

(2019) 08 BOM CK 0032

In the Bombay High Court

Case No : Civil Revision Application No. 316 Of 2016

Pune Municipal Corporation

APPELLANT

Vs

Rajeev L. Sangtani And Ors

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 16, 17, 18, 19, 19(1), 19(2), 21, 24, 24(1)(a), 24(1)(b), 24(1), 24(2), 26, 27, 28, 29, 30, 30(1), 30(3), 51, 53, 53(2), 54, 60, 60(1), 60(3), 63, 64, 64(1), 69, 69(1), 69(2), 70, 74, 114, 114(2)
Land Acquisition Act, 1894 — Section 4, 6, 9, 11, 18, 21(2), 23, 23(1), 23(2), 23(1A), 24, 24(1), 24(2), 26, 53, 54
General Clauses Act, 1897 — Section 6, 6(b), 6(e)
Code Of Criminal Procedure, 1973 — Section 109, 110
Maharashtra Regional And Town Planning Act, 1966 — Section 125, 126, 127
Constitution Of India, 1950 — Article 133, 135, 226, 227

Citation : (2019) 08 BOM CK 0032

Hon'ble Judges : R.M. Borde, J;Rajesh G. Ketkar, J;N.J. Jamadar, J

Bench : Full Bench

Advocate : Abhijit Purushottam Kulkarni, Manoj Badgujar, Aanand Nandu, P.K. Dhakephalkar, Shrikrishna Ganbavale, S.S. Yadav, Ashutosh Kumbhakoni, Akshay Shinde, A.R. Patil, S.B. Lolage, Anil V. Anturkar, Dormaan J. Dalal, Shubham Misar, Prathamesh Bhargude, Sugandh Deshmukh, Yatin Malwankar, Ranjit Shinde, Ajinkya Udane, Girish Godbole, Yashodeep Deshmukh, Sandip Patil

Final Decision : Disposed Off

Judgement

N.J. Jamadar, J

REFERENCE :

1. By the directions of the Hon'ble the Chief Justice, the reference is placed before this Full Bench.
2. The learned Single Judge of this Court, by judgment dated 19th October 2018, in the instant Civil Revision Application, has made the following reference to the

Larger Bench for consideration :

(i) Whether under section 24(1)(b) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land owner or any party seeking enhancement of claim of compensation can invoke the provisions of section 18 of the Land Acquisition Act, 1894 for seeking enhancement of claim of compensation even though the land acquisition award had been rendered under section 11 of the Land Acquisition Act, 1894 after 1st January, 2014 ?

OR

(ii) Whether any such person interested who has not accepted the award rendered after 1st January, 2014 declaring compensation under section 11 of the Land Acquisition Act, 1894 can seek reference by applying only to refer such claim to the Authority i.e. the "Land Acquisition Rehabilitation & Resettlement Authority" established under section 51 of the Act of 2013 ?"

3. Though the litigation, out of which the reference arises, has a long and chequered history, the background facts necessary for appreciating the circumstances in which the reference to a Larger Bench is necessitated, can be summarized as under :-

The applicant-Municipal Corporation, a Local and Planning Authority, had issued a Notification dated 22nd July 2011 under section 4 of the Land Acquisition Act, 1894 ('The Old Act') to acquire the land owned by the respondents for a public purpose. A declaration under section 6 of the Old Act came to be published in the official gazette on 20th September 2012. The Land Acquisition Act, 1894 came to be repealed by the Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('The Act, 2013') with effect from 1st January 2014. An award under section 11 of the Old Act was passed on 22nd December 2014. The respondents-land owners made a reference under section 18 of the Old Act to the Collector, Pune, who in turn, forwarded the said reference to the District Court, Pune. It was registered as Land Reference No. 162/2015. The applicant preferred an application questioning the tenability of the reference before the District Court under Section 18 of the Old Act. It was contended that in view of the provisions contained in sections 51, 63, 64 and 114 of the Act, 2013, the reference ought to have been made to the Authority constituted under Section 51 of the Act, 2013. The respondents-land owners countered the assertions of the applicant and contended that as the award was passed under section 11 of the Old Act, reference under section 18 thereof, was properly made to the District Court and the Reference Court had jurisdiction to entertain and decide the reference. The learned Ad. Hoc. District Judge-2, Pune, by order dated 11th April 2016, negated the challenge to the tenability of the reference before the District Court, and held that the reference under section 18 of the Old Act was maintainable before the District Court. Being aggrieved, the applicant-Municipal Corporation preferred Revision Application.

4. In the referral judgment, the learned Single Judge noted that, on the issue raised in the said revision, as to whether the land owners- claimants could have filed an application seeking reference under section 18 of the Old Act, though an award under section 11 thereof was rendered after 1st January 2014, there were two judgments of the Division Benches of equal strength, namely, in the cases of *Jairam Gangaram Burke & Ors. Vs. State of Maharashtra & Ors.* 2017 (5) Mh.L.J. 354 decided by a Division Bench at Aurangabad, and *Ashok Narayan Lande Vs. State of Maharashtra* 2018 SCC Bom. 1763 decided by the Division Bench at the principal seat.

5. In the case of *Jairam Gangaram Burke & Ors. (Supra)*, the awards under section 11 were passed on 8th February 2016 and 8th March 2016, i.e., after enforcement of the Act, 2013. The petitioners- claimants therein filed a reference before the competent Authority under section 64 of the Act, 2013. The reference was returned by the Authority on the premise that the award was passed under the Old Act. The Division Bench, after adverting to the provisions of section 24 and 114 of the Act, 2013, held, inter-alia, that after enforcement of the Act, 2013, the award has to be passed under the Act, 2013, though the proceedings may have commenced earlier, and the proceedings for enhancement of compensation will have to be taken up before the Authority under section 64 of the Act, 2013.

6. In contrast, in the case of *Mr.Ashok Narayan Lande (Supra)*, wherein the award under section 11 of the Act was passed on 24th September 2015, again after the Act, 2013 was brought into force, repelling the contention that after the enforcement of the Act, 2013, the award could not have been passed under section 11 of the Old Act, the Division Bench held that having regard to the provisions of Section 114 of the Act, 2013, read with Section 6 of the General Clauses Act, 1897, it is quite clear that the acquisition proceedings that were initiated under the old Land Acquisition Act had to be completed by taking recourse to the provisions under that Act only and not by taking recourse to the provisions of the Act, 2013. It was further observed that one exception to this can be found in Section 24(1)(a) of the Act, 2013 which clearly stipulates that where no award under section 11 of the Old Act has been made, then, all provisions of the Act, 2013 relating to the determination of compensation shall apply.

7. In the backdrop of the aforesaid pronouncements in the cases of *Jairam Gangaram Burke & Ors. (Supra)* and *Mr.Ashok Narayan Lande (Supra)*, the learned Single Judge concluded that there was a clear conflict in the views expressed by the Division Benches in the aforesaid two judgments and thus the conflict is required to be resolved by referring the issue to the Larger Bench. This is how, the reference arises before this Court.

Preliminary challenge to the referral order :-

8. *Shri Anturkar*, the learned Senior Counsel raised a preliminary challenge to the

consideration of the reference on the count that the referral order refers to clause (b) to sub-section (1) of section 24 of the Act, 2013. As the award in question has been admittedly passed after the enforcement of the Act, 2013, the case is not covered by clause (b) of sub-section (1) of section 24, which governs the situation where an award under section 11 has been made before the commencement of the Act, 2013. Since the principal question framed in the referral order incorporates section 24(1)(b) of the Act, 2013, the reference does not deserve determination, urged Shri Auturkar. This submission was based on the premise that in view of the judgments of this Court in the case of Shikshan Prasarak Mandal & Ors. Vs. Laxmikant Balkrishna Joshi & Ors. 2004 (1) Mh.L.J. 619 and the Supreme Court in the case of Kerala State Science & Technology Museum Vs. Rambal Co. & Ors. (2006) 6 SCC 258, the Full Bench, being a reference Court, can only deal with the reference and cannot adjudicate upon an issue which is not the question referred to.

9. The learned Senior Counsel, however, fairly submitted that the Full Bench would be within its rights in re-framing the question referred to, but, such a re-framing has to be within the four corners of the original questions referred to the reference court. The Full Bench, according to the learned Senior Counsel, would have no jurisdiction to suo moto raise a question and thereafter determine the same.

10. In the context of the reference, the extraction of the provisions contained in Section 24 of the Act, 2013 is, of necessity, inevitable, for a proper determination thereof. In view of the preliminary challenge, we are constrained to extract section 24 of the Act, 2013, at the threshold, to properly comprehend the issue referred for the consideration of the Larger Bench. Section 24 of the Act, 2013 reads as under:-

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases--- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1984)--

(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 phraseology of section 24 on its plain reading makes it abundantly clear that clause (a) of sub-section (1) addresses a situation where though the proceedings for acquisition have been initiated under the Old Act, yet on the date of the commencement of the Act, 2013, the award has not been passed. In contrast, clause (b) deals with a situation where the proceedings initiated under the Old Act have culminated in passing of the award under section 11 of the Act, 1894. Clause (b), in terms, saves those proceedings and provides that they shall continue in accordance with the provisions of the Old Act, as if the said Act, 1894 has not been repealed by the Act, 2013.

12. The controversy before the learned Single Judge arose on account of the passing of the award after the enforcement of the Act, 2013. The applicability of clause (b) of sub-section (1) of section 24 was neither agitated nor considered by the learned Single Judge. As a matter of fact, there was no occasion to have recourse to clause (b) of sub-section (1) of section 24 as the case was clearly covered by clause (a) on account of passing of the award post enforcement of the Act, 2013. Moreover, the conflict noted by the learned Single Judge, in the views of the Division Benches of this Court in the cases of *Jairam Gangaram Burke & Ors.*(Supra) and *Ashok Narayan Lande* (Supra) also had its genesis in passing of the award after the Act, 2013 was brought into force and the consequences which emanate from the applicability of clause (a) of sub- section (1) of section 24.

13. In the aforesaid view of the matter we were not persuaded to accede to the submissions of Shri Anturkar. We, thus, proceeded to hear and determine the question referred to us on the assumption that the question is with reference to clause (a) of sub-section (1) of section 24. The issue No.(i) of the reference, extracted above, shall, thus, stands re- framed with reference to clause (a) instead of clause (b) of sub-section (1) of section 24.

POINTS FOR CONSIDERATION :

14. In the light of the conflict in the views of this Court, as reflected in the judgments in the cases of *Jairam Gangaram Burke & Ors.* (Supra) and *Ashok Narayan Lande* (Supra), and the issues referred for consideration, for the sake of further clarity and convenience of exposition, we deem it appropriate to formulate the core points that arise for consideration. In our view, the answer to the reference would depend upon the determination of the following points :-

(I) In any case of land acquisition initiated under the Old Act, whether reference in respect of an award, passed after the commencement of the Act, shall be made to the Court under section 18 of the Old Act or the Authority under section 64 of the Act, 2013?

(II) Whether, in any case of land acquisition proceedings initiated under the Old Act, award has to be made under section 11 of the Old Act or under the provisions of the Act, 2013?

15. We are conscious of the fact that the point No.(I) above, directly flows from the issue referred by the learned Single Judge. Whereas, the point No.(II) above is implicit in the issue referred by the learned Single Judge. Point No.(II) above also becomes explicit in the conflict in the views of the Division Benches in the cases of Jairam Gangaram Burke & Ors. (Supra) and Ashok Narayan Lande (Supra) as in the case of Jairam Gangaram Burke & Ors. (Supra), it has been categorically observed that in a case, falling under clause (a) of section 24(1) of the Act, 2013, the award has to be passed under the provisions of the Act, 2013, whereas, in the case of Ashok Narayan Lande (Supra), another Division Bench of this Court has observed in no uncertain terms that the proceedings initiated under the Old Act, had to be completed by taking recourse to the provisions under the Old Act only and not by resorting to the provisions of the Act, 2013, save and except the determination of compensation under the Act, 2013.

SUBMISSIONS :

16. We have heard Shri Ashutosh Kumbhakoni, the learned Advocate General for the State, Shri Abhijit Kulkarni, the learned counsel for the applicant, and, Shri Dhakepalkar, the learned Senior counsel for the claimants-respondent Nos.1 to 4. We have also heard Shri A.V. Anturkar, the learned Senior Counsel and Shri G.S. Godbole, the learned counsel, who have assisted us in response to the public notice in the context of the reference to the Full Bench. The learned counsels have canvassed elaborate submissions and placed reliance upon numerous judgments of the Supreme Court and this Court as well as other High Courts in support thereof. We would refer to the relevant judgments at appropriate places in this judgment.

17. The broad submissions of the learned counsels are on the following lines:-

The learned Advocate General, after taking us through the provisions of the Act, 2013, especially sections 24, 51, 63, 64, 69, 70 and 114 urged that the crucial question that arises for consideration is whether the Authority constituted under section 51 of the Act, 2013 can be said to have been constituted for the determination of disputes as to compensation? Drawing our attention to the provisions of section 51, read with section 64, the learned Advocate General submitted that a dispute as to the determination of the amount of compensation would squarely fall within the ambit of section 64, which mandates that, on the application of the interested person, the Collector shall refer the matter for the determination of the Authority constituted under section 51. Once it is held that

the dispute as to the amount of compensation is within the province of the Authority, according to the learned Advocate General, the jurisdiction of the Civil Court, other than the High Court or the Supreme Court, to entertain any dispute which the authority is empowered by or under the Act, 2013, is expressly barred by Section 63 of the Act, 2013. The learned Advocate General, thus, based his submissions on the premise of the ouster of the jurisdiction of the Civil Court, which, according to the learned Advocate General, includes the Reference Court as envisaged by section 18 of the Old Act.

18. Another limb of the submissions of the learned Advocate General was that from a plain reading of the provisions contained in section 24 and section 114 of the Act, 2013, whereby the Old Act has been repealed, the recourse to the Reference Court under section 18 of the Old Act is impermissible. Laying emphasis on the text of section 114 of the Act, 2013, it was urged that the repeal and saving clause, incorporated by the said section, has three dimensions : (1) the Old Act is repealed; (2) the repeal shall not affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal; (3) the application of section 6 is further subject to the provisions of the Act, 2013, as emphasised by the opening words of sub- section (2), "save as otherwise provided in this Act".

19. Amplifying the submission, it was strenuously urged by the learned Advocate General that the right to claim enhanced compensation by making a reference to the Court under the Old Act or the Authority under the Act, 2013, is not a distinct and separate right from the right to claim compensation. What section 6 of the General Clauses Act 1897 preserves is an "accrued" and not an "inchoate" right. Since the cause of action to make a reference against an award passed by the land acquisition authority, arises only after the passing of the award, which in the cases covered by clause (a) of sub-section (1) of section 24 is indisputably after the enforcement of the Act, 2013, no accrued or vested right can be said to have enured to, for making a reference before the Reference Court under the Old Act. The learned Advocate General laid stress upon the nature of the proceedings before the Reference Court under section 18 of the Old Act. It was urged that it is a well recognized proposition of law that the proceedings before the Reference Court is not in the nature of an appeal. Thus, it cannot be urged that the claimants would be deprived of the right of appeal to a forum provided under the Old Act.

20. The learned Advocate General endeavoured to draw a distinction between the substantive right which is preserved by virtue of the provisions contained in section 6 of the General Clauses Act, 1897, and the matters of procedure, in which a litigant has no vested right. It was submitted that, undoubtedly, right to get compensation for the land, expropriated by the Authority of the State, is a substantive right. However, the forum before which reference, objecting to the award made by the Land Acquisition Collector is to be made, is a matter of procedure. By the Act, 2013, what is changed is the forum; instead of Court,

reference is to be made to the Authority, which has trappings of a judicial forum. Concluding the submissions, on this point, it was urged that a litigant has no vested right in a forum.

21. The aforesaid submissions address 1st point. As regards, the 2nd point, formulated by us, regarding the Act under which an award, in a proceedings of land acquisition initiated under the Old Act, after the enforcement of the Act, 2013, has to be passed, the learned Advocate General had a different take. The thrust of the submission of the learned Advocate General was that in a proceedings for acquisition of land initiated under the Old Act, even after enforcement of the Act, 2013, the award has to be passed under the Old Act and not under the provisions of the Act, 2013. The learned Advocate General made an earnest endeavour to persuade us to hold that the observations of the Supreme Court in the case of *Aligarh Development Authority Vs. Megh Singh & Ors.* 2016(12) SCC 504 to the effect that the land acquisition proceedings initiated under the Old Act, in which the award has not been passed on the date of the commencement of the Act, 2013, would continue but with the rider that the award will have to be passed and compensation determined under the provisions of the Act, 2013, do not command adherence as those observations cannot be termed, "obiter dicta", much less ratio decidendi.

22. The sum and substance of the submissions canvassed by the learned Advocate General is that in a case covered by clause (a) of sub-section (1) of section 24 of the Act, 2013, the award has to be passed by the land acquisition Collector, in accordance with the provisions of the Old Act. However, when an interested person, who is dissatisfied with the said award, makes a reference, it shall be dealt with by the Authority constituted under Section 51 of the Act, 2013, and not by the Court under the Old Act.

23. Shri Anturkar, the learned Senior Counsel supplemented the submissions of the learned Advocate General on the aspect of the reference, objecting to the award of the Collector, before the Authority under the Act, 2013. Shri Anturkar, however, struck a different note on the question as to under which Act an award, in case of an acquisition proceedings initiated under the Old Act, shall be passed. Shri Anturkar, not only countered the submissions of the learned Advocate General that the Award has to be passed under the Old Act, but also went a step ahead by asserting that the expression "all provisions of this Act relating to the determination of compensation", the linchpin of clause (a) of sub-section (1) of section 24 of the Act, 2013, shall receive a liberal construction and, so construed, all the provisions of the Act, 2013 including section 21 of the Act, 2013 get attracted to the determination of compensation. Therefore, according to Shri Anturkar, the application of the provisions of the Act, 2013 need not be restricted to the provisions contained in sections 26 to 30 of the Act, 2013; which are per force attracted. The learned Senior Counsel would urge that the words, "relating to ---" are of wide import and having regard to the beneficial object of the Act, 2013, all the provisions of the Act, which have an impact on the question of

determination of compensation, shall apply. The learned Senior Counsel urged that the view taken by a Division Bench of this Court in the case of Reliance Natural Resources Limited & Ors. Vs. State of Maharashtra & Ors. Writ Petition No.572 of 2019 decided on 2.05.2019, wherein, according to him, this Court has construed the expression, "all provisions of this Act relating to determination of compensation" in a restricted sense does not lay down the correct law and thus requires reconsideration.

24. In short, a three-pronged submission was advanced by Shri Anturkar, namely, the award has to be passed under the provisions of Act, 2013, such an award need not be restricted to determination of compensation with reference to the provisions contained in sections 26 to 30 of the Act, 2013, but shall embrace all the provisions of the Act, 2013 and, if an interested person makes a reference in respect of such award, the Collector shall forward the reference for determination to the Authority constituted under section 51 of the Act, 2013.

25. In opposition to this, Shri Dhakephalkar, the learned Senior Counsel for respondent Nos.1 to 4-claimants, at the outset, submitted that the question as to whether the award, in case of the acquisition initiated under the Old Act, shall be passed under section 11 of the Old Act or section 23 of the Act, 2013 does not warrant determination as the said question has not been referred to the Full Bench. Shri Dhakephalkar would thus urge that the said question shall not be considered and answered by this Bench.

26. On the core of the reference, regarding the forum to which a claim objecting to an award, passed after the commencement of the Act, 2013, shall be made, Shri Dhakephalkar advanced a broad proposition that provisions of the Old Act are expressly saved by the 'non obstante clause' with which section 24 begins. According to Shri Dhakephalkar, the said non obstante clause even governs the provisions of section 114 of the Act, 2013 and overrides the repeal. Shri Dhakephalkar further urged that only beneficial provisions of the Act, 2013, in the matter of determination of compensation, are required to be looked into, and no other.

27. To bolster up the aforesaid submissions, Shri Dhakephalkar took us through the objects and reasons of the Act, 2013. The avowed object of the Act, 2013 was to bestow benefits upon the claimants whose lands have been compulsorily acquired. From this perspective, the beneficial provisions of the Act, 2013, as incorporated in sections 26 to 30 of the Act, 2013, have been made applicable for determination of the compensation in the proceedings initiated under the Old Act, submitted Shri Dhakephalkar. If the provisions of the Act, especially clause (a) of section 24(1) are construed through the aforesaid prism of beneficial legislation, there is no scope for applicability of the other provisions of the Act, 2013 to the proceedings initiated under the Old Act.

28. Shri Dhakephalkar premised his submissions on the proposition that the Old Act has been interpreted as a Complete Code in itself. In view of the express

application of section 6 of the General Clauses Act, all the rights acquired and the liabilities incurred thereunder, would continue despite the repeal of the Old Act. Under the Old Act, the passing of the award, the reference to the Court under section 18, the appeal to the High Court under section 54, with a right of further appeal to the Supreme Court, against a decree passed by the High Court, constituted an intricate chain of the proceedings thereunder. It is trite law that initiation of proceedings carries with it an implication that the right of reference and appeals thereafter provided at the time of commencement of the acquisition proceedings would be available till the conclusion of the said proceedings. The Act, 2013 does not evince any intention to destroy the aforesaid intricate chain of the proceedings and the right to approach the Reference Court and to the appellate courts thereafter.

29. The learned Senior Counsel further submitted that the right to make a reference to the Court under section 18 of the Act, 2013 is not a matter of form only. It is a substantive right. Such a substantive right accrues at the commencement of the acquisition proceedings under the Old Act. Therefore a claimant cannot be divested of such an accrued right. It was further urged that the procedure envisaged by section 60(3) of the Act, 2013 is a complete departure from the provisions of section 53 of the Old Act, which made applicable the provisions of the Code of Civil Procedure to all the proceedings before the Court under the said Act. This substantial departure in procedure also impinges upon the rights of the claimants.

30. Comparing and contrasting the provisions of the Old Act and the Act, 2013, in the matter of appeals against the award passed by the Reference Court/ Authority, it was urged that if an interested person is compelled to approach the Authority constituted under section 51 of the Act, 2013, the right of second appeal, which is a vested right in view of the provisions contained in section 54 of the Old Act, is simply taken away. According to Shri Dhakephalkar, in view of the catena of judicial precedents, such a vested right of appeal cannot be destroyed.

31. Thus, according to Shri Dhakephalkar, even in a case, initiated under the Old Act, where the award is passed post enforcement of the Act, 2013, the reference before the Court under section 18 of the Old Act would be competent and maintainable.

32. Shri Godbole, claimed to represent the cause of Municipal Corporation of Greater Mumbai, in its capacity as an acquiring body. He submitted that the issue under consideration has significant ramifications upon the acquisition of land under the special enactments, especially the Maharashtra Regional and Town Planning Act, 1966. Shri Godbole would submit that full effect is required to be given to the express saving clause incorporated in section 114 of the Act, 2013 whereby the general application of section 6 has been specifically preserved. Thus, the proceedings which were initiated under the Old Act, as of the date of commencement of the Act, 2013, are saved in all their facets and those

proceedings could be lawfully continued under the Old Act. Any other view, according to Shri Godbole, would make the provision of Act, 2013 unworkable and lead to absurd consequences.

33. Shri Godbole, therefore, submitted that in the backdrop of the well recognized principles of statutory interpretation, especially the saving clause incorporated by express reference to section 6 of the General Clauses Act, the acquisition proceedings under the Old Act are saved and, thus, the award has to be passed under the Old Act and the reference, objecting to the award, is also required to be made to the Court under the Old Act.

34. The aforesaid submissions now also fall for consideration.

OBJECT OF THE ACT, 2013

35. To start with, the preamble to the Act, 2013 makes it abundantly clear that it was enacted to ensure that the land acquisition process is humane, participative, informed and transparent. One of the stated object was to ensure that the acquisition of the land caused least disturbance to the owners of the land and provide them just and fair compensation with adequate provisions for rehabilitation and resettlement of the affected persons.

36. The statement of objects and reasons throws light on the situation that existed whilst the old Act was in force and which was sought to be remedied by the Act, 2013. One of the major shortcomings of the Old Act was that it did not address the issue of rehabilitation and resettlement of the affected persons and their families. The legislative approach under the Act, 2013 was fashioned on the premise that the land acquisition and the rehabilitation and resettlement were two sides of the same coin. Clauses (5) and (18) of the statement of objects and reasons, on which specific reliance was placed by Shri Dhakephalkar, read as under :-

"5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

.....

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken."

37. In the light of the preamble and the statement of objects and reasons, the legislation, being a beneficial legislation, warrants a construction which furthers the object sought to be achieved by the Act, 2013. This approach must inform the construction of the provisions of the Act, 2013.

38. We have already extracted section 24. At this juncture, it would be apposite to extract the provisions of section 114 of the Act, 2013 and section 6 of the General Clauses Act, 1897, with reference to which, the submissions were canvassed. Section 114 of the Act, 2013 reads as under :-

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

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

And section 6 of the General Clauses Act, 1897 reads thus :

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

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

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

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

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

ANALYSIS OF THE PROVISIONS

Point No.I :

39. Though section 24 contains the heading of 'lapsing of acquisition process under the Old Act', on a proper construction, the distinction between sub-section (1) and sub-section (2) becomes evident. Sub- section (1) of section 24 principally deals with compensation. Whereas sub-section (2) of section 24 indicates the situation wherein the acquisition process initiated under the Old Act would lapse.

Interplay between clause (a) and (b) :

40. As indicated above, from the phraseology of section 24 (1), it becomes

apparent that clause (a) and clause (b) address distinct situations. Clause (a) governs cases of land acquisition, initiated under the Old Act, where no award has been passed, on date of the commencement of the Act, 2013. Clause (b), on the other hand, takes the cases of land acquisition initiated under the Old Act, where an award under section 11 has already been passed before the Act, 2013 came into force, out of the purview of the provisions of the Act, 2013 and provides, in unequivocal terms, that such proceedings shall continue under the provisions of the said Act as if the Old Act has not been repealed. There can be no duality of opinion on the issue that clauses (a) and (b) of sub-section (1) of section 24 govern two distinct situations. This distinction between clauses (a) and (b) of sub-section (1) of section 24 has been recognized by the judgments of the Supreme Court.

41. In the case of Delhi Development Authority Vs. Sukhbir Singh (2016) 16 SCC 258, it was postulated that section 24(1) begins with a non obstante clause and covers situation where either no award has been made under the Land Acquisition Act, in which case, the more beneficial provisions of the Act, 2013 relating to the determination of compensation shall apply, or where an award under said section 11 has been made, then the land acquisition proceedings shall continue under the provisions of the Land Acquisition Act, as if the said Act has not been repealed.

42. In the case of Delhi Metro Rail Corporation Vs. Tarun Pal Singh (2018) 14 SCC 161, it was enunciated that, a reading of sections 24(1) and 24(2) conjointly and homogeneously makes it abundantly clear that they operate in two different fields. Section 24(1)(b) unequivocally indicates that in case the award has been passed under the 1894 Act, all the proceedings shall continue as if the 1894 Act has not been repealed. Section 24(1)(a) makes the provision of the 2013 Act applicable only in case where the award has not been passed. In other words, it gives a clue that when an award has been passed, obviously further proceedings have to be undertaken under the 1894 Act, to that extent proceedings under the said Act are saved and the 2013 Act will not apply.

43. In the case of Indore Development Authority Vs. Shailendra (Dead) through Legal Representatives & Ors. (2018) 3 SCC 412, a three Judge Bench of the Supreme Court, observed as under :-

"24When we consider the provisions of section 24 of the 2013 Act, it is clear that in case the award has not been passed then as per section 24(1)(a), compensation has to be determined under the Act of 2013. It is also clear that section 24(1)(b) provides that where an award under section 11 of the 1894 Act has been made, then such proceedings shall continue under the provisions of the said Act of 1894 as if it has not been repealed. However, in case physical possession of the land has not been taken, or, the compensation has not been paid, the proceedings shall be deemed to have lapsed; and, in case of compensation with respect to a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries i.e. landowners shall be

entitled to compensation in accordance with the provisions of the Act of 2013"

(emphasis supplied)

44. A profitable reference can also be made to a judgment of the Supreme Court in the case of Delhi Development Authority Vs. Virender Lal Bahri & Ors. 2019 SCC OnLine 279 wherein, the Supreme Court observed that section 24(1) begins with a non-obstante clause, the idea being that despite the fact that the 1894 Act has been repealed by section 114 of the 2013 Act, yet, under certain circumstances, compensation is payable not under the provisions of the repealed Act, but under the provisions of the 2013 Act. Pointing out the distinction between the clauses (a) and (b) of sub-section (1) of section 24, the Court further observed that the the scheme of section 24(1) is to provide enhanced compensation under the 2013 Act even in cases where a section 4 notification has been made under a repealed statute, namely, the Land Acquisition Act, 1894, but where no award has been pronounced on 01.01.2014, when the 2013 Act comes into force. This is clear from a reading of section 24(1)(a). Section 24(1)(b) then goes on to state that where an award has been made under the repealed Act prior to 01.01.2014, then compensation and all other provisions of the repealed Act will continue to apply to such award.

45. It is true that in this case, the Supreme Court referred the case of Delhi Metro Rail Corporation (Supra), on the question as to whether the proviso appended below sub-section (2) of section 24 is a proviso to clause (b) of sub-section (1) or sub-section (2) itself, to the Larger Bench, to which the judgment in Indore Development Authority (Supra) has also been referred. However, the consistent view of the Supreme Court as regards the distinction between clause (a) and clause (b) of sub-section (1) of section 24 becomes explicitly clear from the aforesaid pronouncements. We have referred to these judgments with a specific purpose which we will indicate later.

46. In a case covered by clause (a) of section 24(1), the legislature mandates that, "all provisions of this Act relating to determination of compensation" shall apply. The controversy, thus, revolves around the extent of the application of the provisions of the Act, 2013, "relating to - determination of compensation". The endeavor on behalf of the claimants-respondent Nos.1 to 4 was that only the provisions which directly deal with the determination of compensation by the Collector would apply, namely, sections 26 to 30 of the Act, 2013. The question which, thus, wrench to the fore is, can the expression, "all provisions of this Act relating to the determination of compensation" be circumscribed to, and conditioned by, the provisions dealing with the determination of compensation by the Collector.

47. The first and foremost principle of statutory interpretation is that the legislature's intention must be found in the words used by the legislature itself. It is well recognized that if the words of the statute are clear and unambiguous, they are required to be interpreted in their plain, natural and ordinary sense. It is

also trite that the legislature is not supposed to use any word as a surplusage. Every word used by the legislature is presumed to be with a definite purpose. Such an interpretation is to be adopted wherein no word used by the legislature is rendered redundant.

48. On the touchstone of these fundamental principles of statutory interpretation, if the expression, "all provisions -----" is construed in accordance with its natural, ordinary and popular sense, it indicates in clear and unequivocal terms that all the provisions of the Act, 2013 relating to determination of compensation apply to a case of land acquisition initiated under the Old Act where an award had not been passed on the date of the commencement of the Act, 2013.

Can the determination of compensation, on a reference, by the Authority be said to be a provision relating to determination of compensation?

49. At the heart of the matter is the proceedings, on a reference, to the Authority constituted under section 51 of the Act, 2013. Since the determination hinges upon the nature, composition and the functions of the Authority, it would be necessary to extract the relevant provisions of chapter VIII of the Act, 2013 which subsumes the provisions relating to establishment of the land acquisition, rehabilitation and resettlement Authority. They read as under :-

"51. Establishment of Land Acquisition, Rehabilitation and Resettlement Authority.-(1) The appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more Authorities to be known as the Land Acquisition, Rehabilitation and Resettlement Authority to exercise jurisdiction, powers and authority conferred on it by or under this Act.

(2) The appropriate Government shall also specify in the notification referred to in sub-section (1) the areas within which the Authority may exercise jurisdiction for entertaining and deciding the references made to it under section 64 or applications made by the applicant under second proviso to sub-section (1) of section 64.

52. Composition of Authority.-(1) The Authority shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the appropriate Government.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may authorise the Presiding Officer of one Authority to discharge also the functions of the Presiding Officer of another Authority.

53. Qualifications for appointment as Presiding Officer.-(1) A person shall not be qualified for appointment as the Presiding Officer of an Authority unless,-

(a) he is or has been a District Judge; or

(b) he is a qualified legal practitioner for not less than seven years.

(2) A Presiding Officer shall be appointed by the appropriate Government in consultation with the Chief Justice of a High Court in whose jurisdiction the Authority is proposed to be established.

.....

60. Powers of Authority and procedure before it.-(1) The Authority shall, for the purposes of its functions under this Act, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(2) The Authority shall have original jurisdiction to adjudicate upon every reference made to it under section 64.

(3) The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made thereunder, the Authority shall have the power to regulate its own procedure.

(4) The Authority shall, after receiving reference under section 64 and after giving notice of such reference to all the parties concerned and after affording opportunity of hearing to all parties, dispose of such reference within a period of six months from the date of receipt of such reference and make an award accordingly.

(5) The Authority shall arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of such award.

.....

63. Jurisdiction of civil courts barred.-No civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no

injunction shall be granted by any court in respect of any such matter.

64. Reference to Authority.-(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested: Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

.....

69. Determination of award by Authority.-(1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act.

(2) In addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation.-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount."

50. Section 51 of the Act, 2013 envisages the establishment of an Authority for the purpose of speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement. Section 53 provides that a person shall not be qualified for appointment as the presiding officer of the Authority unless he is or has been a District Judge or is a qualified legal practitioner with 7 years standing. Sub- section (2) of section 53 further provides that the presiding officer shall be appointed in consultation with the Chief Justice of the High Court. Section 60 invests the Authority with the powers of the Civil Court, in the specified matters, for conducting the proceedings under the Act. Sub-section (3)

of section 60, however, provides that the Authority shall not be bound by the procedure laid down in the Code but shall be guided by the principles of natural justice and shall also have the power to regulate its own procedure. Section 63 bars the jurisdiction of civil court, in respect of the matters which fall within the province of the Authority, except that of the High Court under Article 226 or 227 of the Constitution and the Supreme Court.

51. Section 64, with which we are primarily concerned, envisages the reference to the Authority by the Collector upon written application by an interested person, objecting to the award, as regards the measurement of the land, amount of compensation, the person to whom it is payable, the rights of rehabilitation and resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested. Sub-section (1) of section 69 provides that in determining the amount of compensation to be awarded for land acquired, the Authority shall, inter-alia, take into consideration whether the Collector has followed the parameters set out in sections 26 to 30. Sub-section (2) of section 69 enjoins the Authority to award an amount calculated @ 12% per annum on the market value for the period commencing from the date of publication of the notification under section 11 to the date of award of the Collector or the date of taking possession of the land. Sub-section (3) of section 69 further mandates that, in addition to the market value of the land, the Authority, shall in every case award a solatium of one hundred per cent over the total compensation amount.

52. A conjoint reading of the provisions contained in sections 51, 64 and 69 of the Act, 2013 leads to an inescapable inference that the Authority constituted under section 51 is invested with the jurisdiction to decide the dispute relating to compensation, determine whether the Collector has followed the parameters set out in sections 26 to 30 and thereafter determine the compensation by adding thereto the amount calculated @ 12 % per annum under section 69(2) and solatium of 100% over the total compensation amount. Undoubtedly, the Authority is also constituted to deal with the disputes relating to rehabilitation and resettlement, as well. In fact, if the provisions of section 18 of the Old Act are compared and contrasted with the provisions of section 64 of the Act, 2013 which envisage reference to the Authority, the only additional feature for which the reference can be made to the Authority, is objection with regard to the right of rehabilitation and resettlement under Chapters V and VI of the Act, 2013. This additional investiture of power of disposition of disputes, however, does not dilute the primary character of the Authority as the authority for adjudication of the disputes as to compensation, and determination of the compensation, on a reference.

53. On a plain reading of the aforesaid provisions, it would be rather audacious to draw an inference that the provisions contained in Chapter VIII of the Act, 2013, relating to the determination of compensation by the Authority constituted under section 51 of the Act, 2013, do not fall within the ambit of the expression,

"all provisions of this Act relating to determination of compensation". Had the intention of the legislature been to restrict the applicability of the provisions relating to determination of compensation by the Collector only, under Chapter IV of the Act, or, for that matter, the parameters set out under sections 26 to 30, as was sought to be urged on behalf of the respondent Nos.1 to 4, the legislature would have used different expressions. It is more so for the reason that the legislature had expressly used the expression, "parameters set out under sections 26 to 30", in section 69 of the Act. Legislature was, thus, conscious of the use of the expression 'parameters set out in sections 26 to 30'. In this backdrop, had the intention of the legislature been to restrict the application of the provisions relating to determination of compensation by the Collector only, on the one hand, the legislature would have used the words, "determination of compensation by the Collector" and, on the other hand, would not have used the words, "all provisions". We are thus, unable to persuade ourselves to agree with the submissions of Shri Dhakephalkar that the expression, "all provisions.....relating to determination of compensation", envisages the application of the provisions contained in sections 26 to 30 of the Act, 2013 only.

EFFECT OF REPEAL AND APPLICATION OF SECTION 6 OF THE GENERAL CLAUSES ACT

54. On a bare perusal of section 114, (extracted above), it becomes evident that firstly, the Land Acquisition Act, 1894 is expressly repealed. Secondly, by sub-section (2) thereof, the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal is, again expressly, preserved. The situation which thus emerges is that the repeal of the Old Act is without prejudice to the general application of section 6 of the General Clauses Act, 1897. However, the principles under section 6 of the General Clauses Act shall be applicable unless there is a contrary intention in any other provisions of the Act, 2013.

55. After considering the provisions of section 114 of the Act, 2013 and section 6 of the General Clauses Act (extracted above), in the case of Indore Development Authority (Supra), the following observations were made :-

"192 Thus, section 6 of the General Clauses Act provides that unless a different intention appears, the repeal shall not revive anything not in force. Section 6(b) provides that it would not affect any previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(e) provides that it will not affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment unless different intention appears, and any such investigation, legal proceeding or remedy may be instituted, or continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. The provisions of section 6 clearly save such proceedings and pending litigation has to be decided only on the basis of 1894 Act except as

provided specifically in Act of 2013."

(emphasis supplied)

Whether the Act, 2013 evinces contrary intention ?

56. In view of the provisions of section 114, firstly, we are enjoined to give effect to the repeal of the Old Act. What is the effect of repeal? The effect of repeal of a statute is to obliterate it as completely from the records of the legislature as if it had not been passed. A repeal, without any saving clause, would destroy any proceeding, right of action, liability etc. under the repealed enactment. To obviate such result, the device of a saving clause is employed in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. Thus, secondly, to preserve the accrued rights and incurred liabilities, we are required to give effect to the provisions of section 6 of the General Clauses Act. Thirdly, and most importantly, the preservation of rights, liabilities, actions etc. under the Repealed Act, is, however, only to the extent the repealing enactment does not evince contrary intendment. This is emphasised by the term, 'unless a different intention appears' under section 6 of the General Clauses Act and the words, 'save as otherwise provided in this Act' used in sub-section (2) of section 114 of the Act, 2013. What, therefore, needs to be ascertained is whether there is any contrary intention manifested by the Repealing Act, i.e., Act, 2013.

57. Though a large number of authorities were cited by the learned counsels on the implications of the applicability of section 6 of the General Clauses Act, since the principle is fairly well settled, we may refer to few of the pronouncements. In the case of *Bansidhar & Ors. Vs. State of Rajasthan & Ors.* (1989) 2 SCC 557 a Constitution Bench of the Supreme Court enunciated the legal position as under :-

"21 When there is a repeal of a statute accompanied by re- enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Sec. 6 of the General Clauses Act ensued or not-Section 6.would indeed be attracted unless the new legislation manifests a contrary intention--but only for the purpose of determining whether the provisions in the new statute indicate a different intention. Referring to the way in which such incompatibility with the preservation of old rights and liabilities is to be ascertained this Court in *State of Punjab Vs. Mohar Singh*, [1955] 1 SCR 893 said:

" Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Law and the mere absence of a saving clause is by itself not material. The provision of Section 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed"

(emphasis supplied)

58. In the case of *Gammon India Ltd. Vs. Special Chief Secretary & Ors.* (2006) 3 SCC 354, referring to the pronouncement in the case of *State of Punjab Vs. Mohar Singh*, (1955) 1 SCR 893 the legal position was expounded in the following words :-

"46. The principle which has been laid down in this case is that whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purposes of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore, subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

.....

57 When there is a repeal and simultaneous reenactment, section 6 of the General Clauses Act would apply to such a case unless contrary intention has been gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. When the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and reenactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.

(emphasis supplied)

59. Without disputing the aforesaid proposition, and the nature of enquiry which is warranted in the case of repeal and re-enactment of a legislation, as is the case in hand, it was urged by Shri Dhakephalkar and Shri Godbole that there is no intendment in the Act, 2013 to destroy the right to make a reference to the Court under section 18 of the Old Act.

60. To bolster up this submission, a strong reliance was placed on the celebrated judgment of the Constitution Bench of the Supreme Court in the case of *Garikapati Veeraya Vs. N. Subbaiah Choudhary & Ors.* AIR 1957 SC 540, wherein, after referring to the various pronouncements as regards the continuation of a right to remedy, under an enactment which governed those remedies on the date of the institution of the suit or proceeding, the following

propositions were laid down :-

"23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved, to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

61. In contrast to this, the learned Advocate General would urge that there is no vested right in a land owner, where an award has been passed after the enforcement of the Act, 2013, to make reference to the Court under section 18 of the Act, 2013. To buttress the submission that what section 6 protects is the 'vested right ' or 'accrued right' and not merely right to take an advantage of the provisions under a repealed enactment, the learned Advocate General drew our attention to the pronouncement of the Supreme Court in the case of M.H. Shivananda Vs. Karnataka State Road Transport Corporation & Ors. (1981) SCC 149, wherein it was observed that 'the distinction between what is and what is not a right preserved by the provisions of section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for acquiring a right'.

62. This propels us to consider the pivotal question as to whether the passing of the award gives vested right to the land owner to invoke the jurisdiction of the Reference Court. What is the nature of the proceedings before the Reference Court under section 18 of the Act, assumes critical significance. In view of the provisions contained in section 18, read with section 23 and section 24 of the Old Act, it is indubitable that the Reference Court is expected to determine the compensation for the land acquired under the provisions of the Old Act, as a Court of original jurisdiction. The legislature had not conceived the Reference Court as a Court of appeal against the award passed by the Collector under

section 11 of the Old Act. For this purpose, to appreciate the nature of the proceedings before the Reference Court, a profitable reference can be made to the pronouncement of the Supreme Court, in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona & Anr.* (1988) 3 SCC 751, (on which reliance was placed by *Shri Dhakephalkar*) wherein, the Supreme Court had noticed that the Reference Court had virtually treated the award rendered by the Land Acquisition officer as a judgment under appeal and, thus, the true position in law qua the reference under section 18 of the Act was expounded in paragraph 4 of the said judgment. The propositions at Serial Nos.1 to 4, expounded therein are instructive and, thus, extracted below :-

"4. The following factors must be etched on the mental screen:

(1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose."

(emphasis supplied)

63. This position was reiterated by the another three Judge Bench of the Supreme Court in the case of *Ambya Kalya Mhatre (Dead) through LRs. & Ors. Vs. State of Maharashtra* (2011) 9 SCC 325. In the said case, after referring to the provisions under section 18 of the Old Act, and reiterating the propositions laid down in the case of *Chimanlal Hargovinddas (Supra)*, it was observed that once the land owner states that he has objections to the amount of compensation, and seeks reference to the Civil Court, the entire issue of compensation is open before the Reference Court. Once the claimant satisfies the Reference Court that the compensation awarded by the Land Acquisition Officer is inadequate, the Reference Court proceeds to determine the compensation with

reference to the principles in section 23 of the Act.

64. In the backdrop of the aforesaid position in law of the Reference Court, under Section 18 of the Old Act, as a Court of original jurisdiction for determination of the amount of compensation, in the light of the parameters provided in section 23 of the Old Act, it has to be seen whether there is the clear intendment in the Act, 2013 to destroy this right to make a reference to the Court, which was available under the Old Act.

65. At this juncture, a comparative analysis of the provisions contained in section 23 of the Old Act and the relevant provisions contained in sections 28 to 30 of the Act, 2013, illuminates the path :

Section 23 of the Old Act

Sections 28 to 30 of the Act, 2013

23. Matters to be considered on determining compensation. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market-value of the land at the date of the publication of the [notification under section 4, subsection (1)]; secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land. [(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, subsection (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation. In computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.] (2) In addition to the market value

of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.

28

Parameters to be considered by Collector in determination of award.- In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration- firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules; secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

29

Determination of value of things attached to land or building.-

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

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

30

30. Award of solatium.-(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a

"Solatium" amount equivalent to one hundred per cent. of the compensation amount. Explanation.-For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired. (2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule. (3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

66. If we compare the provisions of sub-section (1) of section 23 of the Old Act with the parameters prescribed in section 28 of the Act, 2013, it becomes crystal clear that the Act, 2013 enjoins the Collector to take into account the very same parameters which the Reference Court was bound to consider under section 23 of the Old Act. The provisions of section 30(3) of the Act, 2013 correspond with the provisions of section 23(1A) of the Old Act which provided for the award of interest @ 12% per annum on the market value of the land from the date of the notification under section 4 to the date of taking possession or till the date of the award, whichever is earlier. The provisions contained in section 30(1) of the Act correspond with the provisions contained in section 23(2) of the Old Act in the matter of award of solatium with the change that under the Act, 2013, the solatium equivalent to one hundred percent of the compensation has to be awarded instead of 30% on the market value of the land, under the Old Act.

67. In view of the clear and explicit mandate of clause (a) of sub- section (1) of section 24 of the Act, 2013, concededly, the compensation is to be determined by the Collector in adherence to the provisions of this Act including sections 26 to 30 of the Act, 2013. The prescription of these parameters, which the Reference Court was enjoined to consider under section 23 of the Old Act, thus constitutes a significant departure from the provisions of the Old Act. The parameters which the Reference Court was expected to consider under the Old Act shall now be adhered to by the Collector in the matter of determination of the compensation. It could be urged that under the Old Act also, while passing the award, the Collector was required to consider the very same parameters which the Court was enjoined under sections 23 and 24 thereof. But the matter does not rest here.

68. If we consider the provisions of section 69 of the Act, 2013, extracted above, the departure from the scheme of the Old Act becomes vivid. Section 69(1) of the Act, 2013 enjoins the Authority to take into consideration whether the Collector has followed, inter-alia, the parameters set out under sections 26 to 30 in the matter of determination of compensation. In contrast to the provisions of

section 18 of the Old Act, where the Reference Court was not supposed to sit in appeal over the award, in respect of which the reference is made, the Act, 2013 envisages an enquiry into the question as to whether the Collector has followed the parameters set out under sections 26 to 30 of the Act, 2013. The consideration of this aspect would involve an element of appraisal of the correctness or otherwise of the disposition made by the Collector, on the parameters set out under sections 26 to 30.

Whether the Act 2013 takes away a vested right to make reference :-

69. The thrust of the submission of Shri Dhakephalkar was that there is no indication in the Act, 2013 to destroy the intrinsic chain of the remedies which were available under the Old Act. When an award is passed in respect of a proceedings initiated under the Old Act, after commencement of the Act, 2013, if the land owner is not permitted to have recourse to the provisions of section 18 of the Old Act, it would amount to deprivation of the vested right to make a reference to the Court, which had accrued when the land acquisition proceedings was commenced. The application of the principles of section 6 of the General Clauses Act frowns upon such a course, which amounts to taking away a vested right to pursue the remedies.

70. A strong reliance was placed on a judgment of the Supreme Court in the case of Shyam Sunder and Others vs Ram Kumar And Another (2018) 8 SCC 24 to bolster up the submission that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of suit. Emphasis was laid on the following observations of the Supreme Court in paragraph 28 :-

"28We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise."

(emphasis supplied)

71. In the light of the aforesaid submission, it becomes necessary to appreciate the nature of the right to make a reference for adjudication of a just compensation in the event of compulsory acquisition of land. It is well settled that the award made by the Collector determining the compensation is nothing more than an offer of compensation made by the Government. It does not partake the character of a decree or order. The reference to an adjudicating body, be it a Court under section 18 or an Authority under section 64 of the Act, 2013, is for adjudication of the just and fair compensation for the acquired land,

in accordance with the provisions which regulate the entitlement, heads and quantum of compensation.

72. In the case of *Mrs. Khorshed Shapoor Chenai & Ors. Vs. Assistant Controller of Estate Duty, Andhra Pradesh & Ors.* (1980) 2 SCC 1, a three Judge Bench of the Supreme Court examined the nature of the right to receive compensation upon acquisition of the land. It was held that there are no two separate rights, one, a right to receive compensation and, other, a right to receive extra or further compensation. Upon acquisition of his land under the Land Acquisition Act the claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notifications and it is this right which is quantified by the Collector under section 11 and by the Civil Court under section 26 of the Land Acquisition Act. Since the award made by the Collector under section 11 is nothing more than an offer, if the offer is acquiesced in by total acceptance the right to compensation will not survive but if the offer is not accepted or is accepted under protest and a land reference is sought by the claimant under section 18, the right to receive compensation must be regarded as having survived and kept alive which the claimant prosecutes in Civil Court. It is impermissible to accept the contention that no sooner the Collector has made his award under section 11, the right to compensation is destroyed or ceases to exist or is merged in the award, or what is left with the claimant is a mere right to litigate the correctness of the award. The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in Civil Court.

73. The aforesaid pronouncement of the Supreme Court underscores the indivisibility of the right to receive compensation. It is laid down in clear and explicit terms that there are no two separate rights. The right to make a reference from this stand point is implicit in the right to receive compensation, if the land owner does not accept the offer made by the Collector in the form of award under section 11. We are, therefore, of the view that the right to make a reference survives the award and draws sustenance from the right to receive compensation for the acquisition of the land. The passing of the award by the Collector merely provides the cause for making the reference, as the offer is crystalized. However, the source of the right to make a reference is very right to receive compensation for the compulsory acquisition.

74. The moot question is whether this right to make reference, is sought to be destroyed by the Act, 2013 ? The right to make a reference is expressly recognized by the provisions of section 64 of the Act, 2013. The learned Advocate General and Shri Anturkar urge with a degree of vehemence that the Act, 2013 keeps the right to make reference intact and just changes the forum to which such a reference can be made. Shri Dhakephalkar, on the other hand, stoutly submits that the matter cannot be appreciated in such a simplistic proposition of a mere change in the forum. It was urged with tenacity that the proposition advanced by the learned Advocate General has the propensity to

destroy the intrinsic chain of the remedies provided under the Old Act and rob meaning and content from the said right to make reference; a substantive and vested right. Amplifying the submission, Shri Dhakephalkar urged that the vested rights are impinged in more than one way : firstly, the land owners are deprived of the remedy to make reference to judicial forum; secondly, the procedure in accordance with which such reference is to be adjudicated under the Act, 2013, is prejudicial to the interests of the land owners, and thirdly, and most importantly, the land owners are deprived of the right of further appeal provided under section 54 of the Old Act, which is impermissible in view of the pronouncement in the case of Garikapati Veeraya (Supra).

FORUM

75. Per contra, placing reliance upon the judgment of the Supreme Court in the case of Maria Cristina De Souza Sodder & Ors. Vs. Amria Zurana Pereira Pinto & Ors. (1979) 1 SCC 92, the learned Advocate General urged that the change in forum does not impinge a substantive right, which is saved by the section 6 of the General Clauses Act, 1879. In the case of Maria Cristina De Souza Sodder (Supra), the Supreme Court observed that the provision merely saves the remedy or legal proceeding in respect of such vested right which it is open to the litigant to adopt notwithstanding the repeal but this provision has nothing to do with the forum where the remedy or legal proceeding has to be pursued. If the repealing Act provides new forum where the remedy or the legal proceeding in respect of such vested right can be pursued after the repeal, the forum must be as provided in the repealing Act.

76. Reliance was also placed on the observations made by a Division Bench of this Court in the case of Securities & Exchange Board Of India Vs. Sterlite Industries (India) Ltd. 2004 (1) Mh.L.J. wherein the aforesaid pronouncement in the case of Maria Cristina De Souza Sodder (Supra) was followed in support of the proposition that, "Forum belongs to the realm of procedure and does not constitute a substantive right to a party or to a litigant. Therefore, an appeal the right to which has arisen after a repealed Act, will have to be filed in a forum provided for by the repealing Act."

77. In the backdrop of the aforesaid exposition of law, it can be stated with an amount of certainty that a litigant has a vested right of action, and if the repealing Act does not take it away completely, he can prosecute the said action despite the repeal of the Act, under which it had accrued, but the litigant has no vested right in particular forum. If the re-enacted legislation provides a new forum, then the right of action, accrued under the Old Act, can only be prosecuted before the new forum.

78. A profitable reference in this context can be made to a Constitution Bench judgment of the Supreme Court in the case of The Custodian of Evacuee Property, Bangalore (in all the Appeals) Vs. Khan Saheb Abdul Shukoor etc. 1961 SCC 1087 especially for the reason that in the said case, the change in the forum

was from an appeal to the High Court to the Custodian-General appointed under the Repealing Act. In the said case, the Mysore Administration of Evacuee Property (Emergency) Act, 1949 (first Mysore Act), provided for an appeal to the High Court against an order passed by the Custodian, Evacuee Property. The First Mysore Act was replaced by the Mysore Administration of Evacuee Property (Second) (Emergency) Act, 1949. The Administration of Evacuee Property Act, 1950 repealed the Second Mysore Act. Under the Second Mysore Act and the Administration of Evacuee Property Act, 1950, the appeal against the order passed by the Custodian lay before the Custodian-General, instead of the High Court, which was the case under the First Mysore Act.

79. In the backdrop of the aforesaid facts, the Supreme Court considered the question, "Whether the Second Mysore Act, 1949 and the Administration of Evacuee Property Act, 1950 took away the right of appeal which lay to the High Court under the First Mysore Act and substituted for it another right of appeal by necessary intendment? The Supreme Court answered the said question in the affirmative by observing as under :-

"14We may point out that this is not a case where the right of appeal disappears altogether; all that happens is that where the order is passed by the Custodian the appeal lies to the Custodian-General instead of to the High Court. The legislature has provided another forum where the appeal will lie and in the circumstances it must be held that by necessary intendment the legislature intended that forum alone to be, the forum where the appeal will lie and not the forum under the first Mysore Act. Reference in this connection may be made to *Garikapatti Veeraya v. N. Subbiah Choudhury* (1), where this Court held that the vested right of appeal was a substantive right and was governed by the law prevailing at the time of the commencement of the suit and comprised all successive rights of appeal from court to court which really constituted one proceeding but added that such right could be taken away expressly or by necessary intendment. In the present cases we are of opinion that once proceedings under s.8(1) of the first Mysore Act are held to be similar to proceedings under s. 5(1) of the second Mysore Act or s.7(1) of the Act, it must necessarily follow that the legislature intended this all subsequent proceedings in the nature of appeal after the first Mysore Act came to an end, must being the forum provided by the subsequent legislation.

(emphasis supplied)

80. The aforesaid exposition of law makes it beyond cavil that if the subsequent legislation provides a new forum, before which the right of action can be pursued, the litigant has to enforce the remedy before the new forum created under the re-enacted legislation. On the aforesaid touchstone if we analyse the provisions of chapter VIII of the Act, 2013, the necessary intendment to change the forum is unmistakably explicit. Thus, we are not persuaded to accede to the submissions of Shri Dhakephalkar that the change in forum brought about by section 64 of the Act, 2013 impinges upon a substantive or vested right of the

land owners to make a reference.

PROCEDURE :

81. It is trite that a litigant has no vested right in the procedure. Shri Dhakephalkar, however, would urge that the change brought about by the Act, 2013 in the procedure, in accordance with which the reference is to be adjudicated, is so fundamental and substantial that it affects the substantive right to enforce the remedy. Comparing and contrasting the provisions of section 53 of the Old Act, which made provisions of the Code of Civil Procedure, 1908 applicable to all the proceedings before the Reference Court, with the provisions of section 60(3) of the Act, 2013, which provides that the Authority shall not be bound by the procedure laid down by the Code, but shall be guided by the principles of natural justice, it was urged that the departure is significant and severally affects the rights of the land owners.

82. We are afraid to agree with the aforesaid submissions. To begin with, the forum constituted under section 51 of the Act has all the trappings of a judicial forum. A person who is or has been a district judge or a legal practitioner qualified to become a District Judge, can only be appointed as the presiding officer of the Authority. The proviso to section 53 further enjoins that no person can be appointed as the presiding officer of the Authority without consultation with the Chief Justice of the High Court. Sub-section (1) of section 60 confers upon the Authority the requisite powers, vested in a Civil Court under the Code, in the matter of adjudication of the reference. The fact that the Authority is not bound to follow the procedure laid down in the Code, does not necessarily imply that the adjudication lacks the elements of judicious determination. The legislature has chosen to prescribe an unencumbered procedure so as to promote adjudication of the reference by the Authority unshackled by the procedure prescribed in the Code. Furthermore, the Authority has been given a complete freedom to decide upon its procedure thereby obviating strict adherence to the procedural formalities prescribed in the Code. If the legislature thought it advisable to address the issue of delay and accompanying costs, which the traditional adjudicatory mechanism entails, by providing freedom to the Authority to regulate its own procedure, being guided by the principles of natural justice, and by further providing the time limit of six months for disposal of a reference, the said approach can only be said to be in advancement of the objects of the Act, 2013.

APPEALS :

83. Shri Dhakephalkar would then urge that the Act, 2013 takes away an accrued right of appeal to the Supreme Court, against a decree passed by the High Court, which was available under section 54 of the Old Act. Under section 74 of the Act, 2013, only one appeal is provided to the High Court against an award passed by the Authority under section 69 of the Act. If the right to make a reference is construed to be a vested right, which accrues to a land owner upon

the acquisition of land, then right of appeal to the Supreme Court, provided under section 54 deserves to be recognized and protected. Thus, reference to the Authority under section 64 would take away this vested right of appeal, urged Shri Dhakephalkar.

84. Though the aforesaid submission appears alluring at the first blush yet, on a close scrutiny, it does not carry much conviction. Under section 54 of the Old Act, it was provided that from a decree of the High Court, on appeal against an award by the Reference Court, an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code. It would be suffice to note that section 110 of the Code was omitted by the Code of Civil Procedure (Amendment Act) 1973. It would be contextually relevant to note that in the case of Garikapatti Veeraya (Supra), it was observed that having regard to the contents of Article 135 and sections 109 and 110 as adapted, it may be stated that, broadly speaking, matters in respect of which, appeal would have been competent under section 109 and 110 of the Code, will now be governed by Article 133, if the judgment, decree or final order, appealed against is made after the Constitution, and other matters by Article 135. Moreover, the basis of the value of the subject matter of the suit, which gave a right to appeal was also omitted from Article 133, which had been amended by the Constitution (30th Amendment Act, 1972), with effect from 27th February 1973. Thus, the later part of the provisions of section 54 of the Old Act, which envisaged a further appeal to the Supreme Court, subject to the provisions contained in section 110 of the Code, was a spent provision. To sum up, no such right of appeal to the Supreme Court existed and could be enforced under section 54 of the Old Act.

85. The conspectus of the aforesaid consideration is that a cumulative reading of the provisions of section 24(1)(a) with section 114; the provisions of sections 28 to 30, which have incorporated significant changes in the matter of determination of compensation by the Collector; the provisions of section 51, which have provided a new forum; the provisions of section 69, which again herald a material departure in the approach of the Authority adjudicating the claim, raising objection to the award, and the provisions of section 63, which expressly bar the jurisdiction of the Civil Court, leads to an irresistible inference that under the Act, 2013, there is a clear and unmistakable intendment to provide a new forum constituted under section 51 read with section 64 of the Act, 2013, instead of Reference Court. We are, therefore, of the view that even in the cases where an award is passed after the enforcement of the Act, 2013, though the acquisition was initiated under the provisions of the Old Act, reference objecting to the award made by the Collector is required to be made to the Authority constituted under the Act, 2013.

Point No.2

86. As indicated above, the core conflict in the views in the cases of Jairam Gangaram Burke & Ors. (Supra) and Mr.Ashok Narayan Lande (Supra) was over the Act, under which the award has to be made, in a case initiated under the Old

Act, after the enforcement of the Act, 2013. The submissions of Shri Dhakephalkar, on this point also, proceeded on the premise that only the provisions of the Act, 2013 regarding the quantification of the compensation are required to be resorted to and the award is to be passed under the Old Act. The learned Advocate General supported the submissions of Shri Dhakephalkar, albeit to a limited extent, that the award has to be passed under the Old Act. In contrast, Shri Anturkar endeavoured to persuade us to give a wide interpretation to the expression, "all provisions ----" in section 24(1)(a).

87. We have observed that the words, "all provisions---" are required to be construed in their plain, natural and common sense. There is no quarrel over the proposition that the Collector is enjoined to consider the parameters prescribed in sections 26 to 30 while determining the compensation. We have indicated that such restricted interpretation of the expression, "all provisions ---" would do violence to the plain and literal meaning of the said expression. If the parameters of determination of compensation, provided in sections 26 to 30, indubitably fall within the ambit of the said expression, the controlling and enabling provisions under section 23, which empower the Collector to make an award, inter-alia, providing for the compensation as determined under section 27, and apportionment thereof, a priori would fall within the ambit of the said expression.

88. The matter can be looked at from another angle. If the submission that only the parameters provided in sections 26 to 30 are to be taken into account while determining the compensation, and the award is to be passed under the Old Act, and a reference objecting to such an award is to be made before the Reference Court under section 18 of the Act, then clause (a) of sub-section (1) of section 24 would be required to be read and construed in completely different manner. To accord with such construction, clause (a) should read as under :

(a) where no award under section 11 of the Land Acquisition Act 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. Provided that the provisions of sections 26 to 30 of this Act relating to determination of compensation shall apply.

89. Such a course is simply impermissible and fraught with hazards. Firstly, there is no authority for such substitution of the legislative prescription; secondly, there would be no effect to the will of the legislature to repeal the Old Act; and thirdly, the distinction between the clauses (a) and (b) of sub-section (1) of section 24 would be completely obliterated. We have, therefore, extracted above, under the caption interplay between clauses (a) and (b), the judgments of the Supreme Court pointing out the well marked distinction between clauses (a) and (b) of sub-section (1) of section 24.

90. This perspective governs the point No.(I) also.

91. This propels us to the aspect of binding efficacy of the judgment in the case of Aligarh Development Authority (Supra). In the case of Jairam Gangaram Burke

& Ors. (Supra), the Division Bench had followed the enunciation of law in the case of Aligarh Development Authority (Supra) to arrive at the conclusion that an award is required to be passed under the Act, 2013. In the case of Aligarh Development Authority (Supra), a notification under section 4 of the Act, 1894 was issued on 9th August 2004. It was followed by a declaration dated 3rd August 2005. The Allahabad High Court had quashed the notification and declaration by judgment dated 21st October 2010. During the pendency of the appeal before the Supreme Court at the instance of the requisitioning authority, it was contended that the land owner was entitled to a declaration that acquisition proceedings have lapsed in view of the operation of Section 24 of the Act, 2013, since neither compensation has been paid to the owner nor possession has been taken by the Land Acquisition Collector. The Supreme Court, after adverting to the provisions of section 24(1) of the Act, 2013 held as under :-

"6. In the case before us, since admittedly the award has not been passed, there arises no question of lapse. The land acquisition proceedings would continue but with the rider that the award will have to be passed and compensation determined under the provisions of the 2013 Act."

(emphasis supplied)

92. In paragraph No.7, while passing operative directions, the Supreme Court observed as under :-

7.....The appellant and the Acquisition Authority are directed to complete the acquisition proceedings by passing an award under the provisions of the 2013 Act. This shall be done within a period of six months and needless also to say that the entire compensation due to respondent No.1 would be calculated in terms of the 2013 Act and the same shall either be deposited with the Land Acquisition Collector or disbursed to the respondent No.1 within one month thereafter."

(emphasis supplied)

93. In the backdrop of the facts in Aligarh Development Authority (Supra), it becomes evident that the Supreme Court had passed the said order directing the authorities to pass an award under the provisions of the Act, 2013 after noting that the award under the Old Act was yet not passed and thus there was no question of lapse of acquisition proceedings initiated under the Old Act. The Supreme Court has noted that notification under section 4 of the Act under the Old Act was issued on 9th August 2004, followed by a declaration under section 6 of the Act dated 3rd August 2005. The Supreme Court in the backdrop of the aforesaid state of affairs, issued the directions to calculate the compensation and pass award under the provisions of the Act, 2013.

94. The learned Advocate General endeavoured to demonstrate that the aforesaid pronouncement of the Supreme Court in the case of Aligarh Development

Authority (Supra) does not command authority even as an obiter. The learned Advocate General canvassed a bold submission that the question as to whether the award has to be passed under the Old Act or the Act, 2013 did not arise for determination in the case of Aligarh Development Authority (Supra). Nor, such a determination as regards the Act, under which the award was to be passed, was necessary for the decision of the said case.

95. To bolster up this submission, the learned Advocate General placed a strong reliance upon the judgment of the High Court in the case of Mohandas Issardas & Ors. Vs. A.N. Sattanathan & Ors. 1955 ILR 318. In the said case, it was observed as under :-

".....But the question still remains as to what is an 'obiter dictum' given expression to by the Supreme Court which is binding upon the Courts in India. Now, an 'obiter dictum' is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the tribunal.

.....

The very reason why the Courts in India agreed to be bound by the 'obiter dicta' of the Privy Council was that the highest judicial authority in the Empire had applied its mind to a question of law which arose before it for its determination; and however unnecessary it was for it to decide that question, having expressed an opinion on that point it became an authoritative pronouncement on that question of law, and the Privy Council, by deciding that question of law, set its seal of approval upon that question of law. It cannot be suggested that the doctrine of 'obiter dicta' was so far extended as to make the Courts bound by any and every, expression of opinion either of the Privy Council or of the Supreme Court, whether the question did or did not arise for the determination of the higher judicial authority.

.....

The emphasis is not only on the opinion, but also on the point. It is not merely an expression of opinion unconnected with the point that arises, but it must be an opinion given on a point which arises for determination."

(emphasis supplied)

96. Reliance was also placed on a judgment of the Supreme Court in the case of Union of India & Ors. Vs. Dhanvanti Devi & Ors. (1996) 6 SCC 44, wherein it was observed that what is of the essence in decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed

and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.

Indeed, there can be no dispute about the aforesaid proposition.

97. We are, however, not persuaded to adopt a rigid doctrinaire approach which the learned Advocate General endeavored to impress upon us for reasons more than one. Firstly, the directions of the Supreme Court in the case of Aligarh Development Authority (Supra) cannot be termed as stray and disjointed observations utterly unconnected with the facts of the said case. We have indicated that the Supreme Court took into account the fact that notification under section 4 followed by a declaration under section 6 of the Old Act were issued by the year 2005 but award was not made as the High Court had quashed the notification and declaration on 21st October 2010, and before the Supreme Court, a submission was advanced that in view of section 24 of the Act, 2013, the proceedings had lapsed. In that context, the Supreme Court observed more than once that the compensation has to be determined and award made under the provisions of the Act 2013. Secondly, the said observations of the Supreme Court in the case of Aligarh Development Authority (Supra) have the seal of approval in the three Judge Bench judgment of the Supreme Court in the case of Indore Development Authority (Supra). In paragraph 203, the Supreme Court observed as under :-

"203 In Aligarh Development Authority v. Megh Singh & Ors. (2016) 12 SCC 504, the award was not passed when the Act of 2013 came into force. Thus, it was rightly held by this Court that the acquisition proceedings would continue but with a rider that the award will have to be passed and compensation determined under the provisions of the 2013 Act. This Court has passed the aforesaid orders in view of the provisions contained in section 24(1)(a) of the Act of 2013. There is no dispute with the proposition."

98. The aforesaid pronouncement thus seals the issue. We are bound by the judicial discipline to record that in a case covered by section 24(1)(a), the award will have to be passed and compensation determined under the provisions of the Act, 2013.

99. Point No.(2) is thus required to be answered accordingly.

100. This leads us to the submissions of Shri Anturkar that the scope and ambit of the expression, "all provisions---relating to." need not be whittled down and restricted to the provisions expressly dealing with computation of compensation. It was submitted that the word, "relating to" is consciously and purposefully used by the legislature in contradistinction to the word(s) like, "dealing with" or "about" or "of" which are of restricted import. The word "relating to", according to the learned Senior Counsel, is used in the widest possible sense and it would mean "having any connection with". Thus construed, every provision in the Act,

2013 which has any connection with determination of compensation must fall within the scope of the said expression, asserted Shri Anturkar.

101. To this end, Shri Anturkar invited our attention to the dictionary meaning of the words, "relating to" and also the manner in which the said words, in other enactments, have been construed. By way of illustration, our attention was drawn to the judgment of the Supreme Court in the case of Mansukhlal Dhanraj Jain & Ors. Vs. Eknath Vithal Ogale (1995) 2 SCC 665, wherein while construing the provision of section 41(1) of the Presidency Small Causes Courts Act, 1882, which conferred jurisdiction upon the Court of Small Causes to entertain and try all suits and proceedings between a licensor or licensee or a landlord and tenant relating to the recovery of possession of any immovable property or recovery of the license fee or charges or rent thereof, the Supreme Court held that there is a good deal of difference between the words, "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee.

102. The Supreme Court referred to an earlier judgment in the case of Renusagar Power Company Ltd. Vs. General Electric Company & Anr. (1984) 4 SCC 674 wherein, while explaining the connotation of the term "relating to", the following the proposition was expounded :

"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

103. On the aforesaid premise, Shri Anturkar canvassed a submission that all the provisions of the Act, 2013 wherein both the words, "determination" and "compensation" have been used by the legislature can be resorted to in view of the mandate contained in clause (a) of sub- section (1) of section 24.

104. A special endeavour was made to drive home the point that the provisions contained in section 21 of the Act, 2013 which enjoins the Collector to issue a public notice requiring all interested persons to state their claims, (corresponding to section 9 of the Old Act) are the provisions relating to the determination of compensation and no valid award can be passed under the provisions of the Act, 2013, on the strength of a notice, which might have been given under section 9 of the Old Act. A notice inviting claims in respect of all facets adverted to in sub-section (2) of section 21 is necessary for the determination of just compensation, submitted Shri Anturkar.

105. A criticism was advanced that the judgment of the Division Bench of this Court, in the case of Reliance Natural Resources Limited & Ors. (Supra), of which two of us (R.M. Borde and N.J. Jamadar, JJ.) were members, does not lay down the correct law and requires reconsideration as the Division Bench had not

noticed the wide canvass of the words, "relating to".

106. Etymologically, the words "relating to" appear to be of wide import and comprehensiveness. We are, however, not impelled to accede to the submissions of Shri Anturkar that every provision under the Act, 2013 wherein the words, "determination" and "compensation" find mention, fall within the ambit of the expression. Such a generalized course of action does not commend itself. Text is important. So is the context. Neither a word, group of words nor a provision, group of provisions can be read torn out of context and bereft of the other provisions of the enactment, which itself is required to be read as a whole.

107. As the judgment of this Court in the case of Reliance Natural Resources Limited & Ors. (Supra) was subjected to criticism and the fresh notice under section 21 of the Act 2013 was urged to be indispensable, we would briefly refer to the controversy in the case of Reliance Natural Resources Limited & Ors. (Supra). In the said case, the notification to acquire an office premises under Section 4 of the Old Act was issued on 24th December 1992. The said notification was quashed by this Court on the premise that the subject property could not have been acquired without acquisition of the land beneath. On appeal, by the judgment and order dated 15th September 2017, the Supreme Court set aside the judgment of this Court and directed that the acquisition proceedings be taken to a logical end. A notice, dated 13th December 2018, purported to be issued under section 9 the Old Act called upon the petitioners to submit the claims to compensation. One of the grounds raised in the petition was that, after the enforcement of the Act, 2013, the resort to the provisions contained in the Old Act was impermissible, and the notice as contemplated by section 21 of Act, 2013 ought to have given and thus acquisition be quashed. This Court addressed the said submission in the following manner :-

"22 The matter can be looked at from another angle. The thrust of the submission on behalf of the petitioners is that the notice inviting the claims from the interested persons ought to have been in terms of Section 21 of the New Act, 2013 in contradistinction to Section 9 of the Act, 1894. If we compare and contrast the provisions of Section 9 of the Act, 1894 with the provisions of Section 21 of the New Act, 2013, it becomes abundantly clear that the New Act, 2013 prescribes that the Collector shall call upon interested persons to submit claims to rehabilitation and resettlement, in addition to the claims to compensation, which was provided for in Section 9 of the Act, 1894. From this stand point, if the legislature intended that the provisions relating to rehabilitation and resettlement shall also be made applicable to the acquisition proceedings, covered by clause (a) of Section 24(1) of the New Act, 2013, it would have used the said expression as well in the said clause (a).

.....

24 The submission on behalf of the petitioners that a notice under Section 21 of the Act shall also invite claims to rehabilitation and resettlement loses sight of

the fact that the claims for rehabilitation and resettlement, to be made in pursuance of the notice under Section 21, cannot be made in the abstract. The provisions contained in Section 16, warranting preparation of rehabilitation and resettlement; review thereof under Section 17; the publication of the approved rehabilitation and resettlement scheme under Section 18 and publication of the summary of rehabilitation and resettlement under Section 19, precede the notice under Section 21. The first proviso to sub-section 2 of Section 19 contains an interdict against making a declaration under sub-section (1) of Section 19 unless the summary of rehabilitation and resettlement scheme is published along with the said declaration. The claims to rehabilitation and resettlement are required to be made in the context of these steps and declaration by the competent authorities. Thus, the submission on behalf of the petitioners that the petitioners have a statutory right to make claims to rehabilitation and resettlement, provided a notice under Section 21 of the New Act, 2013 is issued, does no merit countenance.

.....

27 In the facts of the case, the fact that the impugned notice is purported to be issued under Section 9 of the Act, 1894, is not of determinative significance. It is well recognized that a mis- description of a particular statutory provision does not vitiate the process. We find substance in the submission of the learned Advocate General that the petitioners may submit their claims before the competent authority and if they are not satisfied with the determination of the compensation, by way of an award, which may be ultimately passed by the competent authority, the petitioners can contest the said determination on all the grounds which are permissible under the law. The learned Advocate General further fairly submitted that the competent authority would determine the compensation in accordance with the provisions contained in the New Act, 2013 relating to the determination of compensation."

108. From the aforesaid observations, it becomes abundantly clear that the determination in the case of Reliance Natural Resources Limited & Ors. (Supra) was in the context of a prayer of quashment of acquisition proceedings at the stage of notice to submit claims. In that context, this Court has observed that the claims to rehabilitation and resettlement are required to be made in the backdrop of the proceedings and declaration by the competent Authority under preceding sections, i.e., sections 16 to 19, and, thus, the submission on behalf of the petitioners, in that case, that the petitioners have a statutory right to make claims for rehabilitation and resettlement was not countenanced.

109. In the instant reference, we are not called upon to examine the correctness of the aforesaid decision. Nor do we propose to embark upon a general enquiry as to which of the provisions of the Act, 2013 fall within the ambit of expression, "all provisions----". We are, thus, not inclined to delve into the aspect as to whether Reliance Natural Resources Limited & Ors. (Supra) needs reconsideration. If the question of the correctness of the view in Reliance Natural

Resources Limited & Ors. (Supra) poses itself for consideration, in the backdrop of the claims for rehabilitation and resettlement, in an appropriate case, the same can be legitimately examined.

110. So far as the submissions of Shri Golbole, the learned counsel representing the Municipal Corporation of Greater Mumbai that in acquisition proceedings initiated under the Maharashtra Regional And Town Planning Act, 1966, despite the enforcement of the Act, 2013, the award is required to be passed under section 18 of the Old Act and a reference objecting to the award is required to be made to the District Court under section 18 of the Old Act, it would be suffice to note that the instant reference pertains to the cases in which the acquisition proceedings have been initiated under the provisions of the Land Acquisition Act, 1894. In fact, section 24(1) deals with the cases of land acquisition proceedings initiated under the Land Acquisition Act, 1894. A Full Bench of this Court in the case of Mehtab Laiq Ahmed Shaikh & Anr. Vs. State of Maharashtra & Ors. 2017 (6) Mh.L. J. 408, after following the judgment of the Supreme Court in the case of Girnar Traders (3) v/s. State of Maharashtra (2011) 3 SCC 1 has held that section 24(2) of the Act, 2013 will apply only if the acquisition proceedings are initiated under the Land Acquisition Act, and cannot apply if they are initiated under section 125 to 127 of the MRTP Act.

111. We are of the considered view that it may not be appropriate to deal with the submissions advanced by Shri Godbole while answering the question referred to in the instant reference.

CONCLUSION :

112. The upshot of aforesaid consideration and reasons, which we have indicated above, is that, in a case of land acquisition initiated under the provisions of the Old Act, where an award is to be made, after the enforcement of the Act, 2013, such an award shall be made under the provisions of the Act, 2013, and any claim, objecting to the award, shall be referred for determination to the Authority constituted under the Act, 2013, and not to the Court under the Old Act. We, therefore, affirm the correctness of the view recorded in the case of Jairam Gangaram Burke (Supra).

113. We, thus, record our conclusions as under :-

114. (I) In a case of land acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894, where an award has been rendered under section 11 of the said Act, after the enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, i.e., 1st January 2014, any claim/application, objecting to the award shall be referred for determination to the Authority constituted under section 51 of the Act, 2013, in accordance with the provisions contained in section 64 of the Act, 2013, and not to the Court under the provisions of section 18 of the Act, 1894.

(II) In a case of land acquisition proceedings initiated under the provisions of the

Land Acquisition Act, 1894, where no award has been made before the enforcement of the Act, 2013, the award shall be made under the provisions of the Act, 2013.

115. The reference to the Full Bench is answered accordingly.

116. The Civil Revision Application shall now be placed before the appropriate Bench by the Registry for disposal.