDA v. Sukhbir Singh*, (2016) 16 SCC 258	The Court, relying upon Pune Municipal *supra* held that the acquisition had lapsed. The Court took note of the local Standing Order in Delhi which stated provided five different modes of "payment" in compliance with Section 31 of the 1894 Act which included a deposit in the treasury if the landowner fails to appear

		despite notice under section 12(2). The Court on facts states that even the Standing Orders had not been followed.
04.05.2017	*Shivaji Shamrao Patil & Anr. V. Spl. Land Acquisition Officer*, (2017) 13 SCC 265	The Court, relying upon Pune Municipal *supra*, held that the acquisition had lapsed.
07.12.2017	*Indore Development Authority v. Shailendra*, Reference Order	The Court makes a reference to a larger bench on the following reasons : • The previous judgments have failed to consider the proviso to Section 24(2) and the difference in nomenclature of "deposit" and "paid". • The failure to deposit the amount under Section 31 of the 1894 Act attracts interest and not lapsing. • In case of deposit before the relevant authority falling short of majority of landowners, the benefit of compensation under 2013 Act can be extended but not lapsing. • Numerous states have Standing Orders or Rules which provide for deposit of the money in the landowner's account in the government Treasury.
		The Court frames the following questions of law : (i) What is the meaning of the expression "paid"/"tender" in Section 24 of the 2013 Act and Section 31 of the 1894 Act? Whether non-deposit of compensation in court under Section 31(2) of the 1894 Act results into a lapse of acquisition under Section 24(2) of the 2013 Act? What are the consequences of non-deposit in court especially when compensation has been tendered and refused under Section 31(1) of the 1894 Act and Section 24(2) of the 2013 Act? Whether such persons after refusal can take advantage of their wrong/conduct? (ii) Mode of taking physical possession as contemplated under Section 24(2) of the 1894 Act? (iii) Whether Section 24 of the 2013 Act

		revives barred and stale claims? (iv) Whether the conscious omission referred to in para 11 of the judgment in Sree Balaji Nagar Residential Assn. v. State of T.N. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act? (v) Whether the principle of *actus curiae neminem gravabit*, namely, act of the court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act? In substance, the Court rendered the decision in *Pune Municipal* supra to beper incuriam and overruled Shree Balaji *supra*.
08.02.2018	*Indore Development Authority v. Shailendra*, (2018) 3 SCC 412	The Conclusions of the Court on the aforementioned issues, were as under : *Question (i)* The word "paid" in Section 24 of the 2013 Act has the same meaning as "tender of payment" in Section 31(1) of the 1894 Act. The expression "deposited" in Section 31(2) is not included in the expressions "paid" in Section 24 of the 2013 Act or in "tender of payment" used in Section 31(1) of the 1894 Act. In Section 24(2) of the 2013 Act the expression "paid", it is not necessary that the amount should be deposited in court as provided in Section 31(2) of the 1894 Act. Non-deposit of compensation in court under Section 31(2) of the 1894 Act does not result in a lapse of acquisition under Section 24(2) of the 2013 Act. Once the amount of compensation h s been unconditionally tendered and it is refused, that would amount to payment and the obligation under Section 31(1) stands discharged and that amounts to discharge of obligation of payment under Section 24(2) of the 2013 Act also and it is not open to the person who has refused to

		accept compensation, to urge that since it has not been deposited in court, acquisition has lapsed. The claimants/landowners after refusal, cannot take advantage of their own wrong and seek protection under the provisions of Section 24(2). *Question (ii)* The normal mode of taking physical possession under the land acquisition cases is drawing of panchnama as held in *Banda Development Authority* [*Banda Development Authority* v. *Moti Lal Agarwal*, (2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747] . *Question (iii)* The provisions of Section 24 of the 2013 Act, do not revive barred or stale claims, such claims cannot be entertained.
		Question (iv) Provisions of Section 24(2) do not intend to cover the period spent during litigation and when the authorities have been disabled to act under Section 24(2) due to the final or interim order of a court or otherwise, such period has to be excluded from the period of five years as provided in Section 24(2) of the 2013 Act. There is no conscious omission in Section 24(2) for the exclusion of a period of the interim order. There was no necessity to insert such a provision. The omission does not make any substantial difference as to legal position. *Question (v)* The principle of *actus curiae neminem gravabit* is applicable including the other common law principles for determining the questions under Section 24 of the 2013 Act. The period covered by the final/interim order by which the authorities have been deprived of taking possession has to be excluded. Section 24(2) has no application where the court has quashed acquisition.
21.02.2018	*State of Haryana and Ors. v M/S G.D. Goenka Tourism Corporation Ltd. and Anr*, SLP CC	The Court held that in light of disagreement with the judgment in Indore Development Authority *supra*, the Court stayed all proceedings before various High Courts and also requested other co-ordinates benches defer the hearing until a decision is rendered one way or the other on the issue whether the matter

	8453/2017	should be referred to larger Bench or not.
22.02.2018	*Indore Development Authority v. Shyam Verma and Ors. Etc.*, SLP (C) 9798-99/2016	The Court held that in the light of the judgment/orders in Indore Development *supra* and G.D. Goenka *supra*, the issues need to be resolved by a larger bench at the earliest. Matter to be placed before the Hon'ble Chief Justice.
22.02.2018	*State of Haryana & Ors. v. Maharana Pratap Charitable Trust(Regd) & Anr*, Civil Appeal No(s). 4835/2015	The Court held that in light of the order in G.D. Goenka *supra*, the larger issue is to be placed before the Hon'ble Chief Justice.
06.03.2018	*Indore Development Authority v. Shyam Verma and Ors. Etc.*, SLP (C) 9798-99/2016 [5 Judges]	The Constitution Bench, referred to Pune Municipal *supra*, Sree Balaji *supra*, Yogesh Neema *supra*, Indore Develpment Authority vs. Shailendra *supra*, GD Goenka *supra*, Indore Development Authority vs. Shyam Verma *supra* and State of Haryana & Ors. vs. Maharana Pratap Charitable Trust *supra*, and held as under : *"We think it appropriate to state, this Bench shall consider all the aspects including the correctness of the decision rendered in Pune Municipal Corporation (supra) and the other judgments following the said decision as well as the judgment rendered in Indore Development Authority (supra)."* The Court thereafter, listed the matter for hearing.
15.01.2017	*Delhi Metro Rail Corp. v. Tarun Pal Singh,* (2018) 14 SCC 161	The Supreme Court overruled a decision of the Hon'ble High Court. The Court held that the proviso occurring after Section 24(2) of the 2013 Act is a proviso to Section 24(2) and not a proviso to Section 24(1)(b) as was held by the Hon'ble High Court.
27.02.2019	*DDA v. Virendra Lal Bahri & Ors.*, SLP (C) 37375	The Supreme Court, disagreed with the view in Tarun Pal *supra*, and held that the proviso occurring after Section 24(2) of the 2013 Act is actually a proviso to Section 24(1)(b) and not Section 24(2) as

	of 2016	the same would be more workable and purportedly results in lesser anomalies.

CONSTRUCTION OF SECTION 24 OF THE 2013 ACT

Section 11 represents the determinative factor in segregation of Section 24(1)

2. It is submitted that designedly, it is the stage of passing of award under Section 11 of the 1894 Act, that represents the ***determinative factor*** in the segregation for the applicability of the provisions of the 2013 Act or the 1894 Act.

See attached chart on interpretation

Section 24 is quoted as under :

"Land acquisition process under Act 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 (1 of 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

Section 11 as the dividing line

(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.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 physical possession of the land has not been taken or 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."

3. It is submitted that the opening part of the provision in Sec. 24(1) is a "non-obstante clause" providing for a limited overriding effect of the Land Acquisition Act, 1894 in case of the contingencies mentioned in the sub-sections (a) and (b) of sub-section 1.

Sub-section 1(b) as the umbrella clause

Subsection 1(a) contemplates that where no award under Section 11 of the 1894 Act has been made, but proceedings had been initiated under said Act, the provisions of the 2013 Act would apply limited to the determination of compensation. In other words, the entire exercise de novo, under the 2013

Act, will not be required to be undertaken. Therefore, subsection 1(a) contemplates a limited applicability of 2013 Act.

The contingency provided in subsection 1(b) contemplates that where an award under Section 11 of the 1894 Act has been made, the entire proceedings would continue under the 1894 and the provisions of the 2013 Act would be completely excluded for all purposes. Sub-section 1(b) is the larger umbrella clause under Section 24, which protects the vested rights of the parties under the 1894 Act if the stage of passing of award has been crossed.

Section 24(2) craves out an exception to Section 24(1)(b)

4. It is submitted that after umbrella clause under sub-section 1(b), Section 24(2) provides for the exclusionary clause. It must be noted that sub-section 2 under Section 24 is the only lapsing clause under the provision which brings in the rigours of the 2013 Act in totality by mandating the land acquisition to be initiated *de novo*.

5. It is submitted that the said provision opens with the "non obstante clause" carving out an exception only from sub-section (1). It contemplates a situation wherein land acquisition proceedings had been initiated under the Land Acquisition Act, 1894 and an award under Section 11 of the 1894 Act had been made. Therefore, sub-section 2 would have no relation to sub-section 1(a) as the same does not contemplate an award under Section 11 of the 1894 Act at all.

S.24(2) being umbilically linked with S. 24(1)(b)

Sub-section (2) would be limited as an exception to sub-section 1(b). Therefore, sub-section (2) is umbilically related to sub-section 1(b) as an exception, wherein land acquisition proceedings would lapse in certain contingencies even when an award under Section 11 of the 1894 Act had been made.

6. It is submitted that the contingencies for lapsing in Section 24(2), are subject to an award under Section 11 of the 1894 Act being made 5 years prior to the commencement of the 2013 Act (which is 01/01/2014). If the award is made as stated hereinabove, there are two contingencies resulting in complete lapse -:

- Physical possession of the land has not been taken ;or
- Compensation has not been "paid".

The provision for lapse under Section 24(2) is, by its very nature, a vital provision, inviting serious consequences, in case said contingencies arise. It is the interpretation of these "contingencies" that requires further consideration. The "contingencies" ought to be interpreted in a manner which saves the past transactions to the extent they can be saved as it is clearly not the intention of the 2013 Act to tide over all past transactions.

7. The proviso of Section 24(2) further carves out an exception to Section 24(2) viz, in case the award has been made and compensation in respect of *majority of landholdings* has not been deposited in the account of

the beneficiaries, no lapsing will take place, but all the beneficiaries specified in the notification for acquisition shall be entitled to compensation in accordance with the provisions of the 2013 Act.

Therefore, if only a minority of the claimants are disbursed with the compensation, such claimants would get benefit of compensation under the 2013 Act to a limited extent without lapsing. Thus, it is clear that even if the acquisition does not lapse, all the beneficiaries to whom the compensation is payable would be entitled to compensation under the 2013 Act.

Homogenous and complete construction of Section 24

Legislative History is a key guide for interpreting Section 24

8. The events which happened prior to the enactment of section 24, as it exists on the statute book today, is a safe guide to cull out the legislative intent in formulating the said provision the way it is formulated by the legislature.

It is clear that the legislature was providing for a provision which was to be a transitory provision earmarking the areas which would be governed by 1894 Act and areas which would be governed by 2013 Act.

While on one side there was an indisputable and huge public interest as the lands acquired under 1894 Act were already being used for several public purposes and more particularly for many infrastructural projects. The legislature was conscious that at the time of incorporation of section 24, large number of acquisition proceedings with regard to the large number of such public projects would be at various stages and lapsing of everything would be seriously detrimental to public interest.

On the other hand, the legislature had the interest of land holders also in mind who, but for some time period, would have been entitled to the determination of compensation under the new Act. The legislature was, thus, providing for a transitory provision in terms of :-

(i) "time" ; and

(ii) "stage of acquisition proceedings under 1894 Act".

9. The legislature, provided for five years to be the "time" period and made provisions for lapsing / compensation under 2013 Act in the manner provided in section 24[2] r/w the proviso. The proviso to section 24[2] is directly linked with the "stage" at which the acquisition proceedings are presumed to have reached when the new Act comes into force.

Legislative intent is balancing of rights under Section 24(1)(a) and proviso to Section 24(2)

10. It is submitted that Section 24(1)(a) and Section 24(2) are balancing provisions controlling the extent of retrospectivity and curtailing the washing away of rights. The said balance of protecting the acquisition under the 1894 Act in some defined circumstances whilst providing the enhanced compensation provisions under the 2013 Act under some defined

circumstances is the "middle path" that the Legislature has adopted. It is submitted that Section 24(2) is, therefore, controlled by the proviso mandating again a further middle path consciously chosen by the legislature. The proviso to Section 24(2) is quoted herein under :

> *"Provided that where an award has been made and compensation in respect of a majority of landholdings 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."*

11. It is submitted that while providing for a "transitory provision" or situations resulting into "lapsing" of all the steps already taken under the Act being repealed, the legislature always envisages several contingencies which emerge out of day-to-day experience of the legislature.The manner in which section 24[2] and the proviso attached therewith are drafted clearly makes out the legislature having contemplated certain inevitable contingencies which very frequently arise in land acquisition proceedings.

> *To illustrate - when several survey numbers are acquired for a public purpose under the old Act, there may be cases where some of the holdings are benami holdings in the name of fictitious persons. Such situations are rampant in our country. Such benami holders would neither accept the payment nor would even try to identify themselves for obvious reason that by doing so, they would be admitting to an unlawful act and consequences following therefrom. In such a situation, it may not be possible for an acquiring authority to "pay" [which, as plain language indicates, would mean setting apart for being taken by the entitled persons as explained hereafter] to "all" lander holders / entitled persons.*

12. However, as is clear from proviso to section 24[2], if it can be shown that the amount is "deposited" for majority of share holding, the drastic consequence of lapsing would not take place and the only consequence would be the determination of benefits under 2013 Act.The legislative intent in the said proviso clearly appears to be to ascertain the stage up to which the land acquisition proceedings under 1894 Act have reached. If nobody is paid the compensation or compensation is not taken by everyone though tendered and / or kept ready, the legislature contemplates such a situation to be a reversible situation and, therefore, provides for lapsing of all previous stages prior to "non payment". However, if it can be demonstrated that though-

- Compensation was tendered to all;
- Some of them [for whatever reason] did not take the compensation;
- The compensation is deposited in case of majority of the land holdings [viz. setting apart the share of such persons and making it available for them to take it]

- then, neither proceedings would lapse nor the compensation will be required to be determined under 2013 Act.In substance, therefore, the legal situation would be akin to the one contemplated under section 24[1][b] for all practical purposes.

13. It is submitted that during the drafting of the Bill, the legislative intent and the apprehensions of the stakeholders in the acquisition process is clearly depicted in 31st Report of the 'Standing Committee on Rural Development' while discussing the 'The Land Acquisition, Rehabilitation and Resettlement Bill, 2011' which was the precursor to the 2013 Act. Clauses 24 and 107 of the 2011 Bill provided as under: —

> *"Clause 24 - (1) Notwithstanding anything contained in this Act, in any case where a notification under section 4 of the Land Acquisition Act, 1894 was issued before the commencement of this Act but the award under section 11 thereof has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the provisions of this Act.*
>
> *(2) Where possession of land has not been taken, regardless of whether the award under section 11 of the Land Acquisition Act, 1894 Act has been made or not, the process for acquisition of land shall also be deemed to have lapsed and the appropriate Government shall initiate the process of acquisition afresh in accordance with the provisions of this Act.*
>
> *Clause 107 - (1) The Land Acquisition Act, 1894 is hereby repealed.*
>
> *(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or effect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals."*

Predecessor clause

In the context of the above said Clause 24, providing for lapsing of acquisition initiated under the 1894 Act in the event of non-passing of award in Section 11 and in case the possession of land was not taken, the following stakeholders expressed the following apprehensions :

STAKEHOLDERS	APPREHENSIONS	REPLY OF DEPARTMENT
State of Madhya Pradesh	The land acquisition cases should not deem to have been lapsed where substantial payment has been made.	Where award of the Collector has not been made or possession of the land has not been taken under the LA Act, 1894, the land acquisition proceedings shall lapse.
Government of National Capital Territory of Delhi	An explanation should be added in the form of subsection (3) to the following effect:- *"Nothing contained in sub-sections (1) and (2) to Section 24 shall apply to an acquisition*	A new sub- clause so that the new Act shall not apply to cases where the award is pending because of Court order under the LA Act, 1894, is not acceptable as this will conflict with the existing

	proceedings initiated before the commencement of this Act, where the Govt. is prevented either from making the award or from taking possession of the land acquired due to an order passed by the court or proceedings pending therein."	retrospective clause.
Government of Uttar Pradesh	Those cases be kept outof the purview of the LARR Bill, 2011 where possession of the land hasbeen taken under Section 17 of LA Act, 1894.	In the cases where award of the Collector has not been declared or possession of land has not been taken as per the Land Acquisition Act, 1894, before the commencement of the LARR Bill, 2011 then the proceedings of land acquisition shall stand lapsed.
Department of Atomic Energy	The requirement of the Clause 24 may delay projects upto 3 years.	The Department did not agree to the contention
Ministry of Urban Development	The proposed LARR Bill needs to be prospective. It was further stated that : *"It is felt that land acquisition proceedings once initiated under the old Act may be deemed to be allowed to be continued under the corresponding clauses of the LARR Bill instead of considering it as lapsed. The clauses 24(1) and 24(2) In particular will be detrimental for important infrastructure projects, and lead to*	The Department did not agree to the contention

	deleterious time and cost escalation. Also the savings clause at para 107(2) should carry the saving clause that all action taken under the repealed LA Act will be deemed to have been carried out under the corresponding provisions of the LARR Act."	
Ministry of Railways	Wherever acquisition has been taken up by Railways for the existing projects under LA Act, - 1894, the proceedings should not lapse as proposed vide clause 24 in the draft LARR Bill, 2011. However, the provisions of LARR-2011 pertaining to the determination of compensation and rehabilitation and resettlement may be made applicable to the ongoing cases of land acquisition under the land Acquisition Act-1894, where notification under Section 4 has been issued but possession of land has not been made over by the land owners.	The Department did not agree to the contention
Federation of Indian Chambers of Commerce and Industry	The Federation suggested as under : *"Land applied under the Land Acquisition Act, 1894 should not be covered under this Act as it will create litigation. In many cases, land has not been taken over or compensation has not been paid and possession is held up*	On the suggestion that this Bill should apply retrospectively to the cases where the award has been challenged in the Court and the decision is pending therein, the Department stated that if the award of the Collector has not been made or possession of the land has been taken as per the

	due to legal challenges by land owner. All such cases should not be held invalid and governed by new Act."	provisions of the LA Act, 1894 then such cases will lapse as per clause 24 of the Bill.
Other suggestions	Clause 24 (2) should be modified to the extent that in all the cases of land acquisition, where awards under Sec.11 have commenced should be continued to be acquired as per LA Act, 1894. Clause 24 should be amended and all cases where declaration under Section 6 of the Land Acquisition Act, 1894 has not been made, should be deemed to have lapsed and proceedings for land acquisition should start afresh under the new Bill. A cut-off date be given with retrospective effect in the Bill to include all cases in which award payment proceeding is pending either before the Collector and Court. In the absence of cut-off date others who got compensation based on earlier Act will start agitating.	

The recommendations of the Committee after the said consultative process were as under :

> "*The Committee note that Clause 24 of the Bill provides that land acquisition cases/process shall be invalid on enactment of the new Act in cases where Collector has not given award or possession of the land has not been taken before the commencement of the proposed legislation. Some of the representatives of the industry and also the Ministries like Railways and Urban Development submitted before the Committee that land acquisition proceedings already initiated under the existing Land Acquisition, 1894 should not lapse as it would lead to time and cost over-run in many infrastructural projects. However, in such cases land compensation and R & R*

benefits could be allowed as per the provisions of LARR Bill. The Committee would like the Government to re-examine the issue and incorporate necessary provisions in the Rules to be framed under the new Act with a view to ensuring that the land owners/farmers/affected families get enhanced compensation and R & R package under the provisions of the LARR Bill, 2011 and at the same time, the pace of implementation of infrastructural projects is not adversely impacted."

14. Thereafter, before the Bill was placed before the Lok Sabha, the following amendment was proposed on 05.03.2013by the then Hon'ble Minister :

"(1) Notwithstanding anything contained in this Act on and from the 17th December, 2012 in 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 provision of this Act relating to the determination of compensation, rehabilitation and resettlement shall apply; or — No lapsing

(b) Where and award under 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. — No lapsing

(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, but the possession of the land has not been taken or the compensation has not been paid for a period equal to or exceeding five years prior to the date of commencement of this Act, the said proceedings shall be deemed to have lapsed and the appropriate Government shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act. — Lapsing

Explanation - For the purpose of this sub-section

(i) The compensation that has not been accepted by the individuals whose land is sought to be acquired under the said Land Acquisition Act or has been accepted under protest shall be deemed to be unpaid ;

(ii) The compensation shall be deemed to have been paid only where it is credited in the bank account of the individual whose land is sought to be acquired."

15. In spite of the aforesaid amendments being suggested, the Lok Sabha passed the Bill in the following form :

"Clause 25.

(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, rehabilitation and resettlement shall apply; or — No lapsing

(b) where an award under said section 11 has been made, then such proceedings shall continue under the — No lapsing

provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(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 physical possession of the land has not been taken or 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:

Lapsing

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been accepted, 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."

16. It is amply clear that the amendment specifically proposed by the Hon'ble Minister while introducing the Bill was not accepted in the legislative wisdom of the Lok Sabha and the Bill so passed consciously did not incorporate the Explanation (in the form of Proviso to Sec. 24(2)) providing for an extensive and artificial meaning of the word "paid". Further, reference to "bank" amount was also consciously not incorporated thereby leaving the expression "to pay" and "to deposit" with its natural meaning and leaving it to the discretion of the acquiring authorities to deposit the compensation amount even in the treasury. It is possible that the legislature may have considered the reality of 2012-13 where crores of people did not have bank accounts.

Lok Sabha dropped the Explanation

17. It is further submitted that the said rejection is also in consonance with the apprehensions expressed by other stakeholder and ministries at the said time. After the said Bill was passed in the Lok Sabha, the following amendments were proposed and accepted by the Rajya Sabha, giving the provision its final form :

"Clause 25 – Land Acquisition Process under act No. 1 of 1894 shall be deemed to have lapsed in certain cases SHRI JAIRAM RAMESH: Sir, I beg to move:

(8) That at page 15, for lines 20 and 21, the following be substituted. "then, all provisions of this Act relating to the determination of compensation shall apply; or".

(9) That at page 15, lines 32 and 33, for the words "compensation in respect of a majority of land holdings has not been accepted", the words "compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries" be substituted. The questions were put and the motions were adopted. Clause 25, as amended, was added to the Bill"

The said changes were placed before the Lok Sabha, which accepted it and passed the same.

18. It is submitted that as pointed out hereinabove, though Lok Sabha rejected the amendment as proposed by the Hon'ble Minister, it did retain the expression "has not been accepted" in the proviso to Section 24[2]. Pertinently, the Rajya Sabha very consciously removed even the said expression in the proviso to section 24[2]. This legislative exercise makes it abundantly clear that the legislature has consciously and in its wisdom categorically -

a. did not accept the question of "acceptance by the land owners" to be a mandatory requirement ; and
b. did not accept the requirement of the amount being credited into the bank accounts of individuals.

19. Therefore, in its final form as it exists on the statute book today, the Act has specifically rejected the notion of "deemed non-payment" and further rejected the notion of either "non-acceptance" or "deposit in bank accounts of beneficiaries" to be the necessary requirements.

If one compares the Explanation proposed in the amendment and the final form in which section 24 as it exists today carefully, it is clear that the legislative intent and the wisdom was to keep the said phrases open-ended and not restrictive with a view not to unsettle the past transactions based upon unrealistic and unnecessary requirements and thereby to adversely affect the progress of numerous ongoing public projects and infrastructure projects throughout the country. It is submitted that the said approach is in consonance with the apprehensions expressed which are mentioned earlier and also in consonance with the limited effect of the retrospective application of the 2013 Act intended.

20. Further, it is clear that the effort at the time was towards the drafting of a balancing provision which would protect the acquisitions from lapsing and at the same time provide for enhanced compensation under the new Act depending upon the stage upto which the acquisition has progressed. This is the genesis behind Section 24(1)(a) and proviso to Section 24(2) which seek to protect the acquisitions from the drastic consequence of lapsing whilst providing for fruits of compensation under the 2013 Act to the land owners under limited defined circumstances.

Balancing intention

It is submitted that in light of the above discussion, it is necessary to read the proviso to Section 24(2) along with the same provision and not Section 24(1)(b) as the same would protect the intent behind the said legislation.

21. It is submitted that this Hon'ble Court, vide order dated 23.10.2019, framed the questions of law for the purpose of the reference. It is submitted that the first part of the first question is quoted as under :

"What is the meaning of the expression 'paid'/'tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013') and section 31 of the Land Acquisition Act, 1894 ('Act of 1894')?"

The State of Haryana, seeks to place the following submissions on the said issue :

THE WORD "PAID" AND "DEPOSITED IN THE ACCOUNT OF BENEFICIARIES" AS USED IN SECTION 24(2) OF THE 2013 ACT ARE TWO PERMISSIBLE MODES OF "MAKING THE COMPENSATION AVAILABLE TO THE LANDOWNERS"

22. When Section 24 of 2013 Act and the expression "Paid" and "deposited" is interpreted in absence of the shadow of section 31 of the 1894 Act has been done both in Pune Municipal Corporation and Indore Development Authority, it needs to be interpreted -

(a) In the context in which it is drafted;
(b) The purpose for which it is drafted; and
(c) In its natural meaning.

23. The context is to provide for a transitory provision viz. to take care of the pending land acquisition proceedings which are on going under the 1894 Act when 2013 Act is brought into force w.e.f. 1.1.2014.

24. The purpose and object of making this provision is to balance the competing rights of public projects vis-à-vis holders of the land. At the cost of repetition, the object and purpose was to ensure that where acquisition proceedings under 1894 Act have reached an advance stage and investment of public money is already made, firstly, the lapsing of such ongoing projects should be avoided and secondly so far as possible, the land owners also can, without disturbing the process of acquisition, be given the compensation under 2013 Act.

25. At this juncture, again it is reiterated that the legislature knows about the ground realities faced in land acquisition proceedings. There are very few cases where one or two land parcels are acquired in isolation. Mostly, acquisitions take place of bigger tracks of land involving more than one parcels of land and more than one persons "entitled to compensation".

26. When the legislature is providing for a transitory provision to decide as to whether the acquisition under the Old Act would completely lapse or not, , the legislature does contemplate a possibility of the entire payment procedure to all being not processed given the practical situations arising in all such proceedings. The legislature is also presumed to be aware of the fact that in almost all cases of acquisition, the proceedings are stiffly opposed and in most of the cases, the tender of compensation is also opposed under a

wrong and misplaced notion that the acceptance of the tender may be treated as acquiescence with the quantum being tendered.

27. The legislature also does not expect the acquiring authority to perform an impossible task of forcing the payment to the land owners. The legislature, therefore, does not use the expression of the land owners having "accepted" the payment. It merely uses the expression "paid". The legislature clearly tries to balance the rights of land owners only in one contingency viz. in a post award scenario and the aware having been made five years prior to 1.1.2014, when the amount is not "deposited" in the accounts of the majority of the beneficiaries.

28. On the true construction and taking the literal, natural and grammatical meaning of the provisions in the context referred above and keeping in mind the object it can safely be concluded that the word "paid" and the word "deposit" are expressions of the very same act namely making the amount available for being taken by those who are entitled for it.

29. If this interpretation is not given then the refusal by few persons or few persons being untraceable in the acquisition of a vast tract of land would result in the drastic consequence of lapsing of the acquisition proceedings.

30. Such an anomalous situation can never be presumed to be intended by the legislature. The only way in which the object behind section 24 can be achieved is to give natural meaning to the words and expressions used keeping the object in mind and treating the word "paid" and "deposit" as connoting expression of the very same Act depending upon the fact situation in each case.

31. By using the term "paid" and "deposit", the legislature has consciously left a leeway to save the drastic consequence of lapsing by dealing with a particular situation in light of fact situation emerging in each case.If the term "paid" and "deposit" are not treated to be the expression of the very same Act or the "deposit" so as to keep it available being the next step after "pay", it would lead to disastrous situation as the acquiring authority may have acquired vast tract of land put may have substantial portion from it to public use by constructing infrastructural projects. Such a disastrous situation /consequence would never have been anticipated or envisaged by the legislature.

"Paid" does not mean actual payment only / The word "Deposit" cannot mean "deposit in the Court" only

32. It is submitted that the Hon'ble Courtsought not to assume any omission or add or amend words. It is submitted that plain and unambiguous construction has to be given without addition and substitution of the words. It is submitted that when a literal reading produces an intelligible result it is not open to read words or add words to statute. It is submitted that the Privy

Council decisions in *Crawford* v. *Spooner*, 1846 SCC OnLine PC 7and *Howard de Walden (Lord)* v. *IRC*, (1948) 2 All ER 825 (HL)throw considerable light on the same. It is submitted that Crawford *supra* states as under :

> *"... we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction, make up deficiencies which are left there.*
>
> ...
>
> *It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so.' Similarly, it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate."*

33. It is settled law that a court cannot add or subtract a word. It is submitted that this Hon'ble Court in ***V.L.S. Finance Ltd. v. Union of India***, (2013) 6 SCC 278, held as under

> *"17. Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power on the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the appellant is accepted, same would amount to addition of the words "with the prior permission of the court" in the Act, which is not permissible.*
>
> *18. As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resorts to that only in exceptional circumstances to achieve the purpose of the Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision."*

Plain and natural meaning

34. It is submitted that this Hon'ble Court in ***BALCO*** v. ***Kaiser Aluminium Technical Services Inc.***, (2012) 9 SCC 552, sitting in a Constitution Bench, rejected the contention that Part I of the Act was also applicable to arbitrations seated in foreign countries on the ground that in such a case certain words would have to be added to Section 2(2), which

would then have to provide that 'this Part shall apply where the place of arbitration is in India and to arbitrations having its place out of India'. The Constitution Bench prospectively overruled the decision of a three-Judge Bench of the Supreme Court in ***Bhatia International*** v. ***Bulk Trading S.A.***, (2002) 4 SCC 105, which had held that provisions of Part I would apply to international commercial arbitrations held outside India unless the parties, by agreement, express or implied, exclude all or any of its provisions. The Court held as under:

> *"65. Mr Sorabjee has also rightly pointed out the observations made by Lord Diplock in Duport Steels Ltd. [(1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of Appeal in discerning the intention of the legislature; it is observed that: (WLR p. 157 C-D)*
>
> > *"... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."*
>
> *(emphasis supplied)*
>
> *In the same judgment, it is further observed: (WLR p. 157 F)*
>
> > *"... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts...."*
>
> *(emphasis supplied)*
>
> *67. We are unable to accept the submission of the learned counsel for the appellants that the omission of the word "only" from Section 2(2) indicates that applicability of Part I of the Arbitration Act, 1996 is not limited to the arbitrations that take place in India. We are also unable to accept that Section 2(2) would make Part I applicable even to arbitrations which take place outside India. In our opinion, a plain reading of Section 2(2) makes it clear that Part I is limited in its application to arbitrations which take place in India. We are in agreement with the submissions made by the learned counsel for the respondents, and the interveners in support of the respondents, that Parliament by limiting the applicability of Part I to arbitrations which take place in India has expressed a legislative declaration. It has clearly given recognition to the territorial principle. Necessarily therefore, it has enacted that Part I of the Arbitration Act, 1996 applies to arbitrations having their place/seat in India.*
>
> ....
>
> *82. Another strong reason for rejecting the submission made by the learned counsel for the appellants is that if Part I were to be applicable to arbitrations seated in foreign countries, certain words would have to be added to Section 2(2). The section would*

have to provide that "this part shall apply where the place of arbitration is in India and to arbitrations having its place out of India." Apart from being contrary to the contextual intent and object of Section 2(2), such an interpretation would amount to a drastic and unwarranted rewriting/alteration of the language of Section 2(2). As very strongly advocated by Mr Sorabjee, the provisions in the Arbitration Act, 1996 must be construed by their plain language/terms. It is not permissible for the court while construing a provision to reconstruct the provision. In other words, the court cannot produce a new jacket, whilst ironing out the creases of the old one. In view of the aforesaid, we are unable to support the conclusions recorded by this Court as noticed earlier."

The Court cannot provide a drastic and unwarranted rewriting/alteration

35. It is submitted that the Supreme Court in ***Ram Narain v. State of U.P.***, AIR 1957 SC 18,refused to read "residence" within the "town area" as a necessary part of the condition for imposition of a tax. The Hon'ble Court stated as under :

"To do so will be to read in clause (f) words which do not occur there."

36. It is therefore submitted that therefore the word "Paid" does not and cannot mean actual de-facto payment as the same would amount to adding words which do not exist in the provision. Similarly, the word "Deposit" cannot mean "deposit in the Court" as the same was never the legislative intention nor can it be deduced from any form of interpretative process.

ALTERNATIVELY, THE WORD "PAID" IN SECTION 24(2) OF THE 2013 ACT DOES NOT IMPLY "DEPOSIT IN COURT" UNDER SECTION 31 OF THE 1894 ACT

37. In the earlier submissions, it is clear that the term "pay" and "deposit" are used to connote the very same act of making the compensation available after determining the same as per the procedure laid down in 1894 Act. Alternatively the following submissions may be considered.

38. It is submitted that this Hon'ble Court, whilst interpreting Section 24 of the 2013 Act, has, for the first time in Pune Municipality [supra] and subsequent judgments, presumed that the word "paid" occurring in Section 24(2) of the 2013 Act would have to be interpreted as per Section 31 of the 1894 Act. It is submitted that the said presumption does neither has any justification nor any such justification is examined in the said judgments. It is submitted that the said presumption has resulted in grave consequences without ascertaining the conscious omissions on the part of the Legislature.

39. It is submitted that if Section 24 is attempted to be interpreted in absence of the shadow of section 31 of the 1894 Act, the legislative intent and the interpretation becomes lucid which is explained above.

The following table would illustrate how the words "paid" and "deposit" have been used in different senses by the Legislature in the 1894 Act and also the 2013 Act :

1894 Act	2013 Act
31. *Payment of compensation or deposit of same in Court–* (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section. (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted: Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount: Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18: Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto. (3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with	77. *Payment of compensation or deposit of same in Authority–* (1) On making an award under Section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by some one or more of the contingencies mentioned in sub-section (2). (2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under Section 64 would be submitted: Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount: Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of Section 64: Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned. (4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.	
34. *Payment of interest–* When the amount of such compensation is <u>not paid</u> or <u>deposited</u> on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited: Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.	80. *Payment of interest–* When the amount of such compensation is <u>not paid</u> or <u>deposited</u> on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of so taking possession until it shall have been so paid or deposited: Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

40. Firstly, Section 31 of the 1894 Act has its pari materia provision in Section 77 of the 2013 Act. There is neither any justification nor any requirement of interpreting Section 24 of 2013 Act in the shadow of Section 31 of the 1894 Act.

41. It is submitted that even if as an alternative argument it is assumed that the expressions "paid"/"tender" and the expression "deposited" have both been used consciously in Section 31, as is the reason of drafting Section 24(2), it creates an anomalous situation. It is submitted that in the proviso to Section 24(2) of 2013 Act, expression used is compensation has not been

"deposited" "in the account of the beneficiaries", which is separate from the "deposit in Court" as envisaged under Section 31(2) of the 1894 Act. It is submitted that the expression "bank account" has not been used in Section 31 of the 1894 Act at all and the expression "in the Court" has not been used in Section 24(2) of the 2013 Act at all. The said omissions carry weight and cannot be ignored.

Conspicuous absence of the mention of Section 31 of the 1894 Act

It is further submitted that if Section 24 of 2013 Act intended to attract the rigours and technicalities of Section 31 of the 1894 Act, it would have used the requisite phrase. It is submitted that the term "*section 31 of the 1894 Act*" is conspicuous by its absence in Section 24 of the 2013 Act. It is submitted that the Legislature intentionally used the phrases "paid" and "deposit" not in terms of their meanings under Section 31 so as to avoid the rigours of the said provision and to keep the practical exigencies of land acquisition in mind more particularly when Section 24 of the 2013 Act is merely a transitory provision.

42. It is submitted that it is settled law that when the Legislature uses two different phrases, the mean it would carry would be different. It is submitted that this Hon'ble Court in ***Harbhajan Singh v. Press Council of India***, (2002) 3 SCC 722, held as under :

> *"7. Clearly, the language of sub-section (7) of Section 6 above said, is plain and simple. There are two manners of reading the provision. Read positively, it confers a right on a retiring member to seek re nomination. Read in a negative manner, the provision speaks of a retiring member not being eligible for re nomination for more than one term. The spell of ineligibility is cast on "re nomination" of a member who is "retiring". The event determinative of eligibility or ineligibility is "re nomination", and the person, by reference to whom it is to be read, is "a retiring member". "Retiring member" is to be read in contradistinction with a member/person retired sometime in the past, and so, would be called a retired or former member. "Re" means again, and is freely used as a prefix. It gives colour of "again" to the verb with which it is placed. "Re nomination" is an act or process of being nominated again. Any person who had held office of member sometime in the past, if being nominated now, cannot be described as being "again nominated". It is only a member just retiring who can be called "being again nominated" or "re-nominated". No other meaning can be assigned except by doing violence to the language employed. The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule – the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material – intrinsic or external – is available to permit a departure from the rule."*

"Retiring member" different from previously retired member

43. It is submitted that this Hon'ble Court in ***Member, Board of Revenue v. Arthur Paul Benthall***, AIR 1956 SC 35, held as under :

4. We are unable to accept the contention that the word "matter" in Section 5 was intended to convey the same meaning as the word "description" in Section 6. In its popular sense, the expression "distinct matters" would connote something different from distinct "categories". Two transactions might be of the same description, but all the same, they might be distinct. If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and mortgages White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters. If the intention of the legislature was that the expression 'distinct matters' in Section 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in Section 5 and "descriptions" in Section 6 have different connotations.

"matter" different from "description"

So, the above said para said that when two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense."

44. It is submitted that this Hon'ble Court in ***CIT v. East West Import and Export (P) Ltd.***, (1989) 1 SCC 760, held as under :

"7. The Explanation has reference to the point of time at two places: the first one has been stated as "at the end of the previous year" and the second, which is in issue, is "in the course of such previous year". Counsel for the revenue has emphasised upon the feature that in the same Explanation reference to time has been expressed differently and if the legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended to convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. There is abundant authority to support the stand of the counsel for the revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention."

45. It is submitted that this Hon'ble Court in ***B.R. Enterprises v. State of U.P.***, (1999) 9 SCC, held as under:

"70. Article 301 is quoted hereunder:

> *"301. Freedom of trade, commerce and intercourse.— Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."*

"Trade and business" is different from "Trade and Commerce"

In difference, we find that the words used under this Article are "trade, commerce and intercourse". We find Article 301 is confined to trade and commerce while Article 298 refers to trade and business and to the making of contracts for any purpose. The use of the words "business" and "contracts for any purpose" and

its title "... trade, etc." makes the field of Article 298 wider than Article 301. Significantly, the different use of words in the two Articles is for a purpose; if the field of the two Articles are to be the same, the same words would have been used. It is true, as submitted, that since "trade" is used both in Articles 298 and 301, the same meaning should be given. To this extent, we accept it to be so, but when the two Articles use different words, in a different set of words conversely, the different words used could only be to convey different meanings. If different meaning is given then the field of the two Articles would be different. So, when instead of the words "trade and commerce" in Article 301, the words "trade or business" are used it necessarily has a different and wider connotation than merely "trade and commerce". "Business" may be of varying activities, may or may not be for profit, but it necessarily includes within its ambit "trade and commerce"; so sometimes it may be synonymous but its field stretches beyond "trade and commerce"."

46. It is submitted that this Hon'ble Court in ***Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd.***, (2003) 4 SCC 305, held as under:

"8. Section 3 specifically states that no suit for the recovery of any sum shall lie in the civil court against any such person to whom a certificate was issuable under Section 3(1). It is submitted that since a suit was already barred by the U.P. Act, the question of it being further barred under Section 22(1) did not arise. It is also pointed out that in Section 22(1) of SICA, Parliament has drawn a distinction between the words "proceeding" and "suit". It is pointed out that this Court in its decision in Maharashtra Tubes, Arising out of SLPs (C) Nos. 21370 and 21371 of 2002] had construed the word "proceeding" to include proceedings under the State Financial Corporations Act. The section was subsequently amended by the introduction of the prohibition relating to the filing of a suit inter alia to enforce a guarantee in respect of loans advanced to a sick industrial company. It is argued that had Parliament intended to include proceedings like those under the U.P. Act within the word "suit", it would have used the word "proceeding" and not consciously used the word "suit". The respondents have relied upon the decision of this Court in CCE v. Ramdev Tobacco Co. [(1991) 2 SCC 119] to contend that the word "suit" did not cover any proceeding which was not in a court. It is then contended that the proceedings under the U.P. Act were really in the nature of recovery proceedings under Section 22(1) of the Act. Recovery proceedings were prohibited only against the industrial company itself and not against the guarantor. It is further submitted that the High Court had given liberty to the appellants to approach BIFR under Section 22(3) of the Act but the appellants had not availed of that remedy."

"Proceedings" is different from "Suit"

47. It is submitted that this Hon'ble Court in ***DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana,*** (2003) 5 SCC 622, held as under:

"43. The High Court in our opinion, committed a manifest error in holding that despite the fact that the statute uses two different expressions as regards cost to be incurred for construction of schools, hospitals and community centres etc., the effect thereof would be the same. In case of the licensee the words used are "at his own cost" whereas in respect of the others, the words used are "at its cost". When different terminologies are used by the legislature it must be presumed that the same had been done consciously with a view to convey different meanings. Had the intention of the legislature been, as has been held by the High Court, that the cost for such a construction has to be borne by the licensee irrespective of the fact as to whether it undertakes such constructions itself or gets them constructed by its contractors, there was absolutely no reason as to why clearer terms could not be used by the legislature. The words "at his own cost" refer to the licensee, whereas in the case of his nominee being either an institution or a person, as the case may be, the words "at its cost" have been used. The expression "at his own cost" and "at its cost" must be held to have separate and distinct meaning. They are not meant to aim at the same person."

"At his own cost" is different from "at its cost"

HISTORY OF THE 1894 ACT

48. At the outset, it is desirable to examine the manner in which the 1984 Act, came in to being and more particularly Section 31, took its final form. The Act X of 1870 [predecessor to the 1894 Act] repealed both Acts VI of 1857 and XXII of 1863 and made a "consolidated" Act providing for acquisition of land for public purposes and for companies and incorporated Part VII (acquisition for companies) for the first time. Section 40 of the 1870 Act provided for "payment". The said Section, read as under :

"Section 40 - Payment of the compensation shall be made by the Collector according to the award to the persons named in the award or, in the case of an appeal under section thirty-nine, according to the decision on such appeal :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

49. The said Act was considered inadequate and amendments to the said Act were being considered. The Land Acquisition Act, 1870, Amendment Bill, was tabled before the Council of the Governor General of India on 12th January, 1893. On the said date, the Land Acquisition Act, 1870, Amendment Bill was referred to a Select Committee consisting of the following members:-

- Sir Philip Hutchins,
- Sir Alexander Miller,
- Sir Charles Pritchard,
- Raja Uday Pratab Singh of Bhinga,
- Dr. Rash Behari Ghose,
- Palli Chentsal Rao Pantulu &

- Mr. Woodburn.

50. The Report of the Select Committee was tabled before the Council of the Governor General of India on 4th February, 1893. At point 10, the Committee, on the issue of payment noted as under :-

> *"10. Chapter V of the Act concerns the payment of compensation. We have added clauses to Section 40 as amended by Section 12 of the Bill, empowering on the one hand the Collector to deposit the amount of his award in Court, when for any reason there is no person able and willing to receive it, and on the other empowering the owner of the land, if dissatisfied with the award, to accept the amount under protest. To that extent, it will no longer be to the advantage of the owner to protract proceedings and run on a claim for interest; for if, notwithstanding the express privilege given to the owner, he refuses to take the compensation money placed at his disposal, he has no claim to interest on it."*

51. The recommended Section 40, by the Select Committee on 4th February 1893, read as under :-

> *"PART V - PAYMENT*
> *40. (1) On making an award under section eleven, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them if they shall consent to receive it.*
> *(2) If they shall not consent to receive it, or if there be no person competent to receive it, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section eighteen would be submitted:*
> *Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:*
> *Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section eighteen:*
> *Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."*

52. It must be noted that this, for the first time, provided the right to a landowner, to hold on to the Section 11 compensation, whilst preserving his right to a higher compensation by way of a reference, was provided for marking a clear change from the 1870 Act. The legislative intention can be culled out from the discussions and the proceedings preceding the proposal.

53. Thereafter, on 25th March, 1893, the Select Committee submitted a Further and Final Report on the Bill to amend the Land Acquisition Act, 1870. The said Further and Final Report, at point 8 and 9, on the issue of payment and "*deposit in court*", read as under :

> *"8. Section 31 contains the regulation as to the payment of the compensation-money. To this we have added additional Sections laying down the procedure of the Collector and the Judge in those cases in which the occupant of the land acquired*

is from any disability incompetent to alienate it, or in which the compensation-money must remain in deposit till the settlement of the dispute as to title. One of the objections urged by Local Governments against the present law was that excessive charges of interest accumulated against Government when owners refused the Collector's award. The revised Bill met this objection by requiring the Collector to immediate payment of his award, and empowering the owner to take payment of the compensation tendered, without prejudice to a protest regarding the sufficiency of it. In cases abovementioned, however, it is only fair to the owner that the compensation-money deposited by the Collector should be immediately so invested as to yield in him interest till the title to it is settled. We have added a clause giving formal power to the Collector with the sanction of the Local Government to adjust compensation by an exchange of land, a method of settlement which has been found in some provinces useful and convenient to all parties.

9. In this connection we may remark, in answer to a criticism by the Bengal Board of Revenue, that a deposit of money by the Collector in a Civil Court is, we understand, a paper transaction, which merely places the amount at the credit of the Court in its personal ledger in the Collector's treasury."

The deposit is a mere paper transaction

54. This remark of the Further and Final Report of the Select Committee is noteworthy. The said remarks clearly clarifies that there is no sacredness attached to the idea of deposit of amount in the Court and in fact the same is merely done avoid ever increasing interest on the amount. Further, it clearly mentions that the transaction, of the alleged deposit in the Court, is merely a paper transaction aimed at making the payment available to the landowners/Court. The said observations are extremely relevant in understand the concept of parting of money in land acquisition and the rationale behind the mechanism of "payment" under the 1894 Act. It is further submitted that the said observation would also explain the reason of conscious omission of the words "*deposited in Court*" in the proviso to the Section 24(2) of the 2013 Act. The Further and Final Report of the Committee, recommended the following provision as the payment clause :

"PART V - PAYMENT

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them if they shall consent to receive it.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of

any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.
(3) Notwithstanding anything in this section the Collector may, with the sanction of Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned.
(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."

55. Thereafter, on 27th January, 1894, the Select Committee submitted another Report on the Bill to amend the Land Acquisition Act, 1870. The said Report, did not particularly deal with the issue of payment. On 10th February, 1894 in the proceedings before the Council of the Governor General of India, Sir Alexander Miller, proposed the amendment to leave out the words '*if they shall consent to receive it*' from Section 31(1) and inserting the words '*unless prevented by some one or more of the contingencies mentioned in the next sub-section*'. The said amendment was put and agreed to by the Council. In this manner, Section 31 of the 1894 Act, took its final form.

SCHEME OF THE OLD ACT

56. Be that as it may, it must be noted that the Act of 1894 is a self-contained Code providing for every stage of acquisition. The first step in an acquisition is issuances of a notification under Section 4 which is merely a preliminary notification.

57. The next stage in the act of 1894 is hearing of objections under Section 5A. Any person "interested in any land" which has been notified under section 4 can object to the acquisition. The Act does not restrict this "right to object" only to the owner of the land but to everyone "interested in the land" which is very wide. It may include occupiers, easementary right holders, etc.
A person interested is defined in Section 5A [3] to mean everyone who is "entitled to claim an interest in compensation".

58. The next stage is declaration under Section 6 after considering the report made by the Collector under section 5A of the 1894 Act. The land is thereafter marked out, measured and planned by the Collector under section 8 of the Act.

59. The next and the most crucial phase of acquisition for the purpose of the present dispute is the stage of Section 9 where the Collector is enjoined

to issue public notices to "persons interested". Such notice would indicate that - "the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to the Collector. Section 9 reads as under

> *"Section-9: Notice to persons interested. - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him.*
>
> *(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.*
>
> *(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.*
>
> *(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in letter addressed to him at his last known residence, address or place or business and [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)]."*

60. Section 9[2] requires the Collector to mention in the notice that all persons interested in the land [forming part of section 6 Notification] must appear personally or by an agent before the Collector at a time and place mentioned therein.

This is the first stage where the statutory exercise commences for identification of the claimants and claims.

61. Under Section 10, every person who may claims to have any interest is required to inform the Collector about the nature of his interest.

62. The most crucial stage for the purpose of present dispute is Section 11 of the Act. Under section 11 of the Act, the Collector makes "an award" which is a focal point of Section 24 of the Act of 2013.

At the time when the Collector makes the award, he has before it all the objectors, claimants, their objections and suggestions, nature of their respective claims/interests and all other details as can be culled out from section 9 and 10.

> *"11. Enquiry and award by Collector. -*
>
> *[(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has*

stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him :

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act."

63. It is relevant to note that under Section 11[1][iii], the Act specifically stipulates a contingency where a person may not have appeared before the Collector still the Collector has the information about his interest in the land. The Act specifically stipulates such a contingency namely a person never responding to the Notice issued under Section 9 but still he is found by the Collector to have an interest in the land, as the Collector is obliged to issue notices to all viz. owners, occupiers, other interest/claim holders.

Section 11A provides for the time within which the award shall be made.

64. The next stage is section 12. Under section 12[2], the Collector is once again obligated to give immediate notice of his award to such persons interested as are not present personally or by their representatives when the award is made [under section 11 of the 1894 Act]. Section 12, reads as under:

"12 Award of Collector when to be final. –

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

65. Section 12 of the 1894 Act reads as under.

These are the efforts under Section 4 to Section 12 which the Collector is supposed to make for -

(i) Inviting claims and objections by issuing notices;
(ii) Entertaining the objections;
(iii) Adjudicating the claims;
(iv) Determining the quantum of compensation and
(v) Apportioning the quantum *inter se.*
(vi) Issuing notices even after making the award;

66. In all these stages, the Collector is enjoined to issue public / personal notices requiring the personal presence of everyone entitled to be compensated. <u>This is the stage at which the Collector "pays" the amount as determined at the end of the aforesaid exercise.</u>

Section 13, 13A, 14 and 15 are not relevant for the present purpose.

67. The next stage in the acquisition proceedings is <u>Section 16</u> which reads as under:-

<u>Section 16</u>: 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.

As per the said provision, 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.

68. Section 17 provides for cases of urgency.Section 17[3] is the only provision under the Act where the legislature has contemplated <u>"acceptance" of the compensation</u> and that too to the limited compensation for the damages to standing crops and trees or any other damage while taking possession. Nowhere else, the legislature contemplates "acceptance" of compensation by the land owner / occupier/ claimant.

69. Section 17[3] and 17[3A] reads as under:-

17. Special powers in case of urgency. -

(1) In cases of urgency whenever the [appropriate Government], so directs, the Collector, though no such award has

been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, subsection (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

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

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

(3) In every case under either of the preceding sub-sections the Collector shall at that time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and from any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

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

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

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

70. Section 17[3A] also enjoins the Collector to tender and pay 80% of the compensation. It further says that if he is prevented by someone or more of the contingencies mentioned in section 31[2], he will deposit the amount under section 31[2].

71. It may be pertinent to note that the legislative intent can easily be culled out from section 17. If the interpretation to the effect that the term

"pay" would mean "actual payment" and even after being tendered with compensation, the persons entitled choose not to accept the same, nothing can be done, such an interpretation will make Section 17 meaningless.

72. Section 18 to section 30 pertained to deciding the dispute regarding compensation and, therefore, not relevant for the purpose.

73. The next stage thereafter is section 31 of the Act. Section 31[1] stipulates "tender" and "payment" to all persons present in pursuance of the notice under section 9 read with section 12[2] of the Act of 1894. Section 31 reads as under :

> *"31. Payment of compensation or deposit of same in Court. -*
>
> *(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.*
>
> *(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:*
>
> *Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:*
>
> *Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:*
>
> *Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.*
>
> *(3) Notwithstanding anything in this section the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.*
>
> *(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."*

74. Sub Section [2] of the section 31 makes an exception in "tender" and "payment". In the contingencies mentioned in section 31[2], instead of making the "tender" and "payment", the Collector is obliged to "deposit" the amount of compensation in the Court to which the reference under section 18 would be submitted.

75. At this stage, it is necessary to peruse the legislative intent. If for the contingencies enumerated under Section 31(2), the amount is not "deposited" [forgetting for the time being "where" - in Court or otherwise], the consequence is not lapsing of the acquisition proceedings or the proceedings becoming invalid under the 1894 Act. The only consequence provided under Section 31(2) for "non-payment" (even if the term "payment" is taken to be "deposit in Court only"), is liability to pay interest under section 34 of the 1894 Act which reads as under :

> *"34. Payment of interest -*
>
> *When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:*
>
> *Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."*

76. Whenever the Legislature in 1894 Act, intended the consequence to be the proceedings becoming invalid, it has provided so. For example, after a declaration has been made under Section 6 of the Act of 1894, Section 11-A requires/mandates that the Collector shall make his award within 2 years from the date of the declaration and the Legislature has specifically provided that in the event of award being not made in 2 years, the entire proceedings will "lapse".

Section 11-A reads as under :

> *"11A. Period shall be which an award within made -*
>
> *The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:*
>
> *Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.*
>
> *Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."*

77. Thus, in the absence of any "lapsing" contemplated for failure to comply with Section 31(2), on the ground of "non-deposit in Court" such a lapsing can never be read in Section 24 merely because the amount is not deposited in "Court". The consequence of such non-deposit will be the liability to pay interest and not lapsing. In other words, proceedings under Section 24 of the 2013 Act will lapse only when the amount of compensation is not made available and set apart in any form by the Collector and Section

24(2) cannot be given a restricted meaning as sought to be given viz. "deposit in Court".

78. At this stage, it is relevant to read section 18 of the Act. Section 18 reads as under:

> *"Section 18 - Reference to Court. –*
>
> *(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*
>
> *(2) The application shall state the grounds on which objection to the award is taken:*
>
> *Provided that every such application shall be made,–*
>
> *(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*
>
> *(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.*

79. A conjoint reading of section 18[1] r/w section 31[2] makes the legislative intent clear. The legislature wants the Collector to immediately provide for, earmark and set apart the compensation payable to everyone. This legislative mandate is mandatory. The amount so provided for, earmarked and set apart shall have to be "tendered" and "paid" earlier and in cases where, for various reasons stipulated under Section 31(2), the actual "payment" is not possible in spite of its "tender", the Collector is free to keep the earmarked amount separately in any safe mode prescribed by the State Government under Section 55 of the Act of 1894 to make such amount "available" for the land owner to withdraw at his discretion.

In cases where the amount is required to be earmarked and kept aside, the payment of which is dependent upon a judicial adjudication under section 18, the legislature provides for "deposit in the reference court" merely as one of the permissible modes of providing for, earmarking and setting apart the amount and keeping it available to be disbursed / paid depending upon the judicial adjudication.

80. In light of the aforesaid, it is abundantly clear that the mode of depositing the amount in "Court" is one of the permissible modes of deposit and, therefore, a directory provision. It is most relevant to note that the legislature, while drafting section 24 of the Act of 2013 has consciously avoided either contingencies mentioned in section 31[2] or the place at which the compensation can be "deposited". In absence of this conscious omission, it is neither justified nor permissible to read the requirement of "deposited" in Court borrowing it from section 31[2], which in any case, was

merely a directory provision in the 1894 Act so far as the place of deposit is concerned.

81. If the pedantic interpretation as sought for is accepted, namely-

(i) Payment means actual payment by Collector to an individual

(ii) Deposit can mean only "deposit in the court" and not even in the treasury

it leads to an anomalous situation which legislature would never have contemplated.

82. It is further submitted that the Legislature cannot be expected to have envisaged unrealistic reasons. In reality and in practice, there can be manifold possibilities where the Collector can neither "tender" the amount nor can "pay" the amount nor can "deposit" the amount even if he has the amount readily available with him and has kept it available. Some such illustrations are as under:

Illustrations

(i) In spite of the Collector finding a part-owner or co-owner of a piece of land under acquisition to be entitled to receive the compensation from the available record, such person is not traceable;

(ii) Either part of the acquired land or the entire acquired land is owned in a fictitious name by a *benamidaar* who will never come forward to receive the compensation and expose him to serious consequences.

83. If a very straight-jacket and restrictive interpretation is given to the lapsing provision, one or few persons can stall the entire proceeding which can never be the intention of the legislature.

84. On a conjoint reading of the provisions referred above, it is clear that the Act of 1894 provides for a complete mechanism dealing with all the issues concerning acquisition -

- the Act of 1894 obligates the Collector to issue notices to every persons interested in the land under acquisition;
- the Act of 1894 mandates the Collector to immediately "pay" to every person interested immediately upon making of the award who are called upon to remain present by issuance of a statutory notice.
- In some eventualities, which, by their very nature need judicial adjudication, the Collector is permitted to deposit the amount in the Court as one of the permissible modes and is also permitted to earmark the amount, set it apart and keep it available for disbursement by the Court for withdrawal by the owner in any other permissible mode which may mean keeping the amount aside in a treasury.

Natural and contextual meaning to be given devoid of technicalities

85. It is submitted that as per the settled rules of statutory interpretation, the requirement of avoiding inconsistency and repugnancy and the conscious avoidance of any reference to Section 31 of the 1894 Act or the expression used therein, it is submitted that the word "paid" ought to be given its natural and contextual meaning within the larger framework of land acquisition keeping the entire scheme of the 1894 Act and the object regarding "payment" clearly was to ensure that the Collector in fact possess money to pay (eg. There is a prior budgetary allocation for the purpose of acquisition and the Collector has in fact, received the money).

When the stage of "actual payment" (reflected in the above scheme) fails, there is no mandatory or sacrosanct requirement of "depositing" in any particular manner.

"Paid" to be given a general and broad meaning

The construction of such repealing provision intended only to be a transitory provision which needs to be adopted should be such, as would make the statute as a whole, workable and protects the bonafide transactions and action of the stakeholders under the 1894 Act.

86. In light of the above, it is submitted that the meaning of the word "payment" as used in the Section 24 of the 2013 Act, and in the context of other statutes providing for "payment", gains relevance. The same natural meaning requires to be adopted. It is further submitted that many statutes deal with the relationship of the State/Employer with that of an Individual and therefore requires "payment" as a statutory provision. The judicial pronouncements regarding the meaning of "payment" would be even more helpful in the present circumstances. This Hon'ble Court in ***J. Dalmia v. CIT***, (1964) 7 SCR 579, held as under :

> *10. The expression "paid" in Section 16(2) it is true does not contemplate actual receipt of the dividend by the member. In general, dividend may be said to be paid within the meaning of Section 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto.*

The said observation have become the settled law of the land and have been followed in ***Benares State Bank Ltd. v. CIT***, (1969) 2 SCC 316 [Para 5] and ***Ramesh R. Saraiya v. CIT***, (1965) 1 SCR 307 [Para 20].

87. This Hon'ble Court in ***Straw Board Mfg. Co. Ltd. v. Govind***, 1962 Supp (3) SCR 618 *J*, held as under :

> *"4. Let us now turn to the words of the proviso in the background of what we have said above. The proviso lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the*

proceeding is pending for approval of the action taken by the employer. It will be clear that two kinds of punishment are subject to the conditions of the proviso, namely, discharge or dismissal. Any other kind of punishment is not within the proviso. Further the proviso lays down two conditions, namely, (i) payment of wages for one month and (ii) making of an application by the employer to the authority before which the proceeding is pending, for approval of the action taken. It is not disputed before us that when the proviso lays down the condition as to payment of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But if the employee chooses not to accept the wages, he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though Section 33 speaks of payment of one month's wages it can only mean that the employer has tendered the wages and that would amount to payment, for otherwise a workman could always make the section unworkable by refusing to take the wages. So far as the second condition about the making of the application is concerned, the proviso requires that the application should be made for approval of the action taken by the employer. It has been urged on behalf of the respondent that the words "action taken" in this part of the proviso mean the action proposed to be taken and therefore all that the employer can do is to make an application to the Tribunal asking it to approve the action proposed to be taken by it and it is only after the approval that the employer can proceed to dismiss or discharge the workman. We are however of opinion that on this interpretation there would really be no difference between sub-section (2) and sub-section (1) of Section 33 and the intention of the legislature in making the amendment in 1956 would be rendered nugatory. Moreover, it is against the Rules of interpretation to add words to a provision, when the provision, as it stands, is capable of a reasonable meaning which will give effect to the intention of the legislature even on the words as they stand. On the plain meaning of the proviso, it is clear that it gives the employer the power to discharge or dismiss the employee before obtaining the approval of the Tribunal concerned; but at the same time the protection afforded to the employee by the proviso has to remain effective. It seems to us therefore that when the proviso speaks of an application for approval of the action taken, the action taken there is the order of actual discharge or dismissal made by the employer and it is for the approval of this order that the application is to be made. This is borne out by Form 'K' under Rule 60 of the Rules framed under the Act which corresponds to Form 15 under Rule 31 of the U.P. Rules. Further the use of the word "approval" in the proviso also suggests that something has been done by the employer who seeks approval of that from the Tribunal. If the intention was that in view of the proviso the employer could not pass the order of dismissal or discharge without first obtaining the approval of the Tribunal, we see no reason why the words in the proviso should not have been similar to those in sub-sections (1) and (3), namely, that no workman shall be discharged or dismissed without the express permission in writing of the authority concerned. The change therefore in the language used in the proviso to sub-section 2(b) clearly shows in

Provision cannot be made unworkable at one end

our opinion that the legislature intended that the employer would have the right to pass an order of discharge or dismissal subject to two conditions, namely, (i) payment of wages for one month and (ii) making of an application to the authority concerned for approval of the action taken. The use of the word "approval" also suggests that what has to be approved has already taken place, though sometimes approval may also be sought of a proposed action. But it seems to us in the context that the approval here is of something done, as otherwise it would have been quite easy for the legislature to use the words "for approval of the action proposed to be taken" in the proviso. Further Sub-section (5) also suggests when it uses the words "approval of the action taken" that some action has been taken and it is that action which the employer wants to be approved by his application. The difference between sub-section (1) and sub-section (2) is therefore that under sub-section (1) the employer proposes what he intends to do and asks for the express permission of the authority concerned to do it; in sub-section (2) the employer takes the action and merely asks for the approval of the action taken from the authority concerned by his application. There can therefore be no doubt that sub-section (2)(b) read together with the proviso contemplates that the employer may pass an order of dismissal or discharge before obtaining the approval of the authority concerned and at the same time make an application for approval of the action taken by him. It is however urged on behalf of the respondent that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the Tribunal refuses to approve of the action the workman would be left with no remedy as there is no provision for reinstatement in Section 33(2). We however see no difficulty on this score. If the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the Tribunal under Section 33(2)."

88. Similarly, this Hon'ble Court in ***Management of Delhi Transport Undertaking v. Industrial Tribunal,*** (1965) 1 SCR 998, held as under :

"4. The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case ***the tender*** *was definitely made before the order of dismissal became effective and the wages would certainly have been paid if Hari Chand had asked for them.* ***There was no failure to comply with the provision in this respect.***"

89. Similarly, this Hon'ble Court in ***Indian Oxygen Ltd. v. Narayan Bhoumik***, (1968) 17 FLR 214, held as under :

> *"4. The proviso to Section 33(2)(b) lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by him.* ***Though the word used in the proviso is "paid", the proviso does not mean that the employer must actually handover or pay to the workman dismissed or discharged his one month's wages.*** *In Strawboard Manufacturing Co. v. Gobind [(1962) 3 Suppl SCR 618] this Court while constructing this proviso, observered that when it lays down the condition as to payment of one month's wages all that the employer is required to do to carry out that condition is to tender the wages to the employee. But if the employes chooses not to accept them, he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though Section 33 speaks of payment of one month's wages, it can only mean that the employer has tendered the wages and that would amount to payment, for otherwise a workman could always make the section unworkable by refusing to take the wages.* ***In P.H. Kalvani v. Air France [(1964) 2 SCR 104, 109] the employer had offered one month's wages to the workman before the order of dismissal against him came into force. The offer was held to be sufficient compliance of the said condition laid down in the proviso.*** *Management of Delhi Transport Undertaking v. Industrial Tribunal, Delhi [(1965) 1 SCR 998] was a case where the wages were remitted by money order but the workman purposely refused to receive them. It was held that the employers could not be said not to have complied with the condition laid down by the proviso.* ***It is thus clear that the condition as to payment in the proviso does not mean that wages have to be actually paid but if wages are tendered or offered, such a tender or offer would be sufficient compliance for the purposes of Section 33(2)(b) proviso."***

90. From the abovesaid, it is clear that the word "paid" when given its plain meaning, would not mean only de facto handover but will also include compensation or deposit of compensation categorically earmarked viz. keeping a quantified and earmarked amount available separately for making it available to the person interested which may be even in the government treasury.

"Paid" to be interpreted ad pondus omnium

As stated herein above, the word "paid" would have to be interpreted *ad pondus omnium* [considering everything's weight], which would imply that considering the realties and practicalities of land acquisition wherein payment can be avoided by a particular stakeholder making the provision unworkable and restricting the deposit only in "Court" does not achieve/furthers any object, the word "paid" would necessary mean "offering" of compensation or making the compensation "available" to the landowners.

It is submitted that the modalities of such offering or making it available would not have any impact of the lapsing of the acquisition under Section 24(2).

It is submitted that the second part of the question framed by this Hon'ble Court vide order dated 23.10.2019 is as under :

> *"Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into a lapse of acquisition under 13 section 24(2) of the Act of 2013. What are the consequences of nondeposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?"*

DUAL OBLIGATION – PART MANDATORY, PART DIRECTORY

91. It is submitted that there are two settled principles of statutory construction - *dual obligation* and *consequential construction.* It is submitted that principle of dual application states that where a statute requires an act to be done in a particular manner, it may be possible to regard the requirement that the act be done as mandatory, but the requirement that it *be done in a particular manner* as merely directory. In such a case the statutory requirement can be treated as substantially complied with if the act is done in a manner which is not less satisfactory having regard to the purpose of the legislature in imposing the requirement.

Similarly, the doctrine of consequential construction stipulates that if the most trivial breach of an apparently absolute requirement is to be treated as vitiating the relevant transaction, the consequences would often be out of all proportion to the lapse. In such case, the court ought to place a reasonable and proportionate interpretation to the said clause.

It is submitted that the said doctrine reverberate in English law and the interpretation by the English Courts. In ***Howard v. Secretary of State for the Environment*** [1975] Q.B. 235, the Secretary of State contended that a notice of appeal was invalid as it failed to comply with the statutory obligation that it shall be made by notice in writing to the minister, which shall indicate the grounds of the appeal and state the facts on which it is based. The Secretary of State contended that the notice was invalid as it failed to provide details of the facts relied on. The Court held that it was imperative to serve a notice of appeal in writing, but it was only directory that the notice of appeal had to contain the facts. Thus the notice of appeal was not invalid because it did not include all the facts which were going to be relied on. Lord Denning M.R., at p. 241, cited this passage from the speech of Lord Penzance in Howard v. Bodington (1877) 2 P.D. 203, 210:

> *"Now the distinction between matters that are directory and matters that are imperative is well known to us all in the common language of the courts at Westminster .... A thing has been ordered by the legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the courts hold a*

provision to be mandatory or directory, they say that, although such provision may not have been complied with, the subsequent proceedings do not fail."

Later Lord Denning M.R. said, at pp. 242-243:

> *"The section is no doubt imperative in that the notice of appeal must be in writing and must be made within the specified time. But I think it is only directory as to the contents. Take first the requirement as to the 'grounds' of appeal. The section is either imperative in requiring 'the grounds' to be indicated, or it is not. That must mean all or none. I cannot see any justification for the view that it is imperative as to one ground and not imperative as to the rest. If one was all that was necessary, an appellant would only have to put in one frivolous or hopeless ground and then amend later to add his real grounds. That would be a futile exercise. Then as to 'stating the facts.' It cannot be supposed that the appellant must at all costs state all the facts on which he bases his appeal. He has to state the facts, not the evidence: and the facts may depend on evidence yet to be obtained, and may not be fully or sufficiently known at the time when the notice of appeal is given. All things considered, it seems to me that the section, in so far as the 'grounds' and 'facts' are concerned, must be construed as directory only: that is, as desiring information to be given about them. It is not to be supposed that an appeal should fail altogether simply because the grounds are not indicated, or the facts stated. Even if it is wanting in not giving them, it is not fatal. The defects can be remedied later, either before or at the hearing of the appeal, so long as an opportunity is afforded of dealing with them."*

92. In *Belvedere Court Management Ltd. v. Frogmore Developments Ltd.* [1996] 3 W.L.R. 1008, Hobhouse L.J. expressed his views as to the way that the Act of 1987 should be construed using different language, but arrived at the same result. He said, at p. 1032:

> *"By way of final comment I would add that I am strongly attracted to the view that legislation of the present kind should be evaluated and construed on an analytical basis. It should be considered which of the provisions are substantive and which are secondary, that is, simply part of the machinery of the legislation. Further, the provisions which fall into the latter category should be examined to assess whether they are essential parts of the mechanics or are merely supportive of the other provisions so that they need not be insisted on regardless of the circumstances. In other words, as in the construction of contractual and similar documents, the status and effect of a provision has to be assessed having regard to the scheme of the legislation as a whole and the role of that provision in that scheme – for example, whether some provision confers an option properly so called, whether some provision is equivalent to a condition precedent, whether some requirement can be fulfilled in some other way or waived. Such an approach when applied to legislation such as the present would assist to enable the substantive rights to be given effect to and would help to avoid absurdities or unjustified lacunae."*

93. The Court of appeal in ***Kay Green And Others V. Twinsectra Ltd.*** [1996] 1 WLR 1587, held as under :

> *"A section 12 notice must be in writing and served upon the new landlord in time. Further, it must give adequate notice of the requirement of the qualifying tenants to have the estate or interest in the premises, as defined in section 1, to be transferred to a nominated person. Those requirements are in my view imperative.*
>
> *The first complaint as to the form of the notice made by Twinsectra was a failure to include Flat 7, Tudor House, in the notice. It was said that that failure was fatal to the validity of the purchase notice as a whole. That was accepted to be a valid complaint by the judge.*
> *It is correct that Flat 7, Tudor House, is not included in the heading of the notice and therefore it is possible to read the notice as only relating to six flats in Tudor House. That, to my mind, would not give full effect to the notice that was given. The notice required Twinsectra to dispose of the freehold interest that Twinsectra held in the above-mentioned premises." Given that what was being referred to was a freehold interest in Tudor House, it would be absurd to understand the notice as only requiring part of that freehold interest to be transferred. Further, if there was doubt, the letter sent with the notice made it clear that what was being referred to was the whole of the freehold interest in Tudor House. I therefore conclude that the notice was not invalid on this ground.*
> *Second, Twinsectra drew attention to section 12(3), which is concerned with an acquisition where the original disposal included property in addition to premises to which Part I of the Act applied. In such a case, the subsection states that the purchase notice should require the new landlord to dispose of the estate or interest only" so far as relating to the particular premises and upon terms of the original disposal subject to such modifications as are necessary or expedient.*
> *Twinsectra submitted that the purchase notice required transfer of all Tudor Court, whether or not the buildings contained houses or bungalows and that the inclusion of such units in the notice was a clear breach of section 12(3) (a) (i). That the judge held to be correct.*
> *The applicants accept that the purchase notice could advantageously have been drafted in different terms.* ***However, I believe that the requirements in section 12(3) (a) (i) are only directory.*** *In this case, the purchase notice included extra property, but that did not invalidate the notice as a whole. It gave adequate notice of the requirement of the qualifying tenants that the landlord should transfer buildings 1 and 4 of Tudor Court and Tudor House. Further, it was clear that Parr Court was not included. The notice also stated that in the alternative to disposal to them on the original terms, the terms were to be determined by a leasehold valuation tribunal. Thus the landlord was given adequate notice that the tenants of buildings 1 and 4 of Tudor Court and Tudor House wished to acquire the freehold interest in them. That was in my view sufficient.*

Third, Twinsectra submitted that section 12(3) (a) (ii) stated that the purchase notice should require the terms of the original disposal to be modified. That the notice did not do. The notice required Twinsectra to:

> *"dispose of the said estate or interest to them [on] (1) the same terms on which the said estate or interest was disposed of to Twinsectra Ltd.; or (2) alternatively on such terms as may be determined by a rent assessment committee pursuant to section 12(3) (b) of the above-mentioned enactment."*

Although the notice could have been worded so as to refer to the words of section 12(3) (a) (ii), there was in my view no need for it to do so. For practical purposes, *it was sufficient to make it clear to the landlord that the qualifying tenants wished to have the estate conveyed to them upon the same terms with such appropriate modifications as would be agreed or settled by a leasehold valuation tribunal. That I believe was the effect of the notice which was served. It follows that for practical purposes Twinsectra could have been in no doubt, after receipt of the notice, that the terms would have to be settled, in default of agreement, by a leasehold valuation tribunal."*

94. The law in India concerning the same, may also be seen from the case law and jurisprudence developed by this Hon'ble Court. In ***Sharif-ud-Din v. Abdul Gani Lone,*** (1980) 1 SCC 403, the Hon'ble Supreme Cour, held as under :

> *"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. **A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission***

to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

95. In ***Ram Deen Maurya (Dr.) v. State of U.P.***, (2009) 6 SCC 735, the Hon'ble Supreme Court, held as under :

"42. Having examined the Rules and the principles evolved by the Courts, let us now examine whether non-compliance with one of the facets of Rule 4(6) of the Rules would be fatal to the application filed by Dr. Madhu Tandon.

43. To answer this issue, it is necessary to find out, whether the Rule is directory or mandatory. If it is mandatory, then it is settled rule of interpretation, it must be strictly construed and followed and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although the non-compliance may give rise to some other penalty if provided by the statute. It is often said that a mandatory enactment must be obeyed or fulfilled exactly, but, a directory provision non-compliance with it, has been held in many cases as not affecting the validity of the act done in breach thereof (see Principles of Statutory Interpretation, 11th Edn. 2008 by Justice G.P. Singh).

44. Rule 4(6) of the Rules is in four parts. They are, (i) The transfer application for single/mutual transfer shall be submitted to the Director, Higher Education. (ii) It shall be submitted through the management along with the written consent of both the managements. (iii) The Director, Higher Education shall submit his recommendation to the Government within one month. (iv) The Government shall take decision either on the basis of recommendation of the Director or on its own.

45. Filing of the application before the Director (Higher Education) is a must for transfer, for the reason under the Rules, it is he who is expected to consider the application to find out, whether the applicant is eligible for such transfer and whether the applicant has obtained consent or no objection from both the managements, namely, from the management where he or she is working and to the college where he or she wants to be transferred and if the requirement in this behalf is not complied with, the Director may reject the application at the threshold itself. Further, the Rule specifically provides that the application for the purpose of Rule 4, must be filed only before him or no other authority of the State Government; this part of the Rule requires to be considered mandatory.

46. We will come to the second limb of the Rule a little later.

47. The third part of the Rule says that the Director (Higher Education) shall submit his recommendation within one month to the State Government; if there is any delay in making the recommendation, the Rules do not provide that the recommendations so made, will not be considered by the State Government nor the Rule says, if the recommendations are not received within the stipulated time, the State Government would ignore the recommendation and proceed to decide the

request of the applicant independently. Therefore, this requirement of this part of the Rule is only directory and not mandatory, the non-compliance therewith will not make the application invalid.

48. The fourth limb of the Rule gives discretion to the State Government. The State Government may accept the recommendation of the Director (Higher Education) and then proceed to pass an order on the application filed by the applicant(s) for transfer. The discretion is also given to the State Government, that, in spite of recommendations made by the Director (Higher Education), it can also take a decision on its own. That only means that under all circumstances, the State Government need not accept the recommendations of the Director of Higher Education and it can take its own decision with the material available and also to take such decision, collect material from the respective managements. Since absolute discretion is provided to the State Government to take a decision either on the recommendation made by the Director of Higher Education or on its own in regard to the request of the applicant for a single-time transfer from one college to another, this portion of the Rule by no stretch of imagination can be construed as mandatory.

49. Now, we are left with the second part of the Rule. As we have already noticed, the learned Senior Counsel says, it is mandatory and non-compliance therewith would invalidate the application filed and the Director of Higher Education could not have recommended its consideration by the State Government. The submission of the learned Senior Counsel looks attractive at the first blush, but on a consideration of the submission, in our view, it has no merit. At the first instance, we have to find out, whether this part of the Rule is mandatory and its non-compliance is fatal, and assuming that it is mandatory, whether the substantial compliance with this Rule would satisfy the requirement of this part of the Rule and its non-compliance would not be breach of the Rules.

50. We are fully aware that in service law jurisprudence, it is mandatory that an employee is required to route through all his applications to the higher ups through the Head of the Department, where he or she is working. The object and the purpose appears to be that the Head of the Department should know the grievance, if any, of his employee which he is trying to project before a superior forum and it could also be in cases where the employee desires to apply for employment in a different organisation. The object and the purpose of this exercise appears to maintain discipline in the institution or the organisation.

51. In the instant case, on the request made by the applicant an NOC is granted and thereafter, routing the application through the management is a requirement under the Rules, and its non-compliance therewith would not make her application invalid. In the facts and circumstances of this case, since both the managements were fully aware that the applicant intends to shift herself to a college which may be helpful to her either to achieve better prospects in her profession or to suit her convenience. In our view, since it does not involve any public interest nor would it affect the interest of both the

managements in any manner whatsoever, and since there is substantial compliance with the requirements of the Rules, we cannot accept the submission of learned Senior Counsel Shri S.R. Singh, appearing for the petitioner.

52. While considering the non-compliance with procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and furthers its ends and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory."

96. Further, the Hon'ble Supreme Court, in ***Rai Vimal Krishna v. State of Bihar***, (2003) 6 SCC 401, has held as under :

"26. The third submission of the appellants relates to the mode of publication of the assessment lists. That the mode of publication is a procedural provision is self-evident. But is it a mandatory provision? The High Court's finding as to the nature of the provision for publication under sub-section (1) of Section 149 is somewhat contradictory. While holding that the manner of publication was mandatory and had to be complied with in terms thereof, in a subsequent portion of the judgment, it was held that it was a mere irregularity which could be waived. As we read sub-section (1) of Section 149, the Chief Executive Officer is bound to give public notice of the assessment list. The word "shall" makes that clear. However, the word "shall" does not qualify the next phrase which is separated from the words "public notice" by a comma. The phrase separated is "by beat of drum and by placards posted in conspicuous places throughout Patna ...". Generally speaking, the object of giving a notice is to draw the attention of the persons sought to be affected to the matter notified. The purpose of specifying a particular mode of giving notice is to raise a legal presumption against such person, of knowledge of the subject of the notice. In other words, once the mode specified for giving notice is complied with, the onus is on the persons notified to prove that they were not aware of the subject-matter of the notice. There is otherwise no special sanctity given to the mode of service of notice. The appellants have contended that even though owners were served with individual notices under Section 149(2), unless publication was made in the manner provided in Section 149(1) the occupants who were liable to pay water tax and latrine tax would be seriously affected and would not have an opportunity of challenging the imposition of the tax on them. Incidentally, in the objections filed by the appellants their contention is that the holdings owned by them were not liable to payment of latrine tax or water tax because neither of the services were available. However, the matter has to be decided as a principle and not with reference to the appellants' case.

27. Nobody disputes that publication and the giving of notice to persons likely to be affected by the assessment list is a must. The appellants have admitted publication of the assessment lists in three newspapers. It is not their case that such publication did not serve the purpose of notifying those who might be affected by the assessment lists, of their existence. Indeed it appears to us that the requirement to notify

people by beat of drum is an anachronism which appears to be inappropriate in the present day and age in a large city like Patna. The High Court's apprehension that

> *"holding this provision as directory is likely to cause confusion and mischief in future and it is not for this Court to substitute the wisdom of the legislature with its own by holding that notice by newspaper will be sufficient in place of notice of the spot by beat of drum and placards"*

is unfounded both in law and in fact. It is an elementary principle of interpretation that words in statutory provisions take their colour from their context and object, keeping pace with the time when the word is being construed. When or where no other means of effective publication is available, no doubt, announcing the assessment list by beat of drum and by displaying placards would have to be complied with. ***Where equally efficacious, if not better, modes of publication are available, it would be ridiculous to insist on an obsolete form of publication as if it were a ritual.*** *Had the High Court found that publication by newspapers was not effective enough to notify the public, the assessment list could not be given effect to unless publication was properly made. There is no such finding. On the other hand, publication through newspapers is now an accepted form of giving general notice. Therefore, we have no hesitation in holding that the portion of Section 149(1) which deals with the manner of publication, as opposed to the requirement for publication per se, is directory. Since there has been sufficient compliance in effecting the intention of the legislature to give notice to the public at large in the city of Patna, we cannot hold that the assessment lists prepared on the basis of the 1993 Rules are required to be set aside.*

29. This in fact was the exact question which had been decided by a Bench of five Judges in the case of Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] . In that case municipal water tax was sought to be levied under Section 131 of the U.P. Municipalities Act, 1916. In terms of Section 131(3), the Municipal Board was required to publish its proposal relating to the tax and the draft rules in connection therewith along with the notice in the specified format. Section 94(3) provided for the manner of publication of the resolution of the Municipal Board. The method of publication prescribed was "in a local paper published in Hindi and where there is no such local paper, in such manner as the State Government may, by general or special order, direct". ***The publication was made in a local paper published in Urdu. Wanchoo, J., speaking for the majority held that the provision for publication contained in Section 131(3) was mandatory but the mode of publication provided in Section 94(3) was not. Therefore, the publication in an Urdu newspaper was held to be sufficient and in substantial compliance with Section 94(3).*** *This conclusion was arrived at despite the use of the word "shall" in Section 94(3). This is what the Court said: (AIR pp. 899 & 901, paras 7 & 10)*

> *"The question whether a particular provision of a statute which on the face of it appears mandatory – inasmuch as it uses the word 'shall' as in the present case – or is merely*

directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

* * *

... As we have said already the essence of Section 131(3) is that there should be publication of the proposals and draft rules so that the taxpayers have an opportunity of objecting to them, and that is provided in what we have called the first part of Section 131(3); that is mandatory. But the manner of publication provided by Section 94(3) which we have called the second part of Section 131(3), appears to be directory and so long as it is substantially complied with that would be enough for the purpose of providing the taxpayers a reasonable opportunity of making their objections. We are therefore of opinion that the manner of publication provided in Section 131(3) is directory."

30. Again in 1996 this Court in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] had to interpret a regulation framed in connection with a departmental inquiry. The regulation required that the inquiring authority

"shall also record an order that the officer may for the purpose of preparing his defence:

* * *

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the inquiring authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the inquiring authority."

(emphasis supplied)

32. With the greatest respect, we would adopt the reasoning of the aforesaid two decisions of this Court in rejecting the appellants' submission that the mode of publication prescribed in Section 149(1) as opposed to publication itself, was mandatory and hold that the publication in the newspapers was in substantial compliance with the requirements of the sub-section."

97. It is further submitted that this Hon'ble Court, has on numerous occasions, interpreted a particular provision to be merely directory when no consequence is provide for the breach. It is submitted that the said interpretation has been made on occasions even when the word "shall" has been used. It is submitted that the present case would be at a better footing as both, non-consequence and absence of "shall" exist. It is submitted that the

Petitioner seeks to place considerable reliance on the following cases in the said context :

i. *State v. N.S. Gnaneswaran*, (2013) 3 SCC 594 - Para - 11 - 22

ii. *State of Bihar & Ors. V. Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472 - Para - 6, 9, 10, 11, 18, 19, 21, 23, 24

iii. *Owners and parties interested in M.V. "Vali Pero" v. Fernando Lopez & Ors.*, (1989) 4 SCC 671 - Para 16-23

98. It is submitted that therefore, in light of the above, the requirement as to "payment" and "deposit in the account of the beneficiaries" is to be held to be a mandatory condition as the consequence of the same is provided for in the 2013 Act. However, in absence of a provision provided that the deposit specifically in the bank account of the beneficiaries or the deposit in Court by the State, it is submitted that the stipulation qua the place of deposit and the manner of payment, is merely directory. It is submitted that if the said interpretation is adopted, the equities on both sides of the transaction would be balanced as on one hand, the acquisition would lapse if there is no payment or deposit whatsoever and on the other, the acquisition would lapse if the payment and deposit have been made, but not made is strict complacent of the 1894 Act or the Rules therein.

MEANING OF "DEPOSITED IN THE ACCOUNT OF THE BENEFICIARIES"

Natural and contextual meaning to be given devoid of technicalities keeping the object and not the technicalities in mind

99. It is submitted that this Hon'ble Court, whilst interpreting Section 24 of the 2013 Act, has without cogent reasons, presumed that the phrase "deposited in the account of beneficiaries" occurring in the proviso of Section 24(2) of the 2013 Act would have to be interpreted as per Section 31(2) of the 1894 Act. It is submitted that the said presumption has resulted in grave consequences without ascertaining the conscious omissions on part of the Legislature as evidently mentioned above.

Conspicuous absence of the mention of Section 31(2) of the 1894 Act

It is submitted that Section 31(2) mandates that only in the exigencies as provided in Section 31(2), the amount has to be deposited in Reference Court and not in all exigencies. As pointed out above, only deposit is mandatory under Section 31(2) and the place of deposit even in the said provision of Section 31(2) is directory as

(i) The object is to ensure that the Collector has the fund;

(ii) The object is to ensure that the fund is earmarked and is kept ready for disbursement;

(iii) Only consequence- even of non-deposit (much serious than deposit otherwise than in court) is liability to pay interest.

It is submitted that the expression "bank account" has not been used even in Section 31 of the 1894 Act and the expression "in the Court" has not been used in Section 24(2) of the 2013 Act.

The said omissions carry weight and cannot be ignored. It is submitted that the term "*section 31 of the 1894 Act*" is conspicuous by its

absence in Section 24 of the 2013 Act. It is submitted that the Legislature intentionally omitted the phrase "deposited in Court in terms of Section 31(2)" so as to remove any doubt about the place where the earmarked amount is "deposited" and to keep the practical exigencies of land acquisition in mind which may include many land owners not having a bank account.

100. It is submitted that the mechanism for deposit in Court was described under the 1894 Act under Section 31(2). It would be presumed any deposit in Court, under the said Act, would happen as per the requirements of Section 31(2).

The majority in Indore Development *supra*, concludes that the "deposited in the account of beneficiaries", even under the treasury or as per the prevailing State Rule framed under Section 55 of the 1894 Act, would be enough to discharge the obligation under the proviso to Section 24(2). It is submitted that the said interpretation now gets fortified by the clear legislative intent of Section 31 of the 1894 Act as evidently reflected in the "Select Committee Report" (even if presumed to be mandatory in character) cannot be imported in Section 24(2) of the 2013. It is submitted that both the section intend different consequences. It is submitted that therefore, the supposed breach of Section 31(2) of the 1894 Act presuming it to be mandatory may have attracted certain consequences under the 1894 Act (i.e. liability to pay interest), the said consequences cannot be attracted under Section 24 of the 2013 Act.

It is submitted that the word "deposited in the account of beneficiaries" would not include the statutory obligation to deposit either in Court as per the mechanism contemplated under Section 31(2) of the 1894 Act or in the "bank account" of the beneficiaries. There is sufficient compliance if the amount of compensation has been kept apart and deposited in a safe place like treasury categorically earmarked in the account of the beneficiaries.

Relevance of State Rules under Section 55 of the 1894 Act

101. In light of the above, it is submitted that the meaning of the phrase "deposited in the account of beneficiaries" shall have to take colour from the various modes of "deposit" statutorily made by various States and stakeholders. It is submitted that the Rules framed under Section 55 of the 1894 Act deal with the deposit in the name of an individual before various authorities and not merely in the bank or Court. The acts taken by the acquiring authorities under these statutory rules are specifically saved by Section 114 of the 2013 Act which reads as under:

> *"114. Repeal and saving.-*
>
> *(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed. (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."*

As per Section 6 of the General Clauses Act, 1897, the following acts are saved :

"Section 6 - Effect of repeal.

—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

102. It is submitted that there are various State rules framed under Section 55 of the 1894 Act by various State Governments. There are several instructions issued with respect to dealing with government money as provided in Article 283 of the Constitution of India, and when it is the government money it has to be dealt with in accordance with the instructions issued by the State Government from time to time. There are other Financial Codes/Rules/orders issued time to time by various State Governments with respect to dealing with government money. It must be noted that the Legislatures have not made any of this statutory Rules, Codes, Orders otiose or ineffective. They are rather saved under the Section 114 of the 2013 Act. The following are the illustrations.

Various state Rules providing for deposit in the treasury

103. The Standing Order No. 28 of 1909, which applies the Petitioner State of Haryana, the State of Punjab and to the Delhi reads as follows:

"71. Payment of compensation when made.—As soon as the award has been announced the acquiring officer will proceed to pay the compensation awarded to those persons who are present and who accept the award. Sufficient notice should be given to enable all payees to assemble at the place where they will receive their dues but no time should be wasted on useless endeavours to secure the attendance of absentees. A note shall be made of the names of those persons who refused to accept the amount awarded or who accept it under protest. Much trouble will be avoided if the principle that payment of compensation should be made at the time of award, is strictly observed. Most of the persons interested will then be present and immediate payment will save them the necessity of making frequent journeys to the tehsil. It will usually be found of advantage to draw in advance a sum sufficient to cover the probable amount of the award and to make payments against this especially when the award is announced at a place distant from the headquarters.

* * *

73. Statement to be forwarded to the Accountant General.—When an award is made under Section 11 of the Act, the acquiring officer shall have a statement prepared in the following Form marked AA showing the amounts payable to

each person under the award and shall, on the day the award is made, forward a copy of this statement signed by him to the Accountant General or other audit officer, with whom he is in account and the Deputy Commissioner concerned simultaneously with a certificate that the land has been taken possession of and mutated in favour of Government giving the number and date of the attested mutation. On the basis of this certificate, the Deputy Commissioner may forward a proposal to the Financial Commissioner for sanctioning reduction of land revenue under Para 79 infra. Before signing the copy, the officer should carefully satisfy himself that it correctly shows the amounts due under the award and should himself enter the total of Column 6 of the statement in words both in the original and copy. Subsidiary statement in Form AA below, giving particulars regarding the acceptance by the persons concerned of the amounts entered in Column 6 of the award statement should also be furnished to the auditing officer as soon as possible. If the subsidiary statement is not complete on the day that the award is made, the necessary entries in Column 7 of the statement in Form A will be made in the auditing office on receipt of the statement in Form AA.

* * *

FORM AA

Particulars regarding the acceptance by the persons concerned of amounts entered in award statement no. _____ dated ____ 200__.

Name of work for which land has been acquired _____ number and date of declaration in _____ Gazette viz. No. _____ dated ____1968 _____ p. _____

1	*2*	*3*			
Particulars of amount entered in Column 6 of the award statement					
Serial number in the statement award under Section 11 of the Act	*Name of person to whom payment is made under the award*	*(a) Amount accepted without protest*	*(b) Amount accepted under protest*	*(c) Amount deposited in Court Reasons for depositing*	*(d) Amount undisbursed owing to non-attendance and the treasury in which it is deposited*
		Rs p.	*Rs p.*	*Rs p.*	

Note.—In noting these particulars in the award statement, it may be sufficient to enter the letter a, b, c or d, as the case may be, in Column 7 of the statement when the whole amount of the award is shown in one of the four sub-columns (a), (b), (c) or (d) in the statement.

74. Methods of making payments.—There are five methods of making payments—

(1) By direct payments, see Para 75(I) infra

(2) By order on treasury, see Para 75(II) infra

(3) By money order, see Para 75(III) infra

(4) By cheque, see Para 75(IV) infra

(5) By deposit in a treasury, see Para 75(V) infra

*75. Direct payments.— * * **

(V) By treasury deposit.— In giving notice of the award under Section 12(2) and tendering payment under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear, if they do not appear and do not apply for a reference to the civil court under Section 18, the officer shall after any further endeavours to secure their attendance that may seem desirable, cause the amounts due to be paid to the treasury as revenue deposited payable to the persons to whom they are respectively due and vouched for in the Form marked E below. The officer shall also give notice to the payees of such deposits, specifying the treasury in which

the deposits has been made. When then payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposit. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payee belong in order that the number of undisbursed sums to be placed in deposits on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative whether before or after deposit of the amount awarded, such representative must have legal authority for receiving the compensation on behalf of his principal.

Form E					*Form E*				
Name of work for which land has been acquired _____ *To the officer in charge of* _____ *treasury.* *Please receive for transfer to credit of revenue deposit the sum of Rs* _____ *on account of compensation for land taken up for the above purpose payable as detailed below–*					*Name of work for which land has been acquired* _____ *To the officer in charge of* _____ *treasury.* *Please receive for transfer to credit of revenue deposit the sum of Rs* _____ *on account of compensation for land taken up for the above purpose payable as detailed below–*				
Serial number in award statement number	*Name of persons to whom due*	*Area of land*	*Amount payable to each*	*Remarks*	*Serial number in award statement number*	*Name of persons to whom due*	*Area of land*	*Amount payable to each*	*Remarks*
		Acres	*Rs*				*Acres*	*Rs*	
Total _____ *Land Acquisition Officer* *Dated* _____					*Total* _____ *Land Acquisition Officer* *Dated* _____				
Received the above amount and credited to revenue deposit *Treasury Officer* *Note.–This form should be used when the amounts of compensation due are sent to treasury in the absence of proprietors who have failed to present themselves for payment.*					*Received the above amount and credited to revenue deposit* *Treasury Officer* *Note.–This form should be used when the amounts of compensation due are sent to treasury in the absence of proprietors who have failed to present themselves for payment."*				

"

104. It is submitted that in some states it is merely a matter of statutory procedure as to where the deposit is made which acts are saved under Section 114 of the 2013 Act. The High Court Rules of states such as Punjab and Haryana and Delhi, provide that a deposit in Court under Section 31 of the Act of 1894 must be lodged into the Treasury as a Revenue or Civil Court deposit. Rule 1 of Chapter 8-C of the Punjab and Haryana High Court Rules reads as under:

> *"1. Money paid into the District Court under section 31 of the Land Acquisition Act must be lodged into the Treasury as a Revenue or Civil Court deposit under the rules applicable to such deposits, until its investment as required by section 32 ibid."*

105. It is submitted that the Assam Govt. vide Notification No.1211-R., dtd. Apr. 19, 1932, has stated as follows :

> *"9. In giving notice of the award under Section 12(2) and tendering payment under section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the Collector shall require them to appear personally or by representatives by a*

certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them, if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, he shall, after any further endeavour to secure their attendance or make payment that may seem desirable, cause the amounts due to be paid in the Treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made."

106. The Land Acquisition (Bihar & Orissa) Rules, 1894 read as follows :

"10. In giving notice of the award under Section 12 (2) and tendering payment under Section 31 (1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed, to them if they all to appear. If they do not appear, and do not apply for reference to the Civil Court under Section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cease the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, the Treasury in which the deposits specifying have been made."

107. The Uttar Pradesh Rules for the Payment of Compensation for Land Taken Up Under the Land Acquisition Act I of 1894, read as follows:

"6. In giving notice of the award under section 12(2) and tendering payment under section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the special officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid in the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in form E. The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made."

108. The West Bengal Notification No.29 T.R., dtd. Apr. 24, 1895 reads as follows:

"10. In giving notice of the award under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to

them, intimating also that no interest will be allowed to them, if they fail to appear. If they do not appear and do not apply for reference to the Civil Court under Section 18, the officer shall, after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the accompanying form (not given here). The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made."

109. The Land Acquisition (Kerala) Rules, 1990 read as follows:

"13. (2) In case the awardees or their authorised agents fail to appear and accept the award or fail to apply for a reference to court under Section 18, the amount due shall be paid into the treasury as Revenue Deposit payable to the persons to whom it is respectively due and vouched for in Form E.A notice intimating the deposit of the amount into the Treasury shall also be served on all the awardees and interested persons in Form No.11."

110. It is submitted that Rule 10 of the Uttar Pradesh Rules for the Payment of Compensation for Land Taken Up Under the Land Acquisition Act I of 1894 provides for the money paid in Court to be credited as Civil Court Deposits, the accounts of which are ultimately kept by the Treasury (according to paragraph 355 of Chapter XV of the Financial Handbook issued by the Government of U.P.). Rule 10 of the above Rules states as under:

"10. All payments into Court for deposit under the Act should be made by means of cheques in favour of the presiding officer of the Court, payable by order of the Court to credit of Civil Court Deposits. The cheques should be accompanied by receipts in triplicate in form D, duly filled up, of which one will be retained by the Court for record, and the other two returned duly signed to the Collector. The amounts deposited in the Court will be charged off as expenditure in the public works accounts of the Collector, and the ultimate payments to the persons interested under the award shall be arranged for by the Court under the rules for the payment of Civil Court Deposits."

111. It is submitted that a conjoint reading of Section 24 and Section 114 of the Act leaves no room for doubt that the Legislature never intended to nullify the all payments/deposits made under aforesaid statutory instruments only on the ground that the "deposit is not made in the Court"

"Deposit" can mean deposit in the treasury

112. It is submitted that even of the Section 24(2) of the 2013 Act is interpreted under the shadow of Section 31 of the 1894 Act, the Rules framed by each State cannot be rendered nugatory by an interpretative process of Section 31. Therefore, it is submitted that even under Section 31(2), the term "deposit in Court" can also mean deposited in the "Treasury" or deposited in any other form and manner as provided by the statutory and for other Rules.

It is further submitted that as a matter of practical exigency, it is not be prudent to assume that every Court in the country would have the means and the ability to accept deposit and maintain accounts as per the 1894 Act. Thus, the issue of where the compensation is deposited is a matter of procedure. It is submitted that when the State Rules and High Court rules permit deposits in the Treasury, it fails to reason that under the scheme of the Act of 1894, failure to pay or deposit in Court under Section 31(2) only had the effect of attracting interest payment as per Section 34 of the Act of 1894.

113. It is submitted that although some of the said Rules contemplate the deposit outside Court only in the event the landowner fails to reply to the notice under Section 12 of the 1894 Act, the said technical requirement/prerequisite cannot be imported to the phrase "deposited in the account of beneficiaries" under proviso to Section 24(2) of the 2013 Act due to the following reasons :

Underlying objective of the "Deposit in Court"

a. The 1894 Act only attracted interest as per Section 34 of the 1894 Act as a consequence in case of non-deposit in Court making the provision directory;
b. There is <u>no prejudice</u> caused to the landowner if the deposit is not made in Court or as per the strict terms of the Rules framed by the State when otherwise the quantified amount is earmarked/set apart and is kept available for him/them;
c. The breach of a State framed Rule or the 1894 Act cannot attract the lapsing enshrined under Section 24(2) of the 2013 Act;
d. A deposit as per the State framed Rules would meet the requirement of "deposited in the account of beneficiaries"

Prerequisite of Section 12 or Rules cannot be imported under section 24(2)

114. It would be relevant to note the consequence of not depositing the amount under Section 31 of the 1894 Act. As per Section 34 of the 1894 Act, there is a liability for payment of interest. This Hon'ble Court in ***Hissar Improvement Trust*** v. ***Rukmani Devi*****,** **1990 Supp SCC 806,** considered the question of effect of non-deposit and observed that in case compensation is not being paid or deposited in time in court before taking possession of the land, the Collector has to deposit the amount awarded in Section 31 failing which he is liable to pay interest as provided in Section 34. The Court observed as under:

> *"5. It cannot be gainsaid that interest is due and payable to the landowner in the event of the compensation not being paid or deposited in time in court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 31, <u>failing which he is liable to pay interest as provided in Section 34.</u>*
>
> *6. In the circumstances, the High Court was right in stating that interest was due and payable to the landowner. The High Court was justified in directing the necessary parties to appear in the executing court for determination of the amount."*

115. However, it is submitted that it would be relevant to note that in ***Kishan Das*** v. ***State of U.P.*****,** **(1995) 6 SCC 240,** this Hon'ble Court has laid

down that in case the landowners have themselves delayed in disposal of acquisition proceedings, they cannot claim higher rate of interest as that would amount to payment of premium for dilatory tactics. The Hon'ble court held as under :

> *"4. In the light of the operation of the respective provisions of Sections 34 and 28 of the Act, it would be difficult to direct payment of interest. In fact, Section 23(1-A) is a set-off for loss in cases of delayed awards to compensate the person entitled to receive compensation; otherwise a person who is responsible for the delay in disposal of the acquisition proceedings will be paid premium for dilatory tactics. It is stated by the learned counsel for the respondents that the amount of interest was also calculated and total amount was deposited in the account of the appellants by the Land Acquisition Officer after passing the award, i.e., on 15-11-1976 in a sum of Rs 20,48,615. Under these circumstances, the liability to pay interest would arise when possession of the acquired land was taken and the amount was not deposited. In view of the fact that compensation was deposited as soon as the award was passed, we do not think that it is a case for us to interfere at this stage."*

116. It is submitted that therefore, the claim under Section 34 for interest is also not absolute. In case a person is indulging in litigation for adopting dilatory tactics, no divesting of land is provided under the 1894 Act in case it is not deposited in court. Similarly, in ***D-Block Ashok Nagar (Sahibabad) Plot Holders' Assn.*** v. ***State of U.P.***, (1997) 10 SCC 77, this Hon'ble Court has held that liability to pay interest under Section 34 arises from the date of taking possession.

The claim for interest under Section 34 is not absolute

Deposit in treasury in place of deposit in Court would cause no prejudice to the landowner or any other stakeholder

117. It is submitted that whether the mandate of the rules or the statute is breached or not, the same would have no impact whatsoever on the rights or the compensation that the land owners are to receive. It is submitted that it is trite law that in the given situation unless aggrieved party makes out a case of prejudice and injustice, every infraction of law would not vitiate the act. This Hon'ble Court in ***Jankinath Sarangi*** v. ***State of Orissa***, (1969) 3 SCC 392, observed as under:

> *"5. From this material, it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions, a number of rulings are cited chief among which are State of Bombay v. Nurul Latif Khan [State of Bombay v. Nurul Latif Khan, AIR 1966 SC 269] , State of U.P. v. C.S. Sharma [State of U.P. v. C.S. Sharma, AIR 1968 SC 158] and Union of India v. T.R. Varma [Union of India v. T.R. Varma, AIR 1957 SC 882] . There is no doubt that if the principles of natural justice are violated and there is a gross case, this Court would interfere by striking down the order of dismissal; but there are cases and*

cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right."

118. This Hon'ble Court in ***Sunil Kumar Banerjee*** v. ***State of W.B.***, (1980) 3 SCC 304, observed as under:

> *"3. ... It may be noticed straightaway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1973. It is now well-established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide K.C. Mathew v. State of Travancore-Cochin [K.C. Mathew v. State of Travancore-Cochin, AIR 1956 SC 241 : 1956 Cri LJ 444] , Bibhuti Bhusan Das Gupta v. State of W.B. [Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381 : 1969 Cri LJ 654]"*

As stated herein above, the phrase "deposited in the account of the beneficiaries" would have to be interpreted *ad pondus omnium*, which would imply that considering the realties and practicalities of land acquisition wherein deposit can be avoided by a particular stakeholder making the provision unworkable. The phrase "deposited in the account of the beneficiaries" would necessary mean mere "deposit" in the relevant account not bound by the statutory requirements under Section 31(2). It is submitted that the modalities of such deposit would not have any impact of the lapsing of the acquisition under Section 24(2).

"Deposited" to be interpreted ad pondus omnium

119. It is submitted that to this extent, the conclusion at para 18 in ***DDA v. Sukhbir Singh***, (2016) 16 SCC 258,is erroneous. The said conclusion is reproduced as under :

> *"In any case, such deposit in the treasury is referable only to Section 31(1) and cannot ever be a substitute for deposit before the Reference Court as provided under Section 31(2) of the Land Acquisition Act, which applies in the circumstances mentioned in the aforesaid sub-section. We are, therefore, of the opinion that no distinction between the facts of this case and the facts in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] can be drawn on this ground, and the ratio of Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] will apply on all fours to the facts of the present case."*

120. To sum up, it is submitted that as per settled rules of statutory interpretation, to avoid inconsistency and repugnancy and applying the rule of harmonious construction,the following conclusions are inevitable:

a. the word "paid" as used in section 24[2] would not have the restricted meaning of de facto / actual payment.

b. After "tender" and "payment" as used under the scheme of 1894 Act, if the compensation payable to every person entitled thereto is

quantified, provided for, earmarked in any safe mode, would be sufficient within the meaning of the expression "paid".

c. The expression "paid" as used in section 24[2] would not be coloured by section 31 of 1894 Act and cannot be read in the restricted sense in which it is read in Pune Municipal Corp [supra].

d. The expression "deposited in the account of beneficiaries" would not necessarily mean deposit only in the court, it can even be in the court.

e. The expression "deposit in the account of beneficiaries" would not be coloured by the rigors of section 31[2] of 1894 Act

f. Even if an amount payable to each of the person entitled is quantified, earmarked and deposited in any safe mode and is made readily available for the person entitled for disbursement, it would not attract the drastic provision of lapsing under section 24[2] of the 2013 Act.

INTERPLAY BETWEEN "PAID" AND "DEPOSITED"

121. The meaning of the word "paid" occurring in section 24[2] would be relatable to only section 31[1] if the meaning as contemplated in J. Dalmia vs CIT and Straw Board Manufacturing Co. Ltd. vs Govind is given. It is submitted that the word "paid" in the said cases is said to carry a lower threshold than what the said word may suggest on the first blush. The word "paid" herein and in the context of the Land Acquisition would, therefore, only mean 'making the money available to the person interested'.

122. In that sense of the matter, "paid" is a lower threshold and would ideally occur prior to the contingencies in section 31[2] or otherwise.

123. In the example given was of two adjacent parcels of land have been acquired from two persons wherein one has accepted the offer / tender of money from the acquiring authority and the other even after offering / tendering the money has declined to accept it. It is unequivocally submitted that in both situations, as per section 24[2], the money has been paid to both the land owners and it cannot be denied that the unconditional offer in the second case and the refusal on the part of the land owner would not amount to "payment".

124. It is apparent that such offering or tendering of money would save the acquiring authority from the consequence of lapsing. The expression "tender" as used in section 31 would be anterior to the stage of deposit. It is submitted that a deposit, even in the government treasury, made after the offer has been made to the land owner would not resulting in lapsing merely on the ground that the money has not been deposited in the Court as suggested in Pune Municipal and Sukbir Singh cases.

125. It is submitted that in light of the same, to give meaning to the phrase 'compensation has not been paid' words cannot be read to the effect of deposit in Court as a necessary consequence in case of refusal. It is further to be noted that the consequence of non deposit is culled out in the proviso to section 24[2]. It is therefore, clear that it is not necessary to include the word "deposited" within the meaning of the word "paid" if quite simply the word "paid" is to mean 'an unconditional offer of payment of money' as per the award under section 11.

126. It is submitted that it would be reasonable to assume that in cases where deposit in the treasury has been made, the said deposit is after an offer / tender of payment. Therefore, a situation of deposit in treasury would be an occurrence that takes place after payment has taken place and, therefore, "deposit" cannot be included in the word "paid".

127. To sum up the word "paid" in section 24 of the 2013 Act should be given a simple and plain meaning as per the cases mentioned above. The words 'tender of payment' under section 31[1] envisages a situation wherein the money has been offered to the land owner and is available for disbursement. The expression "deposited" in section 31[2] is not included in the word "paid" or "tender payment". It is a higher threshold and would generally occur after the offer of payment.

128. The words 'deposited in the accounts of beneficiary' are intelligibly different from the words 'deposited in court' occurring in section 31[2] in the 1894 Act. It is submitted the phrase used in section 24[2] proviso clearly seeks to refer to a wider array of deposits made by the acquiring authority. This distinctive legislative drafting is done in order to include a wide array of modes and manners in which acquiring authorities have deposited the money after making it available. The judgments in Pune Municipal and Sukhbir Singh, to the extent, that they mandate a deposit in Court as oppose to the deposit in the accounts of beneficiaries, ignore the clear legislative intent.

129. Further, the wider acceptance of deposit in treasury or otherwise as opposed to a deposit in Court clearly points towards a saving clause in the form of a proviso to the lapsing contemplating in Section 24[2]. In that sense while the "deposit" as an action may be mandatory but "where to deposit", would not be mandatory and would be merely directory for the purpose of section 24[2]. The judgment in Sukbir, to the extent it states in para 18 that deposit in treasury, even after offering of payment, would not save an acquisition, is bad. It is submitted that the judgment in Sukhbir, wherein it bring the strict interpretation of Section 31(2), whilst interpreting a different phrase in Section 24(2) proviso, is erroneous. It is submitted that the same is also against the balancing legislative intention.

130. This Hon'ble Court, vide order dated 23.102.2019, framed the following question of law :

"2. Whether the word 'or' should be read as conjunctive or

"OR" TO BE READ AS "AND"

131. Under the scheme of the Act of 1894 several stages are contemplated - one of which is the stage of section 11 which is merely passing of an award by the Collector.

132. Passing of an award under section 11 does not make any change in the ownership / title of the land. Award merely crystalizes the true area of the land, compensation payable and apportionment.

133. The award is final only if condition in section 12 is satisfied and would be conclusive evidence only with regard to the area of the land, value of the land and apportionment of compensation. This finality is again final only between the Collector and the person interested. Section 12 of the Act reads as under:-

> *"Section 12 - Award of Collector when to be final -*
> *(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested.*
> *(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."*

134. Apart from the fact that there is no change in the ownership / title of the land under acquisition at the stage of section 11, the award has limited finality as statutorily stipulated under Section 12.

135. It is only under section 16 of the Act that the land vested absolutely in the Government free from all encumbrances. Section 16 of the Act reads as under:-

> *"Section 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."*

136. It is clear that it is at the stage of section 16 that a "statutory vesting" takes places "absolutely" and "free from all encumbrances".

137. This statutory vesting is dependent upon only two contingencies:-

(i) Making of an award under section 11; and

(ii) Collector taking possession of the land.

@sec 31

138. This statutory vesting is NOT dependent upon the compensation being paid. In other words, the moment an award is made of the possession is taken, the land vests absolutely in the Government and this is a vesting by operation of law.

48 cannot be used

139. It is submitted that as explained hereunder, this Hon'ble Court has construed this "statutory vesting" to be of irrevocable consequence that even the Government cannot divest itself of the acquired land vested in it.

140. As explained hereunder, if the word "or" is not read as "and", it would inevitably create a situation in which a land statutorily vested absolutely in the Government would become divest which could never have been the intention of the legislature while enacting a transitory provision. The following interpretation of section 24[2] requires to be viewed in the context of section 6 of the General Clauses Act read with section 114 of the 2013 Act. It also requires to be viewed in the context of the fact that this Hon'ble Court is interpreting a mere transitory provision and not a permanent provision.

141. It is settled proposition in law that neither a transitory provision nor a repealing law can be interpreted so as to take away, disturb or adversely effect rights created by operation of law. In other words, section 24[2] [which is only a transitory provision] can never be construed to have the effect of divesting the land absolutely vested in the Government under the old Act by way of a statute. In the context of interpretation of transitory provision, this Hon'ble Court, while interpreting a transitory provision in the Land Acquisition (Amendment) Act, 1984, sitting in a constitution bench, in ***K.S. Paripoornan v. State of Kerala,*** (1994) 5 SCC 593, held as under :

> *"12. It is further necessary to bear in mind that the amending Act has added, among others, the provisions of Section 23(1-A) and Section 28-A and has amended the provisions of Section 23(2). It has also made independent transitional provision in its Section 30. The relevant provisions of Section 30 read as follows:*
>
> > *30. Transitional provisions.— (1) The provisions of sub-section (1-A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,—*
> >
> > *(a) every proceeding for the acquisition of any land under the principal Act pending on 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People], in which no award has been made by the Collector before that date;*
> >
> > *(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by*

the Collector before the date of commencement of this Act.

(2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

The date of the introduction of the Bill of the amending Act is 30-4-1982 and the date of its commencement is 24-9-1984.

38. The transitional provision is by its very nature an enabling one and has to be interpreted as such. In the present case, it is made to take care of the period between 30-4-1982 and 24-9-1984, i.e., between the date of the introduction of the Bill of the amending Act and the date of the commencement of the Act. Since some awards might have been made by the Collector and the reference Court during the said interregnum, the legislature did not want to deprive the awardees concerned either of the newly conferred benefit of Section 23(1-A) or of the increased benefit under Sections 23(2) and 28. The second object was to enable the Collector and the Court to give the said benefits in the proceedings pending before them where they had not made awards. The only limitation that was placed on the power of the Collector in this behalf was that he should not reopen the awards already made by him in proceedings which were pending before him on 30-4-1982 to give the benefit of Section 23(1-A) to such awardees. This was as stated earlier, for two reasons. If the said awards are pending before the reference Court on the date of the commencement of the amending Act, viz., 24-9-1984, the reference Court would be able to give the said benefit to the awardees. On the other hand, if the awardees in question had accepted the awards, the same having become final, should not be reopened. As regards the increased benefit under Sections 23(2) and 28, the intention of the legislature was to extend it not only to the proceedings pending before the reference Court on 24-9-1984 but also to those where awards were made by the Collector and the reference Courts between 30-4-1982 and 24-9-1984. Hence these awards could not only be reopened but if they were the subject-matter of the appeal before High Courts or the Supreme Court, the appellate orders could also be reopened to extend the said benefits.

71. Section 30 of the amending Act bears the heading "Transitional provisions". Explaining the role of transitional provisions in a statute, Bennion has stated:

> *"Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the court is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended."*
>
> *(Francis Bennion : Statutory Interpretation, 2nd Edn., p. 213)*

The learned author has further pointed out:

> *"Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act." (p. 213)*

Similarly Thornton in his treatise on Legislative Drafting has stated [Thornton on Legislative Drafting, 3rd Edn., 1987, p. 319, quoted in Britnell v. Secretary of State for Social Security, (1991) 2 All ER 726, 730 Per Lord Keith] :

> *"The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force."*

For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23(1-A) along with the transitional provisions contained in sub-section (1) of Section 30 of the amending Act."

142. In *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.*, (2004) 7 SCC 288, in the context of interpreting transitory provision in the arbitration act, this Hon'ble Court held as under :

> *"70. Section 85 of the 1996 Act repeals the 1940 Act. Sub-section (2) of Section 85 provides for a non obstante clause. Clause (a) of the said sub-section provides for saving clause stating that the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before the said Act came into force.*

Thus, those arbitral proceedings which were commenced before coming into force of the 1996 Act are saved and the provisions of the 1996 Act would apply in relation to arbitral proceedings which commenced on or after the said Act came into force. Even for the said limited purpose, it is necessary to find out as to what is meant by commencement of arbitral proceedings for the purpose of the 1996 Act wherefor also necessity of reference to Section 21 would arise. The court is to interpret the repeal and savings clauses in such a manner so as to give a pragmatic and purposive meaning thereto. It is one thing to say that commencement of arbitration proceedings is dependent upon the facts of each case as that would be subject to the agreement between the parties. It is also another thing to say that the expression "commencement of arbitration proceedings" must be understood having regard to the context in which the same is used; but it would be a totally different thing to say that the arbitration proceedings commence only for the purpose of limitation upon issuance of a notice and for no other purpose. The statute does not say so. Even the case-laws do not suggest the same. On the contrary, the decisions of this Court operating in the field beginning from Shetty's Constructions [(1998) 5 SCC 599] are ad idem to the effect that Section 21 must be taken recourse to for the purpose of interpretation of Section 85(2)(a) of the Act. There is no reason, even if two views are possible, to make a departure from the decisions of this Court as referred to hereinbefore.

71. While interpreting a judgment this Court must pinpoint its attention to the ratio thereof. A court of law must not lose sight of the doctrine of "stare decisis". A view which has been holding the field for a long time should not be disturbed only because another view is possible.

72. Keeping in view the fact that in all the decisions, referred to hereinbefore, this Court has applied the meaning given to the expression "commencement of the arbitral proceeding" as contained in Section 21 of the 1996 Act for the purpose of applicability of the 1940 Act having regard to Section 85(2)(a) thereof, we have no hesitation in holding that in this case also, service of a notice for appointment of an arbitrator would be the relevant date for the purpose of commencement of the arbitration proceeding.

xxxx

103. Since transitory provision is to be interpreted in the light of facts and circumstances existing on the date of the new Act coming into force, Sections 21 and 85(2) of the 1996 Act are quoted below:

"21. Commencement of arbitral proceedings.— Unless otherwise agreed by the parties, the arbitral

proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

* * *

*85. Repeal and savings.—(1) * * **

(2) Notwithstanding such repeal,—

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act."

104. A bare reading of Section 21 of the 1996 Act indicates that arbitral proceedings in respect of a dispute commence on the date on which request to refer such dispute to arbitration is received by the respondent, unless otherwise agreed by the parties. Section 21 is similar to Section 14 of the English Arbitration Act, 1996 which provides that parties are free to agree as to when an arbitration is to be regarded as commencing both under the Arbitration Act, 1996 and for limitation purposes. In the absence of such agreement, Section 14 of that Act applies. Russell on Arbitration (22nd Edn., p. 165) says as follows:

"Commencement for limitation purposes.—The parties are free to agree when an arbitration is to be regarded as commencing both under the Arbitration Act, 1996 and for limitation purposes. In the absence of agreement the provisions of Section 14 of the Arbitration Act, 1996 apply. Under that section an arbitration is treated as being commenced when a notice in writing is served on the other party requiring him to agree to the appointment of an arbitrator or, if the parties are each to make an appointment, requiring him to appoint an arbitrator. The party giving the notice does not have to have already appointed his own arbitrator. Where, however, the arbitration agreement specifies the person to be appointed as arbitrator, the arbitration is treated as being commenced when a notice in writing is served on the other party requiring him to submit the dispute to that person. Finally, if the arbitrator is to be appointed by someone other than a party to the arbitration proceedings, such as an arbitral institution, the arbitration is treated as being commenced when notice in writing is given to that

other person requesting him to make the appointment. It is prudent to send to the respondent a copy of the notice addressed to the person requested to make the appointment as this may avoid arguments about when the notice was given."

105. In the present matter, one is concerned with transitional provision i.e. Section 85(2)(a) which enacts as to how the statute will operate on the facts and circumstances existing on the date it comes into force and, therefore, the construction of such a provision must depend upon its own terms and not on the basis of Section 21 (see Singh, G.P.: Principles of Statutory Interpretation, 8th Edn., p. 188). In Thyssen case [(1999) 9 SCC 334] Section 48 of the old Act and Section 85(2)(a) of the 1996 Act came for consideration. It has been held by this Court that there is a material difference between Section 48 of the 1940 Act, which emphasised the concept of "reference" vis-à-vis Section 85(2)(a) of the 1996 Act which emphasises the concept of "commencement"; that there is a material difference in the scheme of the two Acts; that the expression "in relation to" appearing in Section 85(2)(a) refers to different stages of arbitration proceedings under the old Act; and lastly, that Section 85(2)(a) provides for limited repeal of the 1940 Act, therefore, I am of the view that one cannot confine the concept of "commencement" under Section 85(2)(a) only to Section 21 of the 1996 Act which inter alia provides for commencement of arbitral proceedings from the date on which a request to refer a particular dispute is received by the respondent. In this connection, I may usefully quote Commentary on Commercial Arbitration (2nd Edn., p. 169) by Mustill & Boyd which reads as under:

"....."

109. To sum up, in this case, the question concerns interpretation of transitional provisions; that Section 85(2)(a) emphasises the concept of "commencement" whereas Section 48 of the 1940 Act emphasised the concept of "reference"; that Section 85(2)(a) provides for implied repeal; that the scheme of the 1940 Act is different from the 1996 Act; that the word "reference" in Section 48 of the old Act had different meanings in different contexts; and for the said reasons, I am of the view that while interpreting Section 85(2)(a) in the context of the question raised in this appeal, one cannot rely only on Section 21 of the 1996 Act."

143. It is submitted that section 24[2] is couched in a negative terminology. In other words, section 24[2] [if "or" is read as "or"] would permit any one of the following conditions to be in existence so as to apply "proceedings shall be deemed to have lapsed" provision contained in section 24[2].

(iii) if the physical possession of the land has not been taken; or

(iv) the compensation has not been paid

144. As explained hereunder taking of physical possession is not dependent upon the payment being made. Secondly, payment not being made after taking over of the possession or payment being made belatedly does not result in any adverse impact on "statutory vesting" under section 16 upon taking possession. The only consequence of non-payment and / or delayed payment is liability to pay interest.

145. If the term "or" is read only as "or", its inevitable effect would be to wipe out "absolute vesting" by operation of law under section 16 upon the collector having taken possession merely on the ground that the compensation has not been paid. Such a position would never have been contemplated by the legislature in enacting a transitory provision whereby a consequence is contemplated under the repealed act i.e. wiping out of "statutory vesting" upon non-payment / delayed payment is provided for even after the land is statutorily vested free from all encumbrances.

146. This anomaly can be taken care of only if the word "or" is read as "and" requiring existence of both contingencies [i.e. the position having NOT been taken over and compensation having NOT paid] for the purpose of lapsing contemplated under Section 24[2].

147. There is one more anomalous situation which would arise if "or" is not read as "and". It is submitted that prior to coming into force of 2013 Act, there may be cases where admittedly possession of land is taken by Collector after making an award resulting into statutory vesting of the land. In such cases, the Collector may not have paid the compensation or may have paid it late which, under the old Act, would merely result in his liability to pay interest and penal interest. In such a scenario, the original land owner could never have prayed for divesting of the land from the Government on the ground that the compensation is paid or is not fully paid [which would fall within the definition of "compensation not paid"].

148. Such a person who had no right to divest the Government of a statutory vesting under the old law may misuse the transitory provision under section 24 for raking up the claim which could never made by him under the old Act.

149. The inevitable consequence of this scenario would be converting of transitory provision providing for a limited retrospectively being converted into permanent provision which can be misused for reviving stale claims. To avoid lapsing of acquisition even after statutory vesting having taken place, the term "or" shall have to be read as "and". Any other interpretation would leave room for mischief resulting into unintended and endless, frivolous litigations.

150. As against this if the term "or" is read as "and", it would neither affect the statutory vesting once possession is taken nor would it affect the right, if any, of the land owner to claim possession with interest and penal interest.

151. It is further submitted that the old Act envisages withdrawal of the land acquisition proceedings only if the possession has not been taken under Section 16 of the old Act. Section 48 of the old Act, reads as under :

> *"Section 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."*

152. Similarly the situation arising out of section 17 of the old Act also requires a closer examination. It is submitted that the relevant part of Section 17, reads as under :

> *"Section 17 - Special powers in case of urgency –*
> *(1) In cases of urgency whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.*
>
> *(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3)-*
> *(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the person interested entitled thereto, and*
> *(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), except the second proviso thereto, shall apply as they apply to the payment of compensation under that section."*

153. From the aforesaid Section, it is clear that old Act itself envisaged a situation possession of the land could be taken and the land could be vested absolutely with the acquiring authority in absence of full

compensation/payment to the owner. Further, it may be noted that if "or" in Section 24(2) of the new Act, is not interpreted as "and", it would lead to a situation wherein stale claims could be filed before the Hon'ble Courts. It is submitted that if the divesting of the land, after the vesting has taken place under Section 16 is allowed in case the payment is not made to the landowners. It is submitted that this would enable reviving of stale claims despite efflux of time and despite vesting of land. Further, it would amount to unreasonably thwarting vested rights of the acquiring authority, which has been dealt with in the subsequent part of the submissions.

154. In line with the same, it is submitted that the word "or" may be read as "and" so as to limit the lapsing only in cases where both, payment has not been made (subject to proviso) and possession has not been taken. Therefore, it is clear that possession and payment under the old Act are independent of each other and occur after the award under Section 11 has been made. As per the statute, the possession and payment can be made simultaneously, or one after the other.

155. It is submitted that in order to interpret 'or' as 'and', it is necessary to examine the purport and expanse of the phrase '*vest absolutely in the government, free from all encumbrances*'. It is submitted that this Hon'ble Court, even in acquisitions originally made for a public purpose, if the said land was subsequently utilized for some other purpose, refused to quash the acquisition after the stage of possession and vesting had elapsed. In no case whatsoever, the land could be restituted to the owner after the stage of possession had elapsed. It is submitted that in ***Gulam Mustafa v. State of Maharashtra***, (1976) 1 SCC 800, this Hon'ble Court, held as under :

> *"5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."*

156. It is submitted that further in ***Chandragauda Ramgonda Patil v. State of Maharashtra***, (1996) 6 SCC 405, this Hon'ble Court, held as under :

> *"2. Shri Naik, the learned Senior Counsel appearing for the petitioners, contended that in the second writ petition, the petitioner sought restitution of the possession pursuant to the resolution of the State Government dated 10-10-1973 under which the Government directed that the surplus land was to be utilised first for any other public purpose and in the alternative it was to be given back to the erstwhile owners. Since he had sought enforcement of the said government resolution, the writ petition could not be dismissed on the ground of constructive res judicata. He also seeks to rely upon certain orders said to*

have been passed by the High Court in conformity with enforcement of the government resolution. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

157. Further, in *C. Padma v. Govt. of T.N.*, (1997) 2 SCC 627, in the context of restitution of land not being possible under the old Act, it was held as under :

"4. The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816 Industries dated 24-3-1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10-5-1985. In GOMs No. 546 Industries dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17-10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed.

5. Shri G. Ramaswamy, learned Senior Counsel appearing for the appellants, contends that when by operation of Section 44-B read with Section 40 of the Act, the public purpose ceased to be existing, the acquisition became bad and therefore, the GO was bad in law. We find no force in the

contention. It is seen that after the notification in GOR 1392 dated 17-10-1962 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State. In terms of the agreement as contemplated in Chapter VII of the Act, the Company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd., 5th respondent which is also a subsidiary amalgamated company of the original company. Therefore, the public purpose for which acquisition was made was substituted for another public purpose. Moreover, the question stood finally settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that either original purpose was not public purpose or the land cannot be used for any other purpose.

6. Under these circumstances, we think that the High Court was right in refusing to entertain the writ petition."

158. In *Northern Indian Glass Industries v. Jaswant Singh*, (2003) 1 SCC 335, this Hon'ble Court, held as under :

"9. Looking to the facts of the present case and conduct of Respondents 1-5, the High Court was not at all justified in ignoring the delay and laches and granting relief to them. As already noticed, Respondents 1-5 approached the High Court by filing writ petition almost after a period of 17 years after finalization of the acquisition proceedings. They accepted the compensation amount as per the award and sought for enhancement of the compensation amount without challenging the notification issued under Sections 4 and 6. Having sought for enhancement of compensation only, they filed writ petition even three years after the appeals were disposed of by the High Court in the matter of enhancement of compensation. There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to condone the delay and laches in filing the writ petition. In our view, the High Court was also not right in ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is a well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession."

159. It is submitted that, this Hon'ble Court has in fact held that even re-entry in to the land divested under Section 16, would also not override the symbolic possession of the land by the acquiring authority and the vesting of

the land. It is submitted that in ***Sita Ram Bhandar Society v. Govt. (NCT of Delhi)***, (2009) 10 SCC 501, it was held as under :

> *"18. In this background, Mr Gupta has raised three arguments before us during the course of hearing. He has first pointed out that it was the positive case of the appellant that the land in dispute was encircled by a boundary wall and as such possession thereof could be taken only after entering the land and not by any symbolic or paper possession. As a corollary, it has been submitted that there was no material on record to show that the actual physical possession had been taken as would preclude the withdrawal of the acquisition under Section 48 of the Act. In this connection, the learned counsel has placed reliance on Balwant Narayan Bhagde v. M.D. Bhagwat [(1976) 1 SCC 700] and Om Prakash v. State of U.P. [(1998) 6 SCC 1] which had been subsequently followed in P.K. Kalburqi v. State of Karnataka [(2005) 12 SCC 489] .*
>
> *19. It has finally been submitted that there was ample evidence on record to show that the property in dispute was, in fact, surrounded by a wall and had some other structures as well, and in view of the positive stand taken by the Land Acquisition Collector in his award dated 19-6-1980 that the possession of the area covered by structures would be the subject-matter of a supplementary award, the very basis of the judgment of the High Court that the possession had been taken on 20-6-1980 was erroneous.*
>
> *23. It is the case of the respondent that all the procedures had been followed and that possession had been taken under Section 16 on 20-6-1980, and as such, the question of its release under Section 48 of the Act did not arise, as this provision gives "liberty to withdraw from the acquisition of any land of which possession has not been taken".*
>
> *24. The question raised by Mr Gupta is that as the area in question was very extensive i.e. about 1933 bighas and the land belonging to the appellant was surrounded by a boundary wall, symbolic possession was meaningless and some more positive action was called for. To support this view he has relied on the three judgments cited earlier. We find, however, that the aforesaid judgments, in fact, help the case of the respondent rather than the other way around.*
>
> *28 [Ed.: Para 28 corrected vide Official Corrigendum No. F.3/Ed.B.J./154/2009 dated 10-10-2009.] . A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N. Housing Board v. A. Viswam [(1996) 8 SCC 259 : AIR 1996 SC 3377] after considering the judgment in Narayan Bhagde case [(1976) 1 SCC 700] , observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in Narayan Bhagde case [(1976) 1 SCC 700] had been rendered and held as under: (Viswam case [(1996) 8 SCC 259 : AIR 1996 SC 3377] , SCC p. 262, para 9)*

"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land."

30. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.

40. In Narayan Bhagde case [(1976) 1 SCC 700] one of the arguments raised by the landowner was that as per the communication of the Commissioner the land was still with the landowner and possession thereof had not been taken. The Bench observed that the letter was based on a misconception as the landowner had re-entered the acquired land immediately after its possession had been taken by the Government ignoring the scenario that he stood divested of the possession, under Section 16 of the Act. This Court observed as under: (Narayan Bhagde case [(1976) 1 SCC 700] , SCC p. 712, para 29)

"29. ... This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting."

To our mind, therefore, even assuming that the appellant had re-entered the land on account of the various interim orders granted by the courts, or even otherwise, it would have no effect for two reasons,

(1) that the suits/petitions were ultimately dismissed and

(2) that the land once having vested in the Government by virtue of Section 16 of the Act, re-entry by the landowner would not obliterate the consequences of vesting."

160. Similarly, in ***Leelawanti v. State of Haryana,*** (2012) 1 SCC 66, it was held as under :

"19. If Para 493 is read in the manner suggested by the learned counsel for the appellants then in all the cases the acquired land will have to be returned to the owners irrespective of the time gap between the date of acquisition and the date on which the purpose of acquisition specified in Section 4 is achieved and the Government will not be free to use the acquired land for any other public purpose. Such an

interpretation would also be contrary to the language of Section 16 of the Act, in terms of which the acquired land vests in the State Government free from all encumbrances and the law laid down by this Court that the lands acquired for a particular public purpose can be utilised for any other public purpose.

22. The approach adopted by the High Court is consistent with the law laid down by this Court in State of Kerala v. M. Bhaskaran Pillai [(1997) 5 SCC 432] and Govt. of A.P. v. Syed Akbar [(2005) 1 SCC 558] . In the first of these cases, the Court considered the validity of an executive order passed by the Government for assignment of land to the erstwhile owners and observed: (M. Bhaskaran Pillai case [(1997) 5 SCC 432] , SCC p. 433, para 4)

> *"4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."*

24. For the reasons stated above, we hold that the appellants have failed to make out a case for issue of a mandamus to the respondents to release the acquired land in their favour. In the result, the appeal is dismissed without any order as to costs."

161. It is submitted that Section 24(2), while providing for lapsing, uses the two phrases concerning possession of the land and the tendering of payment with the disjunctive word "or" thereby making it mandatory for the acquiring authority to satisfy both contingencies in order to avoid lapsing. It is submitted that the same would be against the legislative intention of limited lapsing. Further, the said interpretation would be against the purport of the possession and thereby the title "being vested" in the acquiring authority by virtue of the interpretation of section 16 in the 1894 Act [as dealt with the latter part of the submissions]. It is submitted that the intention of the Legislature could not have been to divest the acquiring authority of the land after the said has been vested "free from all encumbrances".

162. It is submitted that ***Ishwar Singh Bindra*** v. ***State of U.P.***, AIR 1968 SC 1450, in para 11 it has been held as under: (AIR p. 1454)

> *"11. ... It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn., it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions "or" and "and" one for the other"*

163. Further, in para 4 of the decision rendered by this Court in ***Director of Mines Safety*** v. ***Tandur and Nayandgi Stone Quarries (P) Ltd.***, (1987) 3 SCC 208, this Hon'ble Court, held as under :

> *"4. According to the plain meaning, the exclusionary clause in sub-section (1) of Section 3 of the Act read with the two provisos beneath clauses (a) and (b), the word "and" at the end of para (b) of sub-clause (ii) of the proviso to clause (a) of Section 3(1) must in the context in which it appears, be construed as "or"; and if so construed, the existence of any one of the three conditions stipulated in paras (a), (b) and (c) would at once attract the proviso to clauses (a) and (b) of sub-section (1) of Section 3 and thereby make the mine subject to the provisions of the Act. The High Court overlooked the fact that the use of the negative language in each of the three clauses implied that the word "and" used at the end of clause (b) had to be read disjunctively. That construction of ours is in keeping with the legislative intent manifested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines."*

164. It is settled law that the expression "or" may be read as "and" or the other way round, in order to further the object of the statute and/or to avoid an anomalous situation. In ***Samee Khan*** v. ***Bindu Khan***, (1998) 7 SCC 59, this Court held as under :

> *"14. Since the word "also" can have meanings such as "as well" or "likewise", cannot those meanings be used for understanding the scope of the trio words "and may also"? Those words cannot altogether be detached from the other words in the sub-rule. Here again the word "and" need not necessarily be understood as denoting a conjunctive sense. In Stroud's Judicial Dictionary, it is stated that the word "and" has generally a cumulative sense, but sometimes it is by force of a context read as "or". Maxwell on Interpretation of Statutes has recognised the above use to carry out the interpretation of the legislature. This has been approved by this Court in Ishwar Singh Bindra v. State of U.P. [Ishwar Singh Bindra v. State of U.P., AIR 1968 SC 1450 : 1969 Cri LJ 19] The principle of noscitur a sociis can profitably be used to construct the words "and may also" in the sub-rule."*

165. In *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*, (2008) 4 SCC 755, this Court held as under :

> *"26. It may be noted that Section 86(1)(f) of the 2003 Act is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word "and" in Section 86(1)(f) between the words "generating companies" and "to refer any dispute for arbitration" means "or". It is well settled that sometimes "and" can mean "or" and sometimes "or" can mean "and" (vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 404).*
>
> *27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word "and" between the words "generating companies" and the words "refer any dispute" means "or", otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some arbitrator. Hence the word "and" in Section 86(1)(f) means "or"."*

166. Most recently, in the context of the IB Code, this Hon'ble Court in *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*, (2018) 1 SCC 353, held as under :

> *"38. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or". If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an Arbitral Tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an Arbitral Tribunal or a court for up to three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the*

insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties."

167. Thus, it is submitted that in order to further the object of Section 24, and to avoid the anomalous situation wherein the acquisition could lapse even after the land has been vested in the acquiring body free from all encumbrances, the word "or" in Section 24(2), may be read as "and".

168. This Hon'ble Court, vide order dated 23.10.2019, framed the following question of law :

"3. What is the true effect of the proviso, does it form part of sub-Section (2) or main Section 24 of the Act of 2013?"

The said issue is answered as follows :

THE PLACEMENT OF THE PROVISO OF SECTION 24(2)

The proviso in Section 24(2) needs to be read along with the main provision in Section 24(2) and cannot be read with Section 24(1)(b)

169. The question regarding placement of proviso in section 24 of the Act. Section 24 as legislature thought it proper to incorporate reads 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.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 physical possession of the land has not been taken or 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."

170. The Hon'ble High Court of Delhi had an occasion to consider the placement of the proviso. The Hon'ble High Court of Delhi, in its judgment dated 21.05.2015, *Tarun Pal Singh v. Lt. Governor, Govt. of NCT of Delhi*, reported in 2015SCCOnlineDel9789 incorporated the proviso to be a proviso to section 24(1)(b) and not section 24(2) of the Act. The said view was subsequently reported by the Hon'ble High Court of Delhi in *Krishna Gupta v. Land Acquisition Collector*, 2017SCCOnlineDel10870.

171. The aforesaid judgment in Tarun Pal [supra] came to be challenged and considered by this Honble Court. This Honble Court vide judgment reported in 2018 (14) SCC 161 [at page 374 of the judgment compilation] overruled the said judgment holding that the proviso has to be read as proviso to section 24[2] and not a proviso to section 24[1][b].

Wide ranging lapsing is against legislative intention

172. Thereafter, this Hon'ble Court in Virendra Lal Bahri *supra*, vide order dated 27.02.2019, has indicated to the contrary and raised a question as to whether the proviso placed after Section 24(2) of the 2013 Act should be treated to be a proviso to Section 24(1)(b) and not to that Section 24(2) as the same would be more workable and purportedly results in lesser anomalies.

The said Bench, in light of the above held that the judgment in Delhi Metro Rail *supra*, required reconsideration.

173. The position of section 24 if the proviso is read to be proviso to section 24[1][b] would have 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.*
> *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.*
> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 physical possession of the*

land has not been taken or 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:"

174. At the outset, the statutory provisions require to be read as it exists. The competent legislature is always presumed to know as to what it is providing. Relocation of a proviso by an interpretative process at a different place than the place at which the Legislature has placed is so drastic a judicial measure that in rarest of the rate case, such an exercise can be done without either encroaching upon the legislative field or causing violence to the plain language used by the Legislature.

175. The placement of the proviso immediately after section 24[2] and the aforesaid context in which the legislature has, by such proviso, attempted to balance the competing public interest and individual rights does not justify such an exercise of relocating the proviso i.e. lifting it from section 24[2] and attempting to put it after section 24[1][b].

176. Secondly, if the legislature wanted the proviso to be an exception to section 24[1][b], there was no impediment for the legislature in so placing the proviso directly after Section 24(1)(b).

Punctuation used in Section 24(2)

177. A close reading of section 24 clearly reflects a manifest legislative intent. The legislature has used a "full stop (.)" after section 24[1][b] and a "colon (:)" after section 24[2].

In the process of interpretation of statutes and more particularly while attempting relocation of any part of the provision, punctuations play a vital role. The aforesaid punctuation leaves no room for any doubt that the legislature has very consciously used proviso as an exception to section 24[2] and not as an exception to section 24[1][b] in the 2013 Act.

178. It is respectfully submitted that though the interpretation of the placement of the proviso needs no further comparative tools of interpretation, there is a very clear and startling indication of legislative intent in section 24[2] itself.

179. It is respectfully submitted that "punctuations" play a very important role in interpreting statutes if some ambiguity is raised in its interpretation. Considering the use of a particular punctuation mark is an accepted method of statutory interpretation.

180. It is submitted that section 24[2] does not end with a full stop "(.)" but ends with a colon "(:)". The legislature is always presumed to be aware of not only the expression it uses but even the punctuation marks which it places at

a place intended. The use of "colon" is extremely significant while bringing out the legislative intent.

181. With regard to the meaning of the punctuation 'fullstop' i.e. [" . "], it is no doubt whatsoever as to the meaning it seeks to convey. The fullstop, seeks to express a deliberate intent to end a particular sentence and detach it from the next part.

182. With regard to the mean of the punctuation 'colon' i.e. [" : "], it is submitted that the University Of Oxford Style Guide states as under :

> *"Use a colon to introduce a subclause which follows logically from the text before it, is not a new concept and depends logically on the preceding main clause. Do not use a colon if the two parts of the sentence are not logically connected."*

183. Further, the University of England, in its Note, "Writing Correctly" states that :

> *"Colons have a number of functions in a sentence. If you use colons in your writing, use them sparingly, and never use a colon more than once in any sentence.*
>
> *Rule 1: Colons can be used to introduce a list, but they must follow a complete sentence (independent clause).*
>
> *Rule 2: Colons can be used to explain, summarise or extend the meaning in a sentence by introducing a word, phrase or clause that enlarges on the previous statement.*
>
> *Rule 3: Colons are used to separate the title from the subtitle.*
>
> *Rule 4: Colons can be used to introduce a quotation in formal academic writing."*

184. Therefore, it is clear that the use of "colon", seeks to refer to the text preceding the colon, in order to qualify the previous statement, enlarge on the same, demarcate a separate unit out of the previous statement or in such similar situations. The point being that the use of 'colon' clearly indicates that the text following the 'colon' is intrinsically linked to the statement preceding the 'colon'.

185. The most common use of the colon in any kind of drafting/including the legislative drafting, is to inform the reader that what follows the colon proves, explains, defines, describes, or lists elements of what preceded it. In modern English usage, a complete sentence precedes a colon, while a list, description, explanation, or definition follows it.

186. The use of punctuation "colon" at the end of section 24[2] makes the legislative intent abundantly and unequivocally unambiguous that what follows the said "colon" is an exception to the contingency contemplated in section 24[2]. In other words, the general rule is legislated in section 24[2] while what "expected" from section 24[2] is carved out in the proviso.

187. It is submitted that if proviso is bodily lifted and placed after Section 24(1)(b), the resultant effect will be that Section 24(2) will end with a "colon" [:]. It is submitted that such an anomalous situation could never have been envisaged by the Legislature.

188. It is submitted that the importance and weightage that is to be given to punctuations, has turned the circle in English Courts. Earlier, the English Courts had held that punctuations would not be a part of the statute as the said punctuations were previously added at the end of the proof-readers and the Acts passed by the Parliament did not contain any punctuation. However, the English Courts have, over the course of the past century, realized that the drafts placed before the Parliament also carry punctuations and hence, it is important to give meaning to the same.

189. The classic work on statutory interpretation, ***Bennion on Statutory Interpretation***, on the said issue, states as under :

> *"Section 16.8 : Punctuation*
> *16.8 Punctuation is a part of an Act and may be considered in construing a provision. It is usually of little weight, however, since the sense of an Act should be the same with or without its punctuation.*
> ...
> *Although punctuation may be considered, it will generally be of little use since the sense of an Act should be the same with or without it. Punctuation is a device not for making meaning, but for making meaning plain. Its purpose is to denote the steps that ought to be made in oral reading, and to point out the sense. The meaning of a well-crafted legislative proposition should not turn on the presence or absence of a punctuation mark."*

190. In ***Marshall v. Cottingham*** [1982] Ch 82 at 88, [1981] 3 All ER 8 at 12, while referring to the change of position and establishing that punctuation may be used in interpretation, it was held that :

> *"the day is long past when the courts would pay no heed to punctuation in an Act of Parliament."*

191. It is submitted that in ***Hanlon v Law Society***, [1981] AC 124 at 197, it was held as under : :[1]

> *". . . not to take account of punctuation disregards the reality that literate people, such as parliamentary draftsmen, punctuate what they write, if not identically, at least in accordance with grammatical principles. Why should not other literate people, such as judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by parliament?"*

192. In ***Houston v Burns*** [1918] AC 337 at 348, it was held as under :

> *"Punctuation is a rational part of English composition and is sometimes quite significantly employed. I see no reason for*

[1] [1981] AC 124 at 197.

depriving legal documents of such significance as attaches to punctuation in other writings."

193. It is submitted that the aid punctuations has been used to resolve apparent conflicts or interpret "troublesome" questions. In ***Dingmar v Dingmar*** **[2006] EWCA Civ 942, [2007] 2 All ER 382** per Ward LJ at [88], it was noted as under:

"punctuation may not be the strongest tool for statutory interpretation but in a troublesome section as this has become, it cannot be ignored"

194. In ***Kennedy v Information Commissioner and another (Secretary of State for Justice intervening)*** **[2012] EWCA Civ 367, [2012] 1 WLR 3524** per Ward LJ at [20], it was held as under:

'the presence of a comma may often be a slender thread on which to hang the answer to a disputed point of construction'.

195. On similar lines, the American approach to interpretation of punctuations is atypical. In ***Taylor v. Caribou,*** **102 Me. 401, 67 A. 2 (1907),** it was held as under :

"We are aware that it has been repeatedly asserted by courts and jurists that punctuation is no part of a statute, and that it ought not to be regarded in construction. This rule in its origin was founded upon common sense, for in England until 1849 statutes were enrolled upon parchment and enacted without punctuation. . . . Such a rule is not applicable to conditions where, as in this State, a bill is printed and is on the desk of every member of the Legislature, punctuation and all, before its final passage. There is no reason why punctuation, which is intended to and does assist in making clear and plain the meaning of all things else in the English language, should be rejected in the case of the interpretation of statutes. "Cessante ratione legis cessat ipso lex." Accordingly we find that it has been said that in interpreting a statute punctuation may be resorted to when other means fail . . . ; that it may aid its construction . . . ; that by it the meaning may often be determined ; that it is one of the means of discovering the legislative intent . . . ; that it may be of material assistance in determining the legislative intention ...."

196. In the context of using punctuations, it is submitted that this Hon'ble court, ought to notice the use of colon and the full stop in the construction of Section 24 of the new Act. It is submitted that no usage, even a punctuation, by the competent Legislature is without meaning. It is submitted that this Hon'ble Court, has on numerous occasions interpreted the use of the punctuations as a tool for statutory construction. It is submitted that a constitution bench of this Hon'ble Court in ***Aswini Kumar Ghose v. Arabinda Bose,*** **1953 SCR 1,** held as under :

J. Mukherjea

"25. Much ado was made an both sides about the comma occurring just before the word "or" in the non obstante clause, the petitioner stressing its importance as showing that the adjectival clause "regulating the conditions etc." does not

qualify the words "Indian Bar Councils Act" which are separated by the comma and that, therefore, the whole of that Act is superseded, while learned counsel for the respondents insisted that in construing a statute punctuation marks should be left out of consideration. Nothing much, we think, turns on the comma, as it seems grammatically more correct to take the adjectival clause as qualifying "law". Having regard to the words "anything contained" and the preposition "in" used after the disjunctive "or", the qualifying clause cannot reach back to the words "Bar Councils Act". But, whichever way we take it, it must be admitted that in framing the non obstante clause, the draftsman had primarily in mind those provisions which stood in the way of an advocate not enrolled in any particular High Court practising in that Court. It does not, however, necessarily follow that Section 2 is concerned only with the right of advocates of the Supreme Court to practise in the High Courts in which they are not enrolled. The true scope of the enacting clause must, as we have observed, be determined on a fair reading of the words used in their natural and ordinary meaning, and in the present case, there is not much room for doubt on the point. The words "every advocate" and "whether or not he is an advocate of that High Court" make it plain that the section was designed to apply to the advocates of the Supreme Court not only in relation to the High Courts of which they are not advocates but also in relation to those High Courts in which they have been already enrolled. The learned Judges below dismissed the words "whether or not etc." with the remark that "they are not very apposite", as "no one who is an advocate of a particular High Court requires to be an advocate of the Supreme Court in order to practise in that Court". While it may be true to say that Section 2 does not give advocates of many of the High Courts any additional right in relation to their own Courts, it would, according to the petitioner's contention, give at least to the advocates of the Calcutta and Bombay High Courts some additional right in the original side of those Courts, and that may well have been the purpose of using those words. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplus-age, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.

56. The contention of Mr Ghosh is that on a proper construction of the language of the clause the whole of the Bar Councils Act and not merely those provisions in it, which relate to disabilities attaching to advocates of other High Courts, must be deemed to be eliminated, so that the right of practising that is conferred by the section is to be exercised without the restrictions or limitations flowing from any of the provisions of the Bar Councils Act. In support of his contention that the whole of the Bar Councils Act is excluded by the opening clause, Mr Ghosh lays great stress on a comma, which separates the Bar Councils Act and the figures and words that follow, from the expression "or in any other law" which comes immediately after that. He says further that under the ordinary rules of interpretation the adjectival phrase "regarding the conditions etc." should be taken to apply to the word or phrase

immediately preceding it and not to the remoter antecedent term or expression. These arguments, though they have an air of plausibility about them, do not impress me much. Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts. Cockburn, C.J. said in Stephenson v. Taylor [(1861) 1 B & S p. 101] :

> *"On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies". It seems, however, that in the Vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio [See Craies on Statute Law, p. 185] . When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation [Vide Crawford on Statutory Construction, p. 343] . I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text [Ibid]"*

J. S.R. Das

"77. The High Court has rejected the contention of the petitioner Aswini Kumar Ghosh on two grounds. In the first place it has been said that the comma was no part of the Act. That the orthodox view of earlier English Judges was that punctuation formed no part of the statute appears quite clearly from the observations of Willes, J. in Claydon v. Green [(1868) LR 3 CP 511 at p. 522] . Vigorous expression was given to this view also by Lord Esher, M.R. in Duke of Devonshire v. Connor [(1890) LR QBD 468] where he said:

> *"In an Act of Parliament there are no such things as brackets any more than there are such things as stops."*

This view was also adopted by the Privy Council in the matter of interpretation of Indian statutes as will appear from the observations of Lord Hobhouse in Maharani of Burdwan v. Murtunjoy Singh [(1886) LR 14 IA 30 at p. 35] , namely, that "it is an error to rely on punctuation in construing Acts of the legislature". Same opinion was expressed by the Privy Council in Pugh v. Ashutosh Sen [(1928) LR 56 IA 93 at p. 100] . If, however, the Rule regarding the rejection of punctuation for the purposes of interpretation is to be regarded as of imperfect obligation and punctuation is to be taken at least as contemporanea expositio, it will nevertheless have to be disregarded if it is contrary to the plain meaning of the statute. If punctuation is without sense or conflicts with the plain meaning of the words, the court will not allow it to cause a meaning to be placed upon the words which they otherwise would not have. ...."

197. In this regard, the Petitioner further seeks to rely on the following case law :

a. *Jamshed N. Guzdar v. State of Maharashtra, (2005) 2 SCC 591* (Constitution Bench) - Para 42, 68, 69, 70, ;

b. *Falcon Tyres Ltd. v. State of Karnataka*, (2006) 6 SCC - Para 7 and 11 ;

c. *State of Gujarat v. Reliance Industries Ltd.*, (2017) 16 SCC 28 - Para 16.

The meaning of a proviso and the requirement of it being read together with the main provision

198. It is a settled principle of interpretation of statutes that a statutory provision requires to be read exactly as the same is enacted by the competent legislature. Though it may be permissible for the court to iron out the wrinkles, the same would not permit "altering the material" altogether.

199. While interpreting a statutory provision, it may be wholly impermissible to lift one proviso at a place intended and designedly put by the legislature at one place and to put it at a totally different place. In exercise of judicial interpretation on a statutory provision whereby a part of the provision is bodily lifted from one place and placed at a different place [different than the place where the legislature placed it], would not be a process of interpretation but a process of legislation which is impermissible.

200. The legislative use of "proviso" is also a subject matter of several judicial interpretations. At the outset, as a basic argument, it may be submitted that if the legislature intended the proviso to be an exception or a proviso to section 24[1][b], nothing would have prevented the legislature in doing so. The very fact that the legislature, however, chose to place the proviso after section 24[2] and that too using "colon" as a punctuation, leaves no room for doubt that any other or further exercise to gather the legislative intent is called for.

201. It is, however, submitted that as per the settled principles of interpretation, the effect of a proviso is to except the preceding portion of the enactment. It is usually added as a saving clause or to carve out an exception.

202. What is clear intention of the legislature in putting the proviso after section 24[2] is to be gathered from the crucial fact that legislature is enacting a transitional provision and not a permanent provision. It is submitted that the transitional provision always takes care of a period of transition from old regime to a new regime. A transitional provision, therefore, contemplates the situations which would arise substantially before the new regime sets in and to an extent after the new regime sets in. Keeping in mind this fact that the legislature is enacting the transitory provision, the legislative intent becomes clear.

203. The legislature contemplates a situation where an award has been passed few days or few months or a few years before commencement of 2013 Act. The regime prior to coming into force of 2013 Act and thereafter is

drastically different. The repealed Act provided for a mere monitory compensation while a different regime is contemplated under 2013 Act. The legislature, therefore, contemplates a particular situation in section 24[2] and thereafter takes care of a situation where the award has been passed few days or few months or few years before the commencement of 2013 Act and provides that since deposit of compensation with respect to majority of holding is bound to take time, the legislature, in its wisdom, makes a difference in "consequences" which is based upon "time gap in passing award" as requisite step to be taken which consume some time by providing proceedings to continue under 1894 Act.

204. If the purpose of the legislature using "proviso" is kept in mind, in light of the aforesaid clear legislative intent while enacting a transitional provision, it will leave no room for doubt that -

(1) Section 24[1][a] provides for complete lapsing of all stages under the old Act;

(2) Section 24[1][b] provides for complete application of the old Act;

(3) Section 24[2], by starting with a non obstante clause [viz. making section 24[1] inapplicable] provides for an exception [which is in fact, an exception to section 24[1][b] as it talks of an award being made] and provides for complete lapsing of the proceedings under the old Act if -

   (i) The award under section 11 has been made 5 years or more prior to 1.1.2014 but

   (ii) The physical possession of the land has not been taken "or" to be read as "and" the compensation has not been paid

205. Section 24, while providing for -

(a) complete lapsing of old regime

(b) complete application of old regime;

(c) partial lapsing of old regime;

In the third situation, a contingency in the said scenario is provided which is based upon "time factor" and makes an "exception" to complete lapsing of the old regime as stipulated in section 24[2] by providing a middle path viz. all actions taken under the old Act are saved [instead of lapsing under section 24[2]] but a partial application of new regime is provided for i.e. entitlement for only "compensation" under the new regime.

206. At this juncture, it is relevant to note that logically also the proviso can go only with section 24[2] which uses the expression *"shall initiate the proceedings of such land acquisition afresh in* accordance *with the provisions of this Act"*.

These expressions are not found in section 24[1]. A comparative analysis of the old Act and the new Act makes it clear that the old Act provided for simpler stages of -

   (i) issuance of notification ;

   (ii) enquiry to be conducted;

   (iii) award to be passed

   (iv) payment to be made

As against this, the new Act provides for an elaborate provision starting from social impact assessment and provides for compensation as well as rehabilitation.

207. When the legislature, while using the expressions "*shall initiate the* proceedings *of such land acquisition afresh in accordance with the provisions of this Act"* provides for complete lapsing of steps taken in the old regime under section 24(2) carves out an exception to take care of a contingency where the steps under the old regime has reached a stage where even compensation has started being paid but could not be deposited in the account of majority, instead of requiring the appropriate Government to start an elaborate and long drawn process starting from social impact assessment onwards which balances the equities by making the land owners entitled only for "compensation" under the new Act instead of applying the entire new Act as stipulated under section 24(2).

208. Further, it is submitted that the said proviso cannot be treated as a proviso to sub-section 1(b) as sub-section 1(b) makes no reference to "*deposit of compensation*" as it merely provides for a *carte blanche* applicability of the 1894 Act in case award under Section 11 is made. It is submitted that the contingency of "deposit" is completely alien to Section 24(1)(b) as the said sub-section is merely dependent upon the award under Section 11 of the 1894 Act.
It is only sub-section (2), which is actually an exception to sub-section 1(b) which makes a reference to payment of compensation.

Deposit is alien to Section 24(1)(b)

209. Further, if the said proviso is treated to be a proviso of Section 24(1) [instead of proviso to Section 24(1)(b) - as an alternative argument], it would result is treating two different categories (1)(a) and (1)(b) equal which was/could never have been the intention of the Legislature.
It is submitted that in cases wherein majority compensation is not deposited after making the award under Section 11, if the higher compensation provisions of the 2013 Act were to apply, then the very basic distinction under Section 24(1) - (a) and (b), on the basis of passing of an award under Section 11 of the 1894 Act would become illusionary and unworkable.

210. It is submitted that this Hon'ble Court, has on numerous occasions interpreted the purport of a proviso. It is further submitted that in no case whatsoever, has this Hon'ble Court ever transposed the proviso provided after a particular sub-section to another sub-section. It is submitted that in ***State of Rajasthan v. Leela Jain, AIR 1965 SC 1296***, the following observations were made:

> *"14. ... So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part."*

211. This Hon'ble Court in ***STO v. Hanuman Prasad [STO v. Hanuman Prasad, AIR 1967 SC 565,*** made the following observations:

> *"5. ... It is well recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded.'*

212. This Hon'ble Court in ***CCT v. Jhaver Ramkishan Shrikishan, AIR 1968 SC 59*** ,made the following observations:

> *"8. ... Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself."*

213. It is submitted that in the said context, reliance is placed on ***S. Sundaram Pillai*** v. ***V.R. Pattabiraman,*** (1985) 1 SCC 591, wherein this Hon'ble Court has elaborately considered various decisions with respect to the proviso. The relevant portion is quoted herein under :

> *"29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:*
>
> *'p. 317. Provisos—These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.*
>
> *p. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.'*
>
> *30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:*
>
> *(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.*
>
> *(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.*
>
> *(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.*
>
> *(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.*
>
> *(e) The proviso is subordinate to the main section.*
>
> *(f) A proviso does not enlarge an enactment except for compelling reasons.*
>
> *(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.*
>
> *(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.*
>
> *(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.*

Proviso is related to the section preceding it

(j) A proviso may sometimes contain a substantive provision.

....

35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co. [Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253 (HL)] , where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly [Jennings v. Kelly, 1940 AC 206 (HL)] , wherein it was observed thus: (AC p. 216)

'We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are: "provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place." There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 per cent of the population mentioned in the opening words of the section.'

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

....

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

214. It is submitted that in the context of statutory interpretation, *Craies on Statute Law*, 7th Edn. referring to various decisions for construction of provisos has observed as under:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

215. It is submitted that in ***R.*** v. ***Dibdin***, 1910 P 57 (CA), the Court held as under:

"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts, as, for instance, in Partington, ex p [Partington, ex p, (1844) 6 QB 649 at p. 653 : 115 ER 244] , Brockelbank, In re, ex p Dunn & Raeburn [Brockelbank, In re, ex p Dunn & Raeburn, (1889) LR 23 QBD 461 (CA)] and Hill v. East and West India Dock Co. [Hill v. East and West India Dock Co., (1884) LR 9 AC 448 (HL)] have frequently pointed out this fallacy, and have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso."

216. It is submitted that in ***Ishverlal Thakorelal Almaula*** v. ***Motibhai Nagjibhai***, AIR 1966 SC 459, the intendment of the proviso has been discussed as under:

"8. The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute, a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section."

217. It is submitted that in ***Haryana State Coop. Land Development Bank Ltd.*** v. ***Employees Union***, (2004) 1 SCC 574, this Hon'ble Court has considered normal function of proviso and observed as under :

"9. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey [Mullins v. Treasurer of Surrey, (1880) LR 5 QBD 170 at p. 173 (DC)] (referred to in Shah Bhojraj Kuverji Oil Mills &

Ginning Factory v. Subbash Chandra Yograj Sinha [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] and Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta [Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta, AIR 1965 SC 1728]), when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.

> *'... if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso',*

said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society[West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647 (HL)] , AC p. 653. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

218. More egregiously, it is submitted that in ***Shimbhu*** v. ***State of Haryana,*** (2014) 13 SCC 318, this Hon'ble Court has observed that fundamental rule of construction is that a proviso must be considered part of the main proviso to which it stands as a proviso. This Hon'ble Court held as under :

> *"13. It is a fundamental rule of construction that a proviso must be considered in relation to the main provision to which it stands as a proviso, particularly, in such penal provisions. Whether there exists any "special and adequate reason" would depend upon a variety of factors and the peculiar facts and circumstances of each case. This Court, in various judgments, has reached the consensus that no hard-and-fast rule can be laid down in that behalf for universal application."*

219. It is submitted that from the aforesaid enunciation it is clear that the effect of a proviso is to except all preceding portion of the enactment. It is only very rarely that proviso is unrelated to the subject-matter of the preceding section. It is submitted that if the proviso to sub-section (2) of Section 24 is read as part of sub-section (1) of Section 24, the same makes the said provision completely different and inconsistent. It is submitted that the expression "*where an award under Section 11 has been made*" provided under Section 24(1)(b), the proceedings have to continue under the provisions of the 1894 Act. If the proviso to sub-section (2) of Section 24 read as proviso to Section 24(1), then Section 24(1)(b) will be rendered nugatory and/or becomes otiose. It is submitted that true effect has to be given to the provision contained in Section 24(1)(b) which says that when award under Section 11 has been made, then such proceedings shall

24(1)(b) cannot be rendered otiose

continue under the provisions of the Land Acquisition Act, 1894, as if the said Act has not been repealed.

220. It is submitted that the proviso to Section 24(2) contemplates a situation where with respect to majority of the holding compensation not deposited in the account of landowners (even though there being tendering of payment to all land owners and physical possession being taken), the benefits of 2013 Act qua the compensation would follow. It is submitted that if the said proviso is not interpreted to be a proviso to Section 24(2), a valuable benefit extended by the Legislature would evaporate. It is submitted that the said proviso provides for enhanced benefit even if the twin conditionalities of Section 24(2) are met. Therefore, the proviso in fact extends the benefit even to those landholders who have received compensation as per the 1894 Act. Further, the said proviso saves the land acquisition and furthers the purpose and object of giving benefit of computation of compensation to all landholders. Therefore, it is evident that the proviso is appropriately be treated as a proviso to sub-section (2) of Section 24 and cannot be read as proviso to Section 24(1)(b) of the 2013 Act.

Proviso to 24(2) extends further benefits

221. It submitted that this Hon'ble Court, vide order dated 23.10.2019, framed the following question of law :

> *"6. Whether Section 24 of the Act of 2013 revives barred and stale claims?"*

The answer to the said reference is as under :

THE LEGISLATIVE INTENT IS CONSCIOUSLY NOT TO GIVE VERY WIDE RETROSPECTIVELY SO AS TO AVOID OBVIOUS AND PERSPECTIVE PRACTICAL DIFFICULTIES IN AN ON-GOING ACQUISITION PROCEEDINGS UNDER 1894 ACT

Provision giving retrospectivity ought to be narrowly tailored

222. It is submitted that Section 24(2) requires to be interpreted in a manner which would be consistent with other provisions of Section 24 and which give effect to the legislative intent. It is submitted that there is a difference between lapsing and limited applicability of 2013 Act.

It is submitted that section 24(1)(a), in case of no award under Section 11 provides for limited applicability and not lapsing. Section 24(2) provides for lapsing even after the stage of Section 11 has been crossed and therefore, makes a departure from section 24(1). It is clear that sub-section (2) is a harsh and drastic provision inviting serious and wide ranging consequences retrospectively. It is submitted that considering the nature of the provision, it must be narrowly tailored and interpreted in a limited manner so as to protect the vested rights of parties.

S.24(2) must be narrowly tailored

Transit of Repeal

223. It is submitted that it is settled law that there is a presumption in favour of restricted retrospective applicability of any provision in an enactment unless a contrary intention appears.

It is submitted that admittedly, Section 24(2) intends to have a retrospective operation however such retrospectivity ought to be applied in a very narrow compass considering the nature and width of Section 24(2) and the drastic consequences flowing from its applicability.

It is submitted that the ambit of restrospectivity to be given under Section 24 needs to be considered in the context of legislative intention manifested from Section 114 of the 2013 Act and Section 6 of the General Clauses Act. Both Section 114 and Section 6 of the aforesaid Act clearly point towards a very restrictive and narrow interpretation of Section 24 making efforts to save the on-going acquisition proceedings as far as possible. Section 114 of the 2013 Act which reads as under:

> *"114. Repeal and saving.-*
>
> *(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed. (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."*

As per Section 6 of the General Clauses Act, 1897, the following acts are saved :

> *"Section 6 - Effect of repeal.*
>
> *–Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not–*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
>
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
>
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
>
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
>
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

Position in the United Kingdom

224. It is submitted that in the United Kingdom, the Interpretation Act 1978, provides as under :

> *"Section 16 - General savings.*

(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,–

(a) revive anything not in force or existing at the time at which the repeal takes effect;

Position in United Kingdom

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

(2) This section applies to the expiry of a temporary enactment as if it were repealed by an Act."

225. It is submitted that the leading English textbooks on the jurisprudence of interpretation of statutes state the same. Bennion, Statutory Interpretation , 5th ed. (2012) Indian Reprint, states as under :

"Where, on a weighing of the factors, it seems that some retrospective effect was intended, the general presumption against retrospectively indicates that this should be kept to as narrow a compass as will accord with the legislative intention[2].

....

Principle against doubtful penalisation. It is a general principle of legal policy that no one should suffer detriment by the application of a doubtful law[3]. The general presumption against retrospectivity means that where one of the possible opposing constructions of an enactment would impose an ex post facto law, that construction is likely to be doubtful[4].

....

If the construction also inflicts a detriment, that is a second factor against it. A retrospective enactment inflicts a detriment for this purpose 'if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past'[5]. The growing propensity of the courts to relate legal principle to the concept of fairness was shown by Staughton LJ when he said:

"In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair

---

[2] *Lauri v Renad* [1892] 3 Ch 402 at 421; *Skinner v Cooper* [1979] 1 WLR 666. The statement in the text was approved by Ward J in *Hager v Osborne* [1992] Fam 94 at 99.

[3] For this principle against doubtful penalisation see generally Code Pt XVII.

[4] As to the opposting constructions see Code Sec.149

[5] *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553, per Lord Brightman at 558. This follows almost exactly the words of *Craies on Statute Law* (7th edn, 1971) Sweet & Maxwell, p 387. See also Re Athlumney, ex p Wilson [1898] 2 QB 547 at 551; *Smith vs Callender* [1901] AC 297 at 303; *West v Gwynne* [1911] 2 Ch 1 at 15. The passage in the text was followed in General *Mediterranean Holdings SA vs Patel* [1999] 3 All ER 673.

to those concerned in them, unless a contrary intention appears"

226. It is submitted that the leading case dealing with the narrow compass while construing retrospectivity, even when the same is provided in the statute is of ***Lauri v. Renad.***, [1892] 3 Ch. 402. The oft quoted passage of the said judgment is as under:

> *"It certainly requires very clear and unmistakable language in a subsequent Act of Parliament to revive or recreate an expired right. It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."*

Statute not to have a greater retrospective operation than necessary

227. It is submitted that the House of Lords also dealt with the said question. It is submitted that sitting in a combination of eight judges, in ***Yamashita-Shinnihon Steamship Co. Ltd.v L'office Chefifien Des Phosphates And Another***, [1994] 1 A.C. 486, the House of Lords opined that the question of the extent of retrospectivity would also be dependent on the degree of unfairness it causes to the parties. The Court held as under:

> *"The rule that a person should not be held liable or punished for conduct not criminal when committed is fundamental and of long standing. It is reflected in the maxim nullum crimen nulla poena sine lege. It is protected by article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969).*
>
> *The rule also applies, but with less force, outside the criminal sphere. It is again expressed in maxims, lex prospicit non respicit and omnis nova constitutio futuris temporibus formam imponere debet non praeteritis. The French Civil Code provides that "La loi ne dispose que pour l'avenir; elle n'a point d'effet retroactif."*
>
> .....
>
> *But both these passages draw attention to an important point, that the exception only applies where application of it would not cause unfairness or injustice. This is consistent with the general rule or presumption which is itself based on considerations of fairness and justice, as shown by the passage in Maxwell quoted, ante, p. 494C-E, and recently emphasised by Staughton L.J in Secretary of State for Social Security v. Tunnicliffe [1991] 2 All E.R 712, 724:*
>
> > *"In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree – the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended."*

Degree of unfairness is a relevant factor for degree of retrospectivity

[6] *Secretary of State for Social Security v Tunnicliffe* [1991] 2 All ER 712 at 724 (reversed on grounds not affecting this dictum in *Plewa v Chief Adjudication Officer* [1995] 1 AC 249)

The distinction between rights and procedure, and unfairness and fairness, may well overlap. Thus if a limitation period is shortened but a plaintiff has time to sue before expiry of the shortened period, he is likely to be statute-barred if he does not sue within the shortened period (see The Ydun [1899] P. 236); but if a limitation period is extended after a previous, shorter limitation period has already expired, the plaintiff will be unable to take advantage of the new period because an absolute defence has by then accrued to the defendant and it would not be fair to deprive him of it: see Yew Bon Tew v. Kenderaan Bas Mara [1983] 1 A.C 553 and Maxwell v. Murphy (1957) 96 C.L.R 261.

Further, Lord Griffiths, Lord Goff of Chieveley and Lord Slynn of Hadley, held as under :

"The principle governing the proper approach to a statutory provision alleged to have retrospective effect has been stated in a number of different ways, but no difference of substance is revealed by the authorities. Thus:

(1) the principle has been described as "a prima facie rule of construction" (Yew Bon Tew [1983] 1 A.C 553, 558F), "an established principle in the construction of statutory provisions" (Pearce v. Secretary of State for Defence [1988] A.C 755, 802C) or "a fundamental rule of English law" (Lauri v. Renad [1892] 3 Ch. 402, 421, Maxwell on the Interpretation of Statutes , 12th ed., p. 215, cited with approval in Carson v. Carson and Stoyek [1964] 1 W.L.R 511, 516-517).

(2) The principle is that a statute or statutes will not be interpreted so as to have a retrospective operation unless (i) "that result is unavoidable on the language used" (Yew Bon Tew , at pp. 558F, 563D-E) or "that effect cannot be avoided without doing violence to the language of the enactment" (In re Athlumney, Ex parte Wilson [1898] 2 Q.B 547, 552) or "its language is such as plainly to require such a construction" (Lauri v. Renad , at p. 421); or (ii) "they expressly or by necessary implication so provide: see Yew Bon Tew , at p. 558F" (Pearce v. Secretary of State for Defence [1988] A.C 755, 802C-D) or "such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication" (Maxwell on the Interpretation of Statutes , 12th ed., p. 215).

(3) "If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only" (In re Athlumney , at p. 552).

(4) If the statute does have some retrospective operation on the basis of the above principles, it is not to be construed as having greater retrospective operation "than its language renders necessary" (Lauri v. Renad , at p. 421) or "than is necessary to give effect either to its clear language or to its manifest purpose" (Arnold v. Central Electricity Generating Board [1988] A.C 228, 275).

....

The absence of express limiting words cannot be used as a basis for implying retrospective operation. That would reverse the true presumption. A necessary and distinct implication typically arises in the context of a statute that, by repealing a previous statute, would leave a "lacuna" in the law if the new statute were not to be construed as having retrospective effect: see, e.g, Food Corporation of India v. Marastro Compania Naviera S.A [1987] 1 W.L.R 134, 152. The particular problem in the present case is a transitional problem only, applicable only to those arbitrations that are stale as at 1 January 1992, in respect of which applications to strike out are made shortly thereafter. In the future, such claimants will either continue to be dilatory or not, in which case the references will proceed to a conclusion. The concern of the legislature, and the mischief at which the section was aimed, was not a limited number of existing stale arbitrations but future arbitrations. Moreover, although the mischief at which the section was aimed is not to be ignored, one should start by looking at the words themselves: see Chebaro v. Chebaro [1987] Fam. 127, 130, 134-135.

It would be unfair to a claimant to give a retrospective operation to section 13A. So far as claimants in existing arbitrations are concerned, they may well have been (correctly) advised prior to 1 January 1992 that they could proceed slowly with the claim without risk of having their claims dismissed by reason of such delay. A retrospective application of the statute would expose him to a penalty on the strength of conduct not susceptible to penalty when committed. It would not, however, be unfair to a respondent to limit section 13A to delay occurring after 1 January 1992. Even if such delay were causative of prejudice or the risk of an unfair resolution of the dispute, under the existing law laid down in Bremer Vulkan a respondent should have been aware that it was a respondent's obligation (as well as a claimant's) to seek directions from the arbitrator to ensure a speedy resolution of disputes: see the Hannah Blumenthal case [1983] 1 A.C 854, 923H. A retrospective alteration to the legitimate expectations of the parties as to the consequences of their conduct at the time it occurred would be contrary to the principles of legal and commercial certainty that formed part of the grounds on which the House of Lords declined in Hannah Blumenthal to depart from Bremer Vulkan : see pp. 913C, 917D, 922H."

228. It is submitted that in ***Gloucester Union v. Woolwich Union,*** [1917] 2 K.B. 374, the Court held as under:

"Before considering the legal effect of art. xxxi. of this Order it is necessary, we think, to bear in mind that by the common law, upon such a division of the parish of Upton St. Leonard's, any settlement already acquired in that parish would have been lost: see Reg. v. Tipton Inhabitants 3; Dorking Union v. St. Saviour's Union . The purpose and effect of par. 1 of art. xxxi. is to get rid of this difficulty and preserve the settlements that have been already acquired before the commencement of the Order. The purpose and effect of par. 2 is in like manner to preserve a status of irremovability that has been acquired at that date; and the question raised in this case is whether par. 3 of the

article is to be construed in all its generality as applicable to acts or circumstances which have been done or occurred completely in the past and before the commencement of the Order, so as to create or confer a settlement where none existed before, or whether, as the appellants contend, it is to be construed as supplemental to pars. 1 and 2 and limited to the cases where persons are in process of acquiring a settlement or status of irremovability so as to preserve their inchoate rights. If the words in par. 3 are construed without limitation, then, the residence of the pauper at Chequer's Row in Upton St. Leonard's between 1893 and 1897 being deemed to be residence in Gloucester, a settlement in Gloucester is conferred upon him and the respondents succeed. We think this paragraph should be so construed subject to the general principle that a statute is prima facie prospective and does not interfere with existing rights unless it contains clear words to that effect, or unless, having regard to its object, it necessarily does so, and that a statute is not to be construed to have a greater retrospective operation than its language renders necessary – see per Lindley L.J in Lauri v. Renad - whatever view may be entertained of the probable intention of the Legislature, unless some manifest absurdity or inconsistency results from such construction; but we have come to the conclusion that the construction of the paragraph contended for by the respondents produces such a practical inconsistency with par. 1 of the same article that it is necessary to put some limitation upon it. If a person had resided before the commencement of the Order for two years in that portion of the parish of Upton St. Leonard's which has been added to Gloucester and for one year following in the portion which remains the parish of Upton St. Leonard's, he would by the latter part of par. 1 be deemed to have acquired a settlement in the parish of Upton St. Leonard's, but if par. 3 is to be applied to such a case his residence in the added portion of Upton St. Leonard's is to be deemed to have been residence in the parish of Gloucester; and if so deemed, then he has not had three years' consecutive residence in any one parish and has no settlement – in other words, the effect of par. 3 in such a case is to destroy the settlement which is preserved by par. 1 and to restore the common law rule which is intended to be abolished. The same result would follow in the converse case where the later period of residence completing the three years in the old parish of Upton St. Leonard's is in the area which has been added to the parish of Gloucester."

229. It is submitted that in ***The King v. The General Commissioners Of Income Tax for Southampton,*** [1916] 2 K.B. 249, [1917] 2 K.B. 374, the Court held as under:

"The language of the section shows clearly that Parliament intended it to have a retrospective effect. The object was to prevent loss to the revenue when Commissioners had acted who were not, under the statutes, the right Commissioners to make the charge, provided that it was made by the Commissioners for the parish or place in which the person charged ordinarily resided. That the section was retrospective in effect was not disputed by Sir Robert Finlay, but he argued that the retrospective operation is limited by the language of the section and does not extend to a

charge made in respect of profits derived from foreign possessions or securities under s. 108 of the Income Tax Act, 1842 . In support of this argument he relied upon the express reference in the first sub-section of s. 32 to s. 106, and s. 146 of the Income Tax Act, 1842 , upon the omission of any reference in this sub-section to s. 108, and upon the repeal in sub-s. 2 of s. 32 of s. 108. He contended that if the Legislature had meant to include s. 108 in the first sub-section it would have referred to it in express berms and would not merely have repealed it by the second sub-section. In the first sub-section mention is made of other sections of the Income Tax Acts, but not of s. 108. It must be taken, he argued, that Parliament had in mind the difficulties created by s. 108, which were pointed out in Aramayo's Case by the House of Lords, and that Parliament intended to remove these difficulties by the repeal of s. 108 so as to prevent its operation in future, but did not mean to change the law as regards acts done before the passing of the statute. The question must depend upon the construction of the language of s. 32. The rules to be applied are well settled. It is a fundamental rule of English law that enactments in a statute are generally to be construed as prospective and intended to regulate future conduct, but this rule is one of construction only and must yield to the intention of the Legislature: Moon v. Durden, per Parke B. It is also the law that a statute is not to be construed to have greater retrospective operation than its language renders necessary: Lauri v. Renad, per Lindley L.J To ascertain the intention regard should be had to the general scope and purview of the enactment, to the remedy sought to be applied, to the former state of the law, and to what was in the contemplation of the Legislature: Pardo v. Bingham, per Lord Hatherley L.C"

Position in India

230. It is submitted that in the said context of retrospective operation and vested rights under a previous statute, the position in India is also noteworthy.

It is submitted that the retrospective application of a provision is to be permissible only when there is a clear legislative intent and further, the retrospectivity is liable to be decided on the basis of its reasonability and/or excessiveness or harshness, otherwise it runs the risk of being struck down as unconstitutional. This Hon'ble Court, while interpreting a transitory provision in the Land Acquisition (Amendment) Act, 1984, sitting in a constitution bench, in ***K.S. Paripoornan v. State of Kerala,*** (1994) 5 SCC 593, held as under :

"64. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there

is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See Halsbury's Laws of England, 4th Edn., Vol. 44, paras 921, 922, 925 and 926.)

65. These principles are equally applicable to amendatory statutes. According to Crawford:

> *"Amendatory statutes are subject to the general principles ... relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively."*
>
> *(See Crawford's Statutory Construction, pp. 622-23)*

66. The dictum of Lord Denman, C.J. in R. v. St. Mary, Whitechapel [(1848) 12 QB 120, 127 : 17 LJMC 172 : 116 ER 811] that a statute which is in its direct operation prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In Alexander v. Mercouris [(1979) 3 All ER 305 : (1979) 1 WLR 1270] Goff, L.J., after referring to the said observations of Lord Denman, C.J., has observed that a statute would not be operating

prospectively if it creates new rights and duties arising out of past transactions. The question whether a particular statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself."

231. This Hon'ble Court in ***Zile Singh v. State of Haryana,*** **(2004) 8 SCC** 1, sitting in a three judge bench, speaking through J. R.C. Lahoti, held as under:

"15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

18. In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India [(2003) 5 SCC 23] it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

A harsh provision ought not to be unreasonably retrospective

232. Further, this Hon'ble Court, after assessing the unintended and absurd results that an amendment may result in, purposefully interpreted the same to be prospective in operation.

It is clarified that Section 24(2) is retrospective in nature and cannot be held to be prospective, however, extent of the retrospectivity ought to be controlled and narrowly construed while interpreting it considering the harsh consequences that it results in particularly against projects of public interest. This Hon'ble Court, as stated above, in ***CIT v. Sarkar Builders***, (2015) 7 SCC 579, held as under:

> *"25. Can it be said that in order to avail the benefit in the assessment years after 1-4-2005, balconies should be removed though these were permitted earlier? Holding so would lead to absurd results as one cannot expect an assessee to comply with a condition that was not a part of the statute when the housing project was approved. We, thus, find that the only way to resolve the issue would be to hold that clause (d) is to be treated as inextricably linked with the approval and construction of the housing project and an assessee cannot be called upon to comply with the said condition when it was not in contemplation either of the assessee or even the legislature, when the housing project was accorded approval by the local authorities.*
>
> *26. Having regard to the above, let us take note of the special features which appear in these cases:*
>
> *26.1. In the present case, the approval of the housing project, its scope, definition and conditions, are all decided by and are dependent on the provisions of the relevant DC Rules. In contrast, the judgment in Reliance Jute and Industries Ltd. [(1980) 1 SCC 139 : 1980 SCC (Tax) 67] was concerned with income tax only.*
>
> *26.2. The position of law and the rights accrued prior to enactment of the Finance Act, 2004 have to be taken into account, particularly when the position becomes irreversible.*
>
> *26.3. The provisions of Section 80-IB(10) mention not only a particular date before which such a housing project is to be approved by the local authority, even a date by which the housing project is to be completed, is fixed. These dates have a specific purpose which gives time to the developers to arrange their affairs in such a manner that the housing project is started and finished within those stipulated dates. This planning, in the context of facts in these appeals, had to be much before 1-4-2005.*
>
> *26.4. The basic objective behind Section 80-IB(10) is to encourage developers to undertake housing projects for weaker sections of society, inasmuch as to qualify for deduction under this provision, it is an essential condition that the residential unit be constructed on a maximum built-up area of 1000 sq ft where such residential unit is situated within the cities of Delhi and Mumbai or within 25 km from the municipal limits of these cities and 1500 sq ft at any other place.*
>
> *26.5. It is the cardinal principle of interpretation that a construction resulting in unreasonably harsh and absurd results must be avoided.*
>
> *26.6. Clause (d) makes it clear that a housing project includes shops and commercial establishments also. But from the day the said provision was inserted, they wanted to limit the built-up area*

of shops and establishments to 5% of the aggregate built-up area or 2000 sq ft, whichever is less. However, the legislature itself felt that this much commercial space would not meet the requirements of the residents. Therefore, in the year 2010, Parliament has further amended this provision by providing that it should not exceed 3% of the aggregate built-up area of the housing project or 5000 sq ft, whichever is higher. This is a significant modification making complete departure from the earlier yardstick. On the one hand, the permissible built-up area of the shops and other commercial shops is increased from 2000 sq ft to 5000 sq ft. On the other hand, though the aggregate built-up area for such shops and establishment is reduced from 5% to 3%, what is significant is that it permits the builders to have 5000 sq ft or 3% of the aggregate built-up area, "whichever is higher". In contrast, the provision earlier was 5% or 2000 sq ft, "whichever is less"."

233. It is submitted that apart from the above, this Hon'ble Court, has consistently laid down principles guiding the retrospective operation of statutes. It is submitted that there is no bar against retrospective operation but this Hon'ble Court has considered the practical realities before analysing the extent of retrospective operation of the statutes. It is submitted that reliance in this regard is placed on ***Jawaharmal*** v. ***State of Rajasthan,*** (1966) 1 SCR 890 (para 18, 25) and ***Rai Ramkrishna*** v. ***State of Bihar,*** (1964) 1 SCR 897 (para 10, 11,16, 17). It is submitted that this Hon'ble Court in ***J.S. Yadav v. State of U.P.,*** (2011) 6 SCC 570, has held as under :

"20. "17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

'Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edn.) at p. 1397, 'vested' is defined as:

'[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.' "

(See Bibi Sayeeda v. State of Bihar [(1996) 9 SCC 516 : AIR 1996 SC 1936] at SCC p. 527, para 17.)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the

law. (Vide Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. [(2004) 1 SCC 663])

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course.

234. It is therefore submitted that the lapsing Section 24(2) ought to be interpreted in a narrow manner thereby protecting the rights under the 1894 Act and implementing the section as a whole. It is submitted that retrospectivity is to be effected in a guarded manner considering the nature of land acquisition and practical difficulties attached therewith.

The Domino Effect

235. It is submitted that the maxim *omnis innovatio plus novitate perturbat quam utilitate prodest* i.e. "every innovation made has to be, ultimately, adjudged from standpoint of the events that follow it"; is relevant to consider the after-effects of the decision in Pune Municipal *supra* and Shree Balaji *supra* and try to interpret Section 24 of the 2013 Act in that context by the Constitution Bench.

It is submitted that the decision in Pune Municipal *supra* and Shree Balaji *supra* have had a *domino effect* in terms of the litigation pending before this Hon'ble Court. The Centre for Policy Research in its Report titled "*Land Acquisition In India: A Review Of Supreme Court Cases 1950-2016*", notes as under :

> *" In this section, we review cases decided under the LARR Act over a period of three years from 2014 to 2016, a total of 280 cases. About half of these cases were brought before the Court under its SLP jurisdiction, while almost all of the remaining half came before the Supreme Court as part of the Court's civil appeals process (see Figure 31). Only 14% of these cases were bunch matters.*
>
> *All but 8 cases were brought under section 24 of the LARR Act, which perhaps explains how quickly they have been finally decided by the Supreme Court. 97% of these cases involved acquisitions made under the Land Acquisition Act (see Figure 32), where the award of compensation was made five years prior to the commencement of the LARR Act. Almost 83% of the challenges before the Supreme Court involved instances where no compensation had been paid[7] to the land losers, 2% of the cases involved instances where compensation had been paid to the land losers but the acquiring authority had not taken physical possession of the land. Approximately 11% of the cases involved instances where neither compensation was paid, nor had the acquiring authority taken physical possession of the land.*
>
> *In an overwhelming 95% of the cases, the Supreme Court invalidated the acquisition proceedings. In 2% of the cases, it remitted the matter back to the High Court and in a single case, it permitted the landowners to initiate proceedings in the appropriate forum. (see Figure 32)*

This is the result of judgments in Pune Municipal supra and the ratio in Shree Balaji supra

[7] "Paid" as construed in Pune Municipal *supra*

If the above review is any sign of what we are to expect from the LARR Act, and there is every reason to believe it is, litigation will undoubtedly increase and the Court is likely to quash many more pending acquisitions under the Land Acquisition Act and other acquisition laws. That 200 of the 280 decided cases involved the Delhi Development Authority highlights the importance of the proximity factor in understanding the distribution of land acquisition litigation before the Supreme Court. However, this also suggests that we may see an increasing volume of litigation from less proximate locations in the coming years."

236. It is submitted that in light of the above, it is necessary for this Hon'ble Court to be cautious and provide an interpretation which prevents and harsh consequences and a potential misuse of the provisions of law and to make the purposive interpretation, considering the experience and after-effect of decisions.

It is submitted that as propounded above, under the interpretation provided by three Hon'ble Judges in Indore Development *supra*, the intendment and spirit of the provisions of the 2013 Act to benefit farmers has been protected. It is submitted that Indore Development *supra* provides for balancing interpretation to stabilise the competing interests. It is further submitted that it is settled law that the Hon'ble Courts ought to adopt a purposive interpretation in case of competing interests. The following cases illustrate the approach of this Hon'ble Court in this regard :

- *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill*, (2012) 2 SCC 108 @ 19-21
- *Tinsukhia Electric Supply Company Ltd Vs State Of Assam & Ors*, (1989) 3 SCC 709 @ para 118-121
- *C.I.T. Vs. Hindustan Bulk Carriers*,(2003) 3 SCC 57 @ para 14-21
- *D. Saibaba vs Bar Council of India & Ors*, (2003) 6 SCC 186 para 16-18
- *Balram Kamanat v. Union of India*, (2003) 7 SCC 628 para 24
- *New India Assurance Co. vs Nulli Nivelle*, (2008) 3 SCC 279 @ para 51-54
- *Government Of Andhra Pradesh & Ors vs Smt. P. Laxmi Devi*, (2008) 4 SCC 720 para 41 & 42
- *Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd.*, (2008) 13 SCC 30 para 132-137
- *N. Kannadasan Vs. Ajoy Khose and Ors*, (2009) 7 SCC 1 para 54-67
- *H S Vankani vs State of Gujarat*, (2010)4 SCC 301 para 43-48
- *State of Madhya Pradesh vs Narmada Bachao Andolan & Ors.*, (2011) 7 SCC 639 para 78-85
- *State of Gujarat and Anr. Vs. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Ors.*, (2013) 3 SCC 1 para 96-98

Purposive interpretation

It is therefore submitted that this Hon'ble Court, must affirm the interpretation provided in Indore Development *supra*.

237. It is submitted that after the judgment in Pune Municipality *supra* and Shree Balaji *supra*, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated.

The Ordinance was needed more as a clarificatory exercise as Pune Municipal *supra*, did not notice, examine or deal with the true legislative intent reflected above and construed the transitory provision under Section 24 of the 2013 Act too liberally making its operation unrealistic, harsh and completely ignoring the prevailing practice of tender/payment/deposit process under the 1894 Act.

It is submitted on the issue of Section 24, the said ordinance provided as under :

> *In the principal Act, in section 24, in sub section (2), after the proviso, the following proviso shall be inserted, namely: -*
>
> > *"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose* ***shall be excluded****"*

238. Thereafter, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitator and Resettlement (Amendment) Ordinance, 2015 was promulgated. The said Ordinance reiterated the above stated position. Thereafter, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitator and Resettlement (Amendment) Second Ordinance, 2015 was promulgated which again reiterated the above stated provision. Therefore, it is submitted that there have multiple efforts to clarify the legislative intent and correct legal position with regard to the judgments in Pune Municipal *supra* and Shree Balaji *supra*.

239. It is submitted that the interpretation of Section 24 cannot be oblivious to the practical realities of land acquisition in the country going on since more than a century. It is submitted that the harshness of the provision ought to be extended beyond the pales of practical realities it culminates in to. It is submitted that the interpretation of Section 24 and especially the purport of the word "paid" and the "deposit in the account of beneficiaries" is to be carried out keeping the said realties in mind.

240. This Hon'ble Court, vide order dated 23.102.2019, framed the following question of law :

> *"5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?"*

The answer to the said reference is as under :

THE JUDGMENT IN INDORE DEVELOPMENT SUPRA OVERRULES THE JUDGMENT OF A DIVISION BENCH IN SHREE BALAJI SUPRA

241. It is submitted that this Hon'ble Court, sitting in a combination of two Hon'ble Judges, in Shree Balaji *supra* held that in calculating the period of five years under Section 24(2), the period of stay granted by the Hon'ble Courts cannot be excluded as it is not provided in the text of the provision. It is submitted that this Hon'ble Court, sitting in a combination of two Hon'ble Judges, in Yogesh Neema *supra* disagreed with the view taken in Shree Balaji *supra* and ordered a reference to a larger bench. Thereafter, a three judge bench in Indore Development *supra*, clearly overruled the judgment in Shree Balaji *supra* after referring to the order in Yogesh Neema *supra*. The majority held as under :

> *"217. .....*
> *The decision in Sree Balaji [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] cannot be said to be laying down good law, is overruled and other decisions following the said decision to the extent they are in conflict with this decision, stand overruled. ....."*

The concurring opinion, held as under :

> *"272. I agree with the conclusions reached by my learned Brothers on the abovementioned questions referred to us, so also that Sree Balaji [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] will stand overruled. However, I wish to place my views on the subject which may be in addition to the views of my Brothers.*
>
> ...
>
> *295.3. For the aforementioned reasons, I am unable to persuade myself to agree with Sree Balaji [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] , and the same stands overruled. Question (ii) and Question (iii) posed by the reference stand answered as follows: ...."*

242. Therefore, it is clear that the decision in Indore Development *supra*, with the agreement of all three Hon'ble judges has overruled the judgment in Shree Balaji *supra*.

It is submitted that the doubts expressed in G.D. Goenka *supra* and the reference order in IDA v. Shyam Verma *supra*, were both based on the conflict between two three judge bench decisions of this Hon'ble Court, i.e. Pune Municipal *supra* and Indore Development *supra* on other issues decided. It is submitted that the reference order or the G.D. Goenka *supra*, nowhere doubts the view taken on Indore Development Authority *supra* - overruling of the judgment in Shree Balaji *supra*. It is submitted that it is settled law that larger bench judgments can overrule judgments by Division Benches of this Hon'ble Court. In light of the above, it is submitted that there is no requirement of the said question being re-agitated before the Constitution Bench.

No need for a larger bench

WITHOUT PREJUDICE, THE MEANING OF PERIOD OF FIVE YEARS OCCURRING IN SECTION 24(2) WOULD EXCLUDE THE PERIOD OF STAY GRANTED BY THE HON'BLE COURTS

Meaning of stay order of the Court

243. Without prejudice to the above, it is submitted that the reasoning behind the Shree Balalji *supra*, is inadequate and the said interpretation results in grave and severe consequences without there being fault on part of any of the litigating parties who have suffered an injunction of the Court.

In a similar context, it must be noted that Section 11-A of the 1894 Act provided for exclusion of time period in case of stay by the Courts in computing time period in which award was to be made. However, Section 11-A provided no phrase to exclude the time period given to mandatorily pronounce the award. This Hon'ble Court, keeping in mind the delaying tactics of the Petitioner, the practicalities of land acquisition in mind, held that even though the provision does not expressly provide for the exclusion of the time period to communicate the order of vacation of stay, the said period ought to be excluded. As stated above, this Hon'ble Court in ***Jeet Singh v. Union of India***, (2011) 13 SCC 534, held as under :

> *12. The learned counsel appearing for the appellants made an effort to compare the provisions of Section 11-A with the provisions of Section 6 of the Act so as to show that the law laid down in Padma Sundara Rao case [(2002) 3 SCC 533] would also be applicable in case of Section 11-A of the Act. It was his submission that the period commencing from 12-2-1999 to 23-7-2002 only should be excluded for the purposes of Section 11-A as the stay was operating only for the said period. According to him, the period during which intimation of the order, whereby the stay was vacated, was given to the Land Acquisition Collector will have to be ignored.*
>
> *13. Looking to the facts of the case we do not accept the said submission because in the instant case the appellants and their father had made all possible efforts to stall the proceedings and only on account of the litigation initiated by them, the acquisition proceedings had been stayed. Ultimately, the stay granted by the High Court had been vacated but intimation of the order, whereby stay was vacated i.e. dated 23-7-2002 was communicated, for the first time, to the Land Acquisition Collector on 27-3-2003. When the order dated 23-7-2002, vacating the earlier stay order was passed, the counsel appearing for Respondent 3, namely, the Land Acquisition Collector or the Government was not present and, therefore, intimation of the said order was not given to the Land Acquisition Collector, who was duty-bound to make an award as per the provisions of Section 11-A of the Act within two years from the date of publication of the declaration under Section 6 of the Act.*
>
> *14. The purpose behind enactment of Section 6 and Section 11-A is different though the language used in both the sections is similar. Section 6 pertains to pre-acquisition stage whereas Section 11-A pertains to post-acquisition stage, the stage at which the award is to be made by the Collector. In our opinion, once*

Delay tactics of the Petitioners therein

Contextual interpretation on the basis of practicalities

Section 4 notification is issued, necessary declaration under Section 6 must be made as soon as possible for the reasons that the owner of the land would not be in a position to use the land as per his desire because of the uncertainty prevailing prior to declaration made under Section 6 of the Act. A prudent owner would not put up any construction on the land and normally no one would come forward to purchase the land also as there would be possibility of the land being acquired. Therefore, declaration under Section 6 is required to be made as soon as possible.

15. So far as provisions of Section 11-A of the Act are concerned, they expect the acquiring authorities to make the award within two years so that the landowner can get compensation after the award is made. He must get his compensation at an early date because his land is acquired, but in case of delay caused in paying the compensation, the landowner would be sufficiently compensated in terms of money for the reason that he would be getting interest on the amount of compensation payable to him as per the provisions of the Act. Thus, in fact, not much harm is caused to the landowner if some delay is caused.

No prejudice caused

...

18. In the aforestated set of circumstances, in our opinion, the acquisition proceedings cannot be permitted to lapse, especially when the Land Acquisition Collector had acted promptly after getting a certified copy of the order whereby the stay granted in CWP No. 6687 of 1998 was vacated. As his counsel was absent when the abovestated order was passed, he could not know about the said order earlier and as per findings of the High Court, he came to know about vacation of the stay order for the first time on 27-3-2003. We also note the fact that possession of the land in question was taken long back and the land in question has been put to the use for which it has been acquired.

19. We do not find any fault with the Land Acquisition Collector for not making the award before getting a certified copy of the order dated 23-7-2002 on 27-3-2003 especially when he was not informed about the said fact earlier. There cannot be any doubt that no person would ever think of taking an action when he has been restrained by any interim order of any court from doing so. Once a person has been restrained by a court of competent jurisdiction from doing something, the person concerned is not expected to do anything till he gets communication from the court to the effect that the earlier order was modified or vacated. No officer would ever think of taking a chance upon any unauthentic communication with regard to vacation of interim relief because in that event, if the information is not correct, he might be held guilty under the provisions of the Contempt of Courts Act. In the instant case, there is nothing on record that prior to 27-3-2003, the Land Acquisition Collector had received any communication that the stay granted on 12-2-1999 had been vacated and, therefore, he was absolutely right in not taking any action for proceeding further for making an award till 27-3-2003.

Authorities cannot be faulted due to the order of the Court

20. In view of the above circumstances, one can surely believe that the Land Acquisition Collector could have proceeded further for making an award only after 27-3-2003, when a certified copy of the order dated 23-7-2002 was communicated to him. In view

of the aforestated undisputed facts with regard to communication of the said order dated 23-7-2002 on 27-3-2003, and taking notice of all the aforestated facts we are of the view that the High Court was right in dismissing the writ petition."

244. Therefore, it is submitted that considering the above stated principles of statutory interpretation, the principles of narrow tailoring of retrospective operation of statute, the requirement to contextually interpret the 2013 Act and the judgment of this Hon'ble Court in a similar circumstance in Jeet Singh *supra*, it is submitted that the period of stay/staus quo ought to be excluded when calculating the time period of five years under Section 24(2).

It is submitted that one cannot be permitted to take advantage of his own wrong. The doctrine *commodum ex injuria sua nemo habere debet* means convenience cannot accrue to a party from his own wrong. It is submitted that one cannot be permitted to obtain unjust injunction or stay orders and take advantage of own actions.

245. It is submitted that this Hon'ble Court in *Om Parkash* v. *Union of India,* (2010) 4 SCC 17, held as under:

> *"72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."*

246. Therefore, when there is interim stay with respect to possession or order of status quo or stay on further proceedings, etc. there is no justification for authorities to proceed any further with respect to payment of compensation either to the litigant or to all or otherwise. It is therefore submitted that the stay of the Court, by its nature, stops even a bonafide party from carrying out obligations and faulting such party with a blanket approach, would be unreasonable and may fall foul of Article 14. It is submitted that it is settled law that the Hon'ble Courts ought to provide such interpretation which saves the constitutionality of a provision. The principle is squarlty attracted in the present case.

Actus curiae neminem gravabit

247. It is submitted that once the Hon'ble Courts have restrained the State authorities to take possession, or to maintain status quo, the consequences of interim orders cannot be used against the State. It is basic principle that when a party is disabled to perform a duty and it is not possible for him to perform a duty, is a good excuse. In the book titled *Selection of Legal Maxims* by Herbert Broom, the author about the said maxim has observed as under:

> *"This maxim "is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law"*

(b). In virtue of it, where a case stands over for argument on account of the multiplicity of business in the court, or for judgment from the intricacy of the question, the party ought not to be prejudiced by that delay, but should be allowed to enter up his judgment retrospectively to meet the justice of the case (c); and, therefore, if one party to an action die during a curia advisari vult, judgment may be entered nunc pro tunc, for the delay is the act of the Court, for which neither party should suffer."

No one should suffer because of an act of the Court

248. It is submitted that this Hon'ble Court in ***Dau Dayal*** **v.** ***State of U.P.***, **AIR 1959 SC 433**, observed that in case complaint has been filed within time and in case issue of process is permitted by the court, it would be unfortunate if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court, is nevertheless denied redress owing to the delay in the issue of process which occurs in court. The Court observed as under :

"6. It will be noticed that the complainant is required to [Ed.: The matter between two asterisks has been emphasised in original.] resort [Ed.: The matter between two asterisks has been emphasised in original.] to the court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in court."

249. It is submitted that a Constitution Bench in ***Sarah Mathew*** **v.** ***Institute of Cardio Vascular Diseases*****, (2014) 2 SCC 62**, has considered the aforesaid maxim and held as under :

"39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] , Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Vanka Radhamanohari [Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4 : 1993 SCC (Cri) 571] . The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim vigilantibus et non dormientibus, jura subveniunt. Chapter 36 of the Code of Criminal Procedure which provides limitation period for certain types of offences for which lesser sentence is

provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the Penal Code, 1860 which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim actus curiae neminem gravabit which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter 36 thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

250. It is submitted that in *Mohd. Gazi* v. *State of M.P.*, (2000) 4 SCC 342, this Hon'ble held as under:

"7. In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit – an act of the court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia – the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey[Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398] and Gursharan Singh v. NDMC [Gursharan Singh v. NDMC, (1996) 2 SCC 459] ."

251. It is submitted that in *Karnataka Rare Earth* v. *Deptt. of Mines & Geology*, (2004) 2 SCC, this Hon'ble held as under:

"10. ... the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an improvement which it would not have suffered but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand: (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost."

252. It is submitted that in ***A.R. Antulay*** v. ***R.S. Nayak***, (1988) 2 SCC 602, this Hon'ble held as under:

> *"81. This case has caused us considerable anxiety. The appellant-accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated 16-2-1984 [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] , as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is commonplace today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the crossroads of values. It is, for the sovereign people of the country to settle these conflicts yet the courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial, he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law, but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. This Court, in its anxiety to facilitate the parties to have a speedy trial gave directions on 16-2-1984 [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under which it should have been guided. By reason of giving the directions on 16-2-1984 [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain*

forever a blot on justice. It has been said long time ago that actus curiae neminem gravabit– an act of the court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law."

253. It is therefore submitted that it would be apposite to notice the position which would be in case the State authorities were, by an order of the court, restrained from taking possession, though they would have otherwise taken the possession in the absence of such an order. In the said scenario, it would highly unfair and judicially imprudent to render the acquisition as lapsed on account of passage of five years despite there being no laxity on part of the State. It is therefore humbly submitted that in order give Section 24(2) a purposive interpretation which is in consonance with elementary rules of common law and fairness, it would necessarily exclude the time period of a stay/status quo granted by a Court in computing the time period of five years under Section 24(2).

Common law and inherent fairness of the law

Casus Omissus - Not applicable

254. Without prejudice to the above, basis of the judgment in Shree Balaji *supra*, that Section 24(2) with respect to the issue of five years, is a case of casus omissus as wherever the legislature wanted exclusion of stay period [Section 19(7) and Section 69(2) of the 2013 Act], a specific provision was made. It is submitted that the aforesaid assertion is grounded in the principle of interpretation that if something is expressed in a provision, anything contrary is impliedly excluded i.e. the maxim - *expressio unius est exclusio alterius* [the explicit mention of one (thing) is the exclusion of another].

255. It is submitted that the principle of casus omissus is not necessarily applicable in all cases. It is submitted that in this regard, the observations of Lord Denning may provide some guidance. It is submitted that Lord Denning, in ***Seaford Court Estates Ld. V. Asher,*** **[1949] 2 K.B. 481**, has held as under :

"The question for decision in this case is whether we are at liberty to extend the ordinary meaning of "burden" so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ld. v. Miller); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges

trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word sc as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.
Approaching this case in that way, I cannot help feeling that the legislature had not specifically in mind a contingent burden such as we have here. If it had would it not have put it on the same footing as an actual burden? I think it would. It would have permitted an increase of rent when the terms were so changed as to put a positive legal burden on the landlord. If the parties expressly agreed between themselves the amount of the increase on that account the court would give effect to their agreement. But if, as here, they did not direct their minds to the point, the court has itself to assess the amount of the increase. It has to say how much the tenant should pay "in respect of" the transfer of this burden to the landlord. It should do this by asking what a willing tenant would agree to pay and a willing landlord would agree to accept in respect of it. Just as in the earlier cases the courts were able to assess the value of the "fair wear and tear" clause, and of a "cooker." so they can assess the value of the hot water clause and translate it fairly in terms of rent; and what applies to hot water applies also to the removal of refuse and so forth. I agree that the appeal should be allowed, and with the order proposed by Asquith L.J."

256. It is submitted that said observations of Lord Denning has found acceptance in numerous cases of this Hon'ble Court. It is submitted that this Hon'ble in ***M. Pentiah v. Muddala Veeramallappa***, (1961) 2 SCR 295, held as under :

> *"27. There is no doubt that the Act raises some difficulty. It was certainly not intended that the members elected to the Committee under the repealed Act should be given a permanent tenure of office nor that there would be no elections under the new Act. Yet such a result would appear to follow if the language used in the new Act is strictly and literally interpreted. It is however well established that "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or in justice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a*

statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a Statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good Sense.": see Maxwell on Statutes (10th Edn.) p. 229. In Seaford Court Estates Ltd. v. Asher [(1949) 2 AER 155, 164] , Denning, L.J. said:

> *"when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written word so as to give "force and life" to the intention of the legislature .... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

I conceive it my duty, therefore, so to read the new Act, unless I am prevented by the intractability of the language used, as to make it carry out the obvious intention of the legislature. Now there does not seem to be the slightest doubt that the intention of the makers of the new Act was that there should be elections held under it and that the Municipal Committees should be constituted by such elections to run the administration of the municipalities. The sections to which I have so far referred and the other provisions of the new Act make this perfectly plain. Thus Section 5 provides for the establishment of municipal committees and Section 8 states that the committees shall consist of a certain number of elected members. The other sections show that the Committees shall have charge of the administration of the municipalities for the benefit of the dwellers within them. It is plain that the entire object of the new Act would fail if no general election could be held under it."

257. It is submitted that this Hon'ble Court in ***Hameedia Hardware Stores v. B. Mohan Lal Sowcar***, (1988) 2 SCC 513, held as under :

> *"10. The main ground on which the learned Judge who decided Abdul Rahman case [(1984) 1 Mad LJ 410] held that it was not necessary to establish the bona fide requirement of the landlord when he made an application for eviction under Section 10(3)(a)(iii) of the Act was that, the word "require" was not to be found in Section 10(3)(a)(iii) of the Act. We are of the view that having regard to the pattern in which clause (a) of sub-section (3) of Section 10 of the Act is enacted and also the context, the words "if the landlord required it for his own use or for the use of any member of his family" which are found in sub-clause (ii) of Section 10(3)(a) of the Act have to be read also into sub-clause (iii) of Sectior 10(3)(a) ot the Act. Sub-clauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clause by adding a conjunction "and" between the said two sub-clauses, in which event the clause would have read thus: "in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use*

of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own". If the two sub-clauses are not so read, it would lead to an absurd result. The non-residential building referred to in sub-clause (ii) is a building which is used for the purpose of keeping a vehicle or adapted for such use and all other non-residential buildings fall under sub-clause (iii). The State Legislature cannot be attributed with the intention that it required a more stringent proof by insisting upon proof of bona fides of his requirement or need also when a landlord is seeking eviction of a tenant from a garage than in the case of a non-residential building which is occupied by large commercial house for carrying on business. The learned counsel for the respondent was not able to explain as to why the State Legislature gave greater protection to tenants occupying premises used for keeping vehicles or adapted for such use than to tenants occupying other types of non-residential buildings. It is no doubt true that the court while construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful.

11. In Seaford Court Estates Ltd. v. Asher [(1949) 2 All ER 155, 164] Lord Denning, L.J. said:

> *"[W]hen a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*

12. This rule of construction is quoted with approval by this Court in M. Pentiah v. Muddala Veeramallappa [(1961) 2 SCR 295, 314 : AIR 1961 SC 1107] and it is also referred to by Beg, C.J. in Bangalore Water Supply & Sewerage Board v. R. Rajappa [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : AIR 1978 SC 548 : (1978) 3 SCR 207] . In the present case by insisting on the proof of the bona fides of the requirement of the landlord, the court is not doing any violence to the statute nor embarking upon any legislative action. The court is only construing the words of the statute in a reasonable way having regard to the context."

258. It is submitted that this Hon'ble Court in ***Madan Singh Shekhawat v. Union of India***, (1999) 6 SCC 459, held as under :

> *"16. In Seaford Court Estates Ltd. v. Asher [(1949) 2 All ER 155 : (1949) 2 KB 481] Lord Denning, L.J. (as he then was) held:*

> *"[W]hen a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."*
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> *17. This rule of construction is quoted with approval by this Court in M. Pentiah v. Muddala Veeramallappa [AIR 1961 SC 1107 : (1961) 2 SCR 295] and also referred to by Beg, C.J. in Bangalore Water Supply & Sewerage Board v. A. Rajappa [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207] and in Hameedia Hardware Stores v. B. Mohan Lal Sowcar [(1988) 2 SCC 513] .*
>
> *18. Applying the above rule, we are of the opinion that the rule-makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of the journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself.*
>
> *19. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, the same will not be issued if the person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly, meaning thereby that if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised."*

259. Therefore, it is clear that casus omission and the limited power of the Hon'ble Court is not absolute rule. It is submitted that in appropriate circumstances, this Hon'ble Court is not powerless to purposively interpret a provision in order to avoid inconsistency or absurdity rather than ensuring harsh consequences to one party which the legislature could have intended.

260. Further, it is submitted that while whilst *expressio unius est exclusio alterius* [the explicit mention of one (thing) is the exclusion of another] is indeed a helpful tool for interpretation but the universal application of the said maxim, including causus omissus, is fraught with difficulties.

261. It is submitted that this Hon'ble Court, in a recent judgment in ***Energy Watchdog v. CERC***, (2017) 14 SCC 80, held as under :

> *52. However, we were referred to other clauses in the PPA, for example, Clauses 12.4(f)(ii), 4.1.1(a) and 17.1, all of which speak of Indian law. It was, therefore, argued that wherever the parties wanted to refer to Indian law, they did so explicitly, and from this it should be inferred that the expression "law" would otherwise include all laws whether Indian or otherwise.*
>
> *53. This argument is based on the Latin maxim expressio unius est exclusio alterius. This maxim has been referred to in a number of judgments of this Court in which it has been described as a "useful servant but a dangerous master". (See for example CCE v. National Tobacco Co. of India Ltd. [CCE v. National Tobacco Co. of India Ltd., (1972) 2 SCC 560] , SCC at para 30.)*
>
> *54. From a reading of the above, it is clear that if otherwise the expression "any law" in Clause 13 when read with the definition of "law" and "electricity laws" leads unequivocally to the conclusion that it refers only to the law of India, it would be unsafe to rely upon the other clauses of the agreement where Indian law is specifically mentioned to negate this conclusion.*

Casus omissus is a dangerous master

262. Further, in ***Mary Angel*** v. ***State of T.N.***, (1999) 5 SCC 209, this Hon'ble Court has held that the mere fact that in some of the provisions there is a mention about period of stay being excluded, cannot be taken to be conclusive that in other provisions the said exclusion would have no applicability wherein the said phrase is not used. This Hon'ble Court held as under:

> *"19. Further, for the rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius", it has been considered in the decision rendered by the Queen's Bench in Dean v. Wiesengrund [Dean v. Wiesengrund, (1955) 2 QB 120 : (1955) 2 WLR 1171 (CA)] . The Court considered the said maxim and held that after all it is no more than an aid to construction and has little, if any, weight where it is possible, to account for the "inclusio unius" on grounds other than intention to effect the "exclusio alterius". Thereafter, the Court referred to the following passage from the case of Colquhoun v. Brooks[Colquhoun v. Brooks, (1887) LR 19 QBD 400 (DC)] , QBD at p. 406 wherein the Court called for its approval—*
>
> *'... "the maxim expressio unius est exclusio alterius has been pressed upon us. I agree with what is said in the court below by Wills, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes of documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice." In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the 1920 Act uncertain and capricious in its operation.' "*

263. In ***CCE*** v. ***National Tobacco Co. of India Ltd.***, (1972) 2 SCC 560, it was held as under:

"30. The question whether there was or was not an implied power to hold an enquiry in the circumstances of the case before us, in view of the provisions of Section 4 of the Act, read with Rule 10-A of the Central Excise Rules, was not examined by the Calcutta High Court because it erroneously shut out consideration of the meaning and applicability of Rule 10-A. The High Court's view was based on an application of the rule of construction that where a mode of performing a duty is laid down by law it must be performed in that mode or not at all. This rule flows from the maxim: Expressio unius est exclusio alterius.But, as was pointed out by Wills, J., in Colquhoun v. Brooks [Colquhoun v. Brooks, (1887) LR 19 QBD 400 (DC)] , this maxim "is often a valuable servant, but a dangerous master...." [Colquhoun v. Brooks, (1888) 21 QBD 52 at p. 65 (CA)] The rule is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these. Moreover, the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for the performance of a duty. Although Rule 52 makes an assessment obligatory before goods are removed by a manufacturer, yet, neither that rule nor any other, rule, as already indicated above, has specified the detailed procedure for an assessment. There is no express prohibition anywhere against an assessment at any other time in the circumstances of a case like the one before us where no "assessment", as it is understood in law, took place at all. On the other hand, Rule 10-A indicates that there are residuary powers of making a demand in special circumstances not foreseen by the framers of the Act or the rules. If the assessee disputes the correctness of the demand an assessment becomes necessary to protect the interests of the assessee. A case like the one before us falls more properly within the residuary class of unforeseen cases. We think that, from the provisions of Section 4 of the Act, read with Rule 10-A, an implied power to carry out or complete an assessment, not specifically provided for by the rules, can be inferred. No writs of prohibition or mandamus were, therefore, called for in the circumstances of the case."

264. It is submitted that therefore the principle of casus omissus and the absence of statutory exclusion of such time period under Section 24(2) [and the simultaneous mention of the exclusion in other part of the statute] cannot be presumed to exclude the time period of a stay or status quo order. It is submitted that considering the basic principles of justice and fairness and the enormity of the provision under Section 24(2) it would be apposite for this Hon'ble Court to interpret the same without a pedantic adherence to the principle of *casus omissus.*

Doctrine of Impossibility

265. Without prejudice to the above, it is submitted that the doctrine of ***lex non cogit ad impossibilia*** would be applicable. It is submitted that in case there is a stay/staus quo order, the performance of the obligations contemplated in Section 24(2), becomes an impossibility for the State. In

light of the same, it is submitted that law cannot expect the State authorities to do what cannot possibly be performed by it. It is submitted that this Hon'ble Court in *Chandra Kishore Jha* v. *Mahavir Prasad*, (1999) 8 SCC 266, held as under :

> *"17. In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the rules thereunder and, therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] ; Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 : 1954 Cri LJ 910] and State of U.P. v. Singhara Singh [State of U.P. v. Singhara Singh, AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2) : (1964) 4 SCR 485] .) An election petition under the Rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done. However, we cannot ignore that the situation in the present case was not of the making of the appellant. Neither the Designated Election Judge before whom the election petition could be formally presented in the open court nor the Bench hearing civil applications and motions was admittedly available on 16-5-1995 after 3.15 p.m., after the obituary reference since admittedly the Chief Justice of the High Court had declared that "the Court shall not sit for the rest of the day" after 3.15 p.m. Law does not expect a party to do the impossible—impossibilium nulla obligatio est—as in the instant case, the election petition could not be filed on 16-5-1995 during the court hours, as far all intents and purposes, the Court was [Ed.: The matter between two asterisks has been emphasised in original.] closed [Ed.: The matter between two asterisks has been emphasised in original.] on 16-5-1995 after 3.15 p.m."*

Impossibility cannot be performed

266. It is submitted that this Hon'ble Court in *IFCI Ltd.* v. *Cannanore Spg. & Wvg. Mills Ltd.*, (2002) 5 SCC, held as under:

> *"30. The Latin maxim referred to the English judgment lex non cogit ad impossibilia also expressed as impotentia excusat legem in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation and the same is akin to the Roman maxim nemo tenetur ad impossibilie. In Broom's Legal Maxims the state of the situation has been described as below:*
>
> *'It is, then, a general rule which admits of ample practical illustration, that impotentia excusat legem; where the law*

creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t): and though impossibility of performance is, in general, no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. Thus in a case in which consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim lex non cogit ad impossibilia applied, and Lindley, L.J., said: 'We have to do with [Ed.: The matter between two asterisks has been emphasised in original.] implied [Ed.: The matter between two asterisks has been emphasised in original.] obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.'
"

267. It is submitted that this Hon'ble Court in ***Presidential Poll, In re,*** (1974) 2 SCC, held as under :

"15. ... The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. 'Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.' Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims 10th Edn. at pp. 162-63 and Craies on Statute Law 6th Edn. at p. 268)."

268. It is submitted that this Hon'ble Court in ***Mohd. Gazi*** v. ***State of M.P.,*** (2000) 4 SCC 342, held as under :

"7. In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit – an act of the court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia – the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception

in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey[Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398] and Gursharan Singh v. NDMC [Gursharan Singh v. NDMC, (1996) 2 SCC 459] ."

269. It is submitted that in ***HUDA* v. *Babeswar Kanhar***, (2005) 1 SCC 191, this Hon'ble held as under:

> *"5. What is stipulated in Clause 4 of the letter dated 30-10-2001 is a communication regarding refusal to accept the allotment. This was done on 28-11-2001. Respondent 1 cannot be put to loss for the closure of the office of HUDA on 1-12-2001 and 2-12-2001 and the postal holiday on 30-11-2001. In fact he had no control over these matters. Even the logic of Section 10 of the General Clauses Act, 1897 can be pressed into service. Apart from the said section and various provisions in various other Acts, there is the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity (see Sambasiva Chari v. Ramasami Reddi [Sambasiva Chari v. Ramasami Reddi, ILR (1899) 22 Mad 179]). The underlying object of the principle is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. The reason is that law does not compel the performance of an impossibility. (See Hossein Ally v. Donzelle [Hossein Ally v. Donzelle, ILR (1880) 5 Cal 906] .) Every consideration of justice and expediency would require that the accepted principle which underlies Section 10 of the General Clauses Act should be applied in cases where it does not otherwise in terms apply. The principles underlying are lex non cogit ad impossibilia (the law does not compel a man to do the impossible) and actus curiae neminem gravabit (the act of court shall prejudice no man). Above being the position, there is nothing infirm in the orders passed by the forums below. However, the rate of interest fixed appears to be slightly on the higher side and is reduced to 9% to be paid with effect from 3-12-2001 i.e. the date on which the letter was received by HUDA."*

Vested rights cannot be laid to dust for non-performance of an impossibility

270. It is submitted that there are different variation to the above said doctrine including ***nemo tenetur ad impossibilia*** and ***impotentia excusat legem*** which also find reference in ***Standard Chartered Bank v. Directorate of Enforcement***, (2005) 4 SCC 530. In light of the above, it is submitted that the performace of the obligation to take over physical possession or to compensation being "paid" to the landowners becomes an impossibility due to a stay/status quo order. Therefore, it would highly prejudicial to tide over all vested right and bonafide actions on part of stakeholder to render an acquisition as lapsed merely on account of passage of time due to a stay order which is essentially an act of the Court and not of the party litigating.

271. It is submitted that it is the important to keep in consideration the principle of restitution whilst interpreting the concept of five years in light of stay/status quo orders. It is submitted that the principle of restitution, common in civil procedure, enjoins a duty upon the courts to do turn the clock back at the time of final decision in certain situations. It is submitted that the said principle places the successful party, at the end of the litigation, as far as possible at the same place unless it would have been had the interim order not being passed. The said principle would have some bearing on the interpretive exercise being carried out in the present context. This Hon'ble Court in ***South Eastern Coal Field Ltd.*** v. ***State of M.P.***, (2003) 8 SCC 648, held that no party can take advantage of litigation and observed as under:

Turning the clock back

> *"26. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution or decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue [Zafar Khan v. Board of Revenue, 1984 Supp SCC 505] .) In law, the term "restitution" is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edn., p. 1315)."*
>
> ...
>
> *28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party*

would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

272. It is submitted that this Hon'ble Court in ***State of Gujarat*** v. ***Essar Oil Ltd.***, (2012) 3 SCC 522, held as under:

"61. The concept of restitution is virtually a common law principle and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court which prevents a party from retaining money or some benefit derived from another which it has received by way of an erroneous decree of court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within a third category of common law remedy which is called quasi-contract or restitution.

62. If we analyse the concept of restitution one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, Fourth Edn., Vol. 9, p. 434).

63. If we look at Restatement of the Law of Restitution by American Law Institute (1937 American Law Institute Publishers, St. Paul) we get that a person is enriched if he has received a benefit and similarly a person is unjustly enriched if the retention of the benefit would be unjust. Now the question is what constitutes a benefit. A person confers benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other or in a way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another but also where he saves the other from expense or loss. Thus the word "benefit" therefore denotes any form of advantage (p. 12 of the Restatement of the Law of Restitution by American Law Institute).

64. Ordinarily in cases of restitution, if there is a benefit to one, there is a corresponding loss to other and in such cases;

the benefiting party is also under a duty to give to the losing party, the amount by which he has been enriched."

273. It is submitted that this Hon'ble Court in ***Ouseph Mathai*** v. ***M. Abdul Khadir***, (2002) 1 SCC 319, held as under:

> *"13. ... [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. **After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay.** Grant of stay does not automatically amount to extension of a statutory protection."*

274. It is submitted that the Hon'ble Court's constant endeavour ought to be to ensure that every stakeholder gets a fair and reasonable treatment before the Courts. It is submitted that the Hon'ble Courts ought to adopt adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to interpret Section 24(2) and the meaning of the phrase "five years or more prior". The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases concerning Section 24 and the lapsing enshrined there under. It is submitted that principle of restitution forms a basic principle of administration of justice and cannot be ignored while interpreting Section 24(2).

Restitution is fair and reasonable

275. With regard to the previous Chapter, this Constitution Bench may place reliance on paragraphs 133-189 of the Indore Development Authority *supra*.

276. This Hon'ble Court, vide order dated 23.10.2019, framed the following question of law :

> *"4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression "the physical possession of the land has not been taken" occurring in Section 24(2) of the Act of 2013?"*

The answer, on behalf of the State, on this question, is as under :

THE MODE OF TAKING POSSESSION AND MEANING OF POSSESSION

Reference is not required

277. It is submitted that this Hon'ble Court in Velaxan Kumar *supra* held that Section 24(2) of the 2013 Act being a benevolent provision, even though possession had been taken, but if due procedure was not followed and, *the* photographs showed that the landowners were in possession, the proceedings would lapse. Thereafter, the three judge bench in Indore Development *supra* has expressly overruled the said judgment placing reliance on *Banda Development Authority v. Moti Lal Agarwal*, (2011) 5 SCC 394.

278. Therefore, it is clear that the decision in Indore Development *supra*, has overruled the judgment in Velaxan Kumar *supra*. It is submitted that the doubts expressed in G.D. Goenka *supra* and the reference order in IDA v. Shyam Verma *supra*, were both based on the conflict between two three judge bench decision of this Hon'ble Court, i.e. Pune Municipal *supra* and Indore Development *supra*. It is submitted that the reference order or the G.D. Goenka *supra*, nowhere doubts the view taken in Indore Development Authority *supra* - of the overruling of the judgment in Velaxan Kumar *supra*. It is submitted that it is settled law that larger bench judgments can overrule judgments by Division Benches of this Hon'ble Court. In light of the above, it is submitted that there is no requirement of the said question being re-agitated before the Constitution Bench.

No need for a larger bench.

Submissions on merits

279. Without prejudice, it is submitted that when the State acquired the land and has drawn memorandum of taking possession that is the way the State takes possession of large tract of land acquired, the State ought not necessarily physically occupy the said land after forcefully displacing who were physically in possession. Possession in law is deemed to be physical possession for the State. This Court in a number of decisions has accepted the mode of drawing panchnama by the State consistently to be a mode of taking possession.

280. It is submitted that this Hon'ble Court in ***T.N. Housing Board*** v. ***A. Viswam***, (1996) 8 SCC 259, this Hon'ble Court has held that recording of memorandum/panchnama by the Land Acquisition Officer in the presence of witnesses signed by them would constitute taking possession of land. This Hon'ble Court observed as under :

> *"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."*

281. It is submitted that this Hon'ble Court in ***Banda Development Authority*** v. ***Moti Lal Agarwal***, (2011) 5 SCC 394, this Hon'ble Court observed that preparing a panchnama is sufficient to constitute taking of possession. If acquisition is of a large tract of land, it may not be possible to take physical possession of each and every parcel of the land and it would be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and getting their signatures. The Court held as under :

> *"37. The principles which can be culled out from the abovenoted judgments are:*

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State Authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

All eventualities taken care of in the judgment in Banda supra

282. It is submitted that this Hon'ble Court in ***State of T.N.*** v. ***Mahalakshmi Ammal,*** (1996) 7 SCC 269, this Hon'ble Court held as under :

"9. It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, panchnama, which is a legally accepted norm.

It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court [Mahalakshmi Ammal v. State of T.N., 1993 SCC OnLine Mad 98 : AIR 1993 Mad 366] was not justified in interfering with the award."

283. It is submitted that this Hon'ble Court in ***Balmokand Khatri Educational and Industrial Trust*** v. ***State of Punjab,*** (1996) 4 SCC 212, it is difficult to take physical possession of land under compulsory acquisition. The normal rule of taking possession is drafting the panchnama in the presence of panchas, is accepted mode of taking possession of land. The Court held as under :

"4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976, by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."

284. It is submitted that this Hon'ble Court in ***P.K. Kalburqi*** v. ***State of Karnataka,*** (2005) 12 SCC 489, held that if land were vacant and unoccupied, taking symbolical possession would be enough. It was held that in case land was vacant only symbolical possession could be taken and such possession would amount to vesting the land in the Government.

285. It is submitted that this Hon'ble Court in ***Raghbir Singh Sehrawat*** v. ***State of Haryana,*** (2012) 1 SCC 792, this Hon'ble Court held as under :

"28. If the appellant's case is examined in the light of the propositions culled out in Banda Development Authority v. Moti Lal Agarwal [Banda Development Authority v. Moti Lal Agarwal, (2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747] we have no hesitation to hold that possession of the acquired land had not been taken from the appellant on 28-11-2008 i.e. the day on which the award was declared by the Land Acquisition Collector because crops were standing on several parcels of land including the appellant's land and possession thereof could not have been taken without giving notice to the landowners. That apart, it was humanly impossible to give notice to large number of persons on the same day and take actual possession of land comprised in various survey numbers (total measuring 214 acres 5 kanals and 2 marlas)."

286. It is submitted that this Hon'ble Court in ***Omprakash Verma*** v. ***State of A.P.***, (2010) 13 SCC 158, this Hon'ble Court held as under :

"85. As pointed out earlier, the expression "civil appeals are allowed" carry only one meaning i.e. the judgment [K. Anjana Devi v. State of A.P., 2007 SCC OnLine AP 26 : (2007) 4 ALD 297] of the High Court is set aside and the writ petitions are dismissed. Moreover, the determination of surplus land based on the declaration of owners has become final long back. The notifications issued under Section 10 of the Act and the panchnama taken possession are also final. On behalf of the State, it was asserted that the possession of surplus land was taken on 20-7-1993 and the panchnama was executed showing that the possession has been taken. It is signed by witnesses. We have perused the details which are available in the paper book. It is settled law that where possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. [Vide Sita Ram Bhandar Society v. State (NCT of Delhi) [Sita Ram Bhandar Society v. State (NCT of Delhi), (2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268] .]

86. It is not in dispute that the panchnama has not been questioned in any proceedings by any of the appellants. Though it is stated that Chanakyapuri Cooperative Society was in possession at one stage and Shri Venkateshawar Enterprises was given possession by the owners and possession was also given to Golden Hill Construction Corporation and thereafter it was given to the purchasers, the fact remains that the owners are not in possession. In view of the same, the finding of the High Court that the possession was taken by the State legally and validly through a panchnama is absolutely correct and deserves to be upheld."

287. It is submitted that this Hon'ble Court in ***M. Venkatesh*** v. ***BDA***, (2015) 17 SCC 1, this Hon'ble Court held as under:

"17. To the same effect are the decisions of this Court in Ajay Krishan Shinghal v. Union of India [Ajay Krishan Shinghal v. Union of India, (1996) 10 SCC 721] , Mahavir v. Rural Institute [Mahavir v. Rural Institute, (1995) 5 SCC 335] , Gian Chand v. Gopala [Gian Chand v. Gopala,

(1995) 2 SCC 528] , Meera Sahni v. LAO [Meera Sahni v. LAO, (2008) 9 SCC 177] and Tika Ram v. State of U.P. [Tika Ram v. State of U.P., (2009) 10 SCC 689 : (2009) 4 SCC (Civ) 328] More importantly, as on the date of the suit, the respondents had not completed 12 years in possession of the suit property so as to entitle them to claim adverse possession against BDA, the true owner. The argument that possession of the land was never taken also needs notice only to be rejected for it is settled that one of the modes of taking possession is by drawing a panchnama which part has been done to perfection according to the evidence led by the defendant BDA. Decisions of this Court in T.N. Housing Board v. A. Viswam [T.N. Housing Board v. A. Viswam, (1996) 8 SCC 259] andL&T v. State of Gujarat [L&T v. State of Gujarat, (1998) 4 SCC 387] , sufficiently support BDA that the mode of taking possession adopted by it was a permissible mode."

(emphasis supplied)

288. It is submitted that this Hon'ble Court in *Banda Development Authority* v. *Moti Lal Agarwal*, (2011) 5 SCC 394, examined several aspects of the matter and held that if land was vacant, going to the spot and preparing a panchnama by a State authority would ordinarily be treated as sufficient to constitute the taking of possession. Further, it held that if crop is standing, notice was required to be given to the occupier of building or structure and thereafter taking possession in presence of independent witnesses and in spite of refusal by the owner did not mean that possession of the land has not been taken. Further, it held that if acquisition is of a large tract of land, it would not be possible to take physical possession of each and every parcel of such land. Further, it held that taking "symbolic" possession, by preparing an appropriate document, in presence of independent witnesses, was sufficient. Further, it was held that utilisation of a major portion of acquired land for public purpose was itself sufficient to prove taking over possession.

289. It is submitted that considering the factual circumstances that arise in numerous land acquisitions and considering the fact that Section 24(2) is a harsh lapsing provision, it is prudent and judicially advisable to interpret physical possession to be possession as per the ratio laid down by this Hon'ble Court in Banda Development *supra.* It is submitted that the re-opened concluded acqusitions on the basis of photographs submitted by the landowners would defeat the limited purpose of Section 24(2) and further result in a very wide and expansive application of the lasing provision which was never the legislative intent.

290. With regard to the previous Chapter, this Constitution Bench may place reliance on paragraphs 104-119 of the Indore Development Authority *supra.*

Co-ordinate bench can declare a judgment to be per icuriam if the grounds exist

291. It is submitted that submission before the bench in G.D. Goenka *supra*, as recorded by the Hon'ble Bench in order dated 21.02.2018 that "a Bench of 3 learned judges cannot hold another decision rendered by a Bench of 3 learned judges as *per incuriam"* is totally unfounded in law. It is submitted that there have numerous occasions wherein different co-ordinate or benches of lesser strength have declared a judgment to be per incuriam.

292. It is submitted that the judgment rendered in ***Jarnail Singh vs Lachhmi Narain Gupta***, (2018) 10 SCC 396, by a bench of five Hon'ble judges, rendered a judgment ***M Nagaraj v. Union of India***, (2006) 8 SCC 212, to be incorrect on a particular point. It is submitted that in M. Nagaraj *supra*, this Hon'ble Court upheld the constitutional validity of Article 16(4A) and Article 16(4B) of the Constitution of India by holding that they do not alter the structure of Article 16(4). However, this Hon'ble Court held that the reservations in promotions could only be provided if the State is of the opinion that SC/STs are backward and are inadequately represented in the service. This Hon'ble Court further held that the State would necessarily need to show quantifiable data depicting backwardness, inadequacy of representation. This Hon'ble Court further held that the concept of 'creamy layer' and compliance of Article 335 i.e. maintenance of overall efficiency in administration, is necessarily to be maintained for extending reservations in matters of promotions. Thereafter, this Hon'ble Supreme Court in Jarnail Singh *supra*, vide judgment dated 26.09.2018, held that the requirement under M Nagaraj *supra* to show quantifiable data depicting backwardness of SC/STs, was not correct. However, the Hon'ble Supreme Court, upheld the requirements of requiring quantifiable data (cadre-wise) depicting '*inadequacy in representation*' and the requirement of adhering to the 'creamy layer' concept and Article 335 i.e. efficiency of administration. This Hon'ble Court held as under :

Jarnail invalidating M Nagaraj case

> *"36. Thus, we conclude that the judgment in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] does not need to be referred to a seven-Judge Bench. However, the conclusion in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney (1) [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] is held to be invalid to this extent."*

293. Therefore, it is submitted that therefore, as a matter of proposition of law, it is incorrect to state that a bench of co-ordinate strength cannot declare a judgment rendered by a bench of co-equal strength to be per incuriam. It is submitted that this Hon'ble Court in ***State of U.P.*** v. ***Synthetics and Chemicals Ltd.***, (1991) 4 SCC 139, speaking through a Division Bench held that a particular conclusion of a judgment rendered by a bench of seven Hon'ble Judges in ***Synthetics and Chemicals Ltd.*** v. ***State of U.P.***, (1990) 1 SCC 109 as per incuriam. The relevant portion of the said judgment is reproduced herein under :

Per Incuriam in U.P. Synthetics

> *"36. The High Court, in our view, was clearly in error in striking down the impugned provision which undoubtedly falls within the legislative competence of the State, being referable to Entry 54 of List II. We are firmly of the view that the decision of this Court in Synthetics [Synthetics and Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109] is not an authority for the proposition canvassed by the assessee in challenging the provision. This Court has not, and could not have, intended to say that the Price Control Orders made by the Central Government under the IDR Act imposed a fetter on the legislative power of the State under Entry 54 of List II to levy taxes on the sale or purchase of goods. The reference to sales tax in para 86 of that judgment was merely accidental or per incuriam and has, therefore, no effect on the impugned levy.*
>
> *40. 'Incuria literally means 'carelessness'. In practice per in curium appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority'. 1944 1 KB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey AIR (1962) SC 83, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decisions of an appellate court is not binding.*
>
> *41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. [(1989) 1 SCC 101] The bench held that, 'precedents sub-*

silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

294. It is submitted that this Hon'ble Court in ***Municipal Corporation of Delhi*** v. ***Gurnam Kaur***, (1989) 1 SCC 101, speaking through a Bench of three Hon'ble judges held that a particular order rendered by a co-ordinate bench to be per incuriam. The relevant part of the said judgment is extracted herein under :

"10. It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] was made not only with the consent of the parties but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution and said:

> *Article 38(2) of the Constitution mandates the State to strive to minimise, amongst others, the inequalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space*

in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the specious plea that they constitute an obstruction to easy access to hospitals. A little more space in the access to the hospital may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as possible this should be avoided which we propose to do by this short order.

This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the Metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

Ignorance of a statutory Rule is ground for declaring a judgment as Per Incuriam

> *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*

12. In Gerard v. Worth of Paris Ltd. (k). [(1936) 2 All ER 905 (CA)] , the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be

made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675] , the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

295. It is submitted that this Hon'ble Court in ***Narmada Bachao Andolan (III)*** v. ***State of Madhya Pradesh,*** (2011) 7 SCC 639, speaking through a Bench of three Hon'ble judges held that a part of judgment in rendered in ***Narmada Bachao Andolan v. Union of India,*** (2005) 4 SCC 32, by a bench of three Hon'ble Judges to be per incuriam. The relevant part of the said judgment is extracted herein under :

"Per incuriam doctrine

65. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.

66. While dealing with the observations made by a seven-Judge Bench in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12 : AIR 1990 SC 85] , the five-Judge Bench in State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201] , observed as under: (Kesoram Industries Ltd. case [(2004) 10 SCC 201] , SCC pp. 292 & 297, paras 57 & 71)

"57. ... A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, ...

** * **

71. ... A statement caused by an apparent typographical or inadvertent error in a judgment of the court should not be misunderstood as declaration of such law by the court."

(emphasis added)

(See also Mamleshwar Prasad v. Kanhaiya Lal [(1975) 2 SCC 232 : AIR 1975 SC 907] , A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531] , State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] and Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] .)

67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

Forgetfulness and ignorance as relevant factors

68. Admittedly, the NWDT award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had given concessions/relief over and above the said award. Thus, Narmada Bachao Andolan (1) [(2000) 10 SCC 664] has been decided with the presumption that such a right had been conferred upon major sons by the NWDT award and Narmada Bachao Andolan (2) [(2005) 4 SCC 32] has been decided following the said judgment and interpreting the definition of "family" contained in the R&R Policy. When the two earlier cases were being considered by the Court, it had not been brought to its notice that the NWDT award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether, as we will consider the definition of the word "family" at a later stage, the mistake inadvertently committed by this Court earlier, should be perpetuated.

69. The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. [1993 Supp (4) SCC 536 : AIR 1993 SC 1048] observed as under: (SCC p. 551, para 12)

> *"12. ... '2. ... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [1 NY 3 (1847)] , AMY at p. 18:*
>
> *"a Judge ought to be wise enough to know that he is fallible and therefore ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors."' [Ed.: As observed in Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43, p. 46, para 2.] "*

(See also Nirmal Jeet Kaur v. State of M.P. [(2004) 7 SCC 558 : 2004 SCC (Cri) 1989] and Mayuram Subramanian Srinivasan v. CBI [(2006) 5 SCC 752 : (2006) 3 SCC (Cri) 83 : AIR 2006 SC 2449] .)

70. In Ministry of Information & Broadcasting, In re [(1995) 3 SCC 619] this Court observed: (SCC p. 629, para 10)

> *"10. ... None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge*

who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors."

296. It is submitted that this Hon'ble Court in ***Thota Sesharathamma*** v. ***Thota Manikyamma,*** (1991) 4 SCC, speaking through a Bench of two Hon'ble judges held that a part of judgment in rendered in ***Karmi*** v. ***Amru,*** (1972) 4 SCC 86, by a bench of three Hon'ble Judges to be per incuriam. The relevant part of the said judgment is extracted herein under :

"10. The case of Mst Karmi v. Amru [(1972) 4 SCC 86 : AIR 1971 SC 745] on which a reliance has now been placed by learned counsel for the appellant and petitioners was also decided by a bench of three Judges Hon. J.C. Shah, K.S. Hegde and A.N. Grover, JJ. It may be noted that two Hon'ble Judges, namely, J.C. Shah and A.N. Grover were common to both the cases. In Mst Karmi v. Amru [(1972) 4 SCC 86 : AIR 1971 SC 745] , one Jaimal died in 1938 leaving his wife Nihali. His son Ditta pre-deceased him. Appellant in the above case was the daughter of Ditta and the respondents were collaterals of Jaimal. Jaimal first executed a will dated December 18, 1935 and by a subsequent will dated November 13, 1937 revoked the first will. By the second will a life estate was given to Nihali and thereafter the property was made to devolve on Bhagtu and Amru collaterals. On the death of Jaimal in 1938, properties were mutated in the name of Nihali. Nihali died in 1960/61. The appellant Mst Karmi claimed right on the basis of a will dated April 25, 1958 executed by Nihali in her favour. It was held that the life estate given to a widow under the will of her husband cannot become an absolute estate under the provisions of the Hindu Succession Act. Thereafter, the appellant cannot claim title to the properties on the basis of the will executed by the widow Nihali in her favour. It is a short judgment without adverting to any provisions of Section 14(1) or 14(2) of the Act. The judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in Badri Pershad v. Smt Kanso Devi [(1969) 2 SCC 586 : (1970) 2 SCR 95 : AIR 1970 SC 963] . The decision in Mst Karmi [(1972) 4 SCC 86 : AIR 1971 SC 745] cannot be considered as an authority on the ambit and scope of Section 14(1) and (2) of the Act."

297. It is submitted that this Hon'ble Court in ***R. Thiruvirkolam*** v. ***Presiding Officer,*** (1997) 1 SCC 9, speaking through a Bench of two Hon'ble judges observed that it is not bound to accept the decision rendered in ***Gujarat Steel Tubes Ltd.*** v. ***Mazdoor Sabha,*** (1980) 2

SCC 593, which was not in conformity with the decision of a Constitution Bench in *P.H. Kalyani* v. *Air France*, (1964) 2 SCR 104. The relevant part of the said judgment is extracted herein under :

> *"11. With great respect, we must say that the abovequoted observations in Gujarat Steel [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] at p. 215 are not in line with the decision in Kalyani [AIR 1963 SC 1756 : (1964) 2 SCR 104] which was binding or with D.C. Roy [D.C. Roy v. M.P. Industrial Court, (1976) 3 SCC 693 : 1976 SCC (L&S) 484] to which the learned Judge, Krishna Iyer, J. was a party. It also does not match with the underlying juristic principle discussed in Wade. For these reasons, we are bound to follow the Constitution Bench decision in Kalyani [AIR 1963 SC 1756 : (1964) 2 SCR 104] which is the binding authority on the point."*

298. It is submitted that this Hon'ble Court in ***N.S. Giri v. Corpn. of City of Mangalore***, (1999) 4 SCC 697, held as under :

> *"12. The abovesaid decision does support the proposition canvassed by the learned counsel for the appellant that an industrial settlement would operate even by overriding a statutory provision to the contrary. However, suffice it to observe that the Constitution Bench decision in New Maneck Chowk Spg. and Wvg. Co. Ltd.[AIR 1961 SC 867 : (1961) 3 SCR 1] and also the decision of this Court in Hindustan Times Ltd. [AIR 1963 SC 1332 : (1963) 1 LLJ 108] which is a four-Judge Bench decision, were not placed before the learned Judges deciding LIC of India case [(1981) 1 SCC 315 : 1981 SCC (L&S) 111 : AIR 1980 SC 2181] . A decision by the Constitution Bench and a decision by a Bench of more strength cannot be overlooked to treat a later decision by a Bench of lesser strength as of a binding authority; more so, when the attention of the Judges deciding the latter case was not invited to the earlier decisions available. Respectfully following the earlier two decisions referred to hereinabove, we are of the opinion that the award dated 11-1-1969 under Section 10-A of the ID Act appointing the age of retirement at 58, contrary to the provisions of the statutory rules appointing the age of retirement at 55, cannot be upheld and given effect to by issuing a writ for its implementation. In any case, the award stood superseded by the subsequent statutory rules of 1974 which too appointed the age of retirement at 55 and there is nothing wrong in the appellant having been asked to superannuate at the age of 55 consistently with the service rules as applicable on that day."*

Non placing of judgments before the Court

299. It is submitted that this Hon'ble Court in ***National Insurance Co. Ltd. v. Pranay Sethi***, (2017) 16 SCC 680, held as under :

> *"28. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution*

of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari[Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] . We have no hesitation that it is not a binding precedent on the co-equal Bench."

300. It is submitted that this Hon'ble Court in ***Sundeep Kumar Bafna v. State of Maharashtra,*** (2014) 16 SCC 623, in the context of a Hon'ble High Court declaring a judgment of the Hon'ble Supreme Court to be *per incuriam*, held as under :

"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.

23..... It should not need belabouring that High Courts must be most careful and circumspect in concluding that a decision of a superior court is per incuriam. And here, palpably without taking the trouble of referring to and reading the precedents alluded to, casually accepting to be correct a careless and incorrect editorial note, the Single Judge has done exactly so. All the cases considered in Rashmi Rekha[Rashmi Rekha Thatoi v. State of Orissa, (2012) 5 SCC 690 : (2012) 2 SCC (Cri) 721] including the decision of the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , concentrated on the contours and circumference of

anticipatory bail i.e. Section 438. We may reiterate that the appellant's prayer for anticipatory bail had already been declined by this Court, which is why he had no alternative but to apply for regular bail."

301. It is submitted that this Hon'ble Court in ***Rattiram v. State of M.P.***, (2012) 4 SCC 516, held as under :

"25. Before we advert whether Bhooraji [(2001) 7 SCC 679 : 2001 SCC (Cri) 1373 : AIR 2001 SC 3372] was correctly decided or Moly [(2004) 4 SCC 584 : 2004 SCC (Cri) 1348 : AIR 2004 SC 1890] and Vidyadharan [(2004) 1 SCC 215 : 2004 SCC (Cri) 260] laid down the law appositely, it is appropriate to dwell upon whether Bhooraji [(2001) 7 SCC 679 : 2001 SCC (Cri) 1373 : AIR 2001 SC 3372] was a binding precedent and, what would be the consequent effect of the later decisions which have been rendered without noticing it.

29. Thus viewed, Bhooraji [(2001) 7 SCC 679 : 2001 SCC (Cri) 1373 : AIR 2001 SC 3372] was a binding precedent, and when in ignorance of it subsequent decisions have been rendered, the concept of per incuriam would come into play.

34. The sequitur of the above discussion is that the decisions rendered in Moly[(2004) 4 SCC 584 : 2004 SCC (Cri) 1348 : AIR 2004 SC 1890] and Vidyadharan[(2004) 1 SCC 215 : 2004 SCC (Cri) 260] are certainly per incuriam."

302. It is submitted that this Hon'ble Court in ***Jai Singh v. MCD***, (2010) 9 SCC 385, held as under :

"37. It must be remembered that in these proceedings, the pleas raised by DTC and MCD before the ARC as well as ARCT were identical. The order passed by ARCT has been upheld by a coordinate Bench of the High Court. RCSA No. 17 of 2001 filed by MCD on identical grounds was thus dismissed by a subsequent coordinate Bench. That was indeed in conformity with the high traditions, procedures and practices established by the courts to maintain judicial discipline and decorum. The underlying principle being, to avoid conflicting views taken by coordinate Benches of the same court. Except in compelling circumstances, such as where the order of the earlier Bench can be said to be per incuriam, in that it is passed in ignorance of an earlier binding precedent/statutory or constitutional provision, the subsequent Bench would follow the earlier coordinate Bench."

303. Therefore, it is submitted that it is settled law that a co-ordinate bench can, if the circumstances so prevail, declare a judgment of co-equal strength, to be per incuriam. Further, this Hon'ble Court should take note of English law on the subject, in order to further elaborate on the issue.

304. It is submitted that in ***Young V. Bristol Aeroplane Company Limited***, [1944] K.B. 718, the Court Of Appeal, noted at Page 726-730, as under:

Per Incuriam principle settled in English Law

" In considering the question whether or not this court is bound by its previous decisions and those of courts of co-ordinate jurisdiction, it is necessary to distinguish four classes of case. The first is that with which we are now concerned,

namely, cases where this court finds itself confronted with one or more decisions of its own or of a court of co-ordinate jurisdiction which cover the question before it and there is no conflicting decision of this court or of a court of co-ordinate jurisdiction. The second is where there is such a conflicting decision. The third is where this court comes to the conclusion that a previous decision, although not expressly overruled, cannot stand with a subsequent decision of the House of Lords. The fourth is where this court comes to the conclusion that a previous decision was given per incuriam. In the second and third classes of case it is beyond question that the previous decision is open to examination. In the second class, the court is unquestionably entitled to choose between the two conflicting decisions. In the third class of case the court is merely giving effect to what it considers to have been a decision of the House of Lords by which it is bound. The fourth class requires more detailed examination and we will refer to it again later in this judgment. For the moment it is the first class which we have to consider. Although the language both of decision and of dictum as well as the constant practice of the court appears to us clearly to negative the suggested power, there are to be found dicta, and, indeed, decisions, the other way. So far as dicta are concerned, we are, of course, not bound to follow them. In the case of decisions we are entitled to choose between those which assert and those which deny the existence of the power.

.....

Nevertheless, the case is, we think, an authority in favour of the proposition that the court has power to overrule its previous decisions. Certainly it cannot be said that there is any statutory right of appeal from a decision of the Court of Appeal to the full court, although on occasions where there has been a conflict caused by the existence of inconsistent earlier decisions the court has ordered the case to be argued before a full court. Apart from a recent case which falls under the fourth class referred to above, we only know of one other case in which the Court of Appeal appears to have exercised the suggested power. That was Mills v. Jennings 50. It is to be noted that the earlier authority which the court refused to follow was a decision, not of the Court of Appeal, but of the old Court of Appeal in Chancery. Indeed, this fact was given as the justification of the view which the Court of Appeal then took. Cotton L.J. in delivering the judgment of the court, said:

"We think that we are at liberty to reconsider and review the decision in that case as if it were being re-heard in the old Court of Appeal in Chancery, as was not uncommon."

It remains to consider the quite recent case of Lancaster Motor Co. (London) v. Bremith, Ld., in which a court consisting of the present Master of the Rolls, Clauson L.J. and Goddard L.J., declined to follow an earlier decision of a court consisting of Slesser L.J. and Romer L.J. This was clearly a case where the earlier decision was given per incuriam. It depended on the true meaning (which in the later decision was regarded as clear beyond argument) of a rule of the Supreme Court to which the court was apparently not referred and which it obviously had not in mind. The Rules of the Supreme Court

have statutory force and the court is bound to give effect to them as to a statute. Where the court has construed a statute or a rule having the force of a statute its decision stands on the same footing as any other decision on a question of law, but where the court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam. We do not think that it would be right to say that there may not be other cases of decisions given per incuriam in which this court might properly consider itself entitled not to follow an earlier decision of its own. Such cases would obviously be of the rarest occurrence and must be dealt with in accordance with their special facts. Two classes of decisions per incuriam fall outside the scope of our inquiry, namely, those where the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covers the case before it – in such a case a subsequent court must decide which of the two decisions it ought to follow; and those where it has acted in ignorance of a decision of the House of Lords which covers the point – in such a case a subsequent court is bound by the decision of the House of Lords.

On a careful examination of the whole matter we have come to the clear conclusion that this court is bound to follow previous decisions of its own as well as those of courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those already mentioned which for convenience we here summarize: (1.) The court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (2.) The court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords. (3.) The court is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam.

305. It is submitted that in ***Nicholas V. Penny,*** [1950] 2 K.B. 466, the Divisional Court at Page 472, 473 and 475, held as under:

"That case is not a very satisfactory one because the prosecutor was not represented on appeal, and a case which has not been argued on both sides has nothing like the weight of authority of one which has been fully argued. Counsel for the defendant said in the present case, however, that that was a decision which this court could not overrule. But, without necessarily saying that we can always differ from a previous decision of the Divisional Court merely because it has not been argued on both sides, the court is not obliged to follow that decision, for it has been laid down by the Court of Appeal in Young v. Bristol Aeroplane Co., Ld. [1944] K. B. 718, which has been followed quite recently in this court, that where material cases or statutory provisions, which show that a court has decided a case wrongly, were not brought to its attention the court is not bound by that decision in a subsequent case. Two remarkable

cases which might have been cited to the court in Melhuish v. Morris, [1938] 4 All E. R. 98, if the case had been argued on both sides were not cited to it, and those cases, I think, would have had a considerable influence on that decision.

.....

For the reasons which I have given this case is of some importance, because we have made a considerable inroad on the decision in Melhuish v. Morris [1938] 4 All E. R. 98, a case in which, as I have said, not only was the prosecutor not represented on appeal, but the cases to which I have referred were not brought to the attention of the court."

306. It is submitted that the Court of Appeal, in ***The Secretary of State for Trade and Industry v Pinakin Ishverial Desai,*** [1991] 11 WLUK 402, held as under :

"I have felt it necessary to cite extensively from Dillon L.J's judgment because of the nature of Mr. McDonnell's submissions. He has submitted, first, that Dillon L.J. was in error in holding that rules 7.47 and 7.49 of the Insolvency Rules applied to appeals against orders under the Disqualification Act and, second, that the decision was per incuriam and not binding on us.

Mr. McDonnell's main point in support of his submission that Dillon L.J. was wrong was that unlike the Disqualification Rules which were expressed to be made under section 411 of the Insolvency Act and section 21 of the Disqualification Act , the Insolvency Rules were only expressed to be made under section 411 . He invited the inference to be drawn that the Insolvency Rules were not intended to apply to disqualification proceedings. But this, and Mr. McDonnell's other arguments, can only prevail in this court if he is right in contending that re Tasbian Ltd. (No.2) can be regarded as decided per incuriam. So let me assume that his argument is correct, that re Tasbian Ltd. (No. 2) was wrongly decided and, on that hypothesis, consider the per incuriam proposition.

It is well established that otherwise binding decisions can be treated as decided per incuriam if decided "in ignorance or forgetfulness of some inconsistent statutory decision or of some authority binding on the court concerned" (per Sir Raymond Evershed M.R. in Morelle v. Wakeling [1955] 2 QB 379). It seems to be plain that re Tasbian Ltd. (No.2) cannot be brought into this category. All the relevant statutory provisions were mentioned by Dillon L.J. in his judgment and there were and are no authorities on the point of statutory construction that he had to decide.

But Mr. McDonnell relies on two recent Court of Appeal decisions which, he submits, establish that there is a residual category of exceptional cases which can be treated as decided per incuriam on the ground that a "manifest slip or error" , can be seen to have occurred. The origin of the concept is, I think, the sentence in the judgment of Sir Raymond Evershed M.R. in Morelle v. Wakeling in which he remarked that it was "impossible to fasten upon any part of the decision under consideration or upon any step in the reasoning ... and to say of it 'Here was a manifest slip or error' "?.

In Williams v. Fawcett [1986] QB 604 Sir John Donaldson M.R. (as he then was) concluded that, in the cases which the court was considering, a "manifest slip or error" could be detected (see p.616 D/E). But he did not regard the manifest slip or error as enough by itself to justify treating the cases as lacking binding authority. At p.616 he said this:

> *"I remind myself of the dangers of treating a decision as per incuriam simply on the ground that it can be demonstrated to be wrong, even if the error is fairly clear on an examination of the authorities. However, for my part I think there are very exceptional features about the four decisions of this court to which I have referred and they are these.*
>
> *There is, first of all, the clearness with which the growth of the error can be detected ... Second, these cases are all concerned with the liberty of the subject ... the cases are also concerned with the maintenance of the authority of the courts to insist upon obedience to their orders. They are, therefore, in a very special category they are cases which are most unlikely to reach the House of Lords ... ".*

So the Master of the Rolls applied the per incuriam rule and did not follow the four authorities. The other members of the court agreed.

In Rickards v. Rickards [1990] Fam. 194 Lord Donaldson of Lymington M.R. (as he had become) emphasized again the importance of the stare decisis rule (p.203) but said "These decisions show that this court is justified in refusing to follow one of its own previous decisions not only where that decision is given in ignorance or forgetfulness of some inconsistent statutory provision or some authority binding upon it, but also, in rare and exceptional cases, if it is satisfied that the decision involved a manifest slip or error" . He then gave guidance as to the cases that might fall into "this exceptional category" , but concluded by saying that "this court must have very strong reasons if any departure from its own previous decisions is to be justifiable."

Balcombe L.J. agreed. He said at p.206 "... we are justified in refusing to follow Podberry v. Peak because to do so would require us to decline a jurisdiction which I am satisfied Parliament has conferred upon us, and thereby potentially to create, or continue, an injustice which may adversely affect many litigants in this and similar fields" .

Nicholls L.J. in agreeing, said this at p. 210:

> *"Does this mean that the Court of Appeal is bound to go on indefinitely refusing to entertain a particular class of appeals, even though in practice the House of Lords is unlikely to have the opportunity to consider the decision in Podberry v. Peak ? I am so oppressed by the injustice which this might well cause that I cannot think that this is the law today. This would indeed bring the law in disrepute. For the reasons given by Lord Donaldson of Lymington M.R. I think this case is in a very special category. Both Lord Greene M.R. in Young v. Bristol Aeroplane Co. Ltd. (1944) KB 718, 729 , and Sir Raymond Evershed M.R. in Morelle Ltd. v.*

> *Wakeling [1955] 2 QB 379, 406 , envisaged that there might be rare and exceptional cases where the Court of Appeal could properly consider itself entitled not to follow an earlier decision of its own even though the earlier decision did not fall strictly within the normal definition of a decision reached "per incuriam" . This is such a case. In the instant case there are two features that (a) the point concerns the jurisdiction of the court and (b) the remedy which the system of judicial precedent assumes will be available to review the earlier decision is, for practical reasons, not so available."*
>
> *These two recent Court of Appeal authorities do, I agree, establish that there is a residual category of cases which, exceptionally, may be treated as decided per incuriam. But, in my opinion, they establish also that in order to come within this category it must be shown not only that the decision involved some "manifest slip or error" , but also that to leave the decision standing would be likely to produce serious inconvenience in the administration of justice, or significant injustice to citizens, or some equally serious consequences. As Lord Donaldson M.R. put it, some "very strong reasons, must be shown (p. 204 in Rickards).*

307. Therefore, it is submitted that if circumstances prevail, a judgment can indeed be declared as per incuriam.

Opinion of the Court in Pune Municipal supra was obiter dicta

308. It is submitted that in Pune Municipal *supra*, the land acquisition had been already quashed by the Hon'ble High Court in the year 2008 before the enactment of the law in 2013. The Hon'ble High Court had also directed restoration of the possession. It is therefore submitted that when the Hon'ble High Court had quashed the acquisition, there was no room for this Hon'ble Court to entertain the submissions based upon Section 24(2) of the 2013 Act. In other words, there was no question of payment of compensation to the owners or depositing it in the court as land acquisition itself had been quashed in 2008. It is therefore submitted that when the provisions of Section 24 were not attracted to the fact situation of the case in Pune Municipal *supra*, the decision cannot be said to be an authority on a question which, in fact, did not arise for consideration of this Hon'ble Court. This Hon'ble Court in Indore Development *supra*, after observing the same held that "*the decision rendered on a question which was not germane to the case cannot be said to be a binding precedent, it is obiter dicta and thus has to be ignored.*".

Obiter dicta ought not to be followed

309. It is however submitted that numerous other benches of this Hon'ble Court, notably in DDA v. Sukhbir *supra*, have treated the observations in Pune Municipal *supra* to be binding as the ratio of the judgment. In light of the same, the Bench in Indore Development *supra*, sought to give detailed reasons for differing with the view taken in Pune Municipal *supra* and further

expressly listed the reasons for declaring the judgment in Pune Municipal *supra* to be *per incuriam.*

The grounds on which the Indore Development supra declares Pune Municipal supra to be per incuriam are sufficient grounds

310. It is submitted that the judgment in Indore Development *supra*, provides for detailed reasons for declaring the judgment in Pune Municipal *supra* to be per incuriam. The observations of the bench are quoted herein under for ready reference :

> *"216. With respect to the decision of this Court in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] we have given deep thinking whether to refer it to further larger Bench but it was not considered necessary as we are of the opinion that Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] has to be held per incuriam, inter alia, for the following reasons:*
>
> *216.1. The High Court has quashed land acquisition, in Pune Municipal Corpn. case [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] , as such provisions of Section 24(2) of the 2013 Act could not be said to be applicable. It was not surviving acquisition then compliance with Section 24(2) by taking possession or by payment of compensation for five years or more did not arise as acquisition had been quashed by the High Court in 2008.*
>
> *216.2. It was not held in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] that the High Court has illegally set aside the acquisition. In case, the High Court had set aside the acquisition in an illegal manner then also maxim actus curiae neminem gravabit would have come to the rescue to save acquisition from being lapsed and a period spent in appeal in this Court was to be excluded.*
>
> *216.3. The provisions of Section 24(2) could not be said to be applicable to the case once acquisition stood quashed in 2008 by the High Court. Thus, there was no occasion for this Court to decide the case on aforesaid aspect envisaged under Section 24(2) of the 2013 Act.*

Pune Municipal is obiter

> *216.4. That statutory rules framed under Section 55 of the 1894 Act and orders having statutory force issued under constitutional provisions or otherwise by various State Governments were not placed for consideration before this Court in Pune Municipal Corpn. case [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] .*

Statutory rules were not placed on record

216.5. Provisions of Section 34, prevailing practice of deposit, and binding decisions thereunder Section 34 of the 1894 Act were not placed for consideration of this Court while deciding the case.

Statutory provision not placed on record

216.6. The proviso to Section 24(2) was not placed for consideration which uses different expression "deposited" than "paid" in main Section 24(2) which carry a different meaning.

Connected proviso not placed on record

216.7. What is the meaning of expression "paid" as per various binding decisions of this Court when the obligation to pay is complete as held in Straw Board Mfg. Co. Ltd. v. Govind [Straw Board Mfg. Co. Ltd. v. Govind, AIR 1962 SC 1500 : 1962 Supp (3) SCR 618] , Delhi Transport Undertaking v. Industrial Tribunal[Delhi Transport Undertaking v. Industrial Tribunal, AIR 1965 SC 1503 : (1965) 1 SCR 998] , Indian Oxygen Ltd. v. Narayana Bhoumik [Indian Oxygen Ltd. v. Narayana Bhoumik, (1968) 17 FLR 214 : 1968 Pat LJR 94 (SC)] and Benares State Bank Ltd. v. CIT [Benares State Bank Ltd. v. CIT, (1969) 2 SCC 316] and other decisions were not placed for consideration.

Larger bench decisions on meaning of "paid" not placed on record

216.8. The binding decisions of the Court as to the consequence of non-deposit in Hissar Improvement v. Rukmani Devi [Hissar Improvement Trust v. Rukmani Devi, 1990 Supp SCC 806 : AIR 1990 SC 2033] , Kishan Das v. State of U.P.[Kishan Das v. State of U.P., (1995) 6 SCC 240] and Seshan v. LAO [Seshan v. LAO, (1996) 8 SCC 89] , etc. were not placed for consideration while deciding the case.

Larger bench decisions consequence of non-deposit not placed on record

216.9. The maxim nullus commodum capere potest de injuria sua propria i.e. no man can take advantage of his own wrong of filing litigation and effect of refusal to receive compensation was not placed for consideration while deciding the aforesaid case.

216.10. There is no lapse of acquisition due to the non-deposit of amount under the provisions of the 1894 Act or the 2013 Act. In this regard, the provision of Sections 77 and 80 relating to payment and deposit under the 2013 Act which corresponds to Sections 31 and 34 were not placed for consideration of this Court while rendering the aforesaid decision.

216.11. The past practice for more than a century, of deposit in treasury, as per rules/orders and decisions were not placed for consideration. It was not open to invalidate such deposits made in treasury without consideration of the provisions, prevailing practice, and decisions under the 1894 Act."

It is therefore submitted that there was occasion and in depth analysis, after which the decision in Pune Municipal *supra* was rendered per incuriam. It is further submitted that part from providing reasons for declaring the decision to be per incuriam, the bench in Indore Development *supra*, further provided detailed reasons and analysis to render the separate findings. It is submitted that in light of the authoritative and reasoned nature of the pronouncement in Indore Development *supra*, this Hon'ble Bench may be pleased to affirm the same. Further, it is submitted that the order dated 21.02.2018 in G.D. Goenka *supra*, which stayed all proceedings under Section 24 of the 2013 Act before all Hon'ble High Courts, is erroneous and based on a wrong premise on the issue of *per incuriam*. It is submitted that this Hon'ble Bench may be pleased to declare that the law declared in Indore Development to be the correct law on the subject.

Submitted by :

Mr. Tushar Mehta,
Solicitor General of India

Briefed by :

Mr. B.K. Satija
Additional Advocate General
State of Haryana

Assisted by :

Mr. Kanu Agrawal,
Advocate