
(2015) 02 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 23476, 28713 and 29482 of 2014

Anitha Tholia and Others

APPELLANT

Vs

State of Telangana and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 300-A
Land Acquisition Act, 1894 — Section 11, 11(1), 11(A), 11A, 11-A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114, 114(1), 23, 24, 24 (2)

Citation : (2016) 1 ALD 148 : (2015) 3 ALT 740 : (2015) ALT(Rev) 244

Hon'ble Judges : P. Naveen Rao, J.

Bench : Single Bench

Advocate : B. Mayur Reddy, for the Appellant

Final Decision : Disposed off

Judgement

P. Naveen Rao, J.—In these three writ petitions, petitioners have properties located in Nampally, Hyderabad, which are acquired by the State. Petitioners challenge determination of compensation on the properties owned by them and pray to grant directions to determine the compensation in accordance with provisions of "The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013" (ACT 30 OF 2013). The three writ petitions are disposed of by this order.

2. The facts in issue are in narrow compass. State set in motion the acquisition of private properties in accordance with provisions of Land Acquisition Act, 1894 (Repealed Act) on a requisition made by the Greater Hyderabad Municipal Corporation(GHMC). Section 4(1) notification dated 8.4.2013 was issued listing 20 private properties located in Nampally village and mandal of Hyderabad district including the properties of petitioners herein. Notices under Section 5-A of the Repealed Act were issued on 8.4.2013. Petitioners filed their objections opposing the acquisition. On consideration of the objections filed by the

petitioners, orders were passed by the District Collector in proceedings No. C/260/2013 dated 9.7.2013 rejecting the said objections. Thereafter draft declaration was approved by the District Collector on 19.7.2013 and same was published in Hyderabad District Gazette. The award was made on 23.12.2013. Award dealt with extent of properties acquired and compensation payable. "The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (ACT 30 OF 2013)" has come into force with effect from 1.1.2014. Act 30 of 2013 repealed Act, 1894. Under Section 12(2) of repealed Act notification was issued on 26.7.2014 directing the petitioners to receive compensation determined and also to vacate the premises. Aggrieved thereby these three writ petitions are instituted.

3. Heard Sri P.V.A. Padmanabham learned counsel appearing for petitioners in W.P. No. 28713 of 2014, Sri Vedula Srinivas, learned counsel appearing for petitioner in W P No. 29482 of 2014, Sri Mayur Reddy, learned counsel appearing for petitioners in W.P. No. 23476 of 2014, learned Government Pleader for Land Acquisition (Telangana) and Sri Vivek Reddy, learned standing counsel appearing for Hyderabad Metro Rail Authority.

4. Sri P.V.A. Padmanabham, learned counsel appearing for petitioners contended that entire land acquisition proceedings are vitiated on account of the promulgation of new Act which has come into force from 1.1.2014, whereas the proceedings were initiated under the Old Act. He further contended that no award was passed by the time new Act has come into force. The respondents were illegally claiming that an award was passed before 1.1.2014 by anti-dating the award. If the respondents have passed award on 23.12.2013, as claimed by them, the award ought to have been communicated immediately, whereas, till July, 2014 no intimation of passing of an award was given and copy of the award is not communicated till date.

5. He further contended that even assuming that an award was passed before 1.1.2014, as contended by the respondent authorities, as copy of the award was not communicated by 1.1.2014, in law it cannot be said that an award was passed before 1.1.2014, and therefore compensation has to be determined in accordance with mandate of Act 30 of 2013, whereas in the instant case compensation was determined as per the provisions of Repealed Act. He further contended that unless copy of the award is served, award is not said to have been made. Process of making of an award is complete only if notice under Section 12(2) of the Repealed Act along with copy of the award is served. The act of making of an award is an administrative act; it is in the nature of an offer made on behalf of the State and unless the offer is communicated and acceptance is given by the property owners, award cannot be said to have been made. Non-communicated administrative decision is not binding on the property owners.

6. Section 24 of the Act is an exception and it only saves certain decisions of the authorities taken under the Repealed Act. Thus provisions of Section 24 have to

be strictly construed in terms thereof and unless an award is properly made before 1.1.2014, compensation has to be determined according to provisions of Act 30 of 2013. As deducible from the statement of objects and reasons, in recognition of concerns expressed by the property owners of forcible acquisition without following due process and without paying appropriate compensation affecting livelihood of such owners, many times, who are small property owners or persons having small agricultural holdings and having been dependant on the said holdings the new Act is made. Act aims to provide just and fair compensation, make adequate provision for rehabilitation and resettlement for the affected persons in the family, determination of compensation package on scientific methods. Learned counsel submitted that the objective of new Act must be kept in mind to understand the scope of Section 11, 11(A) and 12 of the Repealed Act and provisions of Section 24 of the Act 30 of 2013.

7. Learned counsel for petitioners submitted that as per Section 24 of Act 30 of 2013, provisions of repealed Act would apply only if the process of passing of an award was complete. As copy of the award is not communicated even till date, the land acquisition proceedings have not attained finality before 1.1.2014 and therefore petitioners are entitled for determination of the compensation for the properties coming under acquisition in accordance with provisions of the new Act.

8. Learned counsel further contended that without furnishing award copy and providing reasonable time for vacating the premises after payment of compensation, the owners of the properties cannot be evicted and compulsory acquisition cannot be made without following the due process and affording reasonable and sufficient time for relocation of commercial activities.

9. Learned counsel for petitioners further contended that Land Acquisition being expropriate action, provisions of relevant statute must be strictly construed as it deprives the person of property without his consent. While keeping in mind public interest for such acquisition, it is also necessary to protect the interest of the persons who are being deprived of their properties. Where suggested construction operates harshly or in any manner contrary to prevailing conceptions of justice and reason, such interpretation should be avoided. He further contended that narrow interpretation of Section 24 of the new Act would lead to inconsistency and runs contrary to scheme of said section.

10. Learned counsel also strenuously contended that proviso appended to Section 24 has application to contingencies mentioned in Section 24. Said proviso not only carved out an exception to the main provision, it qualifies the scope of provisions and explains length and breadth of scheme of Section 24 and contended that even if award is made prior to 1.1.2014, but if no compensation is paid in respect of majority of property owners under the notification, the land owners are entitled to determination of compensation as per Act 30 of 2013.

11. Sri P.V.A. Padmanabham relied on following decisions:

" Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and

Another, , Vijayadevi Navalkishore Bhartia and Another Vs. Land Acquisition Officer and Another, , Kotak Mahindra Bank Ltd. Vs. Hindustan National Glass and Ind. Ltd. and Others, , Kaliyappan Vs. State of Kerala and Others, , S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, , State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another, , Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , Bhagwan Das and Others Vs. State of UP and Others, , Govt., of A.P. and Others Vs. Malik Sultana and Others, , K. Peda Venkataiah Vs. Government of Andhra Pradesh and Others, , Maddela Narsimlu and others Vs. The Special Deputy Collector, Land Acquisition Unit-I, Sriramsagar Project, Nizamabad, , Sadh Ram Vs. State of Himachal Pradesh and Another, , C. Ram Prakash and C. Naren Dharmaraj Vs. Power Grid Corporation of India Ltd.--> and Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, ." 12. Sri Vedula Srinivas learned counsel while adopting the submissions made by Sri Padmanabam further submitted that the principle laid down by the Supreme Court in Raja Harish Chandra Raj Singh (cited supra) is reiterated in the decision of the Supreme Court in Premji Nathu Vs. State of Gujarat and Another, . He further contended that there is no provision in the Repealed Act also to keep the money in a Revenue Account and keeping the money in Revenue account does not amount to making payment. According to Section 31 of repealed Act, in case the owner of the properties is unwilling to receive compensation, the amount of compensation has to be deposited in the Civil Court. Repealed Act does not envisage keeping the amount in Revenue deposit. As no payment was made prior to 1.1.2014 or till date and only during the course of proceedings before this Court, respondents have come forward with their willingness to pay the compensation the land acquisition proceedings are deemed to have been not finalized before 1.1.2014 and therefore computation has to be worked out according to Act 30 of 2013. Learned counsel further submitted that as no award was communicated, it is deemed that no award was passed before 1.1.2014 and therefore provisions of new Act shall apply.

13. Sri Mayur Reddy, learned counsel supplemented the submissions of Sri P.V.A. Padmanabham and contended that award is in the form of an offer and an offer unless communicated does not become final and any decision taken without communicating offer is not binding on the other party. Even along with notice under Section 12(2) dated 26.7.2014 no award was served, therefore by 1.1.2014 and even till date as the award is not communicated, the award has not been made. He placed reliance on the decision of the Supreme Court in Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, in support of his above contention. Learned counsel Sri Mayur Reddy placed reliance on the decisions of Supreme Court in Bharat Kumar Vs. State of Haryana and Another, on the scope of Section 24 (2) of the Act.

14. All the learned counsels appearing for petitioners also contended that as widely reported in media, there is proposal to change the alignment and if alignment is changed, acquisition of properties of petitioners would not be required and therefore it is wholly illegal to proceed with acquisition when State is contemplating to change the alignment of Metro Rail network. Learned counsels therefore contended that the issue of acquisition of the properties of the petitioners should be kept in abeyance until the issue of change of alignment is finalized and requirement of properties of the petitioners is reassessed after such realignment process is completed.

15. In support of contention that the apprehension expressed by the petitioners is reasonable on change of alignment and on that ground the petitioners are entitled to invoke the extraordinary jurisdiction of this Court, Sri Mayur Reddy, learned counsel for petitioners placed reliance on the decision of the Supreme Court in *Rupinder Singh Sodhi and Another Vs. Union of India (UOI) and Others*, .

16. Sri Vivek Reddy, learned standing counsel representing Hyderabad Metro Rail Authority strenuously supported the land acquisition proceedings culminating in passing of an award. Learned standing counsel contended that award was made on 23.12.2013 and placed reliance on provision contained in Section 11 of the Repealed Act and Section 24 of the Act 30 of 2013 to contend that in terms thereof an award is made the moment it is signed and notified i.e. on 23.12.2013. Communication of the award is not linked to coming into force of the award. The factum of communication of award comes into effect the moment it is signed and notified. By placing reliance on the provisions of Section 12 of the Repealed Act, learned counsel contended that award is deemed to have been communicated on the day when it was pronounced when the parties were present. Referring to provisions in Section 12 of the Repealed Act learned standing counsel contended that scheme of the Act does not envisage communication of the award and therefore contended that award attains finality the moment it is signed and notified and that is "the making of award" as envisaged by Section 11 of repealed Act and Section 24 of Act 30 of 2013.

17. Learned standing counsel further contended that Section 11-A deals only with fixing time limit within which an award should be passed and nothing else. He further contended that relevancy of the communication of the award is with reference to entitlement of the persons whose property is acquired for asking for enhancement of the compensation determined. Section 18 fixes time limit within which such an application can be made for enhancement of compensation. The relevancy of time of communication under Section 12(2) is for the purpose of seeking reference to Civil Court under Section 18 and has limited application only. He submitted that accepting the contention of the petitioners would amount to re-writing the provisions of Section 11 and 12 of the Repealed Act, which is not permissible. He strenuously contended that communication of the award is not an element of Section 11 and 11-A of the Repealed Act. Decision of the

Supreme Court reported in Raja Harish Chandra Raj Singh (cited supra) is for the purpose of time limit as prescribed in Section 18; the said decision has been considered in subsequent decisions of Supreme Court and placed reliance on Kaliyappan (Cited supra) to contend that scheme of the application of principle laid down by Supreme Court in Raja Harish Chandra Raj Singh (cited supra) is limited to time limit prescribed in Section 18 of the Repealed Act. He therefore contended that as per the scheme envisaged in Sections 11 and 12 of the Repealed Act, non communication of the award does not vitiate the validity of the award.

18. Learned standing counsel further contended that proviso to Section 24 of Act 2013 is applicable to sub section 2 and not to sub section 1 and proviso can only limit to narrow down the principal provision and do not enlarge the scope. Scheme of Section 24 would make it clear that the proviso has application with reference to sub section 2 of Section 24. He contended that sub section 1 deals with two contingencies, i.e., effect of passing of an award before 1.1.2014 and effect of not passing of an award before 1.1.2014. Whereas sub section 2 deals with a situation where though an award was passed 5 years prior to 1.1.2014, but either physical possession of the land under acquisition was not taken or compensation was not paid, and holds that it would result in lapsing of the award. However, the scope of this provision in sub section 2 is narrowed down by virtue of the proviso. It deals with a situation where though award was passed prior to 1.1.2014 but compensation in respect of majority of the land holdings was not deposited, all beneficiaries specified in the acquisition notification are entitled to receive compensation in accordance with the provisions of new Act. He contended that this proviso has no application to the contingencies referred to under sub section 1. In support of his contention, he relied upon the principles analysed in "Principles of Statutory Interpretation" written by Mr. G P Singh and Mr. Bennion in his book titled "Statutory Interpretation" and decisions of the Supreme Court in Sales Tax Officer, Circle-I, Jabalpur Vs. Hanuman Prasad, and State of Rajasthan Vs. Leela Jain, .

19. Learned standing counsel further contended that Section 24 of the Act 30 of 2013 refers to Section 11 of the Repealed Act. Thus application of Section 24 would arise if no award as mandated by Section 11 was made before 1.1.2014. Section 11 only talks about making of an award and not communication and thus in terms of section 24 of Act 30 of 2013 award was made on 23-12-2013.

20. Learned standing counsel further contended that Greater Hyderabad Municipal Corporation placed requisition for acquiring several properties in Nampally area of the Hyderabad city. These properties were sought to be demolished to widen the existing road so that even after construction of Metro Rail System, there would be smooth flow of traffic. Even if Metro Rail Project is diverted in Nampally area, the present road requires widening to accommodate growing traffic needs. As the acquisition is to provide passage for metro Rail network the Hyderabad Metro Rail has become the acquisition department and

amounts payable as compensation towards acquisition of private properties were born by the Hyderabad Metro Rail. He further submitted that the proposed diversion of Metro project in Nampally area is not likely to impact properties of petitioners. He submitted that at any rate the acquisition is for public purpose and properties of petitioners are required for widening of road.

21. Learned Government Pleader supported the action of the State in acquiring the properties of the petitioners. Learned Government Pleader contended that award was passed on 23.12.2013. She strenuously denied the allegation that passing of award was anti-dated. She submitted that already relevant records were produced and this Court has perused the records and it would clearly disclose that award was made on 23.12.2013 and it was not an anti-dated award. There is no deviation of procedure mandated by Repealed Act. The Repealed Act has not envisaged communication of the award as mandatory and since it is not envisaged, the award does not become void nor it can be contended that award has not been made merely because it was not communicated or not communicated immediately. She contended that there was sufficient justification for the delay in issuing notice under Section 12(2) and the delay was neither willful nor wanton. On account of delay in issuing notice under Section 12(2) of the Repealed Act, no prejudice is caused to the petitioners and that petitioners were not dispossessed from their property and that they continue to enjoy the same and carrying on their activities.

22. In reply Sri P.V.A. Padmanabham submitted that decision of the Supreme Court in Raja Harish Chandra Raj Singh (cited supra) still holds the field. It has been followed in several decisions by Supreme Court. He further contended that communication is mandatory and award passed is not final unless communicated. As per Section 12(2) of the Repealed Act it cannot be said that award is made unless communicated.

23. In reply Sri Vedula Srinivas, learned counsel for petitioners contended that proviso appended to Section 24 applied to contingencies of Section 24(1)(b).

24. The points for consideration are:

"(a). When an award under the repealed Act is held to have been made? And

(b). Whether petitioners are entitled to determination of compensation as per Act 30 of 2013 on the ground that majority of property owners under acquisition were not paid compensation before 1-1-2014?"

25. To appreciate rival contentions, it is necessary to look into relevant provisions. The provisions relevant for these cases are, Sections 11, 11-A and 12 of repealed Act and Section 24 of Act 30 of 2014. The said provisions read as under:

"Section 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.]

[Section 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.]

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.

Section 24 of the Act 30 of 2013 reads as under:

"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(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

(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, 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 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." 26. The records provided disclose that award was made on 23.12.2014. The fact that award was not communicated prior to 1.1.2014 is not in dispute. Petitioners contend that as award was not communicated before 1.1.2014, award was not "made" and therefore, compensation has to be determined as per new Act. Making of an award is complete only when it is communicated. The stand of respondents is, making of an award means signing of award and does not depend on actual communication and as award was made prior to 1.1.2014, compensation was validly determined as per repealed Act.

27. Heavy reliance is placed on the decision of Supreme Court in Raja Harish Chandra by counsels for petitioners in support of their contention that unless award is communicated it cannot be said to be "made". Award is in the form of offer and unless the offer is made to the other party, it has no legal validity and not binding on the property owner. The decision in Raja Harish Chandra is considered by the Supreme Court in several subsequent decisions.

28. In Raja Harish Chandra, the facts in brief are: award was made on 25-03-1951, but no notice under Section 12(2) was issued to land owner. Only on 13-01-1953, person came to know of passing of award. On 24-03-1953, the person has applied for enhancement of compensation under Section 18 of the Repealed Act. The said application was rejected on the ground that it was beyond the time fixed in Section 18. Single judge of Allahabad High Court held that the application filed under Section 18 of the Repealed Act be treated as within time. The Division Bench upheld the decision of the Land Acquisition Officer. The short question for consideration by the Supreme Court was whether application filed by the appellant under Section 18 was within time. Supreme Court upheld the directions issued by single judge.

29. Supreme Court held as under:

"5. ...Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively.... The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and

natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way.

7. In this connection it is material to recall the fact that under Section 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The legislature recognised that the making of the award under Section 11 followed by its filing under Section 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to Section 18. It is because communication of the order is regarded by the legislature as necessary that Section 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate....

....

11. ...These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned...."

30. In Kaliyappan, when Award is said to have been made is considered by the Supreme Court. It was contended that unless award is served, it is not made and as two years time fixed in Section 11 of repealed Act lapsed before copy of award was served, the said acquisition proceedings lapsed. Reliance was placed on the decision of Supreme Court in Raja Harish Chandra. Supreme Court held,

"4. ...There is no doubt a difference between the meaning given by this Court in Raja Harish Chandra case to the words "date of the award" in Section 18 of the Act and the interpretation of the High Court of the words "the Collector shall make an award" or "the award shall be made" in Section 11-A of the Act but such a distinction had to be maintained because the object of and the reason for prescribing the period of limitation under Section 11-A of the Act are different from the object of and the reason for prescribing the period of limitation under

Section 18 of the Act and the consequences that would flow from the violation of the rule of limitation in the two cases are also different. In the former case the period of limitation is prescribed for preventing official delay in making the award and the consequent adverse effect on the persons or persons interested in the land but in the latter case the period of limitation is prescribed for providing a remedy to the persons whose lands are acquired to seek a reference to the civil court for the determination of proper and just compensation. Secondly, while in the former case violation of the rule of limitation would result in the acquisition proceeding becoming ineffective, in the latter case such a violation will not have any effect on the validity of acquisition proceeding. Thirdly, while in the former case the period of limitation prescribed represents the outer limit within which an award can be made in the latter case we are concerned with the point of time at which the time to make an application under Section 18 of the Act will begin to run against the person interested in the land. The provisions of Section 11-A have to be construed bearing in mind these points of difference. It is well known that the meaning to be assigned to the words in a statute depends upon the context in which they are found and the purpose behind them.

5. ... "To make an award" in this section means "sign the award". That is the ordinary meaning to be ascribed to the words "to make an award". An extended or a different meaning assigned to the words "the date of the award" by this Court in Raja Harish Chandra case cannot be applied in this case since such an extended or different meaning is neither warranted by equity nor will it advance the object of the statute. Similarly under the proviso to Section 11-A of the Act, the Collector is empowered to make an award within two years from the date of commencement of the Land Acquisition (Amendment) Act, 1984 irrespective of the date on which the notice of award is served on the person concerned. We do not find any analogy between Section 11-A and Section 18 of the Act insofar as the above question is concerned. The High Court was, therefore, right in rejecting the above contention of the petitioner."

31. In Maddela Narsimlu, full bench of this Court considered the scope of Section 12(2) and Section 18 of the Repealed Act. The full bench held as under:

"14. ...The purpose in requiring the award to contain reasons, in our view, is meant to be a check on the Collector so that his award may not be arbitrary. The reasons therefore need not be communicated under Section 12(2).

....

16. In our opinion, this argument though attractive on its face, cannot be accepted on a deeper scrutiny of the provisions of the Land Acquisition Act. The award enquiry before the Collector, is only for the purpose of making an offer to the person interested. Though the award must contain reasons it is not necessary that those reasons must be communicated to the persons interested. This is because once a reference is made to the Court upon an application filed within the time limited by S. 18(2), the Collector in his statement to the Court

under S. 19 will then come forward, under sub-clause (d) to S. 19(1) with the grounds on which the amount of compensation is determined. In his statement to the Court he will further mention, for the information of the Court, the situation and extent of the land with particulars of any trees, buildings or standing crop, the name of the persons who he has reason to think are interested in such land and the amount awarded for damages and paid or tenders and the amount of compensation awarded. The Court shall then serve notice under S. 20 of the Act to the persons to file their objections in respect of the area of the land and the amount of compensation. While filing such objections in the Court, after the reference under S. 18 and after notice under S. 20, the persons interested will have the benefit of the grounds communicated to the Court by the Collector under S. 19(1) and they can file effective objections in the civil court. The argument that unless a copy of the award or at least the reasons of the award are communicated to the persons interested under S. 12(2), the said persons cannot claim an effective application for reference under S. 18(1), cannot be accepted. In the application for reference under S. 18(1) it is not necessary for the persons interested to say anything more than that they are objecting to the measurement of land, the amount of compensation or the persons to whom it is payable or the apportionment thereof. Even if they do not mention any particular reasons the application seeking reference under S. 18(1) does not become invalid. They will have a real opportunity before the Court, after the reference and after the Collector's Statement under S. 19(1), when they file their objections in the Court in regard to the area or the amount of compensation or other factors. It is these objections with reasons therefor, then filed that are normally registered as an O.P. It is thereafter that the Land Acquisition Officer files a counter thereto in the Court. The scheme of the Act, in our view, is for giving to the interested persons an opportunity to know the reasons for the award when the matter comes before the Court after the reference under S. 18(1) and not at the stage of service of notice of the award under S. 12(2).

19. It is true that the Division Bench relied upon the two decisions of the Supreme Court viz., Harish Chandra(emphasis supplied) and State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, . In our view the said decisions of the Supreme Court have been delivered in connection with the second part of the proviso (b) to S. 18(2) available in the Central Act (and in some States) and which part has been dropped in Andhra Pradesh by the A.P. Act 20 of 1959.

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20. This part of the provision requires interpretation of another set of words i.e. "notice of award" in S. 12(2). Those words, in our view, mean notice of the award containing the offer of the Government, such award referring, in terms of S. 11 merely (i) the true area of the land, (ii) the compensation which should be allowed for the land, (iii) the apportionment of the said compensation, (iv) the persons known or believed to be interested in the land. If the above four factors are mentioned in the notice of a award it would, in our opinion, be sufficient

compliance with the provisions of S. 12(2) as to notice of award even though the reasons for the award are not communicated."

32. In *Poshetty*, Supreme Court upheld the view taken by Full Bench of this court in the above decision and held as under:

"2. ...In other words, the proviso to sub-section (2) of Section 18 prescribes the limitation within which the application for reference under sub-section (1) of Section 18 is required to be made and the failure thereof puts an end to the right of the claimant to seek a reference under Section 18. This Court has already held that communication of the award is not a precondition (emphasis supplied) and, therefore, the Full Bench of the High Court was right in its interpretation of the provisions of Section 18, proviso read with sub-section (2) of Section 12. The local amendment does not, therefore, make any material change to the aforesaid interpretation." 33. In *State of Punjab and Another Vs. Satinder Bir Singh*, Supreme Court held as under:

"8. The question then is whether the notice under Section 12(2) is a valid notice. From a conjoint reading of Sections 11 and 12, it is clear that notice is only an intimation of making of the award requiring the owner or person interested to receive compensation awarded under Section 11 (emphasis supplied). On receipt of the notice, if the person interested receives compensation without protest, obviously no reference need be made. The determination of compensation becomes final and binds the parties. When he receives the compensation under protest as contemplated under Section 31 of the Act, the need to make the application for reference under Section 18(1) would arise. At that juncture it will be open to the person interested either to make an inspection of the award which was conclusive between him and the Collector by operation of sub-section (1) of Section 12(emphasis supplied), or seek a certified copy of the award from the Collector and the contents. Thereon he could make necessary objection for the determination inter alia, of compensation for the land. It is not necessary that the notice should contain all the details of the award including his consideration and its manner of determination of the compensation as opined by the learned Judge of the High Court. It is not incumbent that the person interested should immediately make the reference application on his receiving compensation under Section 31. In other words receipt of the amount and making the reference application are not simultaneous. The statutory operation of limitation mentioned by Section 18(2) does not depend on the ministerial act of communication of notice in any particular form when the Act or Rules has not prescribed any form. The limitation begins to operate from the moment the notice under Section 12(2) is received or as envisaged by Section 18(2)." 34. In *Bhagwan Das*, Supreme Court held as under:

"26. If the words six months from the "date of the Collector's award" should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under

Section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the landowner as required under Section 45 of the Act. If the words "date of the Collector's award" are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award.

27. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300-A of the Constitution of India. To avoid such consequences, the words "date of the Collector's award" occurring in proviso (b) to Section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award.

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31. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the mahazar/panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so."

35. In *Bailamma*, it is held an award once signed by the Collector becomes an award as soon as it is approved by the Government. Supreme Court held that "the mere fact that the Collector did not pronounce the award after notice in the presence of the parties interested will not invalidate the award, though it may have a bearing on the question of limitation in the matter of seeking a reference under Section 18 or 30 of the Act."

36. In *Premji Nathu*, Supreme Court held,

"15. What needs to be emphasised is that along with the notice issued under Section 12(2) of the Act, the landowner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the court." 37. *Vijayadevi Navalkishore Bhartia* is on the scope of power under proviso to Section 11(1) of the repealed Act. Supreme Court rejected the contention that requirement of "approval" by higher authority amounted to exercising appellate power. The Land Acquisition Office, arrived at

appropriate compensation payable on land acquired and sent proposed award to Commissioner for approval. The Commissioner did not agree with the method of determining compensation and remitted to Land Acquisition Officer for reassessment. Supreme Court held under proviso to Section 11(1) of repealed Act, Commissioner cannot deal with merits of determination of compensation as an appellate authority.

38. Act 30 of 2013 is brought in place of Act, 1894. In terms of Section 114(1) of Act 30 of 2013, Act, 1894 is repealed. Section 24 of Act 30 of 2013 is an exception to Section 114 of the Act. In terms of provision contained in Section 24(1), the land acquisition proceedings initiated under the Repealed Act are saved. If an award is already made before 1-1-2014, all proceedings under the Repealed Act shall continue to apply with reference to all aspects of such acquisition as if said Act was not repealed {(Section 24(1)(b))}. Further, if by 1-1-2014, no award is made, it is permissible to make an award in terms of the Repealed Act after 1-1-2014 also, but compensation payable on such acquisition should be in accordance with Act 30 of 2013 { Section 24(1)(a)}. Thus, in terms of provision contained in Section 24(1)(b) of Act 30 of 2013, if an "Award is made" before 1-1-2014, all provisions of Repealed Act alone would apply. Regarding making of award, Section 24(1)(b) of Act 30 of 2013 refers to award made as per Section 11 of Repealed Act. It is appropriate to notice that Section 24(1)(b) seek to preserve the provisions of Repealed Act as if the same was not repealed. Thus, when this provision refers to "award made" it has to be same as what was envisaged in Section 11 of Repealed Act. The principle deducible from precedents referred to above is, under Section 11 of Repealed Act, an "award is made" the moment it is signed by the Collector/Land Acquisition officer and does not depend on any other contingency including its actual communication. The decision to acquire extent of property specified in the award becomes final the moment it is signed. The statement of objects and reasons and the provisions of Act 30 of 2013 are relevant only for land acquisition initiated after 1.1.2014 and not saved by Section 24 of the new Act. When the provision is clear and unambiguous and convey only one meaning, court cannot venture to ascribe a different meaning. It would amount to trenching into field of legislation, which would be exclusive privilege of Indian Parliament/State legislature. A combined reading of Sections 23, 25 and 31 of Act 30 of 2013, it is evident that even new Act also envisages that "award is made" when signed by Collector and is final between the Collector and person interested, even if person interested was not present when award was made and does not envisage communication of the award as condition precedent to making of award. It is thus clear that Indian Parliament clearly envisages that award is made the moment it is signed and making of award is not linked to its communication.

39. In Maddela Narsimlu the grievance was petitioners were not aware as to when award was passed as no notice was given to them. The award was passed on 9-12-1976 fixing meager compensation. They sought for direction to refer to civil court under Section 18 of the Repealed Act, much beyond the time fixed

therein. Full Bench of this court held service of award with notice is not necessary. This view of Full Bench is affirmed by Supreme Court in Poshetty. In Poshetty, Supreme Court held, "From a conjoint reading of Sections 11 and 12, it is clear that notice is only an intimation of making of the award requiring the owner or person interested to receive compensation awarded under Section 11 (para 8, [1995] 3 SCC 330)". Thus, communication of award is not a precondition for making of the award.

40. Statute has not prescribed time limit within which notice under Section 12(2) should be issued. Mere delay in issuing notice under Section 12(2), does not vitiate the award made, as making of an award is not contingent upon its communication and intimation of making of an award. Date of notice under Section 12(2) is relevant only for the purpose of availing of opportunity to file application under Section 18 of repealed Act for reference to Civil Court. In two leading decisions of the Supreme Court on the issue, Supreme court has not invalidated the award on the ground that award was not communicated within a reasonable time or not served. In Raja Harish Chandra copy of award was not served even after two years and by the time litigation was instituted. Supreme Court has not invalidated the award on the ground of delay. The Supreme Court upheld the decision of learned single judge of Allahabad High Court, who had directed to consider the application filed under Section 18 on its merits and reversed the decision of the Division Bench, where under it was held that application was not made within time as prescribed in Section 18. In Kaliyappan, one of the contentions urged before Supreme Court was that the Award was not made within two years as prescribed in Section 11A, since it was not served. Supreme Court rejected said contention. Supreme Court held.... "To make an award" in this section (i.e., Section 11A) means "sign the award". That is the ordinary meaning to be ascribed to the words "to make an award". An extended or a different meaning assigned to the words "the date of the award" by this Court in Raja Harish Chandra case cannot be applied in this case since such an extended or different meaning is neither warranted by equity nor will it advance the object of the statute.... We do not find any analogy between Section 11-A and Section 18 of the Act insofar as the above question is concerned...." Thus, delay in communication of the award does not vitiate the award, if the same is validly made.

41. As per Section 24(1) of Act 30 of 2013, compensation as per new Act is required to be determined and paid if no award was made under Section 11 of Repealed Act before 1-1-2014. The award having been made on 23-12-2013, the entire gamut of Repealed Act alone would apply as if such Act is not repealed, including determination of compensation and compensation was validly determined as per Repealed Act. As held by the Supreme Court and this Court in the decisions referred to above, there was full compliance of statutory mandate and award was validly made on 23.12.2013.

42. It is also contended that there is a revised road development plan and the

revised road development plan affects the extent of properties required and unless revised road development issue is finalized acquisition process should not be concluded. In the notification issued under Section 4(1) of Repealed Act, the extent of property of each of the petitioners was specified and award is passed accordingly. Since compensation is not paid, it is permissible for the Land Acquisition Officer to acquire property less than what is already notified by restricting the compensation also to the extent of requirement. In such a case, extent of reduced property remains in possession of petitioners and therefore petitioners are not adversely affected. On the contrary as contended by the petitioners, there is revised road development plan and more extent of property of petitioners is likely to be affected, since such larger extent is not part of the acquisition notification, the question of acquiring the property more than what was already notified does not arise and fresh process has to be initiated. Thus the road development plan does not affect the process of acquisition already initiated and concluded.

43. It is next contended that as no compensation was paid to majority of property owners, in accordance with proviso to Section 24 of the Act 30 of 2013, all the property owners are entitled to determination of compensation as per Act 30 of 2013. To buttress their contention reliance is also placed on the statement of objects and reasons to bring about the new Act. Extensive submissions were made on the scope of proviso appended to Section 24(2). According to learned counsels for petitioners irrespective of date of passing of award, if no compensation is paid to majority of land owners, the compensation has to be determined as per the new Act and in the instant case compensation to majority of owners was not paid.

44. In W.P. No. 23476 of 2014, Notice under Section 12(2) was issued on 26.07.2014 and in the next two writ petitions notice under Section 12(2) was issued on 16.09.2014 directing the petitioners to receive compensation and on the same day respectively, another notice was issued directing to vacate the premises. W.P. No. 23476 of 2014 was filed contending that notice under Section 12(2) was received by the petitioners on 05.08.2014 and they were also asked to vacate the premises and deliver the possession by 16.08.2014. Having regard to the said submission, by order dated 14.08.2014, direction was issued directing the respondents not to take possession of the property of the petitioners therein. With reference to the date of passing of award records were called.

45. On 26.09.2014 records were produced. After perusing the records, this Court found that award was passed on 23.12.2013. The learned Assistant Government Pleader, on instructions, submitted that compensation was already determined and cheques were ready and petitioners were entitled to receive compensation. Having regard to the same, earlier interim orders were modified and petitioners were granted liberty to receive compensation as already determined without prejudice to their claim in the writ petition. Further directions were issued to grant time to vacate the premises till 31.10.2014. By further orders dated

31.10.2014 petitioners were given liberty to receive compensation in the form of cheque as per their convenience. The time earlier granted was extended till 30.11.2014. The other two writ petitions are instituted soon after Section 12(2) notice was served on them and in the said cases also liberty was granted to the petitioners to receive compensation already granted and similar direction not to take possession was also passed. Cases were heard finally and while reserving the cases for judgment, the interim orders granted earlier were extended. As seen from the notice dated 26.07.2014 in W.P. No. 23476 of 2014 and notices dated 16.09.2014 in other two writ petitions, the Land Acquisition Officer clearly indicated to petitioners to appear before him and receive compensation. Without receiving compensation, the petitioners are contesting the manner of determination of compensation. Thus, petitioners cannot be permitted to contend that Land Acquisition Officer refused to pay compensation.

46. Determination of compensation is part of passing of award under Section 11 of the Repealed Act and even according to the provisions of Section 27 of Act 30 of 2013. Language employed in various provisions of Section 24 makes it clear that the Parliament has made clear distinction between contingency when award was not passed prior to 1.1.2014 and though award was passed but compensation was not paid to majority of property owners. As per Section 24(1) (a) if proceedings have commenced under Repealed Act prior to commencement of Act 30 of 2013 but award was passed after 1.1.2014, it mandates determination of the compensation according to provisions of Act 30 of 2013 while passing award in continuation of the proceedings already commenced. Whereas, proviso to Section 24 deals with a situation where though award has already been made which would also mean compensation was determined and process for payment of compensation was set in motion but for majority of property owners, compensation was not paid. In such an event all the property owners irrespective of whether some of them have received compensation or not, are entitled for payment of compensation in accordance with provisions of Act 30 of 2013. This clear distinction is discernible by reading of provisions of Section 24(1)(a) and proviso appended to section 24. To attract the proviso, it is thus necessary that award is already passed, compensation was determined and further steps were taken pursuant to the said award including payment of compensation but for majority of property owners compensation was not paid. In the instant case, award was passed before 1.1.2014 but notice of award was communicated to petitioners in July and later. However, to attract the proviso the further requirement is majority of the property owners were not paid compensation. There is no material brought on record to support the contention of petitioners that payment of compensation to majority of property owners was not made. In the affidavit filed in support of the writ petitions, petitioners only vaguely assert that as compensation was not paid to majority of the property owners, the provisions of new Act should be applied to determine the compensation. Passing of award is not vitiated on account of non payment of compensation as per Act 30 of 2013. In fact, proviso is attracted only in case of

non payment of compensation to majority of property holders which would thus mean after the award was passed and steps were taken for payment of compensation, for reasons other than refusal of compensation determined or relevant particulars of entitlement are not furnished or there are rival claims on entitlement and share, majority of property owners were not paid compensation, then it is mandatory for the Land Acquisition officer to determine compensation to all the property owners whose properties are affected in accordance with provisions of Act 30 of 2013. Thus there is merit in the contention of the learned counsel for petitioners that petitioners are entitled to determination of the compensation in accordance with provisions of Act 30 of 2013, if it is a fact that majority of property owners affected by acquisition were not paid compensation. However as facts brought on record do not disclose the factum of non payment of compensation to majority of property owners a declaration as sought by the petitioners cannot be granted.

47. It is further contended that during the pendency of the writ petitions, it is widely reported in the print media and press note was issued on behalf of State Government expressing the stand of the State Government for change of alignment in Nampally area of the city. The State Government proposed to change the alignment to go behind the State Assembly building as against in front of the building. If alignment is changed in said manner, there is no requirement to acquire the properties of the petitioners and, therefore, until the issue is finalized question of taking possession of the petitioners properties would not arise. The said contention of the petitioners is stoutly opposed by the standing counsel representing Metro Rail Project contending that irrespective of change of alignment the properties in issue are required for widening the road for better traffic management and, therefore, even if the alignment is changed, the acquisition is not going to be affected. Except for the press note released on behalf of the State Government on proposal to change the alignment, no concrete decision is placed before this Court of actual change of alignment. Different stakeholders are involved. Unless consensus is arrived by all the stakeholders and a final decision is taken altering the alignment, Court cannot express any opinion. It is premature for the Court to go into that issue merely based on the press release of the intention of the State Government to change the alignment. Until an order is issued or a specific agreement is signed by stakeholders, it is always permissible for the State to review its proposal. What is placed before this Court is at the most a proposal by one of the stakeholders. Furthermore, this issue and whether widening of road is required even if Metro Rail network alignment is changed cannot be gone into in these writ petitions. The prayers sought in the writ petitions are on the method of determination of compensation. The proceedings under the repealed Land Acquisition Act including passing of an award are not under challenge. Petitioners contended that award is anti-dated to show as if the award was passed before 01.01.2014 for the purpose of determination of compensation according to the repealed Act, and even otherwise compensation for majority of property owners was not paid prior

to 1.1.2014, whereas compensation required to be determined is as per Act 30 of 2013. Thus, the relief claimed is only on manner of determination of compensation.

48. In the result, the first point is answered against the petitioners and with reference to second point writ petition is disposed of granting liberty to petitioners to specifically assert and make a claim before the Land Acquisition officer for revised determination of the compensation in accordance with provisions of Act 30 of 2013 and if it is found that majority of the property owners were not paid compensation before 1.1.2014, the Land Acquisition officer shall undertake the exercise of revision of compensation in accordance with the provisions of Act 30 of 2013 and pay the differential amount of compensation to all the property owners. However, the process of determination of revised compensation applying the proviso appended to section 24 can not derail the process of payment of compensation already determined and taking possession of the properties affected by acquisition. Petitioners are also granted further time of four weeks from the date of receipt of copy of the order to vacate the premises and hand over the possession of premises. The Land Acquisition Officer shall pay compensation determined by him as and when petitioners approach him for payment of compensation. There shall be no order as to costs.

Subject to above directions, the writ petitions are disposed of. No costs. Miscellaneous petitions, if any pending in these writ petitions shall stand closed.