

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2644 OF 2016

LOONKARAN GANDHI (D) THR. LR.

...APPELLANT

Versus

STATE OF MAHARASHTRA AND ORS.

...RESPONDENTS

J U D G M E N T

J.K. Maheshwari, J.

1. This appeal has been filed against the order dated 29.09.2009 passed in Writ Petition No. 2022 of 1992 by the High Court of Judicature of Bombay at Nagpur Bench. The said Writ Petition was filed by the father of the appellant/land owner (now deceased) seeking writ in the nature of mandamus to declare the action of the respondents in taking over possession of the subject land owned by him pursuant to acquisition made by respondent no. 2 as illegal, arbitrary and without any authority of law. The land owner also sought compensation @ Rs. 400-500/- per sq. ft. with commensurate damages caused on account of mental agony suffered in last several years, or in alternate, allotment of plot of

equal dimension in the same vicinity. During the pendency of the petition, the original writ petitioner died and his legal heir (appellant herein) was substituted.

2. The High Court observed that possession of land was taken in 1970 and the award in case of other land owners was passed in year 1986, separating the case of appellant. Therefore, partly allowing the writ petition, High Court directed respondent nos. 2 and 3 to complete the exercise for grant of alternate plot on or before 31.01.2010 or otherwise determine compensation on or before 30.04.2010 and pay damages as per Section 48-A of the Land Acquisition Act, 1894 (hereinafter referred to as '**LA Act**') in accordance with law.

3. For ready reference and convenience, hereinafter we shall refer the **deceased father** of the appellant as '**land owner**'; his **legal heir** as '**appellant**'; Respondent No. 1/State of Maharashtra as '**State**'; Nagpur Improvement Trust/Respondent No. 2 as '**NIT**' and Respondent No. 3/Special Land Acquisition Officer as '**SLAO**'.

4. The facts succinctly stated are that, in an auction dated 26.02.1943 held by the Commissioner Court of Wards, the

landowner purchased two plots bearing No. 8 admeasuring 9800 sq. ft. of Khasra No. 35/8 and No. 18 admeasuring 7248 sq. ft. of Khasra No. 35/9 at Mouza Khamla, District Nagpur, Maharashtra on payment of Rs. 880/-. The said plots previously belonged to 'Ex-Malguzar Pande'. The sale deeds of both the plots were executed by the representative of the Court of Wards in favour of the landowner on 02.03.1944. Vide order dated 09.05.1962 passed by S.D.O., Nagpur, the revenue records were corrected and those plots were mutated in the name of the landowner. NIT required the said land for '**Ajni Street Scheme**' (hereinafter referred to as '**Scheme**') for which the notification under Section 39 of Nagpur Improvement Trust Act, 1936 (hereinafter referred to as '**NIT Act**') akin to Section 4 of the LA Act was published on 12.07.1962 specifying Khasra Nos. 35/1 and 35/2 only. The final declaration under Section 45 of the NIT Act akin to Section 6 of the LA Act was published on 16.01.1969. After final declaration, NIT vide letter dated 10.10.1969 requested the State for transfer of Khasra Nos. 35/1 and 35/2 to it for the Scheme, as it presumed the land to be Government Nazul land. Sometime in the year 1970, NIT constructed the road on 5390 sq. ft. of land of

Khasra No. 35/8 which included plot No. 8 belonging to the land owner. Thus, admittedly, after taking of possession of subject land, road was constructed in 1970 on it and is in public use since then.

5. In reply to letter dated 10.10.1969 written by NIT, the Collector, District Nagpur on 31.05.1972 informed that transfer of land of Khasra Nos. 35/1 & 35/2 is not possible because it is not Government land; in fact, the said land belonged to and was occupied by Ex-Malguzar Pande. Therefore, NIT was instructed to submit valuation report of the remaining land. The land owners also received 'no objection' to sell other plot No. 18 of Khasra No. 35/9 from NIT on 21.02.1976 and sold it to one Anil Hinge on 08.03.1976. For the sake of clarity, it is only 'plot No. 8', i.e., Khasra no. 35/8 which is the subject land in the present appeal and not plot No. 18 of Khasra No. 35/9.

6. The first notice dated 18.07.1974 issued by SLAO under Section 9(3) of LA Act was served to landowner and second notice dated 07.09.1974 was also served, however, none of the said notices specified that Khasra No. 35/8 is also under acquisition. Nevertheless, the land owner without prejudice to his rights, filed

his statement of claim in Revision Case No. 82-86/71-72. The NIT in reference to its previous letter dated 10.10.1969, again wrote to SLAO on 02.02.1977, requesting him to determine the interests of land owners on Khasra nos. 35/1 and 35/2. Thereafter, third notice dated 18.10.1977 under Section 9(3) of the LA Act was served to the landowner, however, again there was no mention of Khasra no. 35/8. In the said scenario, the landowner in reply to the notice, requested SLAO to discharge his land from the acquisition proceedings primarily on the ground that Khasra No. 35/8 was not reflected in all three notices. The said prayer was opposed by NIT by response dated 19.04.1979, contending that Khasra No. 35/8 was part of Khasra Nos. 35/1 and 35/2. However, the SLAO vide order date 01.08.1981 separated the papers of the land owner. It is also on record that NIT in furtherance to its letter dated 02.02.1977, informed SLAO on 03.11.1981 that proposal for acquisition of Khasra Nos. 35/1 and 35/2 had been submitted and the interest of various persons shall be determined including the land owner, however, the proposal with respect to Khasra No. 35/8 was still not submitted.

7. The land owner awaiting a proposal from NIT, filed a claim on 25.11.1981 requesting grant of alternate plot in the same vicinity on the ground that the possession of his land was taken in 1970 and as on date, road is already constructed on the same. In response, NIT vide letter dated 02.06.1982 asked the land owner to prove his title without considering its own reply dated 19.04.1979. Meanwhile, on 22.09.1986, SLAO passed an award for adjoining pieces of land in Khasra Nos. 35/3 and 35/4 and since the papers of land owner were separated, no award was passed with respect to Khasra No. 35/8. Corrected city survey record dated 26.09.1986, recording name of land owner in Khasra No. 35/8 was supplied to him. In view of the corrected records, landowner again submitted a representation to NIT on 17.01.1987 and requested for alternate plot. In reply letter dated 06.03.1987, NIT informed landowner that plot No. 8 in Khasra No. 35 belonging to land owner was under acquisition, and alternate plot cannot be allotted. The land owner was directed to approach SLAO for compensation for the said plot. Having no clear response, the land owner sent a legal notice dated 02.09.1987 to NIT and sought details of acquisition proceedings under which his land was acquired, however, it was of no avail. In

the meantime, the land owner made a representation to the Guardian Minister seeking allotment of an alternate plot, which was forwarded to NIT. Pursuant thereto, NIT vide reply dated 19.12.1988 to Guardian Minister admitted that the land of the land owner is under acquisition but grant of alternative plot is not possible. Be that as it may, correspondences were exchanged and finally NIT vide letter dated 15.01.1990 apprised the land owner regarding pending acquisition proceedings of his land. Land owner again submitted representation dated 25.07.1990 and 09.04.1991 for grant of alternate plot as compensation, but again to no avail.

8. Aggrieved by the inaction of authorities and delayed response to his representations, on the advice of the advocate, land owner filed a complaint before Consumer Forum, Nagpur, which was withdrawn for want of jurisdiction. Thereafter, the land owner on 29.04.1992 filed 'Writ Petition No. 2022/1992' before High Court of Bombay, Nagpur Bench praying the above said reliefs. The State did not file any reply, however, SLAO filed a reply and did not dispute the land acquisition notification for the Scheme. The issuance of three notices under Section 9(3) of LA

Act; the order dated 01.08.1981 passed by SLAO separating the papers of land owner as evident from the records; the passing of the award dated 22.09.1986 in the case of landowners of other Khasra Nos. 35/3 and 35/4 were neither denied nor disputed. More so, the SLAO in its reply did not raise any plea of delay and laches in filing the writ petition by landowner.

9. So far as stand of NIT before the High Court is concerned, the issuance of notifications for land acquisition was not controverted. It was stated that Khasra No. 35 mentioned in the final Notification consisted of total area of 8.56 acres of Khasra Nos. 35/1 and 35/2 out of which, 6.56 acres was Government land and the remaining land was of Ex-Malguzar Pande. It was stated that the west side of High Court Road was laid down in the compelling public need for the city of Nagpur. All the communications between NIT, State, SLAO and land owner were not disputed. It was stated that the request for a grant of the alternate plot was rightly declined and the order passed by SLAO on 01.08.1981 was not an order of discharge. Therefore, the land owner on the anvil of said order cannot contest that his land was not acquired. The passing of the award on 02.09.1986 for the

land of other land holders was not denied. With respect to prayer for grant of compensation @ Rs. 400 to Rs. 500 per. sq. ft., it was said that the actual value of land may hardly be Rs. 125 to Rs. 150 per sq. ft. at relevant time, hence, the compensation as sought is on the higher side. It was lastly submitted that the writ petition has been filed after inordinate delay, therefore, it ought to be dismissed on the ground of laches.

10. The High Court by the impugned order partly allowed the writ petition as referred above. Being aggrieved, the appellant is before this Court assailing the said judgment. After notice in this appeal, NIT filed counter affidavit, whereas, the prayer of the State to file counter affidavit was declined vide order dated 07.12.2012 with the liberty to file additional documents. During the pendency, the counsel for appellant on 03.07.2013 without prejudice gave up his claim of alternative plot provided NIT is prepared to pay compensation as per current market rate. On request, time was granted to counsel for NIT to seek instructions. In reply, additional affidavit was filed by NIT stating that compensation as per market rate is not possible, since it is a

public body and informed the award granting compensation @ Rs. 54,717/- has been passed.

11. The appellant filed additional affidavit along with a valuation report dated 16.07.2013 showing the current market value of land as in the year 2013 as Rs. 3,93,45,696/-. In view of the inordinate delay in passing of award from the date of notification and taking over of possession, prayer is made to mould the relief in exercise of the powers under Article 142 of the Constitution of India.

12. After having heard learned counsel for the parties and in the facts of the case, in our view, the following questions arise for consideration:

i) *Whether the impugned judgment of the High Court negating the plea of appellant seeking 'lapse' of the acquisition proceedings in terms of Section 11-A of LA Act is liable to be interfered with?*

ii) *Whether decision of NIT refusing to grant alternative plot, as directed by the High Court, requires interference in this appeal?*

iii) *Whether in the peculiar facts of the case, delay caused in determination of compensation despite time*

bound directions by the High Court, what suitable relief can be granted to appellant?

IN REFERENCE TO QUESTION NO. 1

13. It is not in dispute that the notification was issued under Section 39 of the NIT Act on 12.07.1962. Although the said notification is not on record, but looking at the material brought, it is clear that the land of Khasra No. 35/1 and 35/2 only, without mentioning Khasra No. 35/8 in the said notification was proposed for acquisition. The final notification was issued with same details. The possession of Khasra No. 35/8 was taken in the year 1970 and the road was constructed on 5390 sq. ft. utilising the entire land of 9800 sq. ft of the said Khasra. It is relevant to note that vide Act of 68 of 1984, amendment in the LA Act was introduced adding Section 11-A, whereby passing an award determining the compensation within period of two years was made necessary. In case the award has not been passed within the specified period, it shall result in lapsing of acquisition proceedings. In the present case, the acquisition was under the State Act, i.e., NIT Act with the aid of LA Act, however, it's applicability in such acquisition requires consideration.

14. The said issue of applicability of Section 11-A of the LA Act in an acquisition proceeding carried under NIT Act has been decided by this Court in the case of **“Nagpur Improvement Trust Vs. Vasantrao and Others, (2002) 7 SCC 657”**, wherein it was clarified that the subsequent amendment made by Act No. 68 of 1984 will have no effect on the acquisition made under the State Act, which means the lapsing provision under Section 11-A introduced by Act of 68 of 1984, does not apply to acquisition of land by Nagpur Improvement Trust under NIT Act. The same principle has been reiterated in **“Bankatlal Vs. Special Land Acquisition Officer and Another, (2014) 15 SCC 116”**, wherein it was held that the NIT Act is a complete code in itself, except to apply the provisions of the LA Act that stood legislatively incorporated in the said Act, and other provisions would not apply. It was held that the subsequent amendment made by Act 68 of 1984 inserting Section 11-A would have no effect on the acquisition made under NIT Act.

15. In view of the above, we are of the considered opinion that the provisions of Section 11-A of LA Act which provides for lapsing of the land acquisition proceedings, would not be

applicable where acquisition was made under NIT Act. In view of the foregoing discussion and settled law, we are of the considered opinion that the High Court has not committed any error in negating the plea of lapsing of acquisition proceedings as raised by the appellant.

IN REFERNECE TO QUESTION NO. 2

16. By the impugned order dated 29.09.2009 passed by the High Court, directions were issued to NIT to consider the prayer for the grant of alternate land to the appellant. The said prayer was rejected by the Chairman, NIT on 31.12.2009, inter-alia stating that grant of alternate land in lieu of compensation is not possible in the absence of any provisions in the Act. The said rejection has not been separately challenged by the appellant and has attained finality. In our view also, the said plea does not have any statutory backing under NIT Act, therefore, refusal made by NIT does not warrant any interference. Be that as it may, on 03.07.2013, counsel for the appellant without prejudice to his right made a statement that to amicably resolve the controversy, the appellant was willing to give up the claim of grant of alternate plot provided NIT is prepared to pay the current market price as

on 03.07.2013. Thereafter, time was sought by counsel for NIT to seek instructions. After instructions, NIT filed its response on 02.08.2013 wherein the grant of an alternative plot was denied. As discussed, after the rejection of the representation to grant alternate land particularly in absence of any statutory backing, we are not inclined to entertain the said plea. Nonetheless, the said prayer was not seriously pressed by the appellant and prayer was confined to grant of adequate compensation. Therefore, question no. 2 is answered accordingly.

IN REFERNECE TO QUESTION NO. 3

17. In the case at hand, compulsory acquisition of the subject land was initiated issuing preliminary notification in 1962 and final notification in January 1969 under the provisions of NIT Act with the aid of LA Act. As per Section 59 of NIT Act, for any scheme, the NIT may acquire the land with the previous sanction of the State Government under the LA Act as modified by NIT Act. As per Section 61(b) of NIT Act, for the purpose of acquiring the land, the provisions of LA Act shall apply subject to further modifications as indicated in the Schedule. As per Section 67 of the NIT Act, the provisions of the LA Act are made applicable for

determination of award for the land so acquired. The Schedule as referred to in Section 61 has made the modification in the LA Act. Some of the modifications made in clause 6 adding Section 17-A and clause 14 adding Section 48-A are relevant for the purpose of this case, in addition to other provisions as referred hereinabove. Therefore, for ready reference, they are reproduced as thus –

“17-A. Transfer of land to Trust –

In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition.”

“48-A. Compensation to be awarded when land not acquired within two years –

(1) If within a period of two years from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act, shall apply so far as may be, to the determination of the compensation payable under this section.”

Section 67 of the NIT Act makes it clear that for the purpose of determining the compensation and to pass an award, the provisions of the LA Act would be applicable. Thus, LA Act has its application to such extent for land acquired by the NIT subject to

the modifications made under the NIT Act. In view of the provisions of the NIT Act, the preliminary notification of the land acquisition shall be under Section 39, and the final Notification shall be under Section 45 for compulsory acquisition as specified in Section 59 of the NIT Act. It is to be noted here that, Section 16 of the LA Act deals with the power of Collector to take possession of the land after he has made an award under Section 11 and the said land shall thereupon vest absolutely in the Government free from all encumbrances. Section 17 of LA Act deals with the special powers in case of urgency, but the said provision is not relevant in the facts of the present case. Further, Section 17-A of the LA Act as modified in the Schedule referred to in Section 61 of NIT Act adopts the procedure specified in Section 16 or 17 of the LA Act. Section 17-A prescribes that the Collector upon payment of the cost of acquisition shall make over charge of the land to the Trust and the land shall thereupon vest in the Trust subject to discharge of liability and payment of any further cost which may be incurred on account of acquisition. Therefore, the applicability of Section 11 of LA Act which deals with enquiry and award, and Section 16 of LA Act which deals with power of Collector to take possession, even in acquisition under the NIT

Act is '*sine qua non*'. While making an inquiry under Section 11, the applicability of Section 9 which deals with issuance of notice to persons interested, is an integral procedure in the proceedings. Hence, for the purpose of determination of compensation to pass an award in case of acquisition of land under NIT Act, applicability of the said provisions of the LA Act has been duly recognised in Section 67 of the NIT Act.

18. As per Section 16 of the LA Act, the Collector on making an award may take possession of the land to vest it in the Government. Similarly, under Section 17-A added to Schedule of NIT Act, passing of an award is a necessary pre-condition to vest the land with NIT. Further, Section 48-A specifies that if award is not passed by the Collector within a period of two years from the date of final notification, the land owner, if not responsible for delay to a material extent, shall be entitled to receive compensation for damages suffered by him in consequence of delay. The said damage would be determined as per the provisions of Part-III of LA Act.

19. In view of the said basic provisions if we see the facts of this case, then it is not in dispute that the subject land was occupied

by Ex-Malguzar Pande. The land owner purchased the land in auction and sale deed was executed in his favour by the Court of Wards. As per the order dated 09.04.1962 passed by the SDO, Nagpur, the revenue records were corrected recording his name before issuance of preliminary notification. In the said notification as well as in the final notification dated 16.01.1969, Khasra No. 35/8 was not mentioned. The NIT had taken possession and constructed the road on the west side entrance of the High Court which is in public use. After final notification, statutory notice under Section 9 of LA Act was issued to all the persons interested. As per the mandate of law, such notice shall contain particulars of the land needed for acquisition with an intent to ask the affected parties to submit their respective claims and interests.

20. In the instant case, three notices were issued to the land owners including deceased land owner Loonkaran Gandhi on 18.07.1974, 07.09.1974 and 18.10.1977. However, as stated above, the said notices did not mention Khasra No. 35/8. Since Khasra No. 35/8 was not mentioned, land owner filed the application seeking discharge from acquisition proceedings.

Pursuant thereto, SLAO separated the claim of land owner from other claimants emanating out of same notification. It is pertinent to note that NIT vide letter dated 10.10.1969 informed the Collector, Nagpur that Khasra Nos. 35/1 and 35/2 are Government Nazul land and asked for transfer of such land in favour of NIT for the Scheme. In reply, the Collector, Nagpur on 31.05.1972 informed that such land cannot be transferred since it is not a government land and belongs to Ex-Malguzar Pande. Therefore, the Collector requested NIT to submit a valuation report of the remaining land. The NIT vide letter dated 02.02.1977 acknowledged and requested the SLAO to determine the interest of the persons from Khasra Nos. 35/8 to 35/12. Later, NIT submitted proposals for Khasra No. 35/1 and 35/2, but it is not on record why the proceedings to determine compensation of Khasra No. 35/8 of the land owner were not commenced.

21. The correspondence also reflects that in absence of initiation of proceedings for determination of compensation, land owner submitted a representation to allot alternate land equal to the land of Khasra No. 35/8 in the same locality which was denied on 06.03.1987. As per material placed, in cases of other landowners,

the award was passed on 22.09.1986 by SLAO with respect to Khasra Nos. 35/3 and 35/4. Thus, it is apparent that possession was taken from land owner without payment of compensation and the prayer for alternate piece of land was rejected. It is also apparent that even up to filing the writ petition, proceedings to award compensation of the land of Khasra No. 35/8 were not commenced. On filing the Writ Petition, even during its' pendency, action to determine compensation was not started. Therefore, the High Court by the impugned order directed NIT to consider the prayer for the grant of an alternate plot, otherwise, SLAO to pass award on or before 30.04.2010. As directed by the High Court, prayer for the grant of alternate plot was rejected by NIT, but the award was not passed within the time given in the order by the High Court.

22. In the given facts, the appellant filed this Special Leave Petition, wherein, notice was issued on 22.03.2010. The NIT filed its counter-affidavit on 18.06.2012 contesting the case. On 03.07.2013, this Court passed an order as under –

“Shri Shekhar Naphade, learned senior counsel appearing for the petitioner made a statement that without prejudice to his rights and with a view to amicably resolve the controversy, his client is willing to give up his claim

provided the competent authority of the Nagpur Improvement Trust is prepared to pay the current market price.

Shri Satyajit A. Desai, learned counsel appearing for the Nagpur Improvement Trust requests for an adjournment to seek instructions from the concerned authorities.

Put up after two weeks.”

23. Later, on 22.07.2013, the NIT further sought time to seek instructions in view of the statement made by the counsel for the appellant. Thereafter on 02.08.2013, NIT filed additional affidavit in which reference to ‘ex-parte’ award passed on 30.04.2013 was made for the first time and it was stated that a sum of Rs. 54,717/- has been awarded to the appellant. On 21.10.2013, during arguments, this Court found that there was an inordinate delay in passing the award dated 22.09.1986 in the case of other land owners. Therefore, an explanation was sought for delay of 17 years, 8 months and 13 days. The said order dated 21.10.2013 is relevant and therefore reproduced as thus –

“After the arguments were heard for some time, Shri Uday Dube, learned counsel for the State of Maharashtra made a request for short adjournment to enable his client to file an additional affidavit to explain 17 years 8 months and 13 days delay between issue of notification under Section 45 of the Nagpur Improvement Trust, 1936 and passing of the award. Shri Dube further stated that he shall instruct the concerned officer to explain as to why appropriate

award was not passed within the time specified in order dated 29.09.2009 passed by the High Court.

The request of Shri Dube is accepted and the case is adjourned to 1.11.2013..”

24. In view of the above order, time to file additional affidavits and to explain the delay was allowed to SLAO and NIT, which were filed by them on 11.11.2013 and 04.12.2013 respectively. In the said additional affidavits, the SLAO and NIT, both attributed delay to each other and also against the appellant. Therefore, the Court after hearing passed the order on 03.01.2014, which is reproduced as under –

“The case was taken up on 21st October, 2013, the Court had passed the following order:

“After the arguments were heard for some time, Shri Uday Dube, learned counsel for the State of Maharashtra made a request for short adjournment to enable his client to file an additional affidavit to explain 17 years, 8 months and 13 days delay between issue of notification under Section 45 of the Nagpur Improvement Trust, 1936 and passing of the award. Shri Dube further stated that he shall instruct the concerned officer to explain as to why appropriate award was not passed within the time specified in order dated 29.09.2009 passed by the High Court.

The request of Shri Dube is accepted and the case is adjourned to 1.11.2013.”

Pursuant to the said order, explanation has been filed by the State which shows that there was disputes between

the respondents due to which there was a delay of 17 years, 8 months and 13 days between issue of notification under Section 45 of the Nagpur Improvement Trust, 1936 and passing of the award.

In the circumstances, respondents are directed to explain as to why this Court will not grant suitable relief to the petitioners by directing the respondents as to allot equivalent alternative plots in the adjoining area or to pay the compensation on the basis of market value as on the date of award with solatium and interest, as per law.

Affidavit may be filed within three weeks. Reply, if any, be filed within two weeks thereof.

Post the matter after six weeks.”

25. In response to the order, neither the State Government nor SLAO submitted any explanation. It is only NIT who filed an additional affidavit on 25.01.2014, inter-alia, stating that allotment of alternate plots in the adjoining area is not possible and denied the payment of compensation as per market value as existing on 03.07.2013. It was stated that it is only the appellant who can be blamed for inordinate delay. In the said affidavit, the causes of delay were crystallized in three slots, viz. between the issuance of notifications till filing of writ petition; delay during the pendency of writ petition; and delay between the date of order in the writ petition and passing the award. On filing the said explanation and upon hearing the parties on 22.07.2014, this Court passed the following order –

“Heard Mr. Shekhar Naphade learned senior counsel and Mr. Gagan Sanghi, learned counsel for the petitioner. Mr. Marlapalle learned senior counsel for Respondent No. 1 and Mr. Pallav Shishodia, learned senior counsel for Respondent No. 2 in part.

The learned counsel for the parties shall file respective charts precisely putting forth why there was enormous delay in passing the award. We have asked learned counsel for the parties to undertake this exercise as we are of considered opinion that the compensation that is allowable under Section 48-A of the Nagpur Improvement Trust Act, 1936 may be applicable if a case is made out.

List on 5th August, 2014.”

26. In furtherance to the said order, it is only the appellant who filed the chart and explained as to how and in what manner, the delay is caused. It was further stated that only respondents are responsible for not passing the award despite time bound directions given by the High Court. Conversely, the SLAO passed an ex-parte award that too without any intimation or notice as mandated by Section 12(2) of LA Act.

27. After hearing the parties and upon perusal of the averments made in the additional affidavits filed in furtherance of orders dated 03.07.2013, 21.10.2013 and 22.07.2014, it is clear that Respondents have taken more than six and half years to issue final notification which was published on 16.01.1969. The

possession had been taken immediately and the three notices under Section 9 of LA Act were issued on 18.7.1974, 07.09.1974 and 18.10.1977 respectively. The award was passed in the case of other land owners on 22.09.1986, leaving the case of land owner/appellant herein. Thus, it is apparent that the period of seven years has been taken to issue the notice under Section 9 to the appellant after the date of taking the possession and the award was passed in the case of other land owners after more than 17 years, separating the claim of the appellant. In view of the said chain of events, the delay cannot be attributed to the appellant. More so, the writ petition filed by land owner before High Court on 29.04.1992 was decided on 29.09.2009, i.e., after about 17 years. During the pendency of the writ petition, the delay, if any, occurred, cannot be attributed to the appellant, but it may reflect on conduct of respondents for not passing the award even during such pendency. It is not out of place to observe that the High Court has not outrightly disregarded the claim of the appellant for grant of alternate plot in adjoining area and directed the NIT to take a decision. In case, the allotment of plot was not possible, respondents were directed to pass an award within the time frame. The NIT denied the alternate plot,

but even thereafter, the award was not passed within the time limit fixed by the High Court. The award on record was passed by SLAO only when this Court had taken cognizance in the matter. Therefore, even after the order of the High Court, there is a delay of more than three years in passing of the award. Thus, in our considered opinion, the delay cannot be said to be attributable to the appellant.

28. As per discussion made above and in the facts of this case, what amount of compensation may be directed to the appellant herein needs to be looked into. In this regard, in the case of compulsory acquisition of land, the eminent domain of the State cannot be doubted. Simultaneously, right of the land owner enshrined under Article 300-A and Article 31-A of the Constitution of India which has been recognized as a human/civil right cannot be overlooked. Therefore, if any individual is to be divested or deprived of the said right by the State, it ought not be done without giving compensation in accordance with law for the land so acquired for public purpose.

29. In the above context, we can profitably refer the judgment of this Court in the case of ***“Tukaram Kana Joshi and Others***

through Power-of-Attorney Holder Vs. Maharashtra Industrial Development Corporation and Others, (2013) 1

SCC 353". In the said case, this Court had the occasion to consider the principles of eminent domain, absolute power and deprivation of the rights to property of an individual. The relevant paragraphs of the said judgment are reproduced as thus –

"11.There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a "subject" of medieval India, but not as a "citizen" under our Constitution.

* * * *

17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his

fundamental/constitutional/human rights, under the garb of industrial development.

18. *The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom constitutional/statutory benefits are accorded, in accordance with the law.*

19.....*Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation.....”*

30. The said judgment has been referred in the case of **“Bhimandas Ambwani (Dead) through LRs Vs. Delhi Power Company Limited, (2013) 14 SCC 195”**, wherein this Court had considered the aspect of inordinate delay of about five decades in not granting the compensation to the land loser from the date of taking over of possession and directed the respondent to make the award treating the date of Section 4 notification as on the date of order passed by this Court. For ready reference, the relevant paragraph is reproduced as thus –

“14. *The instant case is squarely covered by the aforesaid judgment in Tukaram case [(2013) 1 SCC 353] and thus, entitled for restoration of possession of the land in dispute. However, considering the fact that the possession of the land was taken over about half a century ago and stood completely developed as Ms Ahlawat, learned counsel has submitted that a full-fledged residential colony of the*

employees of DESU has been constructed thereon, therefore, it would be difficult for Respondent 1 to restore the possession. In such a fact situation, the only option left out to the respondents is to make the award treating Section 4 notification as, on this date i.e. 12-2-2013 and we direct the Land Acquisition Collector to make the award after hearing the parties within a period of four months from today. For that purpose, the parties are directed to appear before the Land Acquisition Collector c/o the Deputy Commissioner, South M.B. Road, Saket, New Delhi on 26-2-2013. The appellants is at liberty to file a reference under Section 18 of the Act and to pursue the remedies available to him under the Act. Needless to say that the appellants shall be entitled to all statutory benefits.

31. Recently, the similar approach was adopted in the case of **“Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another, (2022) SCC Online SC 1408”**, wherein 3-Judge Bench of this Court in a reference while dealing with the divergent views of two Judges relating to taking over of possession without following the mandate of Section 17 of the LA Act, vis-a-vis violation of constitutional guarantee to a citizen under Article 300-A of the Constitution of India, the Court answered the said reference as thus –

25. *On weighing all aspects of the matter, we deem it appropriate that it will serve the ends of justice to direct the respondents to determine the market value insofar as the appellant's land is concerned by reckoning the relevant date as 09.06.2008 (i.e. the date on which the award was ultimately passed), by applying the yardstick under Act,*

1894. It is made clear that only the market value be determined as on that date but for awarding the statutory benefits, it shall be calculated from the date of the original notification since admittedly the appellant has been dispossessed on 04.02.2003 pursuant to the notification dated 17.04.2002. Further, from the date on which the fresh award is passed pursuant to this judgment, the appellant would get the cause of action for seeking reference if dissatisfied with the quantum of compensation awarded. It is made clear that the determination of compensation, in this case, shall not give rise to any right in favour of any other land loser whose land was acquired under the same notification, to seek for re-determination of compensation where the same has already attained finality.

* * * *

27. In the result, we pass the following order:

(i) The provision contained in Section 11A of Act, 1894 shall be applicable to cases in which the acquiring authority has not complied with the requirement of sub-section (3A) to Section 17 of Act, 1894 by tendering and paying eighty per centum of the estimated compensation before taking possession since possession in such cases cannot be considered to be taken in accordance with law and the vesting is not absolute.

(ii) If the requirement is complied and possession is taken after tendering and paying eighty per centum, though there is need to pass an award and pay the balance compensation within a reasonable time, the rigour of Section 11A of Act, 1894 will not apply so as to render the entire proceedings for acquisition to lapse in the context of absolute vesting. The right of land loser in such case is to enforce passing of the award and recover the compensation.

(iii) In the instant case though Section 11A of Act, 1894 has become applicable, in the changed circumstance we deem it proper to mould the relief instead of holding the acquisition to have lapsed.

Hence for the reasons stated above, we direct as follows:

(a) The respondents shall construe 09.06.2008 as the relevant date and determine the market value prevailing as on that date applying the yardstick under Act, 1894 in respect of the acquired land.

(b) To calculate the statutory benefits on such amount including interest, the same shall be determined by taking into consideration the date of the Section 4 notification dated 17.04.2002 since the appellant was dispossessed on 04.02.2003 pursuant to the same.

(c) The date on which the fresh award is passed pursuant to this judgment and communicated shall be the date of cause of action for seeking enhancement of compensation if the appellant is dissatisfied with the quantum of compensation offered.

(d) The compensation determined in this case shall not give the cause of action to any other land loser whose land is acquired under the same notification to seek re-determination of compensation.

(e) The appellant shall be entitled to the cost incurred in these proceedings.”

32. In view of the judgments referred above, this Court while striking a balance between eminent domain of the State and human/civil rights of an individual, has put an obligation on the State and its authorities to pass an award within a reasonable time. It is observed that, on compulsory acquisition of land, if the award is not passed within a reasonable time duly compensating such an individual, it would cause grave hardship and it would adversely affect the livelihood of the land loser. In the said

judgments, because of inordinate delay in passing the awards, the Court had changed the date of preliminary notification ordinarily applicable in determining the market value of land for assessing amount of compensation, to the date of the judgment of the Court, and/or the date of award passed belatedly. This Court has recognized the right of the citizen after taking possession of the land without payment of compensation. As observed, the delay in determining compensation uproots the land losers, however, to meet the ends of justice and to rationalize the equity, switching the date of market value in determining compensation by the orders of the Court is found necessary.

33. In the case of ***“K. Krishna Reddy and Others Vs. Special Deputy Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh, (1988) 4 SCC 163”***, this Court has conceptualized the effect of non-determination and payment of compensation immediately to a land loser. The Court observed that if there is inordinate delay in determination as well as payment of compensation, it diminishes the purchase power as well as value of Rupee due to rising inflation. Therefore, the utility

to compensate such land loser with equal value cannot be ruled out. In the said case, the Court has observed as thus –

“12.After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry.....”

34. If we take clue from the above referred judgments and the observations made, the principles as enunciated squarely applies in the case on hand. For the sake of clarity and at the cost of repetition, looking to the records before us, it is clear that the preliminary notification was published on 12.07.1962 followed by final notification on 16.01.1969. The possession of the subject land was taken in 1970 and the road was constructed which is in public use since then. In the case of other land owners, award was passed on 22.09.1986, discriminating the land owner/appellant herein. Even after directions of the High Court in order dated 29.09.2009 to pass an award by 30.04.2010, it was passed ‘ex-parte’ after three years on 30.04.2013 during

pendency of this appeal without adhering to the mandate of Section 12(2) of the LA Act. Consequently, appellant could not get compensation of the land since last five decades. In view of the said conduct, we are of the considered view that the value of the land which may be on the date of preliminary notification cannot be equated on the date of passing of 'ex-parte' award. As per Section 48-A of LA Act, which is legislatively applicable as per the Schedule of NIT Act, it is clear that if the award is not passed within a period of two years from the date of final notification, compensation for the damages suffered due to delay is required to be determined as prescribed therein. Therefore, in the peculiar facts of this case and to meet the ends of justice, we deem it appropriate to mould the relief and direct that the SLAO shall pass a fresh award taking market value as on the date when the 'ex-parte' award was passed, i.e., 30.04.2013. Needless to observe that, other statutory benefits shall be reckoned and payable from the date of preliminary notification as per the provisions of the LA Act. We are also of the firm view that the appellant shall be entitled for compensation for damages due to delay as specified under Section 48-A of the LA Act within a period of four months.

35. Accordingly, in view of the foregoing discussion, the appeal is allowed in part with the following directions –

1. *As the land has been acquired under the NIT Act, therefore, in view of judgment of Nagpur Improvement Trust (supra) & Bankatlal (supra), the benefit of Section 11-A of LA Act (lapse of land acquisition proceedings), shall not be available to the appellant and the findings in this regard recorded by the High Court are hereby affirmed.*
2. *The rejection of request of appellant for grant of alternate piece of land by NIT, does not warrant any interference in the facts of this case.*
3. *The 'ex-parte' award dated 30.04.2013 shall not be given effect to and the SLAO is hereby directed to determine the compensation afresh. For the said purpose, SLAO shall take the market value of the subject land as on the date of passing of 'ex-parte' award, i.e., 30.04.2013 and determine the compensation affording an opportunity to the appellant and NIT.*

4. *The appellant shall also be entitled to all other statutory benefits as per the provisions of the LA Act which shall be calculated from the date of notification as prescribed by law.*
5. *The appellant shall also be entitled to compensation for damages suffered in view of delay as per Section 48-A of LA Act as modified by Schedule of NIT Act.*
6. *The said exercise be completed by the SLAO within a period of four months from the date of appearance, for which the parties are directed to appear on 25.09.2023.*
7. *Pursuant to this judgment and on passing the award as directed, if the appellant is dissatisfied, the cause of action to seek reference for enhancement shall be from the date of communication of the fresh award.*
8. *The other land owners whose land were acquired under the same notification and who have received compensation will not be entitled to seek re-determination of compensation in view of this judgment.*

36. All the pending applications, if any, shall stand dismissed.

No order as to costs.

.....**J.**
(SURYA KANT)

.....**J.**
(J.K. MAHESHWARI)

NEW DELHI;
SEPTEMBER 6, 2023.