

(2016) 04 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 13389 of 2013

Hansaben Prafulbhai Desai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Railways Act, 1989 — Section 20A

Citation : (2016) AIRCC 2570 : (2017) 1 GLR 823

Hon'ble Judges : Mr. Akil Kureshi and Mr. A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Mr. Saurabh G. Amin, Advocate, for the Petitioners No. 1; Ms. Jirga Jhaveri, AGP, for the Respondents No. 2; Ms. Archana U. Amin, Advocate, for the Respondents No. 1 to 3

Final Decision : Disposed Off

Judgement

Mr. A.Y. Kogje, J. (Oral)—The petitioner has challenged an award dated 6.8.2011 as at AnnexureE to the petition in the following factual background.

2. The petitioner along with her husband claims to be the absolute owner of tenement nos. 28 and 29 situated in Anavil Mohalla, forming part of Gamtal of village Billimora which is constructed on land admeasuring 205.11 sq. mtrs. The petitioner is residing there with her family since many years. The Railway authorities required such land for construction of dedicated freight corridor. The competent authority therefore, issued notification dated 9.1.2009 under section 20A of the Railways Act, 1989 ("the Act" for short) which included several lands of village Billimora which were to be acquired for the said project. According to the petitioner, neither the land nor her house were part of such notification. The Railway authorities followed such notification by another notification dated 5.2.2010 under section 20E of the Act declaring that the lands so notified shall vest absolutely in the Central Government free from all encumbrances. Once again, case of the petitioner is that her land was not part of this notification also. The petitioner was served with notice dated 26.2.2013 issued by respondent

no.3 stating that her house was acquired for the said project and towards compensation for building sum of Rs.9,38,640/was payable to her. She was asked to remain present on 12.3.2013 to collect such payment. According to the petitioner she was not aware about any award being passed by the competent authority and was not supplied such a copy despite being asked repeatedly. Eventually, she was supplied a copy of the award dated 6.8.2011, wherein her name appeared at serial no.23 and the compensation computed for the structure was shown to be Rs.7,08,800/without any further details. The petitioner would point out that thus the authority has awarded compensation for the building and no compensation for the land has been computed or awarded.

3. The petitioner has therefore, filed this petition contending that the Railway authorities have initiated the steps for taking over the possession of the petitioner's land and tenement without any authority of law. The acquisition proceedings in terms of the said Act have not been carried out. Mere passing of the award would not give any authority to the respondents to acquire the petitioner's property.

4. Multiple affidavits have been filed by the respondents. In the first such affidavit dated 15.11.2013, filed by the Chief Project Manager, Surat, it is stated that the house in question is constructed on Gamtal land which belongs to the State Government. There was no proposal for acquisition of such land since the same would be merely transferred from one Government to another. Like the petitioner there are 12 similarly situated persons who were also occupying the Government land. Such land was never included in notifications issued under section 20A and 20E of the Act, since the land itself was never to be acquired from them. It is further stated that names of the petitioner and other similarly situated persons appear in the award because they have interest in dwelling unit/structure over such land and such persons are required to be compensated. It is reiterated that the compensation has been offered for the construction since the petitioner is going to lose such structure only. That since the petitioner was not the owner of the land there was no need to notify such land for acquisition or making a declaration under section 20E of the Act. It is pointed out that if the petitioner is not satisfied with the compensation, she can dispute the same in terms of section 20F of the Act. It is further stated that "the petitioner is having an interest in the structure constructed on the Government land and, therefore, the award has been rightly made under section 20F by the competent authority."

5. In further affidavit in surrejoinder dated 18.1.2014, it is reiterated that the land over which the house of the petitioner is constructed, belongs to the State Government and, therefore, there is no need to separately notify acquisition and the land was already acquired and there cannot be any further acquisition.

11.04.2016

6. In a further affidavit dated 19.7.2014 filed by Ghanshyam Das Bhagwani, Chief Project Manager, it was stated as under :

"4. I place on record District Collector Navsari's Order No. CH/LND/Vashi/206876/ 2013 dated 30.08.2013 as Annexure-II, the Para 1 of which shows that 06921 Hac. Gamtal land, Talodh village belongs to State Government. Moreover, the Village Panchayat Talodh (Billimora) have given their consent and no objection to allot this Gamtal State Government land for Railway Corridor vide Resolution number 19 in the general meeting convened on 24.02.2010 placed as Annexure-III. Thus the ownership of such land is not vested in the petitioner but the said land belongs to the State Government." He further stated that market value of the land in question was determined by the Town Planner, Navsari, at Rs. 7340 per sq. mtrs. which was later on revised to Rs.6440 per sq. mtrs. Since the District Collector was not authorised to transfer such land, a proposal was sent to the Revenue department of Government of Gujarat which passed a resolution on 1.6.2013 to allot the land to respondent no.3 and accordingly, such Gamtal was transferred by the State authorities to the Railways.

7. Assistant Collector, Navsari, filed his affidavit dated 18.7.2014 in which he stated as under :

"3. Further, The District Collector Navsari's Order NO.CH/LND/Vashi/206876/ 2013 dated 30.08.2013 is produced as AnnexureI. The para 1 of the order clearly shows that 0-69-21 Hac. Gamtal land, Talodh village belongs to State Government. Moreover, the Village Panchayat Talodh (Billimora) have given their consent and no objection to allot this Gamtal State Government land for Railway Corridor by Resolution No. 19 in the general meeting convened on 24.02.2010 annexed as Annexure-II."

He also stated that after ascertaining the market value of the land at Rs.6440/ per sq. mtrs in view of resolution dated 1.6.2013 passed by the Revenue department, Government of Gujarat, the land was transferred to the Railways. He has further stated that :

"11. I herewith submit that the petitioner Smt. Hansaben Praffulbhai Desai is having her House along with 13 other persons on this Gamtal land of Talodh village. All the 13 persons (except petitioner Smt. Hanshaben Praffulbhai Desai) have received and accepted compensation for their house structure. The petitioner Smt. Hansaben Praffulbhai Desai is not an owner of this land. She does not possess any documents supporting her claim of ownership of this land. Thus, the land area is shown as "not applicable" in 7+12 Property card."

8. A further affidavit came to be filed by the Assistant Collector, Navsari, on 14.8.2014 in which it was stated as under :

"3. I state that the land records have been checked and entry in the land register of local Government that survey no.232 is Gamtal, Talodh Gram Panchayat Government land. In this regard, the copy of 7/12, Land record GNN7, 7A and 12 have been collected from local Government office, Talodh (Billimora). The copy of 7/12, Land record GNN7, 7A and 12 is produced as Annexure-A1.

4. Land in question is situated just adjacent to existing Railway line at Bilimora. The Freight Corridor Railway tracks is in linear alignment adjacent to existing Railway line. The details of various pockets of land coming on the way of Freight Corridor Railway tracks alignment have been surveyed along with DILR, respective local Govt. officials and DFCCIL. The Central Government notified Name of Taluka, Name of village, Survey No. ,Area in hectare etc. under section 20(A) of Railway Act 1989 for a land required for a public purpose and published in the local Newspaper on 11th February 2009. the Bilimora map showing exact location of land in question is annexed as Annexure-A2.

9. I herewith submit that the petitioner Smt. Hansaben Praffulbhai Desai is having her house along with other 13 persons on this Gamtal alnd of Talodh village. All the 13 persons (except petitioner Smt. Hansaben Praffulbhai Desai) have received and accepted compensation for their house structure. The petitioner Smt. Hansaben Praffulbhai Desai is not a owner of the land. She does not possess any documents supporting her claim of ownership of the land. Thus, the land area is shows as "not applicable" in 7+12 Property card.

Out of 13, all other similarly identical situated persons have accepted the amount of compensation except the petitioner. And therefore it is settled law that when disbursement of substantial amount of award had also taken place, the court would not interfere with the process. It is further stated that earlier the petitioner also approached us to collect her compensation award but she could not furnish the required documents. Now her document are complete and the compensation can be given to her if and whenever she desires."

9. The Chief Project Manager filed yet another affidavit dated 8.10.2014 supporting the averments made by the Assistant Collector, Navsari in the earlier noted affidavit and asserting that the land in question was a Gamtal land of the ownership of the Government which has been transferred by the State Government to the Railways for the said project.

10. Yet another affidavit dated 11.11.2014 came to be filed by the same deponent pointing out that six of the occupants of the dwelling houses on the said land have approached the arbitrator under section 20F of the Railways Act seeking higher compensation. The arbitrator however, has rejected their claims and confirmed the award dated 6.8.2011 passed by the competent authority.

11. One B.D. Dawera, Deputy Collector, Navsari, filed his affidavit dated 18.2.2016 clarifying that in the order dated 30.8.2013 passed by the Collector Navsari, it was inadvertently stated that the land in question is an open waste land. It is pointed out that such statement was made inadvertently due to oversight. It is stated as under :

"3. I am filing the present affidavit for a limited purpose to clarify order passed by Collector Navsari on 30.08.2013 at page 155 annexed to the affidavit filed by respondent no.2 on 18.07.2014, as it was stated in the order that, the land acquired is open and waste land. I respectfully submit that the aforesaid

statement recorded by Collector Navsari is nothing but due to oversight only written in the aforesaid order.

4. It is respectfully submit that at the relevant point of time Collector Navsari has considered various document and pertains to above stated contention, my Collector Navsari had considered the communication referred at sr. no.3 of Deputy Collector, Navsari dated 24.12.2009. I further respectfully state that at the relevant point of time Collector, Navsari in his shera patra no. CH/JNM/WS 2458/2010 dated 11.01.2010 directed concern to reverify all evidences and documents. Pursuant to direction of the Collector, Navsari, Deputy Collector Chikhli has submitted report by communication dated 28.07.2011 and specifically stated that there are about 10 to 15 residential construction on a Government land, which is the subject matter of the present relying on a report submitted by Mamlatdar, Gandevi on 20.06.2011 and therefore, in my respectful submission due to over sight only, my Collector has written in the order that the subject land is open and no any construction. Annexed hereto and marked as Annexure-R1(colly) are the copies of communication dated 11.01.2010, 28.07.2011 and 20.06.2011 of Collector, Navsari, Deputy Collector Chikhli and Mamlatdar, Gandevi respectively.

5. It is respectfully submitted that the concern authorised officer has already offer compensation for the constructed area. And 14 out of 15 have already paid and received the compensation for constructed area. I further respectfully submit that present petitioner was offered a compensation for the constructed area but as there was a discrepancy in the name of the present petitioner and affidavit regarding the name for ask for and thereafter the petitioner was not turned up for compensation. Annexed hereto and marked as Annexure-RII is the copy of communication to the petitioner offering the compensation.

6. I respectfully submit that the petition Para wise and non dealing with the petitioner para wise may not be construed as my admission and I once again at the cost of repetition stating that I am filing present affidavit for a limited purpose for clarifying the contention recorded in the order passed by my Collector Navsari on 30.08.2013."

12. On the basis of such pleadings on record, learned counsel Shri Saurabh Amin for the petitioner submitted that the Railway Authorities have acquired the petitioner's valuable property without any authority of law. He submitted that the procedure laid down under the Railways Act, 1989, has not been followed. There is no clarity that the petitioner's house was situated in the Government land. Neither the State Government authorities nor the Railway authorities have been able to establish such a claim. In any case, the respondents recognise the petitioner's right to use and occupation of the residential unit. Without any notice to the petitioner and inviting objections to the proposed acquisition, her right to user could not have been extinguished. In the present case, notifications issued by the Railway authorities did not include the property of the petitioner. The same could therefore, have not been made part of the final award. The

authorities have passed an award merely awarding the compensation to the petitioner for the superstructure and not the land, thus completely jettisoning the requirement of valid acquisition proceedings. He therefore, submitted that the acquisition should be declared invalid and the authorities be prevented from taking over the possession of the land in question.

13. On the other hand, learned counsel Ms. Archana Amin for the Railway authorities opposed the petition contending that the petitioner has not been able to establish any right, title or interest in the property in question. She has no documents pointing out in what manner she acquired such property or any interest therein. The house was situated on Government land. The petitioner therefore, was a mere trespasser. Such land has been transferred by the State authorities in favour of the Railways. The Railway authorities are in the process of setting up a dedicated freight corridor, a project of considerable national importance. The petitioner was, despite such facts, offered compensation for the loss of superstructure. All other residents of the locality have accepted such compensation. The Railways always were and are still ready and willing to pay the compensation so determined. At any rate, the project of national importance may not be further delayed on the ground of any alleged defect in the acquisition.

14. Learned AGP Ms. Jirga Jhaveri for the Government also supported the case of the Railways and reiterated that the land in question belonged to the Government which was transferred to the Railways.

15. Before advertng to the factual materials on record, we may take note of the statutory provisions. Chapter-IVA of the Act pertains to land acquisition for a special railway project. Section 20A contained in the said Chapter pertains to power to acquire land and reads as under :

"20A Power to acquire land etc: (1) Where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project it, may, by notification declare its intention to acquire such land.

(2) Every notification under subsection (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

(3) The State Government or the Union territory, as the case may be, shall for the purposes of this section, provide the details of the land records to the competent authority, whenever required.

(4) The competent authority shall cause the substance of the notification to be published in two local newspapers one of which shall be in a vernacular language."

Section 20B pertains to power to enter for survey and authorises a person authorised by the competent authority upon issuance of a notification under subsection(1) of section 20A to undertake various activities interalia to carry out inspection, survey, measurement, valuation or enquiry, set out boundaries and

intended lines of work in connection with the land in question.

Section 20D pertains to hearing of objections and reads as under :

"20D. Hearing of objections, etc:

(1) Any person interested in the land may, within a period of thirty days from the date of publication of the notification under subsection (1) of section 20A object to the acquisition of land for the purpose mentioned in that subsection.

(2) Every objection under subsection, (1), shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation: For the purposes of this subsection, ""legal practitioner"" has the same meaning as in clause (i) of subsection (1) of section 2 of the Advocates Act, 1961. (25 of 1961).

(3) Any order made by the competent authority under subsection (2) shall be final." Section 20E pertains to declaration of acquisition and reads as under :

"20E. Declaration of acquisition : (1) Where no objection under subsection (1) of section 20D has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under subsection (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification, that the land should be acquired for the purpose mentioned in subsection (1) of section 20A.

(2) On the publication of the declaration under subsection (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under subsection (1) of section 20A for its acquisition, but no declaration under subsection (1) of this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period during which any action or proceedings to be taken in pursuance of the notification issued under subsection (1) of section 20A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under subsection (1) shall not be called in question in any court or by any other authority."

Section 20F pertains to determination of amount payable at compensation and reads as under :

"20F. Determination of amount payable as compensation: (1) Where any land is acquired under this, Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) The competent authority shall make an award under this section within a period of one year from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse;

Provided that the competent authority may, after the expiry of the period of limitation, if he is satisfied that the delay has been caused due to unavoidable circumstances, and for the reasons to be recorded in writing, he may make the award within an extended period of six months:

Provided further that where an award is made within the extended period, the entitled person shall, in the interest of justice, be paid an additional compensation for the delay in making of the award, every month for the period so extended, at the rate of not less than five percent. of the value of the award, for each month of such delay.

(3) Where the right of user or any right in the nature of an easement on , any land is acquired under this Act, there shall be paid an amount to the owner and any other person which right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition, an amount calculated at ten per cent, of the amount determined under subsection (1), for that land.

(4) Before proceeding to determine the amount under subsection (1) or subsection (3) as the case may be, the competent authority shall give a public notice published in two local newspapers, one of which shall be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(5) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in subsection (2) of section 20D before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(6) If the amount determined by the competent authority under subsection (1) or as the case may be, subsection (3) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government in such manner as may be prescribed.

(7) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(8) The competent authority or the arbitrator while determining the amount of compensation under subsection (1) or subsection (6), as the case may be, shall take into consideration

(a) the market value of the land on the date of publication of the notification under section 20A;

(b) the damage, if any sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

(9) In addition to the market-value of the land as above provided, the competent authority or the arbitrator, as the case may be, shall in every case award a sum of sixty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

Section 20G pertains to criterion for determination of market value of land. Subsection(1) of section 20G lays down the criteria for the competent authority to adopt while assessing and determining the market value of the land. Sub-section(4) of Section 20G which is important for us reads as under :

"(4) In determining the market-value of the building and other immovable property or assets attached to the land or building which are to be acquired, the competent authority may use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by the competent authority."

Section 20H of the Act provides the manner of depositing and paying the compensation. Section 20I gives the power to take possession of the acquired land.

16. It can thus be seen that a special procedure has been laid down in Chapter-IVA of the Railways Act, 1989 for acquisition of land for special railway project. Term "Special Railway Project" has been defined in Section 2(37A) of the Act as to mean a project notified as such by the Central Government from time to time for providing national infrastructure for a public purpose in a specified time-frame, covering one or more States or the Union territories. Thus when a project of such considerable national importance has been so notified, it is categorised for the purpose of Chapter VI of 1989 as one of special railway project. Under such circumstances, a special procedure for acquisition of the land has been made. Significantly, after inviting and disposing of the objections to such acquisition under section 20E, the competent authority would submit a report upon which the Central Government would declare by notification that the land should be acquired for the notified purpose. On publication of such declaration, the land would vest absolute in the Central Government free from all encumbrances. Determination of amount payable as compensation is to be made

under section 20F. As per subsection(1) of section 20F where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority. Thus the acquisition of land for the purpose of special railway project would precede the determination and payment of compensation.

17. We may also note that though the entire procedure for acquisition under Chapter-IV, revolves around acquisition of land, the statutory provisions do recognise that there may be division of title and interests in the same landed property in the nature of land and super structure. It is in this context that under subsection(4) of section 20G, it is provided that in determining the market value of the building and other immovable property or assets attached to the land and building which are to be acquired, the competent authority may use the services of a competent engineer or any specialist in the relevant field. Likewise subsection(3) of section 20F where the right of user or any right in the nature of easement on any land is acquired under the Act, there shall be paid an amount to the owner and any other person which right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition, an amount calculated at ten per cent of the amount determined under subsection(1) of section 20F for the land. Thus the statute clearly recognises the fragmentation of interests in the land or the superstructure as well as determination of the compensation for the land and the superstructure being acquired.

18. Bearing in mind this statutory scheme, we may revert back to the facts of the case. The petitioner claims to be the owner of the two tenements which form part of a cluster of houses through which the proposed railway line for dedicated freight corridor to be laid down by the Railway authorities passes. However, the petitioner neither has any documents to establish her title to this property nor is she able to establish the title of her predecessor on this property. The respondents i.e the State Government as well as the Railway authorities contend that these residential units are situated on the land which originally belonged to the State Government. They have produced the documents and have on affidavit contended this on number of occasions as noted above. The State Government authorities have also produced the resolution passed by the Village Panchayat, Talod (Billimora) consenting to the Government granted land being transferred for the said railway project. Thus the claim of the petitioner to the title of the land must be rejected.

19. We are unable to accept the contention of Shri Saurabh Amin that the State Government authorities and the Railways must be put to strict proof of the location of the land and be asked to establish that same forms part of the Government Gamtal land. We have sufficient assertions of the said respondents arrived at through the inquires and contemporaneous documents. The petitioner who does not have any documents of title of the property including even the superstructure, cannot shift the burden of establishing on the respondents that

the tenements of her occupation are not on land other than the Government land. Insofar as the assertion of the respondents is concerned, that the tenements of the petitioner and other similarly situated occupants form part of the Gamtal land of the ownership of the State Government, the issue must rest.

20. Having said this, it appears an admitted position that the petitioner along with her family occupied such tenements since many years. Even the respondents recognise her right to user when in the award passed by the competent authority on 6.8.2011, she is offered compensation along with other occupants of the locality. It is also true that such award was passed without there being any previous publication of intention of the Central Government to acquire such land or declaration that the Central Government was satisfied that for the public purpose such land was required to be acquired. Quite naturally therefore, no objections were invited from the petitioner, none made.

21. According to the Railway authorities, since the land in question was of the ownership of the State Government which was transferred by the State Government to the Railways on agreed price, it was not necessary to acquire the same under the Railways Act, 1989, and, therefore, no notifications or declarations were made. This stand of the Railways however, would run into two legal roadblocks. Firstly, the stand would be incongruent to the action of the Railway authorities in passing the said award dated 6.8.2011 in which compensation is ordered to be paid to the petitioner also. The second aspect is even if this compensation is for superstructure and not for the land in question, the question that would immediately arise is how was right to user of superstructure acquired by the Railway authorities.

22. In this context, one can easily envisage a situation where for variety of reasons, the land needed for a public purpose is not required to be acquired through compulsory acquisition proceedings, nevertheless, certain rights subsisting on land vesting in private individual have to be extinguished before the land could be put to a use for the public purpose. For example, if the land itself belongs to the Railways but was leased out to a private individual under an agreement and later on, if the Railway authorities required such land for any public purpose, there would be no question of acquiring the land since the title already vests in the Government. However, the right to use the land since was allotted to an individual under an agreement for a determined period and if such period had to be curtailed, there had to be, to that limited extent, acquisition through statutory provisions. The term "land" used in various provisions contained in Chapter-IV therefore, shall have to be seen in light of such position. The word "land" has not been defined under the Act. The General Clauses Act also does not contain the definition of the said term, however, defines term "immovable property" as to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. In the context of landed immovable property, thus it would include things attached to the earth or permanently fastened to anything attached to the earth.

Under subsection(1) of section 20A of the Railways Act, 1989, therefore, when there is a reference to any land being acquired for a public purpose, it necessarily has reference to not only the land but anything attached to the land which would include a superstructure. Reference may also be made to section 20G which pertains to criteria for determination of market value of land. Subsection(4) of the said section provides that in determining the market-value of the land and other immovable property or assets attached to the land or building which are to be acquired, the competent authority may use the services of a competent engineer or a specialist in the field. Thus the statute itself recognises the requirement of acquisition of a land along with superstructure for which a separate mode for assessing compensation is provided. Reference may also be made to subsection(3) of section 20F which provides that where the right of user or any right in the nature of an easement in any land is acquired, or the person whose right of enjoyment is affected, would be paid an amount calculated at ten per cent of the amount of compensation determined under subsection (1).

23. In this context, we may refer to decision of Supreme Court in case of the Special Land Acquisition and Rehabilitation Officer, Sagar v. M.S. Seshagiri Rao and another reported in AIR 1968 Supreme Court 1045. It was a case where the Government land was granted to the private persons on the condition that the grantee will surrender the land to the Government whenever required without claiming compensation. The Government without exercising such powers, reserved in terms of grant order, followed the procedure prescribed under the Land Acquisition Act. The Supreme Court held as under :

"...The Act contemplates acquisition of land for a public purpose. By acquisition of land is intended the purchase of such interest outstanding in others as clog the right of the Government to use the land for the public purpose. Where the land is owned by a single person, the entire market value payable for deprivation of the ownership is payable to that person : if the interest is divided, for instance, where it belongs to several persons, or where there is a mortgage or a lease outstanding on the land, or the land belongs to one and a house thereon to another, or limited interests in the land are vested in different persons, apportionment of the compensation is contemplated. The Act is, it is true, silent as to the acquisition of partial interests in the land, but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When land is notified for acquisition for a public purpose and the State has no interest therein, market value of the land must be determined and apportioned among the persons entitled to the land. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest, subject to the clog.

5. We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the

ownership of the land is subject to a restrictive covenant in favour of the State, the State is estopped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of that interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restrictive interest."

24. Having recognised the petitioner as an occupant of the tenement, the respondents cannot keep the petitioner out of purview of compensation payable in terms of the provisions contained in Chapter-IV of the Railways Act. In fact, it is not even their stand that she is not entitled to compensation for her loss. If that be the position, the extinguishment of the petitioner's right to user must be brought about through compulsory acquisition procedure envisaged in Chapter-IV which would include satisfaction of the Central Government that such property is needed for a public purpose and declaration of the intention to acquire the same by issuance of a notification. It would also include necessarily therefore, petitioner's right to raise the objections to any such proposed acquisition and consideration of the objections, if raised.

25. Any other view would leave the Railway authorities with no right to acquire the petitioner's interest in the land. If it is argued that the land belongs to the State Government which was agreed to be transferred to the Railways and, therefore, no acquisition was to be done, the question would immediately arise under which provision the Railways would then terminate the petitioner's right to user of her tenements. In our understanding of the scheme of compulsory acquisition provided in Chapter IV of the Act, therefore, would take within its sweep, extinguishment of any right of occupation or user of any land or superstructure, which right is being extinguished for the purpose of a special railway project.

26. Though nowhere so contended in multiple affidavits, filed by the Railway administration, before us, oral contention was raised that the petitioner being a rank trespasser on Government land, she is not entitled to any compensation by way of award under the Act and what was offered to her was the benefit flowing from the Rehabilitation and Resettlement Plan ("RRP" for short) of the dedicated freight corridor project. Such stand cannot be accepted for multiple reasons. Firstly, in none of the affidavits filed by the Railway administration, any such stand was taken. Secondly, the very factum that competent authority passed an award in favour of the petitioner which could be done only in terms of section 25G of the Act and had no reference to any scheme for rehabilitation or resettlement, would disprove this. Not only the petitioner, but several other occupants of tenements in the neighbourhood were similarly offered compensation under the same award. As noted, these persons had even sought

enhancement by seeking references before the arbitrator. For all these reasons, the stand of the Railways that the petitioner is not entitled to compensation in terms of section 20F of the Act cannot be accepted.

27. This brings us to the ultimate relief that should be granted to the petitioner. It is true that the sum total of our conclusion would be that a proper procedure as envisaged in Chapter-IV of the Act for acquiring the petitioner's right of user is not followed. However, the relief would have to be moulded in peculiar facts of the case. Such peculiar facts are that though the petitioner is occupant of the tenements since many years, she neither has any document of acquiring any right, title or interest in such property, nor can she demonstrate any right, title or interest in the property in question of her predecessor-transferor. We have upheld the stand of the respondents that the tenements are situated on land belonging to the Government. The Railway authorities had offered compensation to the petitioner for loss of superstructure along with award passed in favour of other landowners and occupants of residential properties in the region. The rest of the lands are already acquired by the Railways. The occupants of the locality barring the petitioner accepted the compensation and sought enhancement through arbitral proceedings. The petitioner is the only person who now resists acquisition of her property. Granting her full protection would result in further inordinate delay in implementation of the railway project of considerable national importance. We are informed that the Railway authorities seek to lay down the railway line which would be dedicated to freight transport for quicker and smoother passage.

28. In case of *Competent Authority v. Barangore Jute Factory and others* reported in (2005) 13 Supreme Court Cases 477, the Supreme Court found that certain private land was utilised by the National Highways Authority for construction of highway. However, correct legal procedure in the process was not carried out. The landowners were deprived of their right to file objections. In such background, while still holding that the acquisition was invalid, the Supreme Court instead of directing reversal of the land already acquired and utilised for the purpose of construction of national highway, directed the authorities that the compensation be determined as on 19.2.2003, the date on which possession of the land of the owners was taken over. Relevant observation of the Supreme Court are as under :

"14. Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway. The construction of national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will

be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.

15. Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the notification so that the land owners are adequately compensated. Reference may be made to:

(a) *Ujjain Vikas Pradhikaran v. Rajkumar Johri and others*, 1992 (1)SCC 328

(b) *Gauri Shankar Gaur & Ors. v. State of UP & Ors.*, 1994 (1) SCC 92

(c) *Haji Saeed Khan & Ors. v. State of UP & Ors.*, 2001 (9) SCC 513

In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19th February, 2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19th February, 2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway. We direct that the compensation for the acquired land be determined as on 19th February, 2003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. The claim of interest on the amount of compensation so determined is to be decided in accordance with law by the appropriate authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act should be given to the Writ Petitioners along with what has been directed by us in this

judgment."

29. In facts of the present case, therefore, instead of directing the Railway authorities to undertake the entire gamut of acquiring petitioner's interest in the land starting from declaration of intention in terms of sub-section (1) of section 20A of the Act, we direct the authorities as under :

1) Deposit entire amount of Rs.9,38,640/along with simple interest at the rate of 9% per annum from the date of award before the competent authority latest by 31.5.2016.

2) The authorities shall recalculate the compensation payable to the petitioner as on today for the loss of superstructure and loss of user of land, if any, along with statutory benefits, in terms of Chapter-IV of the Railways Act, 1989 which shall be done latest by 30.6.2016. Upon such revised computation, which will be communicated to the petitioner, the difference between the sum of Rs.9,38,640/ minus interest and what may be recomputed as per this direction, not later than 30 days from the date of such recomputation, shall be deposited before the competent authority. If so done, the same shall not carry interest, failing which, it will incur, upon completion of such period, simple interest at the rate of 9% till deposit.

4) It will be open for the petitioner to withdraw such sums from the competent authority subject to her right to seek enhancement as per law.

5) Upon completion of such exercise, it will be open for the Railway authorities to take possession of the property in question.

30. We notice and clarify that it is only the petitioner who has come before us challenging the very basis of acquisition. Other occupants have accepted the legality of the acquisition and in fact, sought higher compensation through arbitral proceedings. Nothing stated in this order therefore, would reopen the question qua these persons who in any case have not felt aggrieved by the acquisition proceedings perse.

31. Petition is disposed of.