
(2014) 07 UK CK 0007

In the Uttarakhand High Court

Case No : Special Appeal No. 263 of 2014

Mussoorie Dehradun Development Authority

APPELLANT

Vs

Rajesh Goyal and Others

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
General Clauses Act, 1897 — Section 6, 7
Land Acquisition Act, 1894 — Section 11, 17, 17(4), 4, 5A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114, 24, 24(1), 24(1)(a), 24(1)(b)
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 17, 3, 4, 7

Citation : AIR 2015 UC 8

Hon'ble Judges : Umesh Chandra Dhyani, J; Sudhanshu Dhulia, J

Bench : Division Bench

Advocate : Vinay Garg and Rahul Consal, Advocates for the Appellant; Vishal Gupta and Rakesh Thapliyal, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—In these special appeals are two orders under challenge. The first is an order dated 20.05.2014 passed in Writ Petition No. 2929 of 2013 (M/S) and Writ Petition No. 694 of 2014 (M/S) which is in special appeal No. 263 of 2014 and in Special Appeal No. 262 of 2014 respectively, and second is an order dated 23.05.2014 passed in Writ Petition No. 686 of 2014 (M/S) which is here in Special Appeal No. 261 of 2014 before us. The impugned orders have been passed by a learned single Judge of this Court in exercise of his review jurisdiction whereby the learned single Judge while reviewing his earlier order dated 10.04.2014, has recalled it and thereafter quashed a notification under Section 4 of the Land Acquisition Act, which was not done earlier. For sake of convenience, however, the facts which are reported here relate to Special Appeal No. 263 of 2014. Before we come down to the powers in review and on the jurisdiction of the Court in exercise of such powers, under the parameters of Order 47, Rule 1 of C.P.C., we will first examine the merits of the order dated 20.05.2014 which is presently under challenge in these special appeals.

2. But before that to the preliminary objection of the private respondents. A preliminary objection has been raised by the learned counsel representing the private respondent regarding the maintainability of these special appeals at the hands of the Development Authority (hereinafter referred to as "M.D.D.A."). We will deal with this objection first.

3. According to the counsel for the private respondents, the Development Authority i.e. M.D.D.A is not a "person aggrieved" as a result of the quashing of the notification and hence these appeals are not maintainable by M.D.D.A. He would argue that the notification was issued by the State Government under Section 4 of the (old) Land Acquisition Act, and if anybody is aggrieved by the quashing of the said notification, it should be the State Government, and State Government alone. The State Government has not filed present special appeals. These special appeals have been filed by a beneficiary of the acquisition. Logically, therefore, he would argue that when the State is not aggrieved by quashing of its notification, how can a beneficiary be aggrieved.

4. Learned counsel for the M.D.D.A., on the other hand, submits that even if M.D.D.A. is a "beneficiary" in the present acquisition, it is not an ordinary beneficiary. It is a Statutory beneficiary, as M.D.D.A. is a body created by a Statute known as "Uttar Pradesh Urban Planning and Development Act, 1973". The said Act of 1973 is applicable in the State of Uttarakhand as well. The Act of 1973 is for declaration of development area and thereafter its planned development by a specialized body which in the present case is M.D.D.A. Section 3 of the Act of 1973 reads as under:--

"3. Declaration of development areas:--If in the opinion of the State Government any area within the State requires to be developed according to plan it may, by notification in the Gazette declare the area to be a development area."

5. Under Section 4 of the said Act, the State Government, by a notification in the Official Gazette creates a body known as "Development Authority" which shall be a body corporate, by the name given to it in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

6. It has then been argued that this Authority i.e. the Development Authority (M.D.D.A.) was created for Dehradun and Mussoorie in the erstwhile State of U.P. way back in the 1980s and since then it is performing its Statutory duties. The objects of the authority is contained in Section 7 of the Act of 1973, which reads as under:--

"7. Objects of the Authority:--The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and

electricity and dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided in this Act nothing contained in this Act shall be construed as authorizing the disregard by the Authority of any law for the time being in force."

7. There is a separate Chapter in the Act i.e. Chapter VI with the heading "Acquisition and Disposal of Land" wherein Section 17 reads as under:--

"17. Compulsory acquisition of land (1) If in the opinion of the State Government any land is required for the purpose of development, or for any other purpose, under this Act, the State Government may acquire such land under the provisions of the Land Acquisition Act, 1894:

Provided that any person from whom any land is so acquired may after the expiration of a period of five years from the date of such acquisition apply to the State Government for restoration of that land to him on the ground that the land has not been utilized within the period for the purpose for which it was acquired, and if the State Government is satisfied to that effect it shall order restoration of the land to him on repayment of the charges which were incurred in connection with the acquisition together with interest at the rate of twelve per cent per annum and such development charges if any as may have been incurred after acquisition.

(2) Where any land has been acquired by the State Government, that Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by Authority or the local Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition."

8. The learned counsel for the appellant would then argue that Dehradun is the Capital of the new State of Uttarakhand, and for its development, a plan was submitted for the broadening of "Chakrata road" from Ghantagarh (Clock Tower) onwards. Initially with the consensus of the occupants of the buildings (i.e. occupant of the buildings on both sides of the road) the buildings were "sliced" and the sliced structure was demolished for broadening of the road. The occupants were provided an alternative place. This "slicing" and demolition took place in the year 2011 with the consensus of all the parties concerned. However, after part-demolition of the structure, the structure itself became unsteady, dilapidated and was declared unsafe.

9. Learned counsel has placed reliance on the reports of specialized authorities in this regard which were made a part of record in a Public Interest Litigation before this Court being WPIL No. 87 of 2012 (Rajendra Singh v. State of Uttarakhand & others) where the petitioner had expressed apprehension and sought direction

inter alia regarding the unsafe structure, and the broadening of this Chakrata road from this Court.

10. During the pendency of the above PIL, the State Government itself had directed M.D.D.A. to prepare a re-development plan of the area. This re-development plan was prepared by M.D.D.A. and was approved by the State Government on 08.07.2013 and thereafter amended on 22.10.2013. A pre-requirement of this "planned development" was the acquisition of the area, which included these buildings which were sliced, or what remained of the sliced buildings as they stood. The acquisition was done under the prevalent Land Acquisition Act (the old Act). Consequently, a notification was issued under Section 4 of the Land Acquisition Act on 11.10.2013 dispensing with the provision of Section 5A (of the Land Acquisition Act) by invoking the urgency clause under Section 17(4) of the Act. The counsel would, therefore, argue that the entire development plan in the area has been prepared by M.D.D.A. and approved by the State Government and the acquisition is an indispensable step towards the fulfillment of this development plan, which is in public interest. The notification was issued by the State Government under Section 4 of the Act, on 11.10.2013. Therefore, it cannot be said that M.D.D.A. is not a necessary party or not a party aggrieved by the quashing of the notification by the learned single Judge of this Court, as the statutory duties of MDDA have been hampered by the quashing of the notification.

11. Learned counsel for the appellant, further states that as per his information, the State Government too is filing a special appeal, approval in this regard has already been given and the special appeal will be filed shortly.

12. Be that as it may, since there is nothing on record to substantiate the fact as to filing of the appeal by the State Government, we are not going into this aspect. Nevertheless, considering the special status of the Authority, i.e., M.D.D.A. and its Statutory obligations particularly under Section 7 and Section 17 of the Act i.e. Uttar Pradesh Urban Planning and Development Act, 1973 it cannot be said, by any stretch of imagination, that M.D.D.A. (the appellant) is not a party aggrieved. Moreover, the Rules of the Court (The Allahabad High Court Rules), more particularly, Rule 10 of Chapter IX states that "a person desiring to prefer a Special Appeal" from the judgment of one Judge passed in the exercise of original jurisdiction shall present a duly stamped memorandum of appeal accompanied by a copy of the judgment appealed from, within 30 days from the date of the judgment. There is, therefore, no impediment even as per the Rules of the Court for the appellant in filing the present appeal. The fact that M.D.D.A. is a necessary party is also evident from the fact that it was made a party by the petitioners before the learned single Judge.

13. We have no doubt in our mind that M.D.D.A. is a necessary party and a party aggrieved in this matter. These special appeals are, hence maintainable. The preliminary objection of the private respondent on this issue is, therefore, rejected.

14. Before the learned single Judge three petitions were filed, challenging Section 4 notification of the Government under the Land Acquisition Act. Counter-affidavit had been filed by M.D.D.A., as well by the State Government. All the writ petitions were, thereafter, disposed of by an order dated 10.04.2014. As it would have some bearing on the present matter, the operative portion of the same reads as under:--

"Mr. R.C. Arya, learned Standing Counsel for the State of Uttarakhand and Mr. Vinay Garg, Advocate appearing for MDDA, fairly submit that proposal to widen the Chakrata Road was prepared way back in the year 2011, however, impugned Notification was issued on 11.10.2013 under Section 4 invoking Section 17(4) exempting application of Section 5A of the Act. They further submit that in view of judgment passed by this Court in WPMS No. 1980 of 2007 (Hari Har Singh v. State of Uttarakhand) on 26.03.2014, urgency clause exempting application of Section 5A of the Act ought not to have been invoked. Therefore, petitioners may file their objections under S. 5A of the Act within thirty days from today taking all the pleas therein including the requirement and implementation of development plan and thereafter, State Government shall pass appropriate order thereon in accordance with law, if need be, thereafter, notice Section 6 shall be issued. Learned counsel for the petitioners submit that present petitions may be disposed of in the light of statements made by Mr. R.C. Arya, learned Standing Counsel appearing for the State of Uttarakhand and Mr. Vinay Garg, Advocate appearing for MDDA.

Ordered accordingly.

CLMA Nos. 2948/2014, 14230/2013 and 2918/2013 also stand disposed of."

15. From the perusal of the order dated 10.04.2014, it is clear that acquisition proceedings were initiated under the Land Acquisition Act, 1894 by invoking emergency clause under Section 17(4) of the Act, dispensing with the provision of "hearing" under Section 5A of the Act. At that time the only anxiety of the petitioners was that they must be heard and that anxiety being met with the concession granted by the State Government as well as by the Development Authority i.e. M.D.D.A., the above order seems to have been passed. There is absolutely no doubt that order was an order based on a mutual consent of all the parties concerned.

16. Notwithstanding the above order and the circumstances under which the said order was passed, a review application was thereafter moved, which the record shows, was filed in the Registry on 08.05.2014, and came up before the learned single Judge the very next day on 09.05.2014. On that day the review petitioner sought adjournment of the matter and the following orders were passed:--

"Adjourned at the request of Mr. P.S. Bisht, Advocate holding brief of Mr. Rakesh Thapliyal, learned counsel for the petitioners.

List after two weeks."

17. In short, the matter was simply adjourned with no discussion on the merit of the case by any of the counsels, as is apparent from the record. Thereafter an urgency application was moved in the Registry on 19.05.2014 and the matter was listed on 20.05.2014. On the same day an order was passed, which is presently under challenge in the special appeals. The entire order is being reproduced here. It is as under:--

"In both the writ petitions, applications are moved for reviewing the judgment dated 10.4.2014.

Undisputedly, notification dated 11-10-2013 was issued under Section 4 invoking Section 17(4) exempting application of Section 5-A of the Land Acquisition Act. Undisputedly, no notification under Section 6 of the Land Acquisition Act, 1894 was ever issued nor any award was passed under Section 11 of the Land Acquisition Act, 1894.

Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as under :

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (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 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

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

Perusal of Section 24 would reveal that if no under Section 11 of the old Land Acquisition Act was passed then all the provisions of new Act relating to the

determination of compensation shall apply. However, when award was passed under Section 11 of the old Act, prior to the commencement of the present Act, proceedings shall continue as per the old Act. Section 24 further provides that if award was passed under Section 11 of the old Act five years prior to the commencement of the new Act, however, no possession was ever taken or no compensation was paid, then proceedings under old Act shall be deemed to have lapsed.

In the case in hand, since Section 6 notification was never issued, therefore, there was no question of passing the award under Section 11 or taking possession under Section 9 of the Act.

In the judgment dated 10.4.2014, while placing reliance on the earlier judgment passed by this Court dated 26.3.2014 in Writ Petition No. 1980 of 2007 (M/S) (Hari Har Singh v. State of Uttarakhand), this Court has held that invocation of Section 17(4) exempting application under Section 5-A of the Act, in the peculiar facts and circumstances of the case, was wrong.

In view of the finding recorded that Section 17(4) exempting application under Section 5-A ought not to have been invoked, notification issued under Section 4 would also go. Therefore, Review Applications stand disposed of with the direction that impugned notification under Section 4 read with Section 17(4) exempting application under Section 5-A of the Act stands quashed. However, State Government shall be at liberty to proceed in accordance with law afresh, if so advised, under the new Act.

It is, however, made clear that this Court has not expressed any opinion on the validity of the original plan issued by MDDA and this question is left open to be decided at the appropriate stage.

All the pending applications also stand disposed of accordingly.

Let a copy of this order be placed in connected writ petition too."

18. The first challenge of the appellant before us is to the very jurisdiction (of the learned single Judge in a review petition), as it is submitted that the impugned order was well outside the scope in review jurisdiction. It has been argued that neither there was any error apparent on the face of record nor was there any such "mistake", which could have called for an interference in a review petition.

19. Be that as it may, and as already referred above, this Court would first examine the merits of the order itself which is presently under challenge and thereafter if need be, we will also look into the review jurisdiction.

20. Let us examine the order dated 20.05.2014 purely on its merits. The only reasoning given by the learned single Judge in the impugned order for quashing Section 4 notification is that at the time when the earlier order was passed, the new Land Acquisition Act, i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter

referred to as "Act No. 30 of 2013") had already come into force (on 01.01.2014) where there was a specific provision contained in the said Act, namely, Section 24 of Act No. 30 of 2013, reliance on which was not placed earlier by any of the parties, when the order was passed on 10.04.2014.

21. Before we deal with this aspect, a reference to certain dates and facts would be necessary.

22. Notification under Section 4 of the Land Acquisition Act was made on 11.10.2013 whereby the provision of the 5A of the Act by invoking Section 17(4) of the Act was dispensed with. Would Section 24 of Act No. 30 of 2013 have any bearing in the matter?

23. As it has already been referred above, the new Act, i.e., Act 30 of 2013 was enforced from 01.01.2014, and by virtue of Section 114 of the new Act, the old Land Acquisition Act stand repealed. Section 114 of Act No. 30 of 2013, reads as under:--

"114. Repeal and saving--(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

24. The above provision, however, has to be read in the light of Section 24 of Act No. 30 of 2013. Section 24 is an exception or rather a saving clause, which saves certain "actions" done under the old Act. Section 24 of the Act No. 30 of 2013 reads as under:--

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (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 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in

accordance with the provisions of this Act:

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

25. Section 24 visualizes two, or to put it precisely, three contingencies. Two of these contingencies are contained in Section 24(1)(a) and Section 24(1)(b), respectively. The provision, i.e., Section 24(1)(a) of Act No. 30 of 2013 starts with a non obstante clause and states that notwithstanding anything contained under the old Act if proceedings have been initiated under the old Act and no award has yet been made under Section 11 of the Land Acquisition Act (old Act), then, all the provisions of the new Act shall apply as to the "determination of compensation". Section 24(1)(b) of Act No. 30 of 2013 visualizes another situation where proceedings have been initiated and an award has also been made under Section 11 of the Land Acquisition Act (old Act), then all further proceedings (i.e. such proceedings which are to be done after the announcement of the award) shall continue as if the old Land Acquisition Act has never been repealed.

26. There is third contingency under Section 24(2) of Act No. 30 of 2013 which states that notwithstanding anything contained in sub-section (1) of Section 24 of Act No. 30 of 2013, even if an award has been made under Section 11 of the Land Acquisition Act, but such an award has been made 5 years prior to the commencement of the new Act (i.e. Act No. 30 of 2013) and the physical possession of the land has not been taken or the compensation has not been paid, the proceeding (i.e. proceedings initiated under the old Act) shall be deemed to have "lapsed".

27. Broadly therefore, Section 24(1) of the new Act, speaks of two different situations, which would determine as to the "compensation", to be paid under the old Act or the new Act. Section 24(2) of the new Act on the other hand does not speak of "compensation", rather it speaks as to when the proceedings under the old Act will lapse.

28. Neither in Section 24(1)(a) nor in Section 24(1)(b) of the Act No. 30 of 2013, there is any question of the proceedings having "lapsed". It only speaks as to when the compensation has to be given under the old Act and when it has to be given under the new Act. The order dated 20.05.2014 of learned single Judge is, therefore, based on an assumption that no award being made under the Act, it has become necessary to quash the notification under Section 4 of the Land Acquisition Act (old Act), in view of Section 24 of Act No. 30 of 2013, as if the proceedings under the old Act had lapsed! That is one conclusion which can be derived out of a bare reading of the order dated 20.05.2014.

29. Another reasoning given by learned single Judge for quashing Section 4

notification of the Land Acquisition Act is that when provisions of Section 17(4) of the Act have been wrongly invoked, the necessary conclusion would be that the notification under Section 4 of the Land Acquisition Act must also go. However, learned single Judge has given absolutely no reason, as to why notification under Section 4 of the Land Acquisition Act or invoking jurisdiction under Section 17(4) was bad in the present case. It does refer to another case, i.e., Hari Har Singh v. State of Uttarakhand where the Court had quashed the notification under Section 4. All the same, whether the facts of Hari Har Singh's case are similar to the one before the Court is not clear, in fact on that there is no discussion. Learned counsel for the appellant, on the other hand submits that facts in Hari Har Singh's case were different as in that case Section 4 notification along with the invocation of urgency clause under Section 17(4) was made but there a notification had also been issued under Section 6 that too after one year of the notification under Section 4 of the old Act. Therefore reliance on Hari Har Singh's case was not correct.

30. The argument of the learned counsel for the respondents/petitioners, all the same, is that the interpretation of Section 24 of the Act No. 13 of 2013 has been rightly done by learned single Judge for reasons that what is visualized under Section 24(1)(a) of the Act No. 30 of 2013 is that when no award has been made under Section 11 of the Land Acquisition Act (old Act), it actually imagines a contingency where not only a notification has been issued under Section 4 of the Land Acquisition Act, but there is further a notification under Sections 6 and 9 of the Act as well, and the matter has proceeded to that extent when the provision of Section 24(1)(a) of the Act No. 30 of 2013 would come into play. Taking this argument further, the learned counsel relies upon Section 7 of the General Clauses Act and submits that there is no specific mention of "repeal" under Section 24(1)(a) of the Act No. 30 of 2013 as it is under Section 24(1)(B) of the Act No. 30 of 2013 and, for this reason, such interpretation as is being made by the appellant, is wrong.

31. In his written submissions placed before this Court, the learned counsel for the private respondents Sri Gupta submits that what the Parliament actually intended to put in Section 24(1)(a) was that the acquisition proceedings under the old Act would be saved not only when the proceedings have been "initiated" under the old Act but have reached the stage just short of Section 11, i.e., when only an award has been left to be given, then Section 24(1)(a) would come into play. He submits that in the present case though proceedings had been initiated under the old Act, but there was no further notification under Section 6 and Section 9 and it had not reached that far as contemplated under Section 24(1)(a) and therefore Section 24(1)(a) would not apply, but what would effectively apply here would be Section 24(2) and proceeding will stand lapsed as it does under Section 24(2)!

32. This argument as referred above may be a wishful thinking of the private respondents but in our view has not substance.

33. Nevertheless, since the learned counsel for the private respondents made a passionate plea for casus omissus and urged this Court to give a finding on his submission as according to him this is a new Act and its interpretation may affect other pending proceedings, we have patiently heard the rival counsels on this issue, and this is our opinion on it.

34. It is true that Courts may at times supply words and intention in a Statute, which may be justified in a given case and we have no doubt in our mind that the respondents/petitioners will have some cases where the Court's indeed have done so. But these instances are rare. In overwhelming cases, the Courts" have simply declined to venture into this area. A provision which could have been, or should have been in a Statute, but is actually not there, is normally not provided by the Courts. Indeed by and large the Courts have adhered to the maxim casus omissus pro omisso habendus, [a case omitted is to be held as (intentionally) omitted] (from Black's Law Dictionary- Eighth Edition).

35. As far back as in the year 1952, a three Judge Bench of Hon"ble Apex Court in Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, while disagreeing with the order of the Hon"ble Allahabad High Court, which had stretched certain provisions of law and provided meaning which was not their in the Statute, said as under:--

"No doubt it is the duty of the court to try to harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act."

36. In another judgment of Hon"ble Apex Court in Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, while rejecting the plea of casus omissus raised before it in interpreting Debts Due to Bank and Financial Institutions Act, 1993 states under:--

"It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said, "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). This view was reiterated in *Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama*, ."

37. In another judgment, *Union of India (UOI) Vs. Rajiv Kumar*, again in its replying to the plea of casus omissus, the Hon"ble Apex Court has stated as under:--

"The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said."

It further states as under:--

"It is contrary to all rules of construction to read word into an Act unless it is absolutely necessary to do so."

38. As already referred above there may be a given case where it may be a just requirement to give meaning to a "word" or even to supply "words" which are not there. But such reasons must find place within the Act as a whole, and where a particular provision of law in that Statute is actually going against the basic element of the Act or, in fact, is defeating the provision of the law itself. Such occasions are rare.

39. The Rules of Statutory interpretation in such matters relate to two different principles of construction (a) relating to casus omissus and (b) regarding the reading of the Statute as a whole. This situation has been clearly elaborated and explained in another judgment of the Hon'ble Apex Court in Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders, , which reads as under:--

"In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts L.J. in *Artemiou v. Procopiou* [1966 (1) QB 878] "is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, [Per Lord Reid in *Luke v. I.R.C.*, 1963 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges"]."

40. Does the case in hand require such an interpretation? Clearly it does not.

41. The new Land Acquisition Act, 30 of 2013 came into force on 01.01.2014. It does visualize a new approach to land acquisition, including "compensation". Section 114 of Act No. 30 of 2013 repeals the old Land Acquisition Act with certain savings. Section 114 of Act No. 30 of 2013 reads as under:--

"114. Repeal and saving: (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

42. Section 114 of Act No. 30 of 2013 is to be read with Section 24 of Act No. 30 of 2013. In fact, Section 24 starts with a non-obstante clause which means notwithstanding anything contained in this Act, which should include notwithstanding the repeal of the Act itself, and then it visualizes three contingencies as to the applicability of the compensation under the old Act or the new Act and a contingency where the acquisition under the old Act would stand lapsed. There is absolutely no confusion or ambiguity here.

43. In fact, as learned counsel for the appellant would argue in the present case, the provisions of law being absolutely clear, the plea of casus omissus is not justified. In the present case, strictly speaking, there is no case of casus omissus, as the provision of Section 24 of Act read with Section 114 of Act No. 30 of 2013 are clear and unambiguous. Therefore, though, in a given case, the Court may supply words or meaning to a provision where it is absolutely necessary, it is equally true that "the court cannot so interpret a statute as to produce a casus omissus where there is really none." In the judgment of Hon'ble Apex Court in State of Karnataka Vs. Union of India (UOI) and Another, in paragraph 81, has held as under:--

"81. To advance the balder and broader proposition that what is not specifically mentioned in the Constitution must be deemed to be deliberately excluded from its purview, so that nothing short of a constitutional amendment could authorise legislation upon it, is really to invent a "Casus Omissus" so as to apply the rule that, where there is such a gap in the law, the Court cannot fill it. The rule, however, is equally clear that the Court cannot so interpret a statute as "to produce a casus omissus" where there is really none [see: The Mersey Docks and Harbour Board v. Penderson Brothers (1888 (13) AC 595, 602]. If our Constitution itself provides for legislation to fill what is sought to be construed as a lacuna how can legislation seeking to do this be held to be void because it performs its intended function by an exercise of an expressly conferred legislative power? In declaring the purpose of the provisions so made and the authority for making it, Courts do not supply an omission or fill up a gap at all. It is Parliament which can do so and has done it. To hold that Parliament is incompetent to do this is to substitute an indefensible theory or a figment of one's imagination that the Constitution stands in the way somehow-for that which only a clear Constitutional bar could achieve."

44. The other limb of the respondent's argument regarding applicability of Section 7 of the General Clauses Act, 1897, is to be rejected at the very threshold. Section 7 of the General Clauses Act, which is regarding revival of repealed enactments, has to be read along with Section 6 of the General Clauses Act. Both Section 6 and Section 7 of the General Clauses Act are reproduced as below:--

"6. Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

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

(b) affect the previous operation of any enactment so repealed; or

(c) affect anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed; or

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

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

7. Revival of repealed enactments--(1) In any (Central Act) or Regulations made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all (Central Acts) made after the third day of January, 1968 and to all Regulations made on or after the fourteenth day of January, 1887."

45. Section 6 of the General Clauses Act states as to what shall be the effect of repeal and what shall not be the effect of a repeal. Section 7 of the General Clauses Act visualizes a situation where a repealed enactment is being revived by another enactment. This is not the condition at hand. The New Act, i.e., Act No. 30 of 2013 expressly keeps alive certain rights and liabilities and, at the same time, destroys other rights and liabilities (Section 24 read along with Section 114 of Act No. 30 of 2013). Had there been no Section 24 of Act No. 30 of 2013, in that case, the benefits of Sections 6 and 7 of the General Clauses Act may have been given to the respondents. In the present case, the intention of the legislature is very clear as to what rights and what liabilities are to be preserved and what are to be destroyed under the New Act, i.e., Act No. 30 of 2013, and therefore, the plea regarding interpretation, the application of Section 7 of the General Clauses Act in the present case seems to be misconceived.

46. We must here add that sub-section (1) of Section 24 of the Act No. 30 of 2013, which starts with a non-obstante clause visualizes a situation where proceedings have been "initiated" under the old Land Acquisition Act and then

makes a distinction by speaking of situation contained in sub-section 1(a) and another in sub-section 1(b) of Section 24 of Act No. 30 of 2013 which has already been referred above.

47. The important word here is "when proceedings have been initiated". It does not speak of a situation where proceedings have been initiated and have already reached the stage just short of passing an award, as the learned counsel for the private respondents would like us to believe. Under the old Land Acquisition Act proceedings are initiated for land acquisition once the Government through its Collector shows his intention to acquire a land in an area through a notification duly published in an Official Gazette. This is the notification under Section 4 of the old Act.

48. The dictionary meaning of "initiated" is "first step" or setting the "ball in motion". This is done by publication of notification under Section 4 of the old Act. It marks the beginning of the process of land acquisition. It is the sine qua non of land acquisition under the old Act. Admittedly this notification was published under Section 4 of the old Act on 11.10.2013, therefore, the proceedings under the old Act stood "initiated". Moreover, the award had not yet been made. The two conditions having been met (a) proceedings have been initiated and (b) no award has been made. It is purely a case which comes under Section 24(1)(a) of Act No. 30 of 2013, and therefore, it would not touch the acquisition per se. All that would now happen is that the compensation which has to be given, will now be given under the new Act i.e. Act No. 30 of 2013.

49. In a recent judgment of Hon'ble Apex Court had an opportunity to deal with Section 24 of Act No. 30 of 2013. This was in *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, . What had fallen for determination before the Hon'ble Apex Court was as to when the proceedings initiated under the old Act would lapse, and therefore precisely speaking it was a determination of provisions of sub-section (2) of Section 24. But nevertheless, the determination of the Hon'ble Apex Court in para 10 of the above decision would be relevant. It was said as under:--

"10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non-obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of the 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed."

50. We, therefore, conclude that the very foundation of the order dated 20.05.2014 in our opinion is based on a misreading of law, and therefore, on

pure merits of the order, irrespective of the fact whether it has been passed under writ jurisdiction, or any other jurisdiction, the same cannot stand. This order must go.

51. Having said this, we may in any case add that we also do not find that there was any error apparent on the face of the record or any "mistake" which was liable to be rectified in the earlier order dated 10.04.2014, which required an interference in a review petition, more particularly, when the earlier order which has been reviewed was passed on a consensus of all the parties.

52. A Court has powers to review its own order, but such powers are extremely limited. These powers have to be exercised strictly within the purview of Order 47, Rule 1 of C.P.C.

53. Did the occasion require exercise of such powers in the present case?

54. The learned counsel for the respondent Sri Vishal Gupta submits that the Hon"ble Apex Court in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, the Hon"ble Apex Court has widened the scope of a review jurisdiction and which include a case where there has been a misconception or mistake either on law or of fact by an Advocate.

55. In the above case, the order of a Division Bench of Hon"ble Madras High Court was under challenged, an order which was passed in a review petition. Therefore, inter alia in the above case, the review jurisdiction exercised by the High Court was also an issue. Relying to a particular fact of the case, the Hon"ble Apex Court stated thus in paragraph Nos. 89 and 90, on which a heavy reliance has been placed by the counsel for the respondent. The above paragraphs of the said judgment reads as under:--

"89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47, Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

56. The question, however, remains that when the powers of a review are exercised and are found to be justified it would depend upon the facts of that particular case. There are a catena of decisions of the Hon"ble Apex Court where strong emphasis has been led by the Hon"ble Apex Court on the limited

jurisdiction in review powers. In fact in a later decision in *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, , the Hon"ble Apex Court while again emphasizing the limitation in review jurisdiction and while referring to an earlier decision of the Hon"ble Apex Court in *Board of Control for Cricket in India Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others*, , the Hon"ble Apex Court has held in paragraph 52, which reads as under:--

"52. In *Board of Control for Cricket in India v. Netaji Cricket Club*, this Court considered whether the Division Bench of the Madras High Court was justified in admitting the review petition. After making an elaborate reference to the factual matrix of the case and some judgments, the two-Judge Bench concluded that the High Court did not commit any error by entertaining the review petition. In para 91 of the judgment, reference has been made to an earlier judgment in *Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others*, in which expression "any other sufficient reason" was interpreted and it has been observed that the said rule is not universal. However, the judgment of the two-Judge Bench is conspicuously silent as to why the ratio of the earlier judgment warrants a deviation. The one line observation contained in para 93 that while exercising review jurisdiction the Court can take into consideration subsequent event has to be treated as confined to the facts of the case involving the controversy between rival Cricket Associations."

57. In other words what has been said by the Hon"ble Apex Court in *Board of Control for Cricket in India Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others*, will be limited to the fact of that case alone - the facts which are not present in the present case. Therefore, we have no hesitation in holding that the orders dated 20.05.2014 and 23.05.2013 passed by the learned Single Judge in review petition are orders which could not have been passed in exercise of its review powers by the learned Single Judge, as it is beyond the scope of Order 47, Rule 1 of C.P.C.

58. Having made the above determination, the order dated 20.05.2014 as well as order dated 23.05.2014 are hereby set aside. The proceedings now will continue from the stage, as it was directed in the earlier order of the learned Single Judge dated 10.04.2014. This Court is not going into the merits and demerits of redevelopment plan for which the land is acquired. It, however, goes without saying that it would mean a redevelopment plan which is being undertaken by the M.D.D.A., for public purpose alone.