

(2025) 02 SC CK 0767

In the Supreme Court Of India

Case No : Miscellaneous Application No. 1773 Of 2021 in Civil Appeal No. 7064 Of 2019

Union Of India And Another

APPELLANT

Vs

Tarsem Singh And Others

RESPONDENT

Date of Decision : 04-02-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 300A?Land Acquisition Act, 1894 — Section 23, 23(2), 28National Highways Act, 1956 — Section 3JRight to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 105, 113

Citation : (2025) 02 SC CK 0767

Hon'ble Judges : Surya Kant, J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : Tushar Mehta, Maulik Nanavati, Jaikriti S. Jadeja, Manvi Damle, Pratyush Shrivastava, Pratyush Shrivastava, Shivang Goel, Ishaan Aggarwal, Venkita Subramoniam, Arvind Gupta, Anil Kumar Sahu, Ashish Kumar Sinha, Binita Jaiswal, M/S. M. V. Kini & Associates, K. K. Mani, T. Archana, Rajeev Gupta, P. Soma Sundaram, C U Singh, P Sivakumar, Y Arunagiri, Raghunatha Sethupathy B, Satish Pandey, Jay Jaimini Pandey, Prabhoo Dayal Tiwari, Braj Kishore Mishra, Surajita Pattanaik, Manish Kumar Tiwari, Meghraj Singh, Abhinav Yash Pandey, Manmonhan Sharma, Chander Shekhar Ashri, Pradeep Kumar Arya, Rupesh Goel, Gaurav Chaudhary, Garima Chaudhary, Tushar Mehta, Maulik Nanavati, Jaikriti S. Jadeja, Manvi Damle, Pratyush Shrivastava, Shivang Goel, Ishaan Aggarwal, Vimal Kumar Goyal, Sandeep Singh Dingra, Hitesh Kumar Sharma, Varun Varma, Akhileshwar Jha, Amit Kumar Chawla, Arvind Gupta, D.kumanan, Mayank Kshirsagar, Parth Sarathi, Anumita Verma, Arjun Agarwal, Akhilesh Yadav, Siddharth Mittal, Deepak Agarwal, Abhijeet Varshney, Darshan Sejwal, Sumit Kumar Sharma, Shilpa G Mittal, Prabhat Kumar, Somiran Sharma, Raghuvir Singh Patil, Suryanusen Gupta, Dhrubajit Saikia, Sudhansu Palo, Suman, Rajesh Palo, Rakesh Kumar Palo, S. C. Malhotra, Ipsita Behura

Final Decision : Dismissed

Judgement

Surya Kant, J.

1. The instant Miscellaneous Application, filed by the National Highways Authority of India (NHAI) through its Project Director, seeks clarification regarding the judgment dated 19.09.2019, passed in Civil Appeal No. 7064 of 2019, titled Union of India & Anr. v. Tarsem Singh & Ors, (2019) 9 SCC 304 to the extent that the aforementioned judgment is to be applied prospectively, thereby precluding the reopening of cases where land acquisition proceedings have already been completed and the determination of compensation had also attained finality.

2. This Miscellaneous Application is tagged with several appeals filed by the NHAI challenging the decisions of various High Courts at the instance of private parties, wherein relief has been granted relying on the judgment dated 19.09.2019. The High Courts vide these decisions have either (i) awarded 'solatium' and 'interest' to the expropriated landowners; or (ii) directed the Competent Authority (Land Acquisition, National Highways) to consider and decide representations made by the landowners for the grant of 'solatium' and 'interest' in light of the aforementioned judgment of this Court. This also includes SLP (C) No. 14942/2019 titled 'K. Raju and others v. The Project Director, National Highways Authority of India and others', which has been preferred by a private party assailing the decision of the Madras High Court dated 01.04.2019, whereby the relief of 'solatium' and 'interest' was directed to be raised before the Competent Authority.

3. Additionally, SLP (C) Diary No. 52538/2023 titled 'Raj Kumar and another v. Union of India and others', has been preferred by a private party whose lands were acquired by NHAI. In this instance, the Punjab and Haryana High Court has rejected their claim for the award of 'Additional Market Value' relying upon its decision in National Highway Authority of India v. Resham Singh, 2023:PHHC:053158-DB whereby the landowners were held entitled to 'solatium' and 'interest', but their claim for the grant of 'Additional Market Value' was declined. These benefits were granted / partly declined in terms of Sections 23(2) and 28 of the Land Acquisition Act, 1894 (1894 Act), which were read into the provisions of the National Highways Act, 1956 (NHAI Act).

A. BRIEF LEGISLATIVE BACKGROUND

4. At this juncture, it is pertinent to briefly delve into the legislative background of Section 3J of the NHAI Act vis-à-vis the 1894 Act and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act).

5. The erstwhile 1894 Act facilitated the acquisition of land by the Government for public purposes, outlining a process that included the identification of land, issuance of a notification announcing the intent to acquire, followed by inquiries and hearings to determine the compensation payable to landowners. Additionally, the 1894 Act provided for the grant of 'solatium' and 'interest' under Sections 23 and 28. For a considerable period, the NHAI Act operated alongside the 1894 Act, with its provisions being *pari materia* to those of the latter.

6. Be that as it may, Section 3J of the NHAI Act has been fraught with controversy from its very inception. Section 3J, along with several other provisions, were inserted into the NHAI Act vide the National Highways Laws (Amendment) Act, 1997 (1997 Amendment), with the objective of 'creating an environment to promote private investment in National Highways, to speed up construction of highways and to remove bottlenecks in their proper management'. In this regard, one of the impediments to the speedy implementation of highway projects was recognised to be the inordinate delay in the acquisition of land.

7. Accordingly, the NHAI Act was amended, with a number of measures undertaken to accelerate the procedure of acquisition, whereby a determination of compensation would be made by the Competent Authority, and if not accepted by either party, it would then be determined by an arbitrator appointed by the Central Government. In addition, this newly introduced process did not envisage either 'solatium' or 'interest' and rather declared through Section 3J that 'nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act'.

8. Upon its incorporation and coming into force, several High Courts began to strike down Section 3J of the NHAI as unconstitutional in the light of its effect of treating similarly situated individuals differently. It was first struck down by the Karnataka High Court on 11.10.2002 in the case of *Lalita v. Union of India* 2002 SCC Online Kar 569 and then subsequently on 28.03.2008 by the Punjab and Haryana High Court in *Golden Iron and Steel* (supra). This trend continued to be followed by the Madras High Court in *T. Chakrapani v. Union of India*. 2011 SCC Online Mad 2881.

9. Meanwhile, the 2013 Act came into force with effect from 01.01.2014 and by the promulgation of Amendment Ordinance 9 of 2014, the 2013 Act was amended from 01.01.2015, thereby making its provisions applicable to numerous enactments, including the NHAI Act. Subsequently, upon the lapsing of the Ordinance, a notification dated 28.08.2015 was issued under Section 105, read with Section 113, wherein it was specified that the provisions of the 2013 Act would apply to acquisitions carried out under the NHAI Act.

10. Thereafter, a batch of appeals challenging the decision in *T. Chakrapani* (supra) were disposed of by this Court on 21.07.2016, following a statement made by the then Solicitor General of India that 'solatium' and 'interest' would be paid on acquisitions made under the NHAI Act 'Civil Appeal Nos. 129-159/2014'. However, the batch of appeals challenging the decision of the Punjab and Haryana High Court in *Golden Iron and Steel* (supra) remained pending. In two other appeals, challenging the decisions of the Delhi High Court and the Punjab and Haryana High Court, this Court disposed them off, holding that 'solatium' and 'interest' would be awardable to cases pending as on the date of the decision of the Punjab and Haryana High Court in *Golden Iron and Steel* (supra) i.e. 28.03.2008. *Sunita Mehra v. Union of India*, (2019) 17 SCC 672

11. This prompted NHA I to withdraw the appeals challenging the decision in Golden Iron and Steel (supra). In similar cases, the Madras High Court also awarded payment of 'solatium' and 'interest'. 'Union of India v. M. Pachamuthu, WA Nos. 62-81/2019' Thereafter, the decision in Tarsem Singh (supra) was delivered by this Court, making clear the legal position on the grant of 'solatium' and 'interest' vis-à-vis the NHA I Act.

12. As already iterated, this triggered a chain reaction of writ petitions being filed across various High Courts by aggrieved landowners whose lands had been acquired by the NHA I in the period between 1997 and 2015 and who had not been granted the benefit of 'solatium' or 'interest', seeking parity with those who were found entitled to these statutory benefits prior to 1997 and post-2015. Since the High Courts have restored parity in these cases, NHA I has sought clarification of our judgement in Tarsem Singh (supra).

B. CONTENTIONS ON BEHALF OF THE PARTIES

13. Mr. Tushar Mehta, Learned Solicitor General of India, appearing on behalf of the Applicant, NHA I, made the following submissions:

a) The judgment in Tarsem Singh (supra) is applicable prospectively from the date of its pronouncement, i.e., 19.09.2019, and not retrospectively from the date of enforcement of the 1997 Amendment. Granting relief in cases that have already been concluded is inconsistent with the principles laid down by the Constitution Bench in Gurpreet Singh v. Union of India. (2006) 8 SCC 457

b) If the judgment in Tarsem Singh (supra) is applied retrospectively, it would necessitate reopening all acquisitions made by the NHA I between 1997 and 2015. Consequently, the Government would be obligated to compensate every claimant whose land was acquired by the NHA I during this period.

c) Permitting the decision to operate retrospectively would lead to an influx of mass litigation, requiring the reopening of closed cases. This would have significant economic ramifications, placing an additional burden of approximately Rupees 92.18 crores on the Public Exchequer for the payment of 'interest' and 'solatium' for the delayed period.

d) Reopening such cases would directly contravene the doctrine of immutability, a fundamental principle which holds that a judgment, once attaining finality, becomes unalterable and cannot be modified. Furthermore, any claims now raised by private parties would be barred by the principles of delay and laches.

14. Per contra, the counsel(s) representing the landowners refuted the claims made by the NHA I and contended as follows:

a) Declaring the judgment in Tarsem Singh (supra) as prospective would render redundant the entire exercise of ensuring parity, given that the 2013 Act now governs the field, making the grant of 'solatium' and 'interest' a requisite. Tarsem Singh (supra) was delivered specifically with a view to address the grievances of

landowners who were denied the statutory benefit of 'solatium' and 'interest' owing to the operation of Section 3J of the NHAI Act.

b) Limiting the judgment to prospective application would result in hostile discrimination, as landowners in Chakrapani (supra), Tarsem Singh (supra), and similar cases have benefited from the declaration of Section 3J of the NHAI Act as unconstitutional. Conversely, other similarly situated landowners would be deprived of the same relief, leading to inequality that undermines the essence of Article 14 of the Constitution.

c) The instant Application seeking clarification represents a second attempt to evade impending liability. This Court, in Tarsem Singh (supra), has already addressed the precedent set in Sunita Mehra (supra), unequivocally holding that the benefit of 'solatium' and 'interest' must be extended to all cases arising between 1997 and 2015, based on the categorical admission by the Union of India itself.

d) The clarification sought through this Application, if entertained, would effectively amount to a review of the decision in Tarsem Singh (supra). It would also enable the Government to withdraw from its previously stated position, wherein it had agreed to extend the benefit of 'solatium' and 'interest'.

C. ISSUES

15. As previously elaborated, the singular issue prompting filing of the instant Application is to determine definitively whether the judgment in Tarsem Singh (supra) is applicable prospectively or extends retrospectively.

D. ANALYSIS

16. At the outset, it is essential to briefly refer to the ratio espoused in Tarsem Singh (supra), which, after considering the relevant facts, applicable laws, and precedents, held that Section 3J of the NHAI Act, by excluding the applicability of the 1894 Act and thereby denying 'solatium' and 'interest' for lands acquired under the NHAI Act, is violative of Article 14 of the Constitution. To this end, the decision in Tarsem Singh (supra) took notice of the eleven grounds raised on behalf of the NHAI and the Union of India, and dealt with those grounds by segregating the appeals therein into eleven groups and outlining them in seriatim.

17. Regardless, the prayer in the instant Application expressly seeks clarification that the decision in Tarsem Singh (supra) should be deemed to operate prospectively only. However, in our considered view, granting such a clarification would effectively nullify the very relief that Tarsem Singh (supra) intended to provide, as the prospective operation of it would restore the state of affairs to the same position as it was before the decision was rendered.

18. We say so for the reason that the broader purpose behind Tarsem Singh (supra) was to resolve and put quietus upon the quagmire created by Section 3J of the NHAI Act, which led to the unequal treatment of similarly situated

individuals. The impact of Section 3J was short-lived, owing to the applicability of the 2013 Act upon the NHAI Act from the date of 01.01.2015. As a result, two classes of landowners emerged, devoid of any intelligible differentia: those whose lands were acquired by the NHAI between 1997 and 2015, and those whose lands were acquired otherwise.

19. This must be viewed in the light of the principle that when a provision is declared unconstitutional, any continued disparity strikes at the core of Article 14 and must be rectified, particularly when such disparity affects only a select group. To illustrate, rendering the decision in *Tarsem Singh* (supra) as prospective would create a situation where a landowner whose land was acquired on 31.12.2014 would be denied the benefit of 'solatium' and 'interest', whereas a landowner whose land was acquired the very next day, 01.01.2015-the date on which the Ordinance was promulgated, to read the 2013 Act into the NHAI Act, would be entitled to these statutory benefits.

20. Be that as it may, even if we were to assume that the decision in *Tarsem Singh* (supra) suffers from the vice of vagueness, the absence of a judicial directive or an explicit legislative mandate should not result in the creation of an artificial classification among a homogeneous group by the same State exercising powers under the same Statute. In this specific instance, the landowners have no discretion or choice regarding the date of land acquisition or the surrender of possession. Thus, both equity and equality demand that no such discrimination be permitted, as allowing it would be unjust.

21. That being so, the decision in *Tarsem Singh* (supra) also cannot be assailed on the grounds that it opens a Pandora's Box or contravenes the doctrine of immutability, as it merely allows for the grant of 'solatium' or 'interest', which are inherently embedded as compensatory benefits under an expropriating legislation. This exercise cannot be equated to reopening of cases or revisiting the decisions that have already attained finality. Similarly, the restoration of these twin benefits does not invite reconsideration of the merits of a decided case, re-evaluation of the compensation amount, or potentially declaring the acquisition process itself to be unlawful. Instead, the ultimate outcome of *Tarsem Singh* (supra) is limited to granting 'solatium' and 'interest' to aggrieved landowners whose lands were acquired by NHAI between 1997 and 2015. It does not, in any manner, direct the reopening of cases that have already attained finality.

22. On the contrary, modifying or clarifying the judgment in *Tarsem Singh* (supra) would lend itself to violating the doctrine of immutability, undermining the finality of the decision. In fact, what the Applicant seeks to achieve, indirectly, is to evade responsibility and further delay the resolution of a settled issue where the directions given are unequivocal-Quando aliquid prohibetur ex directo, prohibetur et per obliquum i.e. 'what cannot be done directly should also not be done indirectly'. This Court has, on several occasions, disapproved of the practice of filing Miscellaneous Applications as a strategic litigation tactic aimed

at neutralising judicial decisions and seeking a second opportunity for relief.

23. In all fairness, the only defense that may perhaps seem appealing is the claim of a financial burden amounting to Rupees 100 crores. However, this argument does not persuade us for several reasons: First, if this burden has been borne by the NHAI in the case of thousands of other landowners, it stands to reason that it should also be shared by the NHAI in this instance, in order to eliminate discrimination. Second, the financial burden of acquiring land cannot be justified in the light of the Constitutional mandate of Article 300A. Third, since most National Highways are being developed under the Public Private Partnership model, the financial burden will ultimately be passed on to the relevant Project Proponent. Fourth, even the Project Proponent would not have to bear the compensation costs out of pocket, as it is the commuters who will bear the actual brunt of this cost. Ultimately, the burden is likely to be saddled onto the middle or upper-middle-class segment of society, particularly those who can afford private vehicles or operate commercial ventures. We are thus not inclined to entertain the plea for prospectivity on this limited tenet.

24. Lastly, as regards the decision in *Sunita Mehra* (supra), which is claimed to have prohibited the grant of 'solatium' or 'interest' in concluded cases, we find that this position has already been addressed and clarified in *Tarsem Singh* (supra). Given that the Government, through the then Solicitor General, had conceded this issue at that time, it cannot now retract its stance and seek to reargue the same bone of contention. Hence, this assertion too, stands rejected.

E. CONCLUSION

25. In view of the foregoing analysis, we find no merit in the contentions raised by the Applicant, NHAI. We reaffirm the principles established in *Tarsem Singh* (supra) regarding the beneficial nature of granting 'solatium' and 'interest' while emphasising the need to avoid creating unjust classifications lacking intelligible differentia. Consequently, we deem it appropriate to dismiss the present Miscellaneous Application.

26. Leave is granted in the other connected matters, and all the appeals are disposed of with a direction to the Competent Authority to calculate the amount of 'solatium' and 'interest' in accordance with the directions issued in *Tarsem Singh* (supra). In this context, the appeal arising out of SLP (C) Diary No. 52538/2023 is dismissed, as the challenge therein pertains to the High Court's refusal to award Additional Market Value as another component of the compensation, while 'solatium' and 'interest' have already been granted.

27. Pending applications, if any, stand disposed of in the above terms. Ordered accordingly.