

(2020) 08 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition (ST.) No. 2511 Of 2020

Premier Limited

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-08-2020

Acts Referred:

Railways Act, 1989 &mdash Section 2, 2(7A), 2(29A), 2(37A), 20(1), 20(A), 20(A)(1), 20(A)(2), 20(B), 20(C), 20(D), 20(E), 20(E)(1), 20(E)(2), 20(F), 20(G), 20(H), 20(H)(1), 20(H)(2), 20(I), 20(I)(1), 20(I)(2), 20(J), 20(N), 20(O), 20(P)
Constitution Of India, 1950 — Section 12, 226, 227

Citation : (2020) 08 BOM CK 0001

Hon'ble Judges : Ujjal Bhuyan, J;N. R. Borkar, J

Bench : Division Bench

Advocate : Ankit Lohia, Suresh Kumar, Rupali Akolkar, Rajpurohi

Final Decision : Disposed Of

Judgement

1. Heard Mr. Ankit Lohia, learned counsel for the petitioner; Mr. Suresh Kumar, learned counsel for respondent No.1; Mrs. Rupali Akolkar, learned

counsel for respondent No.2; and Mr. Rajpurohit, learned AGP for respondent Nos.3 and 4-State.

2. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner seeks a direction to the second respondent to release the

compensation amount of Rs.21,71,56,088.00 in favour of the petitioner as per final award dated 06.05.2017 along with interest @12% p.a. from the

date of the final award till payment or realization thereof. An alternative prayer has been made for a direction to the competent authority to release

part compensation payment of Rs.15,38,13,908.00 along with interest @12% p.a. with effect from 29.12.2019 in favour of the petitioner as per interim

compromise arrangement dated 27.12.2019. A further prayer is made that if the

Court comes to the conclusion that respondents are not liable to pay compensation as per the final award dated 06.05.2017, then to set aside and quash the acquisition proceedings with respect to the land in question along with the final award dated 06.05.2017 and transfer back the title and possession of the land in question to the petitioner.

3. Case of the petitioner is that petitioner is a public limited company, earlier known as 'Premier Automobile Limited', incorporated under the provisions of the Indian Companies Act, 1913. It has its registered office at Mumbai Pune Road, Chinchwad in the district of Pune and corporate office at Nariman Point, Mumbai. It is presently engaged in the business of manufacturing and selling of CNC machines, heavy engineering and parts and components thereof. Being a listed company, it has approximately 35,000 shareholders with a large workforce.

3.1. Petitioner was the lawful owner of 28,672 sq. mtrs. of land at village Bhopar, Thane which was required by the Government of India for a special railway project called 'Western Dedicated Freight Corridor'.

3.2. In view of such requirement, notification dated 02.07.2015 was issued by the first respondent under section 20-A of the Railways Act, 1989

(briefly 'the Act' hereinafter) declaring the intention to acquire various lands including the land in question belonging to the petitioner. As per the legal

requirement, the said notification was published in two local newspapers, one in English and the other in vernacular, i.e., Indian Express and Dainik

Sakal on 01.08.2015. Petitioner did not raise any objection to acquisition of the land in question though by such acquisition the remaining portion of land not acquired would be rendered economically unviable.

3.3. During the year 2015-16, a joint survey of the land in question was carried out by the Deputy Superintendent of Land Records, Kalyan, district

Thane to ascertain the measurement of the land and for demarcation of the land in question. According to the petitioner, an internal report was

forwarded by the third respondent to the second respondent on 28.04.2016 and thereafter by the second respondent to the first respondent in

accordance with section 20-E of the Act. Following the same, in exercise of powers conferred by section 20-E(1) and (2) of the Act, first respondent

vide notification dated 06.06.2016 published in the official gazette of India on 07.06.2016 and in the newspapers on 20.07.2016 declared that on

publication of the notification in the official gazette, the land set out in the schedule thereunder including the land in question would vest absolutely with the central government. By the said notification, first respondent also called upon persons interested in the land to submit their claims in writing to the third respondent within 30 days from the date of publication of the notification.

3.4. It is stated that office of the third respondent had also published a joint survey report dated 20.07.2016 thereby listing out the names of unauthorized occupants and the area encroached upon by them in respect of the land in question.

4. Be that as it may, final award was passed by the competent authority on 06.05.2017. It is stated that the third respondent was nominated as the competent authority by the central government and as the competent authority, he had passed the final award on 06.05.2017. As per the final award,

compensation was determined for 32,353 sq.mtrs. of land which included the land in question acquired by the first respondent for the said project at

village Bhopar. Petitioner's share of compensation as determined and recorded in the final award for the land in question was Rs.21,71,56,088.00. The

final award also provided that a separate supplementary award would be declared, if required, to determine the valuation of constructions over the

land in question as shown in the joint survey report. The final award further recorded the fact that joint measurement of the land in question was

carried out and report was obtained by office of the third respondent on 30.03.2016 i.e., prior to issuance of the notification dated 06.06.2016.

Pursuant to such report notification dated 06.06.2016 was published by the first respondent for acquiring the land in question.

5. According to the petitioner the competent authority i.e., the third respondent was fully aware of the fact that there were certain unauthorized

structures on the land in question during the time of preparation of the final award. Be that as it may, the final award was conclusive in so far the

quantum of compensation required to be paid to the owners including the petitioner and it did not in any manner direct that payment / release of the

determined compensation amount was conditional upon removal of existing unauthorized structures.

6. The quantum of compensation determined by the third respondent as the competent authority was communicated to the petitioner vide notice dated

06.05.2017 issued under sections 20-H (2) and 20-I of the Act.

7. Petitioner accepted the final award and remained present in the office of the competent authority on the notified date along with all necessary

details to enable the competent authority to release the determined compensation to the petitioner. Unfortunately, the compensation determined as payable to the petitioner was not paid and wrongfully withheld.

8. Petitioner pursued the matter with the second and third respondents requesting them to release the quantum of compensation payable to the

petitioner in terms of the final award and also to take over physical possession of the land in question. But it is stated that no follow-up steps were taken.

9. Petitioner has stated that following certain internal communications between the second respondent and the third respondent, the third respondent as

the competent authority initiated steps for passing a supplementary award for payment of compensation on account of the structures constructed over

the land in question. Such supplementary award after preparation was forwarded by the third respondent to the second respondent. However, it is

stated that vide an internal communication dated 30.08.2018, second respondent rejected the supplementary award for the structures constructed over

the land in question on the ground that since the petitioner is the owner of the land in question, it should clear all the unauthorized occupiers and

handover vacant possession of the land in question free from all encumbrances to the second respondent. Petitioner contends that such condition

insisted upon by the second respondent is neither mentioned in the notification dated 02.07.2015 nor in the notification dated 06.06.2016; besides not

finding place in the final award.

10. Further contention of the petitioner is that respondents had made mutation entry No.2278 dated 07.09.2018 regarding transfer of title and handing

over of possession of the land in question from the petitioner to the second respondent. It was recorded that Indian Railways was the occupier of the

land in question and that the said land in question was acquired for the project 'Western Dedicated Freight Corridor'.

11. When the petitioner learnt about rejection of the supplementary award and also non-payment of the determined compensation as per the final

award, it held discussions with the third respondent. In the course of the

discussions, it was pointed out by the petitioner that in view of the legal provisions, the land in question stood fully acquired and was transferred in favour of the first respondent; therefore, withholding of compensation was not justified. Petitioner was informed that the third respondent had proposed to the second respondent that compensation to the tune of Rs.7 crores was to be paid to the unauthorized occupants but the second respondent was not agreeable to the same.

12. Petitioner vide letter dated 22.06.2019 impressed upon the third respondent that in terms of notification dated 06.06.2016, the land in question stood vested with the central government and that petitioner was entitled to compensation of Rs.21,71,56,088.00 as determined by the third respondent in the

final award. However, it did not yield any fruitful result. Subsequent efforts made by the petitioner also proved to be futile. Petitioner had addressed

letters to the railway minister as well as to the project manager of the second respondent for release of the compensation amount but without any

success. However, petitioner persisted with its endeavors and in this connection had discussions with the third respondent who had passed an order on

27.12.2019 regarding release of Rs.15,38,13,908.00 to the petitioner as compensation. Petitioner accepted the said order on the assurance of the third

respondent that the aforesaid amount would be immediately released in favour of the petitioner. Unfortunately even that amount was not released to

the petitioner. It is stated that though petitioner was under no legal obligation to accept part compensation but in order to mitigate the hardship caused

on account of withholding of compensation and because of financial duress, petitioner had agreed to such compromise arrangement. Subsequently

when managing director of the petitioner met representatives of the second respondent, the later informed the petitioner that upon handing over of

vacant possession of the land in question, second respondent would forthwith release the entire compensation amount. Despite the land in question

being vested with the central government, no compensation amount has been paid to the petitioner even though final award has been passed.

13. Aggrieved, petitioner has preferred the present writ petition seeking the reliefs as indicated above.

14. Second respondent in its reply affidavit has denied the claim of the petitioner. It is stated that the second respondent i.e., Dedicated Freight

Corridor Corporation of India Limited has been established by the Government of India, Ministry of Railways to undertake planning and development, mobilization of financial resources and construction, maintenance and operation of dedicated freight corridor. Second respondent is constructing the Western Dedicated Freight Corridor which has been notified as a special railway project with route length of 1483 Kms from JNPT (Maharashtra) to Dadri, Haryana. For this purpose, second respondent has acquired lands at various places including at Village Bhopar, Taluka Kalyan, district Thane under the Act as amended by the Railways (Amendment) Act, 2008. Government of India, Ministry of Railways has appointed Sub-Divisional Officer, Kalyan, third respondent, as the competent authority for conducting land acquisition proceedings.

14.1. Preliminary notification under section 20-A of the Act was published in the Gazette of India on 29.03.2011 which is reckoned as the relevant date for determination of the market value of the land covered by the said notification which included survey No.244/2 having 52 hectares 22 ares area of land situated at Village Bhopar, Taluka Kalyan in the district of Thane which was to be acquired for the special railway project. Details of publication of the said notification have been provided by the second respondent in the reply affidavit. Second respondent has stated that concerned land owners and interested parties did not file any objection as to land acquisition at the relevant point of time.

14.2. Government of Maharashtra vide government resolution dated 05.09.2011 had formed a committee consisting of 7 members under the chairmanship of the District Collector for finalization of village-wise land rates for fixation of compensation to be paid in case of acquisition of private land in the district of Thane. The said committee while finalizing the land rates had taken into consideration all relevant factors. Accordingly, a joint measurement survey was carried out on the land on 21.07.2011 and report was prepared on the basis thereof. It is stated that at the time of the joint measurement survey on 21.07.2011, there were no structures on the said land. The entire land was free from encroachment. However, the said survey number was shown to be in the name of the government. As the said survey number was government land, issuance of notification under section 20-E was not required and award was not published. Accordingly, the said survey was neither included in section 20-E (1) notification nor in

the private land award passed by the competent authority.

14.3. According to the second respondent when the petitioner came to know that the lands around his land were being acquired, it came forward and

made a claim that the said survey number was owned by it. As the land was no more in the possession of the government, second respondent sought

to acquire the same from the petitioner. Accordingly, notification under section 20-A(1) was issued on 06.07.2015 which was followed by another joint

measurement survey on 20.01.2016 whereafter report dated 22.03.2016 was submitted. This was followed by the final award declared on 06.05.2017.

14.4. According to the second respondent, many illegal structures i.e., encroachments have come up on the land bearing survey No.244/2. This only

goes to show that the land was well protected till publication of the first notification and that thereafter petitioner had permitted such encroachments

on its land. This, second respondent contends, is out of mala fide desire of the petitioner to extract more money as compensation from the second

respondent, being hand in glove with the encroachers. It is stated that since the land has been acquired for a public purpose, petitioner ought to clear

the encroachments first and handover possession of the vacant land as notified under section 20-E(2) i.e., land free from all encumbrances.

14.5. Further stand of the second respondent is that being a private property petitioner ought to have taken good care of its land and protected it from

encroachment. Petitioner had allowed the said land to be encroached by encroachers after the joint measurement survey. Petitioner has not disclosed

from when and how encroachers had got access to the land. On the other hand, there is minimal encroachment on the petitioner's balance land which

is still in the possession of the petitioner.

14.6. Second respondent has furnished details of lands situated at Village Bhopar which have been acquired from the petitioner for the said special

railway project as well as details of the lands acquired for the said purpose in the surrounding villages of Usarghar, Betavde etc.

14.7. According to the second respondent award declared by the competent authority was in three stages and the total amount was Rs.229.21 crores;

out of which Rs.204.61 crores has already been disbursed to the petitioner and in some cases to M/s. Horizon Projects Limited where petitioner had

sold its land after the first award. It is stated that the balance amount for the

area admeasuring 0.5222 hectares of survey No.244 part in Village

Bhopar, Taluka Kalyan in the district of Thane has not been paid to the petitioner since there are illegal structures on the land which are to be cleared

by the land owner. As soon as the said land is cleared of illegal structures and vacant possession handed over, payment would be made to the petitioner.

14.8. Second respondent has also mentioned that petitioner had raised no grievance with respect to either the payment or the rate when the lands in

the other surveys which belonged to the petitioner were acquired. But in so far the land in question is concerned, petitioner has lately mentioned that

the rate offered is below the market rate and that the award is not just and proper. Besides there are discrepancies in the petitioner's letter to the

minister and in the letter addressed to the second respondent which reflects mala fides on the part of the petitioner.

14.9. Second respondent has alleged that petitioner did not disclose that the land in question was previously government land; there were other survey

numbers in Bhopar and neighbouring villages, which have been acquired by the second respondent and compensation promptly paid; encroachments

over the land in question had occurred later i.e., in the year 2016 after it became clear that the said land would also be acquired; talks about part

payment were initiated with the petitioner only for the purpose of removal of encroachment, there being no provision in the Act for making part

payment of the award.

14.10. Thereafter, second respondent has replied para-wise to the contentions of the petitioner. Referring to the award dated 06.05.2017, it is stated

that section 20-E(2) clearly stipulates that on the publication of the declaration under sub-section (1), the land shall vest absolutely in the central

government free from all encumbrances. Highlighting this aspect of the matter, it is contended that the first respondent and the second respondent

would take over the land and make necessary payment as soon as it gets clear and encumbrance free land. It is stated that there are over 69 illegal

structures standing over the land in question which are to be cleared first before payment is made. Petitioner did not handover vacant possession of

the land to the second respondent and for that reason, second respondent has retained the payment till vacant possession is handed over to it.

14.11. It is stated that joint survey of the land in question was conducted twice. The joint measurement survey referred to by the petitioner is the second one. At the time of the first one, the land was in the name of the government and so acquisition proceedings did not proceed but at that point of time, the land was free from encroachment. The second joint measurement survey was necessitated as the petitioner had acquired the land from the government which land was required to be acquired for the project.

14.12. Referring to the final award it is stated that it was mentioned therein that a separate award shall be made for the structures on the land acquired.

14.13. Basic contention of the second respondent is that the land should be free from encumbrances at the time of acquisition. Payment of compensation as per award is conditional upon handing over possession of vacant and encumbrance free land. Therefore, the encroachment has to be removed first by the petitioner. The moment encroachment is removed and possession of vacant land is handed over, respondents shall pay the necessary amount to the petitioner.

14.14. It is contended that the land in question still vests with the petitioner as he has physical possession over it. As a matter of fact, petitioner has repeatedly requested the second respondent to take over physical possession. When the land is full of encroachment and even the physical possession thereof lies with the petitioner, there is no way for the second respondent to make payment of compensation to the petitioner and therefore, a writ of mandamus may not be issued directing payment of compensation.

14.15. While denying that second respondent had requested the third respondent for evaluation of the structures, it is stated that the third respondent under pressure from the petitioner had evaluated the structural award and had sent the same to the second respondent on 05.06.2018 for approval.

However, the same was denied vide letter dated 30.08.2018 with a request to the third respondent to direct the petitioner to handover the encumbrance free possession of the land in question. Contending that mere mutation is not adequate proof of taking over physical possession of the land in question, it is stated that the said land is still in possession of the petitioner.

14.16. Second respondent has the discretion to accept or deny the structural

award. It was made clear to the petitioner that encumbrance free land had to be handed over to the second respondent. Second respondent has rejected the structural award as the structures had come up on private land after first notification of Thane district. If such structures are permitted then it would lead to erection of new structures every now and then once people know that the land is going to be acquired. Therefore, it is denied that any compensation is due to unauthorized structures.

14.17. Summing up, second respondent has contended that it is not liable to pay anything to the encroachers who were permitted by the petitioner to put up such illegal structures and since the physical possession of the land in question is still with the petitioner, there is no question of paying any compensation to the petitioner. Regarding payment of part compensation, it is stated that it was made clear to the petitioner that part compensation was to be paid to enable it to cover up the cost that would be incurred for removal of encroachment which it had promised it would do. Since petitioner failed to fulfill its part of the promise, question of payment of even part compensation does not arise.

14.18. Therefore, second respondent seeks dismissal of the writ petition with costs.

15. In its rejoinder affidavit, petitioner while reiterating the contentions made in the writ petition has denied the averments and stand taken by the second respondent in its reply affidavit. In so far contention of the second respondent that there was no encroachment on the land in question in July, 2011 when the first joint measurement survey was carried out is concerned, it is stated that the said survey was not conducted in the presence of the petitioner. Therefore, veracity of findings of the said survey is disputed by the petitioner. It is further contended that when the joint survey was conducted on 20.01.2016 which indicated that encroachments had come up on the land in question, respondents were fully aware of such encroachments but proceeded to acquire the land knowing fully well about the encroachments. Respondents could very well have rejected the proposal for acquisition in view of the encroachments but vide the notification dated 16.06.2016, first respondent made a declaration to the effect that the subject property would vest absolutely with the central government. The compulsory nature of acquisition of the land in question with

encroachments on it would be evident from the fact that the schedule to the said notification dated 16.07.2016 gave the description of the land to be acquired as "with or without structure".

15.1. Having taken a conscious decision to acquire the land in question with encroachments and after issuing notification to that effect, it is not open to the respondents to insist on the petitioner clearing the encroachments. Condition imposed by the second respondent that the awarded amount would be paid subject to petitioner handing over vacant possession of the land in question after removing the encroachments is factually and legally untenable.

15.2. While denying the contention of the second respondent that petitioner has not handed over physical possession of the land in question to the respondents, it is stated that on the assurance that third respondent would immediately release interim compensation of Rs.15,38,13,908.00, petitioner had on 27.12.2019 handed over physical possession of the land in question to the third respondent and had further issued a possession letter in this regard. Thus, physical possession of the land in question has been taken over from the petitioner. It is stated that though the third respondent did not put his signature to the letter of handing over of possession, it did not make any material difference to the fact that possession of the land was handed over to the respondents, which would be evident from the mutation entry dated 07.09.2018 which records that "possession of the said land has been handed over to the Indian Railways".

15.3. Having acquired the land in question and having taken over possession of the same it is not open to the second respondent to contend that possession over the said land continued to remain with the petitioner. Since second respondent is in possession of the land in question, it is fully capable and competent to remove the illegal structures therefrom. In any event, since the subject land stood compulsorily acquired in the year 2016 itself with structures, second respondent cannot now withhold compensation on the ground that the land in question is not free from encumbrances.

15.4. Petitioner has reiterated that it was only after joint survey of the land in question was carried out when the respondents had taken note of the encroachments that the land in question was compulsorily acquired by the respondents. Petitioner having been divested of its land is entitled to compensation as determined by the final award.

16. Learned counsel for the petitioner Mr. Lohia has referred to the relevant provisions of the Act inserted vide the Railways (Amendment) Act, 2008

and submits that since award has been made, it is the duty and obligation of the competent authority to make payment of the amount of compensation

as per the final award and the same cannot be withheld on the ground that the land is not free from encumbrances. In support of this contention,

learned counsel has pressed into service a Division Bench judgment of Gujarat High Court in C handraprabhaben Navinchandra B. Vs. State of

Gujarat, 1983 SCC Online 129.

16.1. On a query by the Court, he submits that a writ petition seeking a mandamus to the competent authority for release of compensation as per the

final award is certainly maintainable and in this connection has placed reliance on the following two decisions:

a. AIR 1996 Kar. 171, J. M. Sohanlal Vs. Special Land Acquisition Officer; and

b. 2003 SCC Online Allahabad 2103, Raja Abhushan Bramha Shah Vs. State of U.P.

17. Per contra learned counsel for the second respondent submits that second respondent is not denying payment of compensation to the petitioner in

terms of the final award. It is evident that physical possession of the land in question is still with the petitioner with lot of illegal structures standing on

the land. Petitioner should remove those structures and handover physical possession of the land in question and once that is done compensation as per

the award shall be immediately released.

18. Mr. Suresh Kumar, learned counsel for the first respondent and learned AGP appearing for the third and fourth respondents have supported the

stand of learned counsel for the second respondent.

19. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

20. Before proceeding further, it would be apposite to advert to the relevant legal provisions.

21. The Act i.e., Railways Act, 1989 was enacted to consolidate and amend the law relating to railways. Though there has been several amendments

after enactment, the amendment which is relevant is the Railways (Amendment) Act, 2008 which was given retrospective effect from 31.01.2008. By

this amendment, Chapter IV-A containing sections 20-A to 20-P was inserted in

the Act along with certain expressions in the definitions section i.e., section 2 with retrospective effect from 31.01.2008.

21.1. â??Competent authorityâ? has been defined in section 2(7-A) of the Act to mean any person authorised by the central government by notification to perform the functions of the competent authority for such area as may be specified in the notification.

21.2. â??Person interestedâ?? is defined in section 2(29-A) and includes the following:-

- (i) all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act;
- (ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
- (iii) a person interested in an easement affecting the land; and
- (iv) persons having tenancy rights under the relevant State laws.

21.3. â??Special railway projectâ? is defined in section 2(37-A) 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 Union Territories.

22. As noticed above, Chapter IV-A as inserted by the amendment of 2008 deals with land acquisition for a special railway project. Power to acquire land etc. is dealt with in section 20-A. As per sub-section (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. Sub-section (2) says that such a notification shall give a brief description of the land and of the special railway project for which the land is intended to be acquired. In this connection, the state government or the concerned union territory may provide the details of the land records to the competent authority in terms of sub-section (3) and sub-section (4) requires the competent authority to cause the substance of the notification to be published in two local newspapers, one of which shall be in a vernacular language.

23. While section 20-B empowers any person authorized by the competent authority to enter into the land in respect of which a notification under sub-

section (1) of section 20-A has been issued for the purpose of survey etc., in the event of damages caused while carrying out survey, measurement, etc., the same shall be evaluated and compensation shall be paid to the persons having interest in that land under section 20-C.

24. Section 20-D provides for hearing of objections upon issuance of notification under sub-section (1) of section 20-A. Under sub-section (2), the competent authority shall decide such objection after giving an opportunity of hearing to the objector. Sub-section (3) makes it clear that any order passed by the competent authority under sub-section (2) shall be final.

25. Section 20-E is relevant and it deals with declaration of acquisition. Section 20-E is extracted hereunder:

20E. Declaration of acquisition : (1) Where no objection under sub-section (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 sub-section (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 sub-section (1) of section 20A.

(2) On the publication of the declaration under sub-section (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 sub-section (1) of section 20A for its acquisition, but no declaration under sub-section (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 sub-section (1) of section 20A is stayed by an order of a court shall be excluded.

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

25.1. As per sub-section (1) where no objection has been made or in case objection has been made but the same has been disallowed, the competent authority shall submit report to the central government as early as possible and

on receipt of such report, the central government shall declare by notification that the land should be acquired for the purpose mentioned in sub-section (1) of section 20-A. Sub-section (2) says that once a declaration under sub-section (1) is published, the land shall vest absolutely in the central government free from all encumbrances. Sub-section (3) deals with a situation where though a notification has been published under sub-section (1) of section 20-A but no declaration under sub-section (1) of section 20-E has been published within a period of one year from the date of publication of the notification under sub-section (1) of section 20-A. In such a case, the notification under sub-section (1) of section 20-A shall cease to have any effect. As per the proviso, while computing the period of one year, the period covered by any stay order passed by a court shall be excluded. Sub-section (4) makes it clear that any declaration made by the central government shall not be called in question in any court or by any other authority.

26. Section 20-F deals with determination of amount payable as compensation. As per sub-section (1), where any land is acquired under the Act, there shall be paid an amount which shall be determined by an order of the competent authority. Sub-section (2) lays down the period within which the award is to be made i.e., one year from the date of publication of the declaration which is extendable for a further period of six months for reasons to be recorded in writing. In case an award is made within the extended period, additional compensation has to be paid for the delay in making the award. If the amount determined by the competent authority is not acceptable to either of the parties then on an application by either of the parties, it may be determined by the arbitrator to be appointed by the central government in the manner provided in sub-sections (8) and (9). When the arbitrator steps in, provisions of the Arbitration and Conciliation Act, 1996 would apply.

26.1. Section 20-G provides the criterion for determination of market value of the land.

27. Section 20-H deals with deposit and payment of amount. Section 20-H reads as under:

20H. Deposit and payment of amount: (1) The amount determined under section 20F shall be deposited by the Central Government, in such manner as may be prescribed by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 20F by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine percent annum on such excess amount from the date of taking possession under section 20-I till the date of actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government, in such manner as may be prescribed by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.â??

27.1. As per sub-section (1), the amount determined under section 20-F shall be deposited by the central government in such manner as may be

prescribed by that government with the competent authority before taking possession of the land. Sub-section (2) says that as soon as the amount is

deposited, competent authority shall, on behalf of the central government, pay the amount to the person or persons entitled thereto. Where there are

more than one claimant, claiming to be interested in the amount deposited, as per sub-section (3) the competent authority shall determine the persons

who in its opinion are entitled to receive the amount payable to each of them. In case of any dispute as to apportionment of the compensation amount

or to the claim of any person, in terms of sub-section (4) the competent authority shall refer the dispute to the decision of the principal civil court of

original jurisdiction within the limits of whose jurisdiction the land is situated. It

is relevant to mention that as per sub-section (5) where the amount determined under section 20-F by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at 9% per annum on such excess amount from the date of taking possession under section 20-I till the date of actual deposit.

28. Power to take possession is provided in section 20-I. As per sub-section (1), where any land is vested in the central government under sub-section (2) of section 20-E and the amount determined by the competent authority under section 20-F is deposited with the competent authority by the central government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or to any person duly authorized by it in this behalf within a period of 60 days of service of the notice. As per sub-section (2), if there is refusal or failure to comply with such direction, the competent authority shall apply to the Commissioner of Police or to the Collector of the district, as the case may be, and such authority shall enforce the surrender of the land to the competent authority or to the person duly authorized by it. Since section 20-I is relevant, the same is also extracted hereunder:

â??20-I Power to take Possession : (1) Where any land has vested in the Central Government under sub-section (2) of section 20E, and the amount determined by the competent authority under section 20F with respect to such land has been deposited under sub-section (1) of section 20H with the competent authority by the Central Government, the competent authority may, by notice in writing, direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within a period of sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply-

(a) in case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a district.

and such Commissioner or Collector, as the case may be shall enforce the

surrender of the land, to the competent authority or to the person duly authorised by it.â??

29. Section 20-J says that where the land is vested in the central government under section 20-E, it shall be lawful for any person authorised by the central government to enter into and do such acts on the land necessary for the special railway project.

30. Section 20-N makes it clear that provisions of the Land Acquisition Act, 1894 shall not apply to an acquisition under the Act though under section

20-O, provisions of the National Rehabilitation and and Resettlement Policy, 2007 shall apply to project affected families.

31. This is the scheme of Chapter IV-A of the Act which deals with land acquisition for special railway project.

32. Having carefully analyzed the relevant legal provisions as above, we may now examine the claim of the petitioner as resisted by the second respondent on the basis of pleadings and materials on record.

33. Railway Board, Ministry of Railways, Government of India issued notification dated 02.07.2015 in exercise of the powers conferred by sub-section

(1) of section 20-A of the Act. The said notification was published on 06.07.2015 in the Gazette of India, Extraordinary. As per the said notification,

the central government after being satisfied that for public purpose the land described in the schedule thereto was required for the purpose of

execution, maintenance, management and operation of special railway project, viz., Western Dedicated Freight Corridor, in the district of Thane in the

State of Maharashtra declared its intention to acquire such land. It was mentioned that any person interested in such land could raise objection to the

acquisition before the 'competent authority' i.e., Sub-Divisional Officer, Kalyan who would decide such objection by following the principles of natural

justice. It was also mentioned that decision of the competent authority would be final. Mention was made that any interested person could inspect the

details and particulars of the land in the office of the competent authority.

33.1. Schedule to the notification dated 02.07.2015 gave a brief description of the land to be acquired for the said project â??with or without

structureâ??. The land in question was mentioned at serial number 1(6) being situated at Village Bhopar bearing survey number (new) 244 part

having area of 0.5222 hectares.

34. Gazette of India, Extraordinary dated 07.06.2016 published notification dated 06.06.2016 issued by Ministry of Railways (Railway Board),

Government of India. In the said notification, reference was made to the earlier notification dated 02.07.2015 issued under section 20-A(1) of the Act.

It was stated that substance of the said notification was published in two daily newspapers, one in English and the other in vernacular, on 01.08.2015

as per requirement of sub-section (4) of section 20-A. It was also stated that no objections to land acquisition were received and accordingly orders

were passed by the competent authority who thereafter submitted report to the central government in pursuance of sub-section (1) of section 20-E of

the Act. Upon receipt of report of the competent authority, central government in exercise of the powers conferred by sub-section (1) of section 20-E

declared that the lands specified in the schedule thereto would be acquired for the said special railway project. Further, declaration was made by the

central government under sub-section (2) of section 20-E that on publication of the notification dated 06.06.2016 in the official gazette, the land

specified in the schedule thereto would vest absolutely in the central government â??free from all encumbrancesâ??.

34.1. Schedule to the notification dated 06.06.2016 gave a brief description of the land to be acquired â??with or without structureâ??. The land in

question also found mention in the said schedule. While type of the land in question was mentioned as barren, nature of land was mentioned as private.

Area being 0.5222 hectares, name of land owner / interested person was mentioned as Premier Automobile Company Limited i.e., the petitioner.

35. Thereafter, following the procedure laid down in sections 20-F and 20-G of the Act, the third respondent as the competent authority passed the

final award on 06.05.2017 being award number 54 of 2015. As per the final award total area admeasuring 3.2353 hectares, including the land in

question, was found â??free from all encumbrancesâ?? and under the provisions of section 20-E(2) of the Act stood vested with the central

government without any encumbrance. Valuation of the acquired land was determined and the total awarded amount was quantified at

Rs.150,78,44,252.00.

36. Third respondent as the competent authority issued notice dated 06.05.2017 i.e., on the same day of passing of the award, to the petitioner under

sections 20-H(2) and 20-I of the Act stating that as per award number 54 of 2015, amount to be paid to the petitioner was determined at

Rs.21,71,56,088.00. Petitioner was asked to be present on 22.05.2017 at 11.00 a.m. in the office of the third respondent along with original and

attested copies of necessary documents for accepting the consideration amount. It was clarified that in case of non-appearance of the petitioner,

possession of the land in question would be taken over ex-parte and thereafter handed over to the second respondent.

37. What followed thereafter is a series of allegations and counter-allegations between petitioner and second respondent. However, what is clearly

deducible therefrom is that compensation as per the award has not been paid to the petitioner on the ground taken by the second respondent that

petitioner had allowed unauthorized structures to come up over the land in question and that the awarded compensation would be paid to the petitioner

only on it clearing the encroachments and handing over the said encroachment free vacant land to the second respondent. This is the point where the

parties are confronting each other which has led to the present litigation.

38. But what is the legal position?

39. We have already examined the scheme of Chapter IV-A of the Act which deals with land acquisition for a special railway project. Starting point

of land acquisition under Chapter IV-A is issuance of notification by the central government under section 20-A(1) of the Act declaring its intention to

acquire the schedule land on being satisfied that such land would be required for execution of a special railway project for a public purpose. Therefore,

legally speaking, we are not required to go behind or prior to the notification issued under section 20-A(1) of the Act. In the instant case the said

notification was issued on 02.07.2015 which included the land in question. Thus, we would be concerned with the land in question or the status thereof

only from 02.07.2015 onwards which can be said to be the cut-off date. Further, it is nobody's case that the procedure prescribed was not followed

while issuing the said notification.

40. Since no objections were received following the first notification issued under section 20-A(1), after following the laid down procedure central

government issued the crucial notification under section 20-E(1) of the Act declaring that the land specified in the schedule stood acquired for the said

special railway project. This notification was issued on 06.06.2016. We have already noticed and discussed that sub-section (2) of section 20-E

creates a legal fiction whereby on publication of the declaration under sub-section (1), the land so acquired shall vest absolutely in the central

government "free from all encumbrances". Accordingly, in the notification dated 06.06.2016 mention was made about this legal fiction with the

central government declaring that the acquired land as specified in the schedule thereto stood vested absolutely in the central government "free from

all encumbrances". Thus, by way of the legal fiction title over the land in question stood transferred to the central government though actual

possession was yet to be handed over being deferred to a subsequent stage.

41. Thereafter the award was passed on 06.05.2017 and as per intimation to the petitioner it was entitled to compensation of Rs.21,71,56,088.00. In

this proceeding petitioner has neither questioned the methodology adopted in determining the compensation nor the quantum of compensation.

42. So what happens after the award is passed and compensation determined? We have already noted the stand of second respondent that there are

illegal structures over the land in question which the petitioner should clear first and thereafter handover the same to the second respondent free from

all encumbrances whereafter the awarded compensation will be paid to the petitioner. But the question which arises for consideration is whether this

is the correct approach or what is the correct legal position?

43. For this we go back to sections 20-H and 20-I of the Act. Requirement of section 20-H(1) is that the amount determined to be paid as

compensation under section 20-F shall be deposited by the central government in the prescribed manner with the competent authority (third respondent

in this case) before taking possession of the land. As per sub-section (2), as soon as the compensation amount is deposited under sub-section (1),

competent authority shall on behalf of the central government pay the amount to the person or persons entitled thereto. Sub-section (3) visualizes a

situation where there are several claimants to the amount deposited under sub-section (1). In such a situation, the competent authority shall determine

the person(s) who in his opinion are entitled to receive compensation and the quantum payable to each one of them. If any dispute arises as to

apportionment of the compensation amount or claim of any person to the same

or part thereof, the competent authority shall refer the dispute to the Principal Civil Court of original jurisdiction within whose territorial limits the land is situated for its decision.

44. Pausing here for a moment, we may again read sub-sections (1) and (2) of section 20-H together before proceeding to section 20-I. From a

conjoint reading of the aforesaid two sub-sections it is clearly discernible that the central government shall deposit the compensation amount as per the

award with the competent authority before taking possession of the land and as soon as the amount is deposited by the central government, the

competent authority shall pay the same to the person or persons entitled thereto.

45. Section 20-I follows section 20-H. As per sub-section (1) of section 20-I, where any land is vested in the central government under sub-section (2)

of section 20-E and the amount determined by the competent authority under section 20-F with respect to such land has been deposited by the central

government with the competent authority under sub-section (1) of section 20-H, the competent authority may by notice in writing direct the owner as

well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person

duly authorized by him in this behalf within a period of 60 days from the date of service of the notice. Sub-section (2) deals with a situation where the

owner or any other person in possession of the land refuses or fails to comply with any direction made under sub-section (1). In such a case the

competent authority shall apply to the Commissioner of Police if the land is situated within metropolitan area or to the Collector of the district if the

land is situated other than in metropolitan area; on such application being made, the Commissioner of Police or the Collector of the district, as the case

may be, shall enforce the surrender of the land to the competent authority or the authorized person.

46. A conjoint reading of sections 20-H and 20-I of the Act makes it very clear that once the compensation amount is determined, the same shall be

deposited by the central government with the competent authority before taking possession of the land (emphasis ours). The moment the amount is so

deposited, the competent authority shall pay the same to the person or persons entitled thereto. If there is more than one claimant to the compensation,

the competent authority shall determine the entitlement of the claimants and

apportionment thereof. If there is dispute in this regard, the competent authority shall refer the same to the competent civil court of original jurisdiction for its decision. Side by side, the competent authority is also required to give written notice to the owner of the land as well as to any other person in possession of the land to surrender or deliver possession thereof to the competent authority or to his authorized person within the prescribed period of sixty days. In case of refusal or failure to surrender or deliver possession, the competent authority shall apply either to the Commissioner of Police or to the Collector of the district concerned who shall enforce surrender of the land to the competent authority or to the authorized person.

47. From a minute and careful examination of the aforesaid two provisions what is discernible is that payment of compensation to the person(s)

entitled to is not dependent upon handing over of possession of the land. There is no negative statutory mandate in this regard. As it is, section 20-I

which deals with taking over of possession follows section 20-H which deals with deposit of the awarded compensation by the central government

with the competent authority and immediate payment of the same by the competent authority to the person(s) entitled thereto. The draftsman has

consciously placed the provision dealing with taking over of possession after the provision dealing with deposit and payment of the awarded

compensation amount. This is made further clear by the language employed in sub-sections (1) and (2) of section 20-H on the one hand and the

language employed in sub-section (1) of section 20-I on the other hand. In the case of the former, after the award is passed, the central government

shall deposit the compensation amount with the competent authority before taking possession of the land (emphasis ours) and as soon as the amount is

deposited, the competent authority shall pay the same to the person or persons entitled thereto. While no time limit is prescribed what is unmissable is

that before taking over possession of the land the central government has to deposit the compensation amount with the competent authority and as

soon as the deposit is made, competent authority shall make the payment to the person(s) entitled, clearly indicating an element of urgency. On the

other hand a period of sixty days is prescribed for surrender or delivery of possession under sub-section (1) of section 20-I. This is clearly indicative of

the fact that payment of compensation is not contingent upon handing over of

possession. Besides, use of the word “shall” while dealing with deposit and payment of the awarded compensation amount under sub-sections (1) and (2) of section 20-H in contra-distinction to the use of the word “may” while dealing with taking over of possession in terms of sub-section (1) of section 20-I is also indicative of the legislative intent that payment of compensation is independent of taking over possession.

48. If that be the position, then stand taken by the second respondent is not at all justified being beyond the statutory framework. If there are encroachers over the land in question, the competent authority is required to give notice in writing to the owner as well as to the encroachers to surrender or deliver possession of the land in question within the prescribed period. From the materials on record it is seen that such a notice has been given only to the petitioner being the owner and not to any of the encroachers, if there are any and if they are indeed in possession of the land in question, because that is a factual exercise which is required to be undertaken by the competent authority. It is also not very clear as to whether any claim to compensation has been made by such encroachers. If made, it is for the competent authority to determine entitlement of such persons to compensation and the quantum within the overall amount awarded to the petitioner for acquisition of the land in question. Be that as it may, it is only after written notice if the owner or possessor fails to surrender or deliver possession of the land in question within sixty days from receipt of notice that the competent authority shall take recourse to the remedy available under sub-section (2) of section 20-I.

49. That apart, calling upon the petitioner to evict the encroachers and to hand over possession of the land in vacant condition thereafter as a condition precedent to payment of compensation besides being legally unsustainable is also practically not possible because by virtue of the legal fiction under sub-section (2) of section 20-E, the land in question is already vested absolutely in the central government free from all encumbrances and, therefore, petitioner will have no legal authority to carry out eviction on the land in question.

50. Before concluding we may also mention that the second respondent is the beneficiary of land acquisition. The land in question is being acquired by the central government for the project of the second respondent. In the scheme

of Chapter IV-A the beneficiary has virtually no role to play. It is between the central government, competent authority and the persons interested. From the pleadings it is quite apparent that the second respondent is a corporation i.e., a Government of India enterprise, a public sector undertaking set up to undertake planning and development, mobilisation of financial resources and construction, maintenance and operation of dedicated freight corridors. Being a government corporation, second respondent has its own corporate identity and legal existence which is distinct from the central government. Though it may be a "State" within the meaning of Article 12 or an "Authority" under Article 226 of the Constitution of India, it is certainly not the central government. Therefore, action of the second respondent in restraining the competent authority from acting in accordance with law is totally unwarranted, being without jurisdiction and impermissible in law.

51. In the circumstances we are of the view that the competent authority has failed to discharge his statutory duty / obligation as per mandate of sections 20-H and 20-I of the Act which has caused prejudice to the petitioner. That being the position, present is a fit case for issuance of a writ of mandamus to the competent authority i.e., third respondent to comply with the statutory requirement. Further, there has been an inordinate delay in payment of compensation since 06.05.2017 when the award was made. Pertinently, petitioner is unable to utilize the land in question in any manner after publication of the notification under section 20-E(1) of the Act in view of sub-section (2) thereof as the land stood vested absolutely in the central government free from all encumbrances. Therefore, in our considered opinion petitioner would also be entitled to interest for the delay.

52. Accordingly, the following directions are issued:-

1. Third respondent shall pay the due compensation to the petitioner and such other person(s) who may lodge claim thereto as per award number 54 of 2015 within a period of six weeks from the date of receipt of this order;
2. Third respondent shall also pay interest @ 6 per cent per annum on the compensation amount to be paid to the petitioner from the date of deposit of the awarded amount by the central government till the date of payment to the petitioner;
3. Third respondent shall issue notice in writing to the petitioner and such other

person(s) who may be found to be in possession of the land in question

to surrender or handover possession to the competent authority within a period of 60 days from the date of receipt of the notice;

4. In the event of refusal or failure to comply with direction number (3) above, third respondent shall take appropriate action in terms of sub-section

(2) of section 20-I of the Act;

53. With the above directions, writ petition is disposed off. However, there shall be no order as to costs.

54. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed

copy of this order.