
(2015) 12 MEG CK 0002
In the Meghalaya High Court
Case No : WP(C) No. 155/2015

Pawan Bawri

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10(A)
Land Acquisition Act, 1894 — Section 11, 11A, 11-A, 17(1), 17(4)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 11, 20, 21, 23, 24

Citation : (2015) 12 MEG CK 0002

Hon'ble Judges : U.N. Singh, C.J. and T. Nandakumar Singh, J.

Bench : Division Bench

Advocate : Aman Sinha, Senior Advocate, N. Mozika and Sanjay K. Pathak, Advocates, for the Appellant; N.D. Chullai, Senior GA and S. Sen Gupta, Addl. Senior GA, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—In this writ petition, the petitioner is praying for issuing a writ in the nature of mandamus or direction to the respondents to issue a Notification under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "New Land Acquisition Act of 2013") to determine the compensation for acquisition of 7.89 acres (3,43,20.20 sq.ft.) of land out of the "Maxwelton Estate" as on the date of issuance of such notification under Section 11 of the New Land Acquisition Act of 2013 and to pay compensation to the petitioner for acquisition of the said land.

2. Heard Mr. Aman Sinha, learned senior counsel assisted by Mr. N Mozika, learned counsel for the petitioner and Mr. ND Chullai, learned Sr.GA assisted by Mr. S Sen Gupta, learned Addl. Sr.GA appearing for the respondents No. 1-4.

3. The concise fact of the case leading to the filing of the present writ petition is

recapitulated. The present petitioner is the son of late J.N. Bawri. The land popularly known as "Maxwelton Estate" situated at Kench's Trace, Shillong comprising of two plots was purchased by late B. Borooah under a registered Sale Deed dated 05.07.1920 for a consideration amount of Rs. 40,000/-. The said Maxwelton Estate was mutated in the name of late B. Borooah vide order dated 09.06.1988 passed by the Meghalaya Board of Revenue in Case No. MBR/RA/No.2/85 and also the order dated 26.08.1985 passed by the Deputy Commissioner, East Khasi Hills District, Shillong in Mutation Case No. 1 of 1985. A writ petition being Civil Rule No. 27(SH) of 1990 (Civil Rule No. 491 of 1990) was filed by the State Govt. challenging the said mutation orders for mutating the said Maxwelton Estate in the name of late B. Borooah in the erstwhile Gauhati High Court, Shillong Bench. The Gauhati High Court vide common judgment and order dated 06.08.1999 passed in Civil Rule No. 27(SH) of 1990 (Civil Rule 491 of 1990) and Civil Rule No. 20 (SH) of 1992 (Civil Rule No. 1279 of 1992) dismissed the Civil Rule No. 27(SH) of 1990 challenging the mutation orders and the relevant portion of the common judgment and order dated 06.08.1999 is quoted hereunder:--

"For the reasons, observations, and discussions made above, the writ petitioners could not make out a case to justify the interference of the impugned mutation order passed by the learned Deputy Commissioner/Collector, East Khasi Hills District, Shillong dated 26.08.1985 in Mutation Case No. 1/85 and that of the impugned order dated 9th June, 1988 passed by the Meghalaya Board of Revenue in Case No. MBR/RA No. 2/85 and, accordingly, I hold that this writ petition is devoid of merit and, accordingly, it is dismissed thus, affirming the concurrent findings so far arrived by the learned Deputy Commissioner/Collector, East Khasi Hills District, Shillong and the Meghalaya Board of Revenue under the related impugned orders thus, making it clear that the impugned orders 26.8.1985 and 9.6.1988 are valid and still operative in the eye of law and, as such, these orders are to be given effect to by the concerned authorities forthwith. It may be noted that an application dated 3rd October, 1991 under Order 22 Rule 10(A) of the C.P.C. has been filed on behalf of the respondent No. 3 intimating this Court that Shri. Chittaranjan Barooah, the 3rd respondent had expired on 17th August, 1991 i.e. during the pendency of this case leaving behind his wife Smti. Krishna Barooah, daughter Kumari Indrani Barooah and son Shri. Indrajit Barooah as his legal heirs to succeed the estate left by him. This fact is not disputed by the writ petitioner.

In view of the above position, the concerned authorities are to act upon mutation application from the legal heirs of late Chittaranjan Barooah, if any, to meet the ends of justice. It may also be noted that the petitioners had expressed their apprehension in the writ petition that the respondent No. 3 or his attorney may sale the Maxwelton Estate by taking benefit of the order of Mutation in favour of Shri. Chittaranjan Barooah. According to me, this apprehension is misplaced as neither this court nor any authority can deny any right if such right accrues to the respondent concerned or his duly authorized attorney in accordance with law.

The writ petition is accordingly dismissed but no costs."

4. Shri. Chittaranjan Borooah, who is the son of late B. Borooah inherited the said Maxwellton Estate. Under the registered loan agreement dated 24.08.1983 entered between the recorded owner of the land i.e. Shri. Chittaranjan Borooah son of late B. Borooah and the father of the petitioner, the owner of the land (Shri. Chittaranjan Borooah) had taken loan from the father of the petitioner and in lieu thereof, the owner conferred an irrevocable right on the father of the petitioner to recover the loan by selling the property in question. The petitioner being the heir and successor of his father has the interest in the property i.e. Maxwellton Estate. The petitioner's father and the petitioner at their own cost had constructed the RCC Residential house on the said land i.e. Maxwellton Estate.

5. In the year 2001, the Govt. of Meghalaya, Revenue Department had initiated land acquisition proceedings and issued Notification No. RDA 1/2001/39 dated 05.01.2001 under Section 4 of the Land Acquisition Act, 1894 (for short "LA Act of 1894") stating that the land namely "Maxwelton Estate" was likely to be needed for public purpose, viz construction of office complexes. The Notification further stated that "in exercise of the powers conferred by Section 17(4) of the LA Act of 1894, the Govt. had decided that in view of the urgency of the project, provisions of Section 5-A of the LA Act of 1894 shall not apply". Thereafter, the State Govt. issued the declaration No. RDA 1/2001/50 dated 19.01.2001 under Section 6 of the LA Act of 1894 that a portion of Maxwellton Estate measuring more or less 7.879 acres (3,43,209.20 sq.ft.) bounded on the:

"North : Stream

South : P.W.D. Road

East : P.W.D. Road

West : land of (L) B.K. Dey, Smti. Rajashree Bhattacharjee and land of (L) R.K. Bisharaad."

is required for the public purpose.

For easy reference, the said two notifications dated 05.01.2001 under Section of the LA Act, 1894 and 19.01.2001 under Section 6 of the LA Act, 1894 are quoted hereunder:--

"PART-II-A

GOVERNMENT OF MEGHALAYA REVENUE DEPARTMENT ORDERS BY THE GOVERNOR

NOTIFICATION

The 5th January, 2001

No. RDA 1/2001/39.--It is hereby notified that land with the boundary described

below measuring more or less 7.879 acres in the village of Maxwellton Estate Kench's Trace SubDivision Shillong in the District East Khasi Hills is likely to be needed for the public purpose; viz; for the Construction of Office Complexes.

SCHEDULE OF BOUNDARY

North : Stream

South : P.W.D. Road

East : P.W.D. Road

West : land of (L) B.K. Dey, Smti. Rajashree Bhattacharjee and land of (L) R.K. Bisharaad.

This Notification is made under the provision of Section 4 of Act 1 of 1894; as amended by Act 68 of 1984 to all whom it may concern.

Government are pleased to authorize the Officer for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land and do all other Acts required or permitted by Sub-Section (2) of Section 4 of the Act.

In exercise of the powers conferred by Section 17(4) of the Act, Government have decided that in view of the urgency of the Project Provisions of Section 5-A of the Act shall not apply.

F.R. Hynniewta, Under Secretary to the Govt. of Meghalaya, Revenue Department

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GOVERNMENT OF MEGHALAYA ORDERS BY THE GOVERNOR DECLARATION

No. RDA1/2001/50 Dated Shillong, the 19th January, 2001.

Whereas it appears to the Government of Meghalaya that land is required to be taken by the government at the public expenses for a public purpose viz, for construction of office complexes by Government of Meghalaya Revenue Department, Shillong in the village of Kench's Trace, Maxwellton Estate, Sub-Division, Shillong in the District East Khasi Hills, it is hereby declared that for the above purpose land measuring more or less 7.879 acres of standard measures bounded on the:--

North : Stream

South : P.W.D. Road

East : P.W.D. Road

West : land of (L) B.K. Dey, Smti. Rajashree Bhattacharjee and land of (L) R.K. Bisharaad.

is required within the aforesaid village Kench's Trace, Maxwellton Estate.

This Declaration is made under the Provisions of Section 6 of Act 1 of 1894, which was amended by Act 68 of 1984 to whom it may concern.

A map of the plot of land may be inspected in the office of the Deputy Commissioner, East Khasi Hills District, Shillong.

Nothing in this declaration will be considered to apply to land which is resumable for the said purpose under the terms of the Lease and which Government elect to resume instead of acquiring under the Act.

(F.R. Hynniewta) Under Secretary to the Govt. of Meghalaya, Revenue Department"

6. Smti. Krishna Baruah, wife of late Chittaranjan Borooah filed writ petition being WP(C) No. 44(SH)2003 assailing the said Notification dated 05.01.2001 and declaration dated 19.01.2001 issued by the Revenue Department, Govt. of Meghalaya under the provisions of Section 4(1) and (2) and 17(1) and (4) and Section 6 of the LA Act of 1894 for acquiring about 7.879 acres of Maxwellton Estate, Kench's Trace, Shillong for construction of office complexes on the ground that there was no urgency. The Gauhati High Court passed an interim order dated 24.01.2001 "in the meantime, the respondent Government shall not give effect to the Notification dated 05.01.2001 and another Notification dated 19.01.2001 until further orders." Therefore, the land acquisition proceedings pursuant to the declaration dated 19.01.2001 was stayed until further orders. WP(C) No. 44(SH)2001 was dismissed for default vide order of the Gauhati High Court dated 06.12.2006. Vide order dated 23.02.2007 of the Gauhati High Court, WP(C) No. 44(SH)2001 was restored but the stay order was not restored. The writ petition i.e. WP(C) No. 44(SH)2001 was finally dismissed on 13.04.2007. As a result, there was no interference to the land acquisition proceedings by the Court. The writ petitioner had filed Writ Appeal being WA No. 9/2013 against the judgment and order of the learned Single Bench dated 13.04.2007 for dismissing WP(C) No. 44(SH)2001 on 25.04.2007 and the Division Bench passed an interim order dated 27.04.2007 only to the extent of "not to disturb possession of appellant." However, the proceedings in pursuance of the said declaration dated 19.01.2001 was not stayed by the High Court (Division Bench). Writ Appeal No. 9 of 2013 was finally dismissed by the Division Bench vide judgment and order dated 10.02.2014.

7. Under Section 11A of the LA Act of 1894, the Collector shall make an award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. The explanation to Section 11-A of the LA Act of 1894 states that in computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an Order of a Court shall be excluded. For easy reference Section 11-A of the LA Act of 1894 is quoted hereunder:--

"[11-A. Period within which an award shall be made.--(1) The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.--In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an Order of a Court shall be excluded.]"

8. Under the provisions of Section 11-A of the LA Act of 1894, the Collector shall make an award under Section 11 of the LA Act of 1894 within a period of two years from the date of publication of the declaration i.e. 19.01.2001 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. However, the period of stay shall be excluded in calculating the period of two years mentioned in Section 11-A of the LA Act of 1894. In order to see as to when the period of two years mentioned in Section 11-A of the LA Act of 1894 was expired in the present case, tabulation is made hereunder:--

From the above chart, it is crystal clear that the period of two years mentioned in Section 11-A of the LA Act of 1894 from the date of the said declaration dated 19.01.2001 under Section 6 of the LA Act of 1894 had been expired in the year 2008. Accordingly, the land acquisition proceedings under the said declaration dated 19.01.2001 shall stand lapsed in the year 2008.

9. The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill having been passed by both the Houses of Parliament received the assent of the President on 26.09.2013. It came on the Statute Book as "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)" and came into force w.e.f. 01.01.2014. Section 3(c) of the New Land Acquisition Act, 2013 defined the meaning of "affected family". Section 3(x) defined the meaning of "person interested". For easy reference, Section 3(c) and (x) of the New Land Acquisition Act of 2013 are quoted hereunder:--

"3(c) "affected family" includes-

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any

of their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;

3(x) "person interested" means-

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);

(iii) a person interested in an easement affecting the land;

(iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and

(v) any person whose primary source of livelihood is likely to be adversely affected."

Under Section 21 of the New Land Acquisition Act of 2013, Notice shall be issued to persons interested. Enquiry and land acquisition award shall be made by the Collector under Section 23 of the New Land Acquisition Act of 2013. For easy reference, Sections 21 and 23 of the New Land Acquisition Act of 2013 are quoted hereunder:--

"21. Notice to persons interested.--(1) The Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.

(2) The public notice referred to in sub-section (1) shall state the particulars of the land so needed, and require all persons interested in the land to appear

personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days and not more than six months after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under Section 20 .

(3) The Collector may in any case require such statement referred to in sub-section (2) to be made in writing and signed by the party or his agent.

(4) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situated.

(5) In case any person so interested resides elsewhere, and has no such agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last known residence, address of place or business and also publish the same in at least two national daily newspapers and also on his website.

23. Enquiry and land acquisition award by Collector.--On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 21 , to the measurements made under section 20 , and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of-

(a) the true area of the land;

(b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under section 31 and which in his opinion should be allowed for the land; and

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

10. Section 24 of the New Land Acquisition Act of 2013 clearly provides that the land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. Sub-section (1)(a) of Section 24 clearly provides that in any case of land acquisition proceedings initiated under the LA Act of 1894 (1 of 1894) no award under Section 11 of the said LA Act of 1894 has been made, then, all the proceedings of this Act relating to the determination of compensation shall apply. Thus, under sub-section (1)(a) of Section 24 of the

New Land Acquisition Act of 2013, all the provisions of the new acquisition Act will be applied in any case of the land acquisition proceedings initiated under the LA Act of 1894 where no award under Section 11 of the LA Act of 1894 had been made. In the present case, as stated above, the land acquisition proceedings started under the said declaration dated 19.01.2001 under Section 6 of the LA Act of 1894 had already been lapsed in the year 2008. Therefore, at the time of enforcement of the New Land Acquisition Act of 2013 w.e.f. 01.01.2014, there was no land acquisition proceedings initiated under the LA Act of 1894 for acquiring the said part of Maxwellton Estate. Sub-section (1)(a) of Section 24 of the New Land Acquisition Act of 2013 would be applicable to the pending land acquisition proceedings initiated under the LA Act of 1894. The provisions of Section 24(1)(b) of the New Land Acquisition Act of 2013 will not be applicable in the present case inasmuch as, there was no land acquisition proceedings initiated under the LA Act of 1894 for acquiring the land-in-question i.e. Maxwellton Estate. For easy reference, Section 24 of the New Land Acquisition Act of 2013 is quoted hereunder:--

"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."

11. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no

words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

12. The Apex Court in *State of Gujarat and Another Vs. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Others*, held that:

"96. In the process of statutory construction, the court must construe the Act before it, bearing in mind the legal maxim *ut res magis valeat quam pereat* which means it is better for a thing to have effect than for it to be made void, i.e., a statute must be construed in such a manner, so as to make it workable. Viscount Simon, L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.*: 1940 AC 1014: (1940) 3 All ER 549 (HL) stated as follows: (AC p.1022)

".....if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

97. Similarly in *Whitney v. IRC*: 1926 AC 37 (HL), it was observed as under: (AC p.52)

"..... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction, which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred, looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. "The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed so as to make it effective and operative." The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted, as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus, legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter, and the obvious intention of the legislature does not stand defeated, unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add

force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico". The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide: M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , S.P. Jain Vs. Krishna Mohan Gupta and Others, , Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, , UCO Bank and Another Vs. Rajinder Lal Capoor, and Grid Corporation of Orissa Ltd. and Others Vs. Eastern Metals and Ferro Alloys and Others,)."

13. The Apex Court in a catena of cases held that the maxim "expressum facit cessare tacitum" ("when there is express mention of certain things, then anything not mentioned is excluded") is applicable in interpretation of the statute. [Ref: Union of India and Another Vs. Tulsiram Patel and Others,]. The Apex Court in Union of India (UOI) Vs. Rajiv Kumar, had considered the two principles of construction i.e. maxims Quod enim semel aut bis existit practereunt legislators - Casus omissus et oblivion datus dispositioni juris communis relinquitur and held that the statute is an edict of legislature and court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. Paras 18 and 23 of the SCC in Rajiv Kumar's case (Supra) read as follows:--

"18. It is a well-settled principle in law that the court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy-makers.

23. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole - appear to be well settled. 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: (1965) 3 All ER 539 (CA) (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available".

14. The Apex Court in Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another, held that:

"53. Doctrine of purposive interpretation in a situation of this nature, in our opinion, shall be applied.

54. In *R (Haw) v. Secy. Of State for the Home Deptt.*: , (2006) 3 All ER 428. Lord Smith stated: (All ER pp. 438-39, paras 42 & 44-45)

"42. ... a passage from Bennion *Statutory Interpretation* (4th Edn., 2002, p.810, Section 304) entitled, "Nature of purposive construction". That begins with the following words:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by - (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

44. The passage from Bennion continues:

"... "... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remained one of construction, even where this involves reading into the Act words which are not expressly included in it. [*Kammins Ballroom Co. Ltd. v. Zenith Investments (Torquay) Ltd.*:1971 AC 850: (1970) 3 WLR 287: (1970) 2 All ER 871 (HL)] provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed." "

45. The passage from Bennion continues:

"Lord Diplock's third point is, with respect, erroneous. The argument that in *Jones v. Wrotham Park Settled Estates*:1980 AC 74: (1979) 2 WLR 132: (1979) 1 All ER 286 (HL) Lord Diplock was mistaken in saying that for a rectifying construction to be effected it must be possible to state with certainty what the missing words are, has been endorsed by the House of Lords. Lord Nicholls of

Birkenhead said that the court must be sure of "the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used" [see *Inco Europe Ltd. v. First Choice Distribution* (a firm): , (2000) 1 WLR 586 : (2000) 2 All ER 109 (HL)]." "

(See also *K.L. Gupta and Others Vs. The Bombay Municipal Corporation and Others*, , *Maruti Udyog Ltd. Vs. Ram Lal and Others*, ; *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, ; *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, ; *Balram Kumawat Vs. Union of India (UOI) and Others*, and *Pratap Singh Vs. State of Jharkhand and Another*,)"

15. The Apex Court in *H.S. Vankani and Others Vs. State of Gujarat and Others*, held that the legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). Para 43 of the SCC in *Dilip S. Dahanukar*'s case (*Supra*) reads as follows:--

"43. It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly."

16. The respondents had filed affidavit-in-opposition in the present writ petition. Nowhere in the affidavit-in-opposition of the respondents had mentioned that the award had been made for the said land i.e. Maxwelton Estate under the New Land Acquisition Act of 2013 pursuant to the declaration dated 19.01.2001 under Section 6 of the LA Act of 1894. The learned Sr.GA appearing for the respondents surprisingly had submitted before the Court on 19.11.2015 that an amount of Rs. 3,83,06,701/- (Rupees three crores, eighty three lacs, six thousand and seven hundred and one) had been awarded as compensation which also includes the total cost of land. But the said factual submissions made by the learned Sr.GA were contrary to the stand taken by the State Govt. in their affidavit-in-opposition dated 12.08.2015 filed on 13.08.2015 wherein, the respondents neither mentioned the preparation of the award made by the Collector of Land Acquisition for the said land i.e. Maxwelton Estate under the LA Act of 1894 nor under the New Land Acquisition Act of 2013. The respondents in para 14 of the affidavit-in-opposition admitted that no award has been made under the provisions of the LA Act of 1894. The petitioner also filed rejoinder affidavit to the affidavit-in-opposition filed by the respondent on 09.10.2015. In para 16 of the rejoinder affidavit filed by the petitioner, the petitioner stated that the

respondents had clearly admitted that under Section 24 of the New Land Acquisition Act of 2013, the provisions of the new Act will be applicable to the pending land acquisition proceedings under the old Act. Para 16 of the rejoinder affidavit filed by the petitioner is reproduced hereunder:--

"16. That with regard to the statements and averments made in paragraph 14 of the affidavit-in-opposition, the deponent states that the respondents have admitted that no award has been made under the provisions of the Land Acquisition Act, 1894. It is, therefore, respectfully submitted that the provisions of Section 24(1)(a) of the LARR Act, 2013 are clearly attracted for determination of compensation according to the new Act. The law relating to applicability of section 24 of LARR Act, 2013 on the pending acquisition proceedings is well settled by the Hon'ble Supreme Court. The Supreme Court has held that where the acquisition proceedings under the old Act were pending on the date of commencement of the LARR Act, 2013, section 24 of the new Act shall govern the pending acquisition proceedings."

There was no reply from the side of the respondents by filing reply affidavit to the said para 16 of the rejoinder affidavit of the petitioner.

17. As stated above, the land acquisition proceedings pursuant to the declaration dated 19.01.2001 under Section 6 of the LA Act of 1894 had already been lapsed in the year 2008 under Section 11-A of the LA Act of 1894. As such, there was no pending land acquisition proceedings when the new Act i.e. New Land Acquisition Act of 2013 came into force on 01.01.2014. Therefore, the provisions of the New Land Acquisition Act of 2013 will not be applicable to the land acquisition proceedings in consequence of the declaration dated 19.01.2001 which had already been lapsed in the year 2008 inasmuch as the provisions of the New Land Acquisition Act of 2013, will be applicable only to the pending land acquisition proceedings. Any award prepared by the Collector under the New Land Acquisition Act of 2013 in consequence of the declaration dated 19.01.2001 under Section 6 of the LA Act of 1894 will be void for the simple reason that there was no pending land acquisition proceedings under the LA Act of 1894 in pursuance of the declaration dated 19.01.2001 under Section 6 of the LA Act of 1894 at the time of enforcement of the New Land Acquisition Act on 01.01.2014.

18. For the foregoing reasons, there is no alternative for the State respondents except to initiate new land acquisition proceedings under the New Land Acquisition Act of 2013 for acquiring part of Maxwellton Estate mentioned in the declaration dated 19.01.2001. In the case of initiating new land acquisition proceedings, the procedure prescribed in the New Land Acquisition Act of 2013 for preparing the award and also for giving sufficient notice and opportunity to the interested persons for putting up their case and interest in the land to be acquired shall be strictly followed. The award, if any, prepared by the Collector of the Land Acquisition under the New Land Acquisition Act of 2013 for the land mentioned in the declaration dated 19.01.2001 shall stand quashed.

19. Writ petition is allowed.