(2016) 02 RAJ CK 0179

In the Rajasthan High Court

Case No : SB Civil Writ Petition No. 9126 of 2014

Virendra Singh APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Jaipur Development Authority Act, 1982 — Section 45
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2016) 3 WLC 454

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. Anil Mehta, Advocate, for the Petitioners; Mr. Rajendra Prasad, AAG with Mr. Ashish Sharma, Mr. Jatin Agrawal, Mr. Surya Pratap Singh and Ms. Sneha Bharati, Advocates, for the Respondents

Final Decision : Partly Allowed

Judgement

Mr. Bela M. Trivedi, J.—All the petitions involving similar issues were heard together with the consent of the learned counsels for the parties and are being disposed of by this common judgment.

2. The petitioners in the present batch of petitions have challenged the land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894''), in respect of the lands in question sought to be acquired for the Ajmer Agra Ring Road, spread across 47 villages, admeasuring in aggregate about 1,578.958 hectares. The petitioners have also sought the declaration that the said land acquisition proceedings have lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as ''the Act of 2013''). Though the respondents have filed the reply in each of the petitions, the rejoinder by the petitioners and other affidavits as well as the documents have been filed in

SBCWP No. 9126/14 only, for being read in other writ petitions too. Hence SBCWP No. 9126/14 was treated as the lead case.

3. Faxtual Matrix:

3.1. The respondents, having prepared an integrated infrastructural project consisting of transport corridor, for fast moving traffic while connecting the city area in a circle along with a development corridor found necessary for the planned development of the Jaipur City and for the proper functioning of the transport corridor itself, the respondent No.1 had issued the notifications under Section 4 dated 15.7.05 for acquisition of the lands in question for the said integrated project in two phases. The respondent No. 3, Land Acquisition Officer having submitted the reports under Section 5A of the said Act, the respondent No.1 had issued the declarations under Section 6 dated 4.8.06 and 5.8.06, which were published in the official gazette on 18.8.06. The respondent No.3, LAO thereafter had passed village wise awards which were approved by the State Government in the year 2008 and 2009.

3.2. Most of the petitioners claiming to be the khatedars of their respective agricultural lands, had initially challenged the said land acquisition proceedings by filing the writ petitions being No. 997/06, 800/08, 8827/07, 9063/07, 9227/07, 1394/08, 1396/08 and 2205/08. The said petitions came to be disposed of vide order dated 4.5.11 and 15.2.12 directing the petitioners to make representations before the State Empowered Committee constituted by the Government, and to approach the court if any grievance survived after the decision of the committee.

3.3. It appears that the petitioners through their representatives had made the representations before the said Empowered Committee, however the same came to be rejected by the said Committee. The petitioner Virendra Singh along with other petitioners therefore had again filed writ petitions being Nos. SBCWP No. 8200/12, 8149/12, 8198/12 and 8199/12, in which the respondents had raised preliminary objections regarding the maintainability of the writ petitions to the effect that some of the petitions were filed in the name of dead persons, and in other petitions, names of many petitioners were repeated in the cause-title of the same petition or of other petitions. Pending the said four petitions, the petitioner Virendra Singh of the SBCWP No. 9126/14 along with other petitioners, filed 34 writ petitions which are listed at Serial Nos. 1 to 34 in the present order. At the relevant time, their being call of strike given by the Bar Association, the petitioner Virendra Singh had remained personally present along with other petitioners in the court and had prayed to do the needful. The court without being technical into the matter had permitted the said petitioners to withdraw their earlier set of four petitions, vide the order dated 22.9.14, and pursue their 34 petitions.

3.4. In the said set of 34 petitions, the court after hearing the learned counsels for the parties had declined to grant any interim relief pending the petitions vide the order dated 24.9.14. Being aggrieved by the said order, the SAW being No. 1539/14 was filed before the Division Bench, only in case of SBCWP No. 9126/14. The said appeal came to be allowed by the Division Bench vide the order dated 29.10.14 against which the SLP being No. 31076/14 was filed by the respondents before the Supreme Court. The said SLP came to be disposed of by the Supreme Court vide the order dated 5.1.15 on the ground that the High Court had commenced day-to-day hearing of the main petitions. It appears that the other DB Appeals subsequently filed before the Division Bench against the order dated 24.9.14 also came to be disposed of by the Division Bench in view of the said order passed by the Supreme Court. The petitions at Sr. No. 35 to 86 were subsequently tagged along with the said 34 petitions at the request made by the learned counsels for the parties.

3.5. The present batch of eighty six petitions have been filed by the petitioners alleging interalia that the notification under Section 4 was not published in accordance with the provisions of the said Act of 1894 and that there was violation of the principles of natural justice while preparing the reports under Section 5A of the said Act. The petitioners have also alleged that the acquisition proceedings initiated without framing any scheme as contemplated under Section 38 and 39 of the JDA Act were invalid and the purpose for which the lands were sought to be acquired could not be said to be a "public purpose". The petitioners have also alleged that the allotment of 25% developed lands to the khatedars on the basis of the circular dated 27.10.05 issued by the State Government was not in consonance with the provisions of the said Act and therefore was illegal. According to the petitioners, in some of the cases though awards were passed under the Act of 1894, five years or more prior to the commencement of the Act of 2013, the physical possession of the lands was not taken nor the compensation was paid, and hence the acquisition proceedings in respect of such lands have lapsed in view of Section 24(2) of the Act of 2013.

3.6. The petitions have been resisted by the respondents by filing the replies contending interalia that all the mandatory provisions contained in Section 4, 5A and 6 were duly complied with before passing of the Awards. According to the respondents, the petitions were not only barred by the principles of constructive res-judicata but were liable to be rejected on the ground of delay, laches, acquiescence, estoppel and waiver. It has been contended that during the course of acquisition proceedings, most of the persons interested/beneficiaries had surrendered their lands for the project in lieu of the compensation in the form of 25% developed land and the said fact has been mentioned in the awards also. According to the respondents the developed lands to be alloted to such petitioners have already been reserved, and the lottery for specific allotment was also held. The respondents have further stated that out of the total area of 1,578.958 hectares under acquisition for the project, the persons interested had surrendered about 1,047.3073 hectares of land at the time of passing of the awards in the year of 2008 and 2009, and due to the disputes with regard to 78.5593 hectares of land, the references were made to the civil court and amount of compensation was deposited before coming into force of the Act of 2013. According to the respondents, even after passing of the awards several persons had surrendered their lands with the JDA in lieu of compensation in the form of developed land for whom also the reservation of the plots have been made. Thus, the possession of about more than 95% of the lands under acquisition was with the respondents, and the possession of less than 100 hectares spread in small patches across few villages had to be taken. The compensation of almost all lands under acquisition was either paid or deposited. It is also stated that the work has already been assigned for the implementation of the prestigious and important project, and in the event of non availability of land to the contractors, the public exchequer would be effected adversely apart from delaying the project. While denying the allegations about the non-compliance of the provisions contained in the said Act, the respondents have prayed to dismiss the petitions.

3.7. The petitioners have filed their rejoinder to the reply filed on behalf of the respondents, to which the respondents have filed counter affidavit. Both the parties have produced voluminous documents in support of their respective cases. The court had called for the original files from the Government for perusal, and also called for the original record of the petitions filed by the petitioners earlier. For the sake of convenience, the assorted facts and chequerred history of litigation as emerging from the voluminous record of petitions may be summarised in the tabular form as under:-

S. No.

Date

Event

Reference

1

15/07/05

Notification dated 15.7.05 in respect of Phase-I of the project under Section 4 of Land Acquisition Act, 1894 was issued which was published in official gazette on 18.7.05. Publications in Newspapers, and public notices in localities were made upto 11.8.05.

Annex.5, Page 55) and (Annex.-RA/1, page 15-60 of Addl. Affidavit

2

15.7.05

Notification dated 15.7.05 in respect of Phase-II of the project under Section 4 of Land Acquisition Act, 1894 was issued which was published in official gazette on 18.7.05. Publications in Newspapers, and public notices in localities were made upto 12.8.05

Annex.2 of CW No. 10173/14

3

27/10/05

Circular was issued containing policy of the Government for allotment of land in lieu of land under acquisition.

Annex.-R-1/12, page 328 of reply

4

06/12/05

After receiving the objections, first 5A report was submitted in respect of villages covered under Phase-II.

Annex.-RA/4, page 182 of Addl. Affidavit

5

28/3/06

The other 5A report was submitted in respect of villages covered under Phase-I.

Annex.06, page 59

6

04/08/06

The declaration under Section 6 was published in official gazette on 18.8.06 in respect of Phase-II.

Annex.4 of CW No. 10173/14.

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05/08/06

The declaration under Section 6 dated 5.8.06 was published in official gazette on 18.8.06 in respect of Phase-I.

Annex.-7, page 94

8

Year 2006-08

SBCWP No. 997/06, 800/08, 8827/07, 9063/07, 9224/07, 1394/08, 1396/08 and 2205/08 were filed challenging the aforesaid acquisition by substantially the same petitioners.

9

30/10/07

Interim order was passed restraining the LAO from passing the award upto 2.11.07 which was subsequently extended from time to time.

10

28/5/08

In SBCWP No. 800/08, 8827/07, 9063/07, 9224/07, 1394/08, 1396/08 and 2205/08, the order dated 30.10.07 was modified as under:- "I have considered the above aspect of the matter and is of the view that there is no justification to further continue the interim order dated 30.10.2007. Accordingly, the interim order dated 30.10.2007 is vacated. However, as regards the other part of challenge to the acquisition, the petitioners are free to file a fresh application separately. Put up on 2.7.2008. Till then the petitioners shall not be dispossessed from the land in dispute. In case the writ petitions are dismissed then the respondents shall be entitled for compensation on account of delay in the matter."

11

02/07/08

The order dated 28.5.08 was modified so as to permit taking of possession for the road but restraining from dispossessing from the remaining land.

Award dated. 11.9.08 Annex.9, page 101-104

12

July 2008 to May 2009

Awards were passed village wise and were approved by the Government.

13

04/05/11

Petitions Nos. 997/07, 800/08, 8827/07 and 9063/07 were disposed of directing the petitioners therein to approach the empowered committee. Liberty to approach again on dissatisfaction was granted.

Annex.1, page, 36

14

16/6/11

The Empowered Committee with participation of representatives of farmers considered and decided the issues as to the acquisition of land for Development Corridor and grant of land in lieu of compensation to the farmers.

Annex.2, Page 43-47

15

15/02/12

Other 4 petitions No. 9927/07, 1394/08, 1396/08 and 2205/08 were disposed of directing the petitioners to make representations before committee.

Annex.1, Page 38-42

16

14/03/12

Empowered Committee considered and rejected the representations of the petitioners.

Annex.3, Page 48-52

17

2012-2013

Possession memos with regard to the lands surrendered as well as that of possession taken were issued. The compensation in case of disputes was also deposited in the civil court.

(Annex.R-1/15, pages 354 to 424) and (Annex.RA/8, page 189 of Addl. Affidavit).

18

Year 2012

The petitioners jointly filed petitions No. 8149/12, 8198/12, 8199/12 and 8200/12 again challenging the notifications and acquisition proceedings.

19

Year 2014

After coming into force of the Act of 2013 with effect from 1.1.14, the aforesaid four petitions were amended so as to raise a plea about lapsing of the acquisition proceedings under section 24(2) of the Act of 2013. Replies were filed pointing out fundamental defects in the petitions including filing in the name of dead persons.

20

22/9/14

The petitioners were permitted to withdraw the said four petitions with liberty to file the same afresh.

21

28/8/14 & 19/9/14

The present petitions were filed

22

24/9/14

Initially, 34 petitions were filed and after detailed hearing the applications for stay in those cases were dismissed.

23

29/10/14

SAW No. 1539/14 was filed in SBCWP No. 9126/14 only against the order dated 24.9.14 and the same was allowed.

Rejoinder to reply, page 493 (not marked as Annex.)

24

05/01/15

SLP No. 31026/14 against the order dated 29.10.14 was filed and the same was disposed of as under :- "This petition is filed against an Interlocutory Order. It is not in dispute that the High Court has commenced day to day hearing. Any grievance, that the petitioners has, should properly be ventilated by the High Court. Signature Not Verified The Special Leave Petition stands disposed of."

Annexed with reply to Addl. Affidavit

25

The other D.B. Appeals filed subsequently in other petitions were disposed of with the directions that the learned Single Judge will not be influenced by the observations in interim order while finally deciding the writ petitions.

26

31/12/14

Amendment Ordinance 2014 promulgated inserting second proviso in Section 24(2).

Annex.10

27

15/1/15

Application for amendment of the writ petition to challenge Section 6 of the Amendment Ordinance dated 31.12.14 was filed, but the same was withdrawn later on.

Appl.No. 2466/15 withdrawn by Order dated. 2.2.15

28

03/04/15

Second Amendment Ordinance promulgated making it effective from 31.12.14 retaining 2nd proviso to section 24(2).

4. Though the legal issues involved in all the petitions are similar, few facts in each petition are different, inasmuch as some of the petitioners had opted for the benefit under the circular dated 27.10.05 issued by the State Government, for passing of the consent award of compensation to the maximum extent of 20% residential and 5% commercial plots, in proportion to the agricultural lands surrendered by them, whereas some of the petitioners had not opted for the said benefit. In some cases, the awards were passed after 1.1.09, and in others the awards were passed before 1.1.09 i.e. 5 years prior to coming into force of the Act of 2013 on 1.1.14. Some petitioners have approached the court for the first time challenging the proceedings after the Act of 2013 came into force. Therefore for the sake of convenience, the petitions are classified into five categories as under:-

CHART SHOWING IN WHICH CATEGORIES THE PETITIONERS ARE FALLING

S. No.

Writ No.

Not Opted for Developed Land

B Opted for Developed Land

C Award After 1.1.09

D Award Before 1.1.09

E First Time

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5. Both the learned counsels for the parties had made elaborate submissions for days together and relied upon the numerous decisions of the Apex Court and the High Courts. They have also submitted their respective written arguments, the gist thereof may be stated as under :-

5.1. The submissions of the learned counsel Mr. Anil Mehta for the petitioners.

In response to the preliminary objections raised by the learned AAG Mr. Prasad for the respondents with regard to the maintainability of the petitions, it has been sought to be submitted by Mr. Anil Mehta, learned counsel for the petitioners that the petitions were neither barred by the principles of res-judicata, nor barred by delay, laches or acquiescence. According to Mr. Mehta, the issues raised in the present petitions were neither heard nor finally decided by the court in earlier petitions. In the earlier set of eight petitions, the petitioners were simply religated to the settlement committee and the liberty was granted to them to approach the court again if they were aggrieved by the decision of the committee. The petitioners had approached the court again by filing the petitions being aggrieved by the decision of the empowered committee, however in the said petitions, the respondents having raised technical objections, the same were sought to be withdrawn with the permission of the court and the present petitions thereafter have been filed which could not be said to be barred by res judicata or by delay, laches and acquiescence.

5.2. Pressing into service, the provisions of the JDA Act, it has been submitted by Mr. Mehta that there was no scheme framed by the JDA as per Section 38 of the JDA Act prior to initiation of the acquisition proceedings for the Ring Road and the development corridor. According to him, the proposal was prepared by the Asstt. Commissioner, JDA on 25.11.14 for developing the Ring Road as planned by the PWD, however the said proposal could not be materialised and the Government decided to handover the project to the JDA. Thereafter the JDA had undertaken the exercise for the said project, however found it difficult due to lack of availability of the funds. Therefore two options were given for the feasibility of the project, out of which one option was by selling the entire commercial and residential land within 90 meters wide strip on either side of the road and secondly to allot 15% developed land to the khatedars in lieu of compensation. The said proposal dated 25.11.04 prepared by the Asstt. Commissioner was approved by the Jaipur Development Commissioner and the Minister UDH, however the same was never approved by the Authority as contemplated under Section 38 and 39 of the JDA Act. The public objections were also not invited, nor the composition of authority, as defined under Section 4 of the JDA Act, was made by the JDA.

5.3. The proposal for acquisition of land was sent by the JDA without application of mind and the State Government had also issued the notification under Section 6 of the said Act without any application of mind. In the notification under Section 6 it was mentioned that the land was likely to be acquired for JDA for discharging its functions, however there was no proposal or project approved for acquisition of 360 meters land by the competent authority of JDA. Hence the requirements of Section 45 of the JDA Act were also not complied with.

5.4. The acquisition of additional land for financing the project could not be said to be a "public purpose" within the meaning of Section 3(f)(iii) of the L.A. Act.

5.5. Though the notifications under Section 4 were issued on 15.7.08 and published in the official gazette on 18.7.05, and in the newspapers on 30.7.05, the same were not widely published in the locality. The documents produced by the respondents along with the reply and the additional affidavit were not reliable.

5.6. The petitioners though had filed the objections, they were not given the opportunity of personal hearing and the Land Acquisition Officer Shri Anil Kumar Agrawal had prepared the report under Section 5A in mechanical manner. The second report of enquiry was filed by the LAO Shri Sunilkant Gautam on 28.3.06, however he had joined the office after the transfer of his predecessor Shri Anil Kumar Agrawal on 4.3.06. Hence the second report prepared by Shr Sunilkant Gautam stating that opportunity of hearing was granted to the khatedars was not correct. In view of the settled legal position, since the petitioners were deprived of their valuable right of personal hearing in the enquiry under Section 5A of the said Act, the entire proceedings had vitiated.

5.7. The allotment of 25% developed land to some of the petitioners in lieu of compensation on the basis of the circular dated 27.10.05 issued by the State Government was illegal and arbitrary in view of various decisions of the Supreme Court. The harmoneous reading of the Land Acquisition Act implied that the LAO was not empowered to pass the award other than for monetory compensation. As per Section 11(2) of the said Act, the matters as contemplated in Section 15, 23, 24 and 31(3) of the said Act have to be included in the award and the LAO could not act contrary to the said provisions.

5.8. In the cases where the khatedar-tenants had opted for 25% of the developed land, no award was passed by the LAO, and therefore even if it is assumed that the provisions contained in Section 24(2) were not applicable, the proceedings had lapsed under Section 11 in absence of the award. Since the khatedars had right to withdraw the offer of the LAO prior to passing of the award, the khatedars-petitioners who had opted for the 25% of the developed land had right to resile from the said offer as no award was passed in their cases. As per the settled legal position, neither the consent nor the waiver could have affected the rights of the petitioners, when the circular issued by the State Government itself was illegal.

5.9. In case of those petitioners in which favour award was made on 9.9.08, and no compensation was paid or deposited in the court prior to 1.1.14, the proceedings had lapsed as per Section 24(2) of the Act of 2013. The respondents had taken forcible possession from some of the petitioners with the help of police force between 25th September to 5th November, 2014 and such possession taken from such petitioners could not be said to be legal possession of the respondents.

5.10. The judgments rendered by the Supreme Court in respect of Section 24(2) of the Act of 2013 were binding to this court under Article 141 of the Constitution of India and could not be held to be per-incuriam.

6. The submissions made by the learned AAG Mr. Rajendra Prasad for the respondents.

6.1. The learned AAG Mr. Prasad appraising the court about the purpose, and importance of the acquisition of the lands in question, highlighted the salient features of the said project of Ring Road and the development corridor by submitting that the same was necessary for the planned development and for regulating the fast moving traffic. He further submitted that the said project was being undertaken in the public interest and there was no element of profiteering. The substantial part of land i.e. more than 90% of the persons effected had voluntarily surrendered their lands and accepted the compensation. The possession of the entire land has also been taken and the compensation has either been deposited with the civil court or has been given by way of allotment of developed land. The entire exercise was undertaken for the said project after due application of mind and after purposeful discussions at various levels in JDA and the State Government. The said project would include not only the commercial and residential centers but the underpasses, major and minor bridges, flyovers, ROBs, Box Culverts, Pipe Culverts, Bus Bay and shelters etc. and the two corridors for further planned expansion of the city apart from providing congestion free traffic.

6.2. The petitions listed in Category-E have been filed for the first time challenging the acquisition proceedings by way of misuse of process of law and they suffer from unexplained delay, laches and acquiescence.

6.3. In the petitions mentioned in Category-C the awards have been passed after 1.1.09 therefore, the question of lapsing of proceedings under Section 24(2) of the Act of 2013 would not arise.

6.4. The petitioners of the petitions mentioned in Category-B, had voluntarily surrendered the title and possession of their lands for getting the compensation in the form of developed land and have also executed the necessary documents for securing reservation/allotment of developed land, hence such petitioners could not have challenged the acquisition proceedings, the same being barred by the principles of waiver, estoppel and acquiescence''s. Such petitions also deserve to be dismissed as the concerned petitioners had concealed the material facts about their surrender of land and acceptance of reservation letters by them.

6.5. The petitioners of the petitions listed in Category-B could also not challenge the circular dated 27.10.05, after they having enjoyed the benefit under the said circular, and that too without making any prayer in the petitions for declaring the said circular as invalid, more so when there had been further transfers of the reserved/allotted lands to third parties, as per Annex.AR/8.

6.6. All the petitions suffer from vagueness as to the location of the lands, filing of objection under Section 5A, receiving of compensation etc.

6.7. The petitions listed at serial No. 1 to 34 are barred by the principles of estoppel, constructive res-judicata and also by the principles underlined in Order 23 of CPC, which are applicable to the writ petitions also. According to Mr. Rajendra Prasad, the said petitions had raised all the issues challenging the land acquisition proceedings, however they did not prefer to challenge the orders passed by the court directing them to approach the empowered committee. They also chose to approach the said committee, which tentamouonted to the waiving of the challenge to the said issues.

6.8. As per the various decisions of the Supreme Court it was not necessary to frame the scheme for acquisition of land under Section 38 and 39 of the JDA Act as alleged by the petitioners.

6.9. Section 45 of the JDA Act is an enabling and not prohibitory provision for acquisition of the land and the said provision does not truncate the powers of the State Government to acquire the land for "public purpose".

6.10. The acquisition proceedings were initiated after following the due process, and the decision was taken at the highest level in the Government. Any internal correspondence, or the nothings on the note sheets of the Government files could not be made the basis to challenge the proceedings.

6.11. The lands were being acquired for the transport corridor and for development corridor which was a "public purpose" within the meaning of Section 2(17) of the JDA Act and under Section 3(f)(iii) of the Land Acquisition Act. Heavy reliance has been placed on various decisions of Apex Court to submit that in case of integrated and indivisible infrastructural development, a holistic approach has to be adopted and that the writ court cannot substitute its own judgment for the judgment of Government as to what would constitute a "public purpose".

6.12. The circular to allot developed land in lieu of compensation was a policy decision taken by the Government in the public interest for serving the "public purpose" and such policy decisions have the legal sanction also, as contemplated under Section 3(f)(iii) of the said Act.

6.13. There was no violation of Section 4 of the said Act inasmuch as due publication of Section 4 notification was made by publishing the same in the official gazette, in the newspapers and by affixing the same at the convenient places in the locality.

6.14. Section 5A of the said Act does not contemplate issuance of personal notices to the persons interested. The objections have to be filed by the persons interested within the prescribed time limit and the opportunity of personal hearing is required to be given only if asked for by the objector. The petitioners have not specified in their respective petitions as to whether they had filed the objections or not, however from the record it was found that the petitioners in 32 petitions had not filed any objections and others had filed stereotype objections. Some of the petitioners who had filed objections, had voluntarily surrendered their lands also. None of the petitioners had ever requested for personal hearing. Even in the objections filed by the petitioners, they had stated that they had no objection about the acquisition of land for the road but had objections against acquiring lands for the development corridor, however it was not specified as to which land was covered under the transport corridor and which land was covered under the development corridor. It has been further submitted that the first report was submitted by the same officer who had considered the objections of the petitioners and rejected the same and the second report was submitted on the basis of the official record considering the written arguments of the counsel. The report under Section 5A being administrative in nature, the LAO cannot be expected to write such report as judicial or quasi-judicial authority.

6.15. The declaration under Section 6(3) of the said Act is the conclusive evidence with regard to the need of the land and also to the fact that it is for public purpose.

6.16. Distinguishing the decisions of the Supreme Court relied upon by the learned counsel for the petitioners as regards the policy decision of the State Government for allotting 25% of developed land in lieu of compensation, it has been submitted that in the instant cases the petitioners having taken the advantage of the circular dated 27.10.05 and thereby having precluded the respondents from proceeding as per the provisions of Section 11(1) of the Act of 1894, the petitioners were estopped from challenging the said circular of the Government. After the amendment in the Land Acquisition Act in the year 1984, the provision has been introduced in Section 11(2) for passing of consent award, or award by agreement, and the said provision has been given overriding effect over sub-section (1) of Section 11. The word "compensation" does not mean in terms of money only, it could be in kind also, equivalent to the value of the property acquired and agreed upon by the concerned party.

6.17 Relying upon various decisions of the Apex Court, it is submitted that once an agreement was entered into between the parties, the question of receiving compensation under protest does not arise and the beneficiaries had no right to seek reference to the civil court under Section 18 of the said Act. In the instant cases also the petitioners who had opted for the allotment of developed land in lieu of compensation, by executing the requisite documents could not be permitted to challenge the same after so many years.

6.18. In many cases, the Supreme Court has issued directions in the form of guidelines to provide developed land in lieu of compensation, in the schemes for which acquisition was being made. The Act of 2013, Schedule-II also provides for such allotment and therefore the policy of 2005 could not be said to be illegal or invalid. The said policy decision having been taken at the level of Chief Minister, it was in consonance with the Conduct of Business Rules framed under Article 166 and the standard orders issued in that regard.

6.19. The village wise awards have been passed for each parcel of land. Where the parties had not opted for developed land in lieu of compensation, the monetory compensation was determined, and in cases where the option of developed land was given, specific directions based on the Government policy have been given in the award.

6.20. As regards the plea of lapsing of proceedings under Section 24(2) of the Act of 2013, it is submitted that such plea is not available to the petitioners of the petitions mentioned in Category-C in which cases awards have been made after 1.1.09. Such plea is also not available to the petitioners who fall in Category-B as they had surrendered their lands in lieu of compensation and opted for the developed land. As regards the petitions listed in Category-A, it is submitted that holistic and harmoneous reading and construction of Section 24 its sub-sections and proviso, is required to be made, which reflect that the provisions of Section 24(2) are intended to apply to "the proceedings initiated under the Act of 1894" as a whole and not to the proceedings of acquisition of parcels of land covered under the proceedings individually. The proviso to Section 24(2) not only carves out an exception to the main enactment, but also throws light upon the meaning of the Section 24(2) and helps in deciding the contours of the said provision. Even in cases where compensation has not been paid in respect of majority of the holdings, the proceedings would not lapse, but would be continued and the compensation would be paid as provided under the Act of 2013 to all beneficiaries specified in the notification under Section 4. As a necessary corrolary, if the compensation has been paid to the majority, the proceedings would be continued by payment of compensation as per the provisions of the old Act. Taking of possession in both the situations would be immaterial. However, if compensation has been paid to none and possession of none of the land holder has been taken, then only the proceedings would lapse.

6.21. Relying upon various decisions on the interpretation of Statutes, the learned counsel for the respondents has submitted that the interpretation of the provisions has to be in consonance with the provisions of the Constitution, and it should not lead to discriminatory relief to the persons similarly situated. The learned counsel has also distinguished the decisions of the Supreme Court relied upon by the learned counsel for the petitioners, and has urged to consider the implications of the proviso to Section 24(2) afresh, by invoking the doctrine of sub-silentio.

6.22. Lastly, it is submitted that the project in question is very important for the residents of Jaipur and would serve a great "public purpose". The entire land is in possession of the respondents and has already been put to use for the project. It is only the petitioners who have interest in the land in different small patches at various places, have questioned the acquisition, and any adverse order by this court would frustrate the implementation of the whole project. It is also submitted that the quashing of acquisition proceedings is not the only remedy and the court can mould the relief.

7. ON THE MAINTAINABILITY OF PETITIONS

7.1. Now, considering the multidimentional submissions made by the learned counsels for the parties, it appears that the petitioners have mainly challenged the notifications issued under Section 4, declarations issued under Section 6 and the award made under Section 11 of the Land Acquisition Act, in respect of their respective parcels of lands in question, and have sought further declaration to the effect that the said acquisition proceedings have lapsed in view of Section

24(2) of the Act of 2013. As stated earlier, the petitioners falling under Category-E have approached the court for the first time after the gross delay of about nine years challenging the acquisition proceedings. The petitioners falling in other categories had already approached the court twice and this is third round of litigation for them. The said petitioners had initially filed the petitions being Nos. 9227/07, 800/08, 8827/07, 9063/07, 1394/08, 1396/08 and 2205/08 challenging the land acquisition proceedings and whereas the petitioner Virendra Singh & Others had filed the Writ Petition no. 997/06 challenging the notice dated 27.1.06 issued by the respondent-JDA published in the newspaper calling upon the landowners to give option if they desired to surrender their respective lands and to receive compensation by way of the developed land in view of the circular dated 27.10.05. After considering the pleadings and considering the submissions of the learned counsels for the parties, the said petitions were disposed of by the court as per the orders dated 4.5.11 and 15.2.12 respectively, interalia directing the petitioners to approach the Empowered Committee constituted by the State Government and permitting the petitioners to approach the court again if their grievances survived.

8. Since the said Empowered Committee rejected the representations made by the said petitioners, the said petitioners along with others had again approached the court challenging the said notifications, declarations and the awards, by filing the four petitions being No. 8200/12, 8149/12, 8198/12 and 8199/12. During the pendency of the said four petitions, the Act of 2013 came into force with effect from 1.1.14 and therefore the said petitions were amended by the concerned petitioners with the permission of the court. In the said petitions, the respondents while filing their replies, had raised the preliminary objections on the maintainability of the said petitions, as some of the petitioners had already expired long back but their names were shown in the cause-title. Names of some petitioners were repeated in the cause-title of the same petition or of the other petitions. The respondents had also raised objections against filing of the common petitions by the petitioners on the ground that the facts of each petitioner were different. On such objections having been raised by the respondents, the concerned petitioners filed the present set of petitions, pending the earlier four petitions. Subsequently the said four petitions were permitted to be withdrawn by the court vide order dated 22.9.14, without being technical in the matter.

9. In the backdrop of these facts, the learned AAG for the respondents has challenged the very maintainability of these petitions, on various grounds like delay, laches, waiver, estoppel, abandonment of rights, concealment of facts and on the ground of being barred by the principles of constructive res-judicata. It is trite to say that the jurisdiction under Article 226 of the Constitution being extraordinary jurisdiction, the party approaching the court has to come with clean hands disclosing all correct and material facts. The equitable jurisdiction cannot be exercised when the petitions suffer from the delay, laches and acquiescence. The conduct of the petitioners is also equally important to be seen

while granting the relief in the petition under Article 226 of the Constitution. In an English decision in case of Lindsay Petroleum Co. v. Hurd (1984) 5 PC 221, while explaining the doctrine of latches, it was held by Sir Bames Peacock, that:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

10. The said principle laid down for the courts of equity in England was also followed by the Constitution Bench of the Supreme Court in case of Moon Mills Ltd. v. M.R. Meher, President Industrial Court, AIR 1967 SC 1450 and by a three-Judge Bench in the case of Maharashtra SRTC v. Shri Balwant Regular Motor Service AIR 1969 SC 329. Again a three-Judge Bench of the Supreme Court in case of State of Maharashtra v. Digambar (1995) 4 SCC 683 observed to the effect that the petitioner is not entitled to obtain equitable relief under Article 226 of the Constitution, if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like. In case of U.P. Jal Nigam and anr. v. Jaswant Singh and anr. (2011) 11 SCC 464, while considering the question whether the employees who did not wake up to challenge their retirement and who had accepted the same by receiving their post retirement benefits could be given relief in the light of the subsequent decision of the Supreme Court, it was observed in para 12 as under :-

"The statement of law has also been summarised in Halsbury?s Laws of England, Para 911 , pg. 395 as follows : " In determining whether there has been such delay as to amount to laches, the chief points to be considered are : (i) acquiescence on the claimant?s part; and (ii) any change of position that has occurred on the defendant?s part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches. "

11. If the facts of the present petitions are examined in the light of the aforesaid legal position, it emerges that the petitioners who fall in the Category-E have approached the court for the first time in the year 2014 challenging the notifications under Section 4 issued in the year 2005, declarations issued under Section 6 issued in the year 2006 and the awards under Section 11 made in the year 2008-09. There is no explanation coming forth from the said petitioners as to why they had not challenged the said proceedings earlier. Further though the petitioners falling in other categories had filed the petitions earlier as stated here in above, the court after considering their contentions had directed them to approach the State empowered committee, while disposing of the said petitions. The said petitioners instead of challenging the said orders had preferred to approach the empowered committee. Not only that, the petitioners while making representations before the empowered committee had specifically stated that they had no objection against acquisition of their lands for the Ring Road but had challenged the acquisition of land for development corridor. The empowered committee with the participation of the representatives of the farmers including some of the petitioners, considered and decided the issues raised by the petitioners against them vide the decision dated 16.1.11.

12. The petitioners thereafter again filed the four petitions being No. 8200/12, 8149/12, 8198/12 and 8199/12, however did not challenge the circular dated 27.10.05,(Annex.R-A/1/12) issued by the State Government, whereby the decision to give 25% developed land in lieu of compensation was taken. Even in the present set of petitions, the said circular has not been challenged, except making some vague averments without making any prayer to set aside the said circular. Not only that, admittedly the petitioners of the Category-B petitions, had opted for the allotment of developed land in lieu of compensation pursuant to the said circular. The said petitioners had also surrendered their lands. The respondent-JDA had issued allotment and reservation letters in favour of most of such petitioners, on such petitioners having executed the necessary documents in favour of the JDA. Significantly, when the earlier petitions were disposed of by the court vide order dated 4.5.11 and 15.2.12 requiring the petitioners to approach the State empowered committee, the awards were already made, however the petitioners instead of challenging the said orders of the court passed in the petitions, preferred to approach the empowered committee. The petitioners had all the opportunity to challenge the acquisition proceedings as well as the circular dated 27.10.05 but they preferred to waive their challenges and grievances, and allowed the respondents to proceed further with the acquisition proceedings. It is needless to say that waiver involves a conscious, voluntary and intentional relinquishment or abandonment of a known, existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, the party would have enjoyed, as held by the Supreme Court in case of M/s. Sikkim Subba Associates v. State of Sikkim AIR 2001 SC 2062.

13. At this juncture it would be also appropriate to reiterate the legal position settled by the Apex Court to the effect that the writ petitions challenging the acquisition proceedings after the award is passed would not be maintainable. Beneficial reference be made of the decisions in case of Municipal Corporation v. Industrial Development Co., (1996) 11 SCC 501. In case of A.P. Industrial Infrastructure Corporation Ltd. v. Chinthamaneni Narasimha Rao and ors. (2012) 12 SCC 797, the Supreme Court after considering various decisions held that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same at least before an award is made and possession of land is taken by the Government authorities. In case of State of Rajasthan and ors. v. D.R. Laxmi and ors. (1996) 6 SCC 445, the Supreme Court specifically observed that the extraordinary jurisdiction of High Court may not be exercised when the acquisition proceedings have become final and in such circumstances the court may decline to exercise its discretion. In para 10 thereof it was held as under :-

"10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances."

14. In view of the above, the petitioners of Category-E having filed the petitions in 2014 for the first time could not have challenged the land acquisition proceedings initiated in the year 2005 under the Act of 1894. The petitioners of other categories also having not challenged the orders passed in the first set of eight petitions in the year 2011-2012, and preferred to approach the empowered committee though the awards were already made, and they having agreed to the acquisition of their lands for the project of Ring Road, they had clearly waived their right to challenge the acquisition proceedings.

15. It cannot be gainsaid that though the provisions of the CPC are not specifically made applicable to the writ petitions filed under Article 226 of the Constitution of India, the general principles contained in the said Code would apply to the writ petitions. As observed by the Apex Court in case of Bharat Amratlal Kothari and anr. v. Dosukhan Samadkhan Sindhi and ors. (2010) 1 SCC 234, every petition under Article 226 of the Constitution of India must contain a relief clause and whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. It has also been observed therein that though the High Court has power to mould the relief to meet with the requirements of each case, that does not mean that the drafts man of the writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court. So far as the facts of these

petitions are concerned, the petitioners who had filed the earlier set of petitions, had specifically stated that they had no objection against acquisition of their lands for the construction of the Ring Road but no land in excess of the land required for Ring Road should be acquired. It is pertinent to note that in the said petitions, initially the court vide order dated 30.10.07 had passed an ad-interim order restraining the respondents from passing the award, however the same was modified on 28.5.08 and the respondents were restrained from dispossessing the petitioners from the land in question. Again vide order dated 2.7.08, the respondents were permitted to take possession of the land in question for the Ring Road and were restrained from dispossessing the petitioners from the remaining land. The awards in respect of all the lands in question had already been made during 2008-09 pending the said petitions, however the petitioners had neither bothered to amend the said petitions nor had bothered to challenge the orders dated 4.5.12 and 15.12.12 disposing of the eight petitions. Though it is true that in none of the orders dated 4.5.12 and 15.12.12, passed in earlier set of petitions, the court had recorded any findings on the merits of the case and hence the principles of res-judicata as contained in Section 11 of CPC would not be applicable as rightly contended by the learned counsel Mr. Mehta for the petitioners, nonetheless the petitioners having not asserted their rights to challenge the validity of the acquisition proceedings already initiated and concluded by passing the awards under Section 11 of the said Act, they had clearly abandoned or relinquished the said challenges which were available to them at the relevant time. As stated herein above, most of the petitioners in these petitions were also the petitioners in the earlier eight petitions jointly filed by them and therefore it does not lie in the mouth of the petitioners to say that the entire acquisition proceedings, and the awards passed under the Act of 1894, were bad in law.

16. It is also pertinent to note that the petitioners of Category-B had already opted for the allotment of developed land in lieu of compensation pursuant to the Circular dated 27.10.05 and they were also issued the allotment letters and reservation letters, on their submitting necessary documents. Some of the petitioners like the petitioners in SBCWP Nos. 11502/14 and 9158/14 had also further executed the sale-deeds in favour of some third parties on the basis of the said allotment letters and reservation letters issued by the respondents. Hence such petitioners are also estopped from challenging the acquisition proceedings as sought to be done by them in the present petitions.

17. The jurisdiction under Article 226 of the Constitution being equitable jurisdiction, the persons invoking the same cannot be permitted to approbate and reprobate to suit their own purposes and misuse the process of law. The petitioners had consciously, will fully and deliberately waived their rights, placing the respondents in a position in which it would not be reasonable to put them, if the remedy were afterwards to be asserted. Having regard to such conduct on the part of the petitioners, the court is of the opinion that the present petitions suffer from latches, acquiescence''s, waiver, estoppel, and abandonment of

rights,and therefore could not be held to be maintainable in the eye of law.

18. ACQUISITION PROCEEDINGS: WHETHER IN VIOLATION OF SECTION 38, 39 AND 45 OF JDA ACT?

Having held that the petitions are not legally maintainable, let us consider the other issues on merits raised by the learned counsels for the parties. The learned counsel Mr. Anil Mehta for the petitioners relying upon the various provisions of the JDA Act and the note-sheets produced by the respondents had vehemently submitted that the provisions contained in Section 38 and 39 of the JDA Act were not followed by the respondent-JDA prior to initiation of the acquisition proceedings nor any public objections were invited before framing any scheme for the project in question, by the concerned authority of the JDA. According to him as per the minutes of meeting dated 1.4.05 placed on the record by the respondents along with the additional affidavit, the width of development corridor was increased by 120 meters from 90 meters, however presently the development corridor is being made with the width of 135 meters and therefore there was no justification for acquisition of extra 30 meters of land. According to him, the proposal for increasing the width of land for Ring Road as well as for the development corridor was without any application of mind and illegal. Further placing reliance on Section 45 of the JDA Act as also the decision of Supreme Court in case of State of Punjab and ors. v. Sanjeet Singh Grewal and ors. (2007) 6 SCC, 292, he submitted that since there was no representation or proposal from the JDA to acquire the land for the project in question, nor any scheme was framed in that regard, the acquisition proceedings initiated by the State Government were illegal and not in consonance with the provisions of the JDA Act.

19. In order to appreciate the said submissions of Mr. Mehta, it would be apposite to consider some of the provisions of the JDA Act. It appears that Chapter-VII thereof deals with the projects and schemes. Section 38 empowers the authority i.e. the JDA to make projects and schemes for the integrated development of Jaipur region or any part thereof as may be considered necessary for the purpose of implementing the proposals in any master development plan. Sub-section (2) of Section 38 specifies the matters for which the project or scheme could be made. As per Section 39, the authority may by resolution, declare its intention to prepare the project or scheme as provided under Section 38 in any development area. The said section also provides for procedure to be followed by the JDA before approving such projects or schemes before publishing the same in the official gazette for being implemented. Chapter-VIII of the Act deals with the acquisition and disposal of the lands. Section 45 thereof empowers the State Government to acquire the lands, which provides interalia that where on any representation from the authority, it appears to the State Government that in order to enable the authority to perform any of its function or to discharge any of its duties or to exercise any of its powers or to carry out any of its projects or schemes or development programmes, it is

necessary that any land in any part of Jaipur region should be acquired, the State Government may acquire the land under and in accordance with the provisions of the Land Acquisition Act, 1894. Thus from the conjoint reading of the said provisions, it emerges that the JDA can make projects and schemes for the integrated development of Jaipur region as contemplated in Section 38 and implement such projects and schemes after following the procedure under Section 39 of the JDA Act. In case the JDA makes representation to the Government for acquisition of any land situated in any part of the Jaipur region, to carry out any of its projects or schemes, the State Government could acquire such land under Section 45 in accordance with the provisions contained in the Land Acquisition Act. None of these provisions preclude the State Government from acquiring any land on its own for the "public purpose" as per the provisions contained in the Land Acquisition Act, 1894.

20. On the perusal of record, it transpires that the Government of Rajasthan had declared its intention to construct the road forming a ring around Jaipur City on BOT basis with 30 meter wide median of about 65 Kms., in three segments, connected to each other linked with zone CND,(which was already under construction of NHAI), for which bids were invited by issuing public notice on 31.1.02 (Annex.R/1/1). It appears that the said attempt did not succeed and therefore again the bids were invited by the Government for the said project in pursuance of the Rajasthan Road Development Act, 2002 by giving public notice on 17.4.03 (Annex.R/1/2). Since the bids invited by the Government through Public Works Department were not found to be acceptable, the Commissioner, JDA, in a high level meeting under the Chairmanship of the Public Works Minister, proposed for taking up the project by JDA, giving details as to how such project could be implemented, as per the minutes of meeting dated 8.3.04 (Annex.R/1/3). It appears that in the meantime some Public Interest Litigation was filed in the High Court, where the emphasis was made for immediate construction of Ring Road. There was also proposal for getting Ring Road constructed through PWE/NHAI/Government of India, but there was no commitment from their side to complete the Ring Road project expeditiously, and hence the Project Director, Ring Road had proposed that the JDA could proceed to execute the construction of Ring Road (Annex.R/1/4). Thereafter the matter was considered by the JDA and NHAI, and after the matter was discussed at various levels of State Government including the Chief Minister, it was decided that the JDA will continue with the project, as the NHAI could not satisfactorily respond to the implementation of the said project of Ring Road. From the said note-sheets on the record, it clearly transpires that it was the State Government and not the JDA who had initiated the proposal for the project in question and therefore there was no question of the JDA making the scheme or project under Section 38 and following the procedure under Section 39 of the JDA Act. It was the State Government itself which had declared its intention of acquisition in January 2002 by inviting the bids for the said project of Ring Road with development corridor and subsequently it was decided to be handed over to the

JDA for the implementation. As observed here in above, Section 45 of the JDA Act enables the State Government to acquire the land as and when the representation is made by the JDA to carry out its projects and schemes. Such provision could not be construed as prohibition against the State Government from acquiring the land for the "public purpose" for the development of the City, in pursuance of its own scheme or policy. The court therefore does not find any substance in the submission of the learned counsel Mr. Mehta for the petitioners that the JDA having failed to follow the procedure under Section 39 read with Sections 38 and 45, the acquisition proceedings initiated by the State Government were vitiated.

21. The reliance placed on the decision of the Supreme Court in case of State of Punjab v. Sanjeet Singh Grewal (supra) by Mr. Mehta is also misplaced. In the said case, considering the specific objects of enacting the Punjab Regional and Town Planning and Development Act, 1995, the Supreme Court was of the opinion that the State Government could not have declared site for new town without consulting the other authorities under the said Act. As such the decision of Supreme Court in case of Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan (1993) 2 SCC 662 relied upon by Mr. Rajendra Prasad clinches the issue. The relevant part of para 9 thereof reads as under :-

"The crux of the argument is that the improvement in the urban area can only be carried out by executing the schemes framed under the Act and in no other way. We do not agree with Mr. Shanti Bhushan. Under the Scheme of the Act the improvement of the urban area can be undertaken by the trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. Under Section 52 of the Act the land can be acquired by the State Government at the instance of the trust, or a department of the Government or any prescribed authority. The plain language of Section 52(1) of the Act negates the contention raised by Mr. Shanti Bhushan. Where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification under Section 52(1) of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the schemes framed by the trust under Chapter V of the Act or for any other "public purpose" under the Act. No fault can be found with the procedure followed by the State Government in this case. The notification issued by the State Government under sub-section (1) of Section 52 of the Act specifically states that the land was being acquired for the construction of residential, commercial and administrative buildings. The Government having taken a policy decision to acquire land for the "public purpose" was justified in issuing the notification under Section 52(1) of the Act in respect of the land in dispute. We, therefore, see no force in the contention of Mr. Shanti Bhushan and reject the same. "

22. The said decision has been followed by the Supreme Court in case of Pratap v. State of Raj. and ors. (1996) 3 SCC 1, in which it has been held that even if there is no scheme prepared or finalised, under the Housing Board or Urban Improvement Act, acquisition could be validly made under the provisions of the Land Acquisition Act for a public purpose.

23. It is also pertinent to note that the Division Bench of this court in case of State and ors. v. Jaipur Nagar Graha Nirman Sahakari Samitiya Association and 115 ors. (1996) 3 RLW (Raj.) 453, while specifically dealing with Section 45 of the JDA Act has held as under :-

"(14) The expression "where it appears to the State Government" occurring in Section 45 of the J.D.A. Act, shows that it is not necessary for the State Government to frame a detailed scheme or development plan before exercising the powers of acquisition under the Land Acquisition Act. It is sufficient, if a decision in that respect is taken and the detailed scheme is left to be worked out at the stage of the execution of the plan. Government, having taken the policy decision for the "public purpose" or the purpose mentioned in Section 45 of the J.D.A. Act, was justified in issuing the notification for acquisition of the land. Thus, in the context of the J.D.A. Act, 1982, the proceedings for acquiring the land under the Acquisition Act can be initiated and completed in the absence of the sanctioned notified scheme for which the land is required. Therefore, the decision of the learned single Judge that in the absence of the sanctioned as approved scheme no acquisition proceedings of the land could legally be initiated, cannot be upheld."

24. In view of the aforesaid settled legal position and in view of the provisions contained in the JDA Act the court has no hesitation in holding that the framing of scheme would be necessary only when the project was proposed by the JDA for the matters contained in Section 38. In the instant case, the integrated project for Ring Road was neither proposed by the JDA nor the Government had initiated the proceedings on the representation of the JDA. As rightly submitted by Mr. Rajendra Prasad for the respondents, Section 45 of the JDA Act is an enabling provision which empowers the State Government to acquire the land for the JDA to carry out its functions, discharge its duties and to carry out any of its projects or schemes or development programmes. The said provision is neither conflicting nor inconsistent with the provisions of the Land Acquisition Act. Therefore Section 45 of the JDA Act could not be held to be either restrictive or prohibitory, preventing the State Government from acquiring land for the public purpose or for the development of Jaipur City, unless the project or scheme was framed by the JDA under the JDA Act.

25. Whether for public purpose?

It was further argued by the learned counsel Mr. Anil Mehta for the petitioners, relying upon various nothings made in the file by the officers of the JDA that since the respondents did not have sufficient funds for constructing the Ring Road around the city, the additional land in the name of development corridor was proposed to be acquired for financing, which could not be said to be a "public purpose" within the meaning of Section 3(f)(iii) of the said Act. The relevant provision is reproduced for the sake of convenience:-

"Section 3(f):

(i) ......

(ii) ......

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) ....

(v) ....

(vi) ....

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority."

26. It is to be noted that the definition of "public purpose" contained in Section 3(f) of the Land Acquisition Act is only illustrative and not exhaustive. As per the settled legal position, in case of an integrated and indivisible project, the project has to be taken as a whole and has to be judged whether it is in the larger public interest or not. It cannot be split into different components, to consider whether each and every components will serve a public good or not. It cannot be gainsaid that development of infrastructure would be a legitimate "public purpose" for exercising the power of Eminent domain. It is also well established that if the cost of acquisition is to be born either wholly or partly by the Government, the acquisition can be said to be for "public purpose" within the definition of "public purpose" under the Land Acquisition Act. It has been well settled in catena of decisions of the Supreme Court that in deciding whether the acquisition is for "public purpose" or not, prima facie the Government is the best judge, and the writ court should be loath in interfering or substituting its judgment for the judgment of the Government. Of course, such decision of the State Government would be subject to judicial scrutiny and the writ courts can interfere if the power is found to have been exercised mala fide or de hors the Act.

27. At this juncture, a very pertinent observations made by the Apex Court in case of Sooraram Pratap Reddy and ors. v. District Collector, Ranga Reddy District and ors. (2008) 9 SCC 552 with regard to "public purpose" are required

to be reproduced as under:-

"67. The expression "public purpose" is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. Really, the expression is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited.

68. We may also refer to few decisions wherein the expression came up for consideration of Courts.

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71. In State of Bihar v. Kameshwar Singh, 1952 SCR 889, a Constitution Bench of this Court was examining vires of certain provisions of the Bihar Land Reforms Act, 1950 and other State laws in the context of Article 31 of the Constitution (as then stood). The constitutional validity was challenged on the ground that the Act failed to provide for compensation and there was lack of "public purpose". The Court, however, negatived the contention. As to ?"public purpose"?, Mahajan, J. (as His Lordship then was), observed; "The expression ?"public purpose"? is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in the general interest of the community as distinguished from the private interest of an individual". In the concurring judgment, S.R. Das, J. (as His Lordship then was) stated; "From what I have stated so far, it follows that whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a "public purpose". With the onward march of civilisation our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. This modern trend in the social and political philosophy is well reflected and given expression to in our Constitution."

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79. A ?"public purpose"? is thus wider than a ?public necessity?. Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. A need or necessity, on the other hand, is urgent, unavoidable, compulsive. ""public purpose" should be liberally construed, not whittled down by logomachy".

28. The Supreme Court in the said judgment, while dealing with the policy matter observed that normally a writ court will not propel into the unchartered ocean of Governmental policy. It observed in para 90 as under :-

"90. Recently, in Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal and ors., (2007) 8 SCC 418, one of us (C.K. Thakker, J.) considered the issue in detail and observed; "In our judgment, it is well-settled that public authorities must have liberty and freedom in framing policies. No doubt, the discretion is not absolute, unqualified, unfettered or uncanalised and judiciary has control over all executive actions. At the same time, however, it is well established that courts are illequipped to deal with these matters. In complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors, and it is not possible for courts to consider competing claims and conflicting interests and to conclude which way the balance tilts. There are no objective, justiciable or manageable standards to judge the issues nor such questions can be decided on ''a priori'' considerations".

It is, therefore, a settled proposition of law that in absence of illegality or violation of law, a Court of law will not interfere in policy matters."

29. The Supreme Court, in similar case, where the lands were sought to be acquired for creation of Expressway along with five zones, observed in case of Nand Kishore Gupta and ors. v. State of U.P. and ors. (2010) 10 SCC 282 as under:-

"57.The Expressway is a work of immense public importance. The State gains advantages from the construction of an Expressway and so does the general public. Creation of a corridor for fast moving traffic resulting into curtailing the travelling time, as also the transport of the goods, would be some factors which speak in favour of the Project being for the "public purpose". Much was stated about the 25 million square meters of land being acquired for the five parcels of land. In fact, in our opinion, as has rightly been commented upon by the High Court, the creation of the five zones for industry, residence, amusement etc., would be complimentary to the creation of the Expressway.

58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the

economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilisation of the Expressway and the existence 3 of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a "public purpose"."

30. Reliance has been placed by Mr. Mehta for the petitioners on the decision of the Supreme Court in case of Mohan Singh Gill and ors. ETC. v. State of Punjab and ors. ETC. 2015 (4) SCALE 196, in which it was held interalia that the hidden purpose for acquiring surplus land, i.e. the land apart from what was required for constructing missing link-II, was to develop it as a commercial area, which was not stated in the acquisition notification, so that the finances could be arranged for construction of road or some other purpose, and the same cannot be treated as "public purpose". However, it is pertinent to note that in the said case, the notification under Section 4 stated the "public purpose" as "Missing Link-II for development only" and the Supreme Court considering the facts of the case, observed in para 23 thereof as under:-

"(23) We have pondered over this issue in depth with reference to the record and find force in the submissions of the learned counsel for the appellants. It is clear from the facts noted above that in the notification dated 10.08.2009 issued under Section 4 of the Act, "public purpose" which is stated is "Missing Link-II for development (from Dhandra Road to Sidhwan Canal via Malerkotla Road), Ludhiana....". Thus, the land owners were informed that the land is sought to be acquired for the construction of Missing Link-II. From the reading of this notification, it is difficult to visualise by a common person with reasonable prudence that the part of land is sought to be exploited for commercial development as well. Obviously, when the purpose stated is construction of Missing Link-II, the objections would be filed by land owners having focus on the said stated purpose in mind. Had the land owners been told that major part of the land is going to be utilised for commercial purpose as well, they would have filed their objections to the proposed move. With no specific stipulation in this behalf in the notification under Section 4 of the Act, the persons which land was sought to be acquired were deprived of an effective opportunity to file the objections under Section 5-A of the Act."

31. So far as the facts of the present petitions are concerned, it was not only specified in the notification under Section 4 that the lands in question were likely to be needed for the Ring Road and development corridor, the petitioners in their objections filed by them in the enquiry under Section 5A of the said Act had specifically not objected to the acquisition of the land for Ring Road and their objections were only with regard to acquisition for development corridor. The

submission of Mr. Mehta for the petitioners that the acquisition of part of lands in question was to be done for financing the project of Ring Road as per the note-sheet dated 25.11.04 also cannot be accepted. It is to be noted that the said note-sheet only reflected the analysis of the project and its economic implications, giving options available to the authority for funding the project. The object of the said development corridor was also for securing further development as planned for the project of Ring Road, as transpiring from the pleadings and documents produced by the respondents. Thus, it being an integrated infrastructural development project, the same would certainly be a "public purpose" within the meaning of Section 3(f)(iii) of the said Act, which states that the "public purpose" would include the provisions of land for planned development of land from public funds in pursuance of the scheme or policy of Government and subsequent disposal thereof in whole or in part by lease assignment or outright sale with the object of securing further development as planned. As rightly submitted by Mr. Rajendra Prasad, AAG for the respondents, in absence of planned development of the area around a fast moving traffic corridor, the haphazards in planned development made by the individuals may frustrate the very purpose of such transport corridor and therefore the provision for development corridor was required to be simultaneously made. He has also submitted that in the Master Plan of 2025 for Jaipur region, such corridor has not only been provided along side the Ring Road, such provision has also been made for all highways passing through the Jaipur region as a matter of policy. Such acquisition of land for planned development has been treated as "public purpose" by the Supreme Court in various decisions. To cite a few are in case of Nand Kishore Gupta and ors. v. State of U.P. and ors. (supra), in case of State of Karnataka and anr. v. All Indian Manufacturers Organisation and ors. (2006) 4 SCC, 683, and in case of Bondu Ramaswamy v. Bangalore Development Authority (2010) 7 SCC 129.

32. COMPLIANCE OF MANDATORY REQUIREMENTS UNDER THE LAND ACQUISITION ACT.

This takes the court to the next issue whether the respondents had complied with the mandatory requirements of the Act of 1894.The learned counsel Mr. Anil Mehta for the petitioners challenging the validity of notification under Section 4 of the said Act would submit that the said notification was not widely published in the locality as a result thereof the large number of khatedars were unaware about the said acquisition proceedings initiated by the State Government and could not file effective objections. According to him though some of the khatedars had filed objections in the enquiry under Section 5A, they were not fully aware about the details of the purpose and the policy of the respondents, which had resulted into violation of the mandatory provision contained in Section 4 of the said Act. The court does not find any substance in the said submission of Mr. Mehta. As transpiring from the record, more particularly the documents annexed to the additional affidavit (Annex.R-A/1), not only the said notifications were given wide publicity, the said notifications were also published at the convenient places in the concerned locality where the particular parcel of land under acquisition was situated. In any case, the very fact that most of the petitioners had filed the objections before the LAO during the inquiry under Section 5A, falsifies the said contention raised by Mr. Mehta that the notifications under Section 4 having not been duly published, the petitioners were not aware about the initiation of acquisition proceedings.

33. It was also sought to be submitted by Mr. Mehta that the petitioners who had filed the objections, were not granted an opportunity of personal hearing by the concerned Land Acquisition Officer. Relying upon various decisions of the Supreme Court, he submitted that Section 5A is the only protection available to the persons which land is sought to be acquired and therefore an opportunity of being heard is necessary to be granted to such persons in the enquiry under Section 5A, otherwise the entire proceedings would stand vitiated. In this regard, he has relied upon the decisions in case of Kamal Trading Pvt. Ltd. v. State of West Bengal (2012) 2 SCC 25; Hindustan Petroleum Corporation v. Darius Shapur Chennai (2005) 7 SCC 627; Raghbir Singh Sehravat v. State of Haryana (2012) 1 SCC 792; Surendra Singh Brar v. Union of India (2013) 1 SCC 403 etc. There cannot be any disagreement to the proposition of law laid down by the Apex Court in these decisions relied upon by the learned counsel Mr. Mehta to show that the compliance of Section 5A, of the principles of natural justice, and proper application of mind to the objections is a must, and that the violation of the substantive right of the land owners or the interested persons may vitiate the acquisition proceedings. However in the instant cases, it appears that most of the petitioners had filed their petitions and others had chosen not to file objections. From the bare perusal of the provisions contained in Section 5A it emerges that the person interested has to make objection in writing within 30 days and the Collector is required to give an opportunity of hearing to such person or to the persons authorised by him or to his pleader. After hearing such objections, the Collector i.e. the LAO has to report to the Government containing his recommendations on the objections together with the record for the decision of the Government. The learned AAG Mr. Rajendra Prasad has rightly relied upon the decision in case of Rambhai Lakhabhai v. State of Gujarat (1995) 3 SCC 752, in which it has been held interalia that the procedure for inquiry under Section 5A is not like an elaborate trial. Section 5A was amended and right of hearing was made mandatory consistent with the development of law of natural justice. However, if the parties had chosen not to appear either in person or through counsel, no fault could be laid at the door of LAO for not giving opportunity of hearing. The LAO is obliged to give opportunity of personal hearing only if the party asked for it. In the instant cases, there is nothing on record to suggest that the said opportunity was denied to the petitioners though asked for.

34. On the contrary, the record suggests that the petitioners who had filed the objections had filed the same in stereo-typed manner, filling the blanks with regard to the particulars of their lands, and had further specifically mentioned therein that they had no objection about the acquisition of their lands for the

road, but they opposed the acquisition of land for doing business. The other petitioners had chosen not to file any objection. At this juncture, it may be stated that the enquiry under Section 5A and the report of the LAO is only an administrative report for the purpose of sending it to the Government for taking the decision whether the land is needed for "public purpose" or not and therefore the LAO is not expected to act as a judicial or quasi-judicial authority, as held by the Apex Court in case of Jayantilal Amratlal Shodhan v. F.N. Rana and ors. AIR 1964 SC, 648 and in case of Sam Hiring Co. v. A.R. Bhujbai AIR 1996 SC 3008. The Supreme Court in case of Rambhai Lakhabai Bhakt v. State of Gujarat (1995) 3 SCC, 752 has also held that it is not mandatory to fix the date of hearing, if the objector has not appeared personally. In case of Delhi Administration v. Gurdip Singh Uban AIR 2000 SC 3737 also the Supreme Court has observed that if the objections under Section 5A were not filed, the right to file objection is deemed to have been waived and the only objection with regard to "public purpose" can be examined by the High Court. In none of the instant petitions, there is specific pleading as to which of the petitioners had filed the objections and were denied the opportunity of hearing, and which of the petitioners could not file objections. It was only when the court asked for the details of each petition, the counsel for the respondents had submitted the chart showing the position in each case. In absence of any specific pleading regarding denial of personal hearing by the LAO, the proceedings could not be held as vitiated on the bald and vague allegations made on behalf of the petitioners.

35. Of course there appears to be some substance in the submission of Mr. Mehta that the LAO, who submitted the second report, had tried to show that he had given the opportunity of hearing to the petitioners or the representatives of the petitioners on the dates mentioned therein, when he had not taken the charge of the said office on the said dates. In this regard it has been submitted by Mr. Prasad that the said LAO had taken the dates from the record while preparing the report and that he was not expected to write the report as a judicial authority. He also submitted that the report being a composite report in which the objections of the petitioners were duly considered, no prejudice was caused to the petitioners. The court probably would have considered the matter seriously if the petitioners had challenged the report on this ground at the earliest point of time when they filed the petitions in the year 2006-07. On the contrary, as stated earlier they had specifically averred in the written objections as well as in the said petitions that they had no objection against the acquisition of lands for Ring Road but had objection against the Government making profit. The said submission of Mr. Mehta loses its significance since some of the petitioners, who had filed the objections in the enquiry under Section 5A, had also opted for the allotment of developed land in view of circular dated 27.10.05. Such conduct explicitly proves that the petitioners have changed their versions from time to time to suit their own purposes. It is held by the Apex Court in the case of Delhi Administration v. Gurdip Singh Uban and ors. (supra) that the claimants who had not filed objections to Section 4 notification could not be

permitted to contend before the Court that Section 5A enquiry is vitiated, nor can they be permitted to seek quashing of Section 6 declaration on such ground. It has been held in para 54 to 56 as under :-

"54. Now objections under section 5A, if filed, can relate to the contention that : (i) the purpose for which land is being acquired is not a "public purpose" (ii) that even if the purpose is a pubic purpose, the land of the objector is not necessary, in the sense that the "public purpose" could be served by other land already proposed or some other land to which the objector may refer or (iii) that in any event, even if this land is necessary for the "public purpose", the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and objection (iii) is personal to the objector.

55. Now in the (ii) and (iii) type of objections, there is a personal element which has to be pleaded in the section 5A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal and which he could have raised. However, so far as objection (i) is concerned, even in case objections are not filed, the affected party can challenge in Court that the purpose was not a "public purpose".

56. Learned Solicitor General Sri Salve rightly argued that in respect of each land owner which land is acquired, the section 4 notification if it-is sought to be avoided on personal grounds as staled in (ii) and (iii) above, it is necessary that objection be filed to avoid a voidable notification. Otherwise, the notification which is not avoided on any personal grounds, remains operative and personal objections are deemed to be waived."

36. In the instant cases, some of the petitioners had filed stereotyped objections in the inquiry under Section 5A and some had not filed. Those who had filed, had not objected any of the personal grounds as stated in the afore stated judgment. The objection as regards the public purpose has already been dealt with hereinbefore. Some of the petitioners who had filed objections had opted for the developed land in view of the circular dated 27.10.05. Even some of the petitioners who had not filed the objections, had also surrendered their lands. The submissions of Mr. Mehta that the acquisition proceedings had vitiated on account of non-compliance of the mandatory provisions of the Act of 1894 are therefore sans merits.

37. VALIDITY OF THE CIRCULAR DATED 27.10.05:

In the next limb of his arguments, Mr. Mehta has submitted that the circular dated 27.10.05 issued by the State Government to allot 25% developed land in lieu of compensation to the khatedars which lands were sought to be acquired, was bad in the eye of law in view of the legal position settled by the Supreme Court in various cases. To buttress his submission, he has relied upon the decisions of the Supreme Court in case of JDA v. Radhe Shyam and ors. (1994) 4 SCC 370, in case of Secretary, JDA, Jaipur v. Daulatmal Jain and ors. (1997) 1

SCC 35, in case of JDA v. Vijay Kumar Data (2011) 2 SCC 94, Division Bench of this court in case of JDA v. Lalaram, 2012 (1) WLC (Raj.) 310. He also submitted that the proper procedure as per the Rules of Business was also not followed by the Government before issuing the said circular. However, the learned AAG Mr. Rajendra Prasad taking the court to the original nothings on the file of the Government submitted that the said circular was issued in continuation of the earlier circulars propounding the policy of the Government to allot developed land in lieu of compensation, and the said circular was issued after obtaining necessary approval of the Chief Minister as per the Rules of Business framed under Article 166(3) of the Constitution. He has relied upon the decision of the Supreme Court in case of Bondu Ramaswamy and ors. v. Bangalore Development Authority and ors. (2010) 7 SCC 129 to submit that even the Supreme Court had suggested that the land loser should be made beneficiaries of the acquisition and in case of acquisition for urban development, reasonable portion of the developed land should be made available to the land losers.

38. Before adverting to the submission of Mr. Mehta on the legality and validity of the said circular dated 27.10.05, it is significant to note that though the petitioners have raised the contention with regard to the said circular in their petitions, they have failed to make any prayer for setting aside the said circular. It is also significant to note that the petitioners falling in Category-B had already opted for the developed land in view of the said circular and also executed necessary documents in favour of the respondents. Hence, apart from the fact that the said circular is not under challenge in any of the present petitions, the said petitioners who have already got the benefit of the said circular could not be permitted to contend that the said circular was illegal or bad. Having said that, let us deal with the submission of Mr. Mehta with regard to the validity of the said circular.

39. In order to appreciate his submission, it would be necessary to reproduce Section 11 of the Act of 1894, which reads as under :-

"Section.11 Enquiry and award by Collector.

(1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of?

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

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

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.?"

40. From the bare reading of the said provision, it transpires that though the Collector is required to follow the procedure as contained in sub-section 1 while making the award, sub-section 2 thereof empowers the Collector to enter into an agreement with the persons interested, who appear before him and agree in writing on the matters to be included in the award, in the form prescribed by the Rules made by the appropriate Government. Thus, though the Collector or LAO cannot suo moto pass an award without enquiry under sub-section (1), sub-section (2) of Section 11 permits the persons interested to enter into an agreement and empowers the Collector to pass an award by agreement with the persons interested. Section 11(4) also has overriding effect over the provisions contained in the Registration Act 1908, which states that no agreement made in sub-section (2) shall be liable to registration under that Act.

41. It further appears that a policy decision as contained in the circular dated 27.10.05 was taken by the Government to allot 25% developed land to the khatedars in lieu of compensation, which lands were sought to be acquired, in continuation of its earlier policy decisions contained in various circulars issued from time to time. The Supreme Court recently in case of Lala Ram and ors. v. JDA and anr. Decided on 1.12.2015 in Civil Appeal No. 13940/15 had an occasion to deal with similar circular dated 13.12.01. In the said case though the State Government had taken the decision to grant 15% developed residential land in lieu of compensation, the State Government and JDA having not followed the

said circular, the persons interested had challenged the said action before the JDA Appellate Tribunal. The said Tribunal ordered the JDA for allotment of the land in a particular area namely Vidhyadhar Nagar or at the nearest place other than in Lalchandpura and Anantpura. The said order having been challenged before the Single Bench of the High Court by the JDA, by filing the writ petitions, the same were dismissed. The JDA having preferred intra court appeals, the Division Bench allowed the said appeals vide the judgment and order dated 12.8.11 (2012 (2) WLC (Raj.) 310). The said order was challenged by the original land owners Lala Ram & Others which lands were acquired by the State Government, by filing the said civil appeal. The Supreme Court therefore considered the legality and validity of the circular dated 13.12.01, as also the other circulars, including the circular dated 27.10.05, which is under consideration in the present set of petitions. In the said matter, the State Government had specifically filed the reply stating interalia that the circular dated 27.10.05 was duly approved by the Chief Minister therefore did not suffer from any legal infirmity that the Rules of Business were not followed. Considering the said reply, the Supreme Court observed interalia that the State Government had issued the policy circulars for providing land in lieu of compensation including the one dated 13.12.01, and further that the policy circular dated 27.10.05 was issued with the approval of Chief Minister, by which the extent of developed land was further enhanced from 15% to 25%. The Supreme Court in the said judgment has also considered its earlier decisions including the JDA v. Radhe Shyam (supra) and Secretary, JDA Jaipur v. Daulatmal Jain (supra), which are relied upon by the learned counsel Mr. Anil Mehta for the petitioners in the instant petitions. The Supreme Court distinguishing the said judgments, allowed the said civil appeals and directed the JDA and the State Government to allot the developed land as per the policy decisions dated 13.12.01 at the places indicated in the said judgment, by further holding that failure to discharge the obligatory duty defined by the public policy, without any justification by the JDA and the State Government, cannot be approved. The Supreme Court thus in the said judgment had not only approved the said policy decision contained in such circulars but also directed the State Government and the JDA to implement the same in favour of the persons interested.

42. In one more decision in case of Bondu Ramaswamy v. Bangalore Development Authority (supra), the Supreme Court itself had suggested that the land loser should be made beneficiaries of the acquisition and in case of acquisition for urban development, reasonable portion of developed land should be made available to the land loser. The relevant paragraphs thereof are reproduced hereunder:-

153. The solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition. It is necessary to evolve tailor-made schemes to suit particular acquisitions, so that they will be smooth, speedy, litigation free and beneficial to all concerned. Proper planning, adequate counselling, and timely mediation with different groups of

landlosers, should be resorted. 124 Let us consider the different types of benefits that will make acquisitions landloser-friendly.

153.1. In acquisitions of the first kind (for benefit of general public or in national interest) the question of providing any benefit other than what is presently provided in the Land Acquisition Act, 1894 may not be feasible. The State should however ensure that the landloser gets reasonable compensation promptly at the time of dispossession, so that he can make alternative arrangements for his rehabilitation and survival.

153.2. Where the acquisition is for industrial or business houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a land acquirer but also the role of the protector of the land-losers. As most of the agriculturists/small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable, should be made an integral process of the scheme of such acquisitions. If the Government or Development Authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition process.

153.3 Where the acquisition is of the third kind, that is, for urban development (either by formation of housing colonies by Development Authorities or by making bulk allotment to colonisers, developers or housing societies), there is no scope for providing benefits like employment or a share in the equity. But the landlosers can be given a share in the development itself, by making available a reasonable portion of the developed land to the landloser so that he can either use it personally or dispose of a part and retain a part or put it to other beneficial use. We may give by way of an illustration a model scheme for large scale acquisitions for planned urban development by forming residential layouts: Out of the total acquired area, 30% of the land area can be 126 earmarked for roads and footpaths; and 15% to 10% for parks, open spaces and civic amenities. Out of the remaining 55% to 60% area available for forming plots, the Development Authority can auction 10% area as plots, allot 15% area as plots to urban middle class and allot 15% area as plots to economically weaker sections (at cost or subsidised cost), and release the remaining 15% to 20% area in the form of plots to the land-losers which lands have been acquired, in lieu of compensation. (The percentages mentioned above are merely illustrative and can vary from scheme to scheme depending upon the local conditions, relevant Bye-laws/Rules, value of the acquired land, the estimated cost of development etc.). Such a model makes the land-loser a stake-holder and direct beneficiary of the acquisition leading to co-operation for the urban development scheme."

43. In view of the above there remains no shadow of doubt that the Supreme Court has also approved such policy decisions taken by the State Government to allot the developed land in lieu of compensation. It is also settled legal position that the courts should not interfere with the policy decision of the Government so long as they are not arbitrary, illegal, irrational or opposed to public interest. As stated here in above, the petitioners have made vague and casual allegations as regards the said circular without challenging the same in the petitions. In absence of any proper pleadings and prayer with regard to its legality and validity, it could not be held that the said circular is arbitrary, illegal or not in the interest of public at large.

44. So far as the decisions relied upon by Mr. Mehta are concerned, in case of JDA v. Radhey Shyam (supra), the Supreme Court considering the provisions of Section 11 as it existed prior to amendment and the provisions of Section 31 of the Act of 1894, had held that the LAO had no power or jurisdiction to allot land in lieu of compensation. The Supreme Court had no occasion to deal with either the provisions of Section 11(2) or the policy decision of the Government. In case of JDA v. Daulatmal Jain (supra) also the Supreme Court finding blatant misuse of public office by the concerned Minister and his committee to favour few influential and highly placed individuals, had observed that the allotment of plots to the respondents was illegal, when there was no policy of Government in force for general public. In the said case, the respondents had already conceded that allotment of plot in lieu of compensation made by the LAO which passed the award was illegal in view of the provisions of Section 11 as existed at the relevant time and in view of decision in case of JDA v. Radhe Shyam (supra). The Supreme Court had neither considered the amended provisions of Section 11, nor the parties had placed on record any public policy of the Government permitting such allotment. In case of JDA v. Vijay Kumar Data (supra), the Supreme Court had found that the circular containing policy decision of the State Government did not comply with the requirement of Article 166 of the Constitution and therefore was found to be in violation of the earlier decisions of the Supreme Court. So far as the instant circular dated 27.10.05 is concerned, the same was approved at the level of Chief Minister and in consonance with the Rules of Business framed by the Government under Article 166 of the Constitution. The same was also in continuation of the earlier policy decisions of the State Government, as observed by the Supreme Court in case of Lalaram and ors. v. JDA and anr. (supra).

45. It is also very much pertinent to note that the petitioner Virendra Singh and Ors. in the earlier petition being SBCWP No. 997/06 had specifically challenged the validity of the said circular dated 27.10.05. The said petition having been disposed of along with the other petitions vide the order dated 4.5.11, the said petitioners did not challenge the said circular in the subsequent petitions filed by

them, and also have not challenged the same in the present set of petitions by making any prayer to set aside the same. Not only that as stated earlier the petitioners of Category-B had opted for the developed land in lieu of compensation as per the said circular, and also executed the documents as required by the respondents, which are part of record. Hence, it does not lie in the mouth of the petitioners to say that the action of respondents in proceeding with the acquisition proceedings in accordance with the said circular was bad.

46. Whether the proceedings have lapsed under Section 24(2) of the Act of 2013.

The petitioners have mainly prayed in the petitions that the acquisition proceedings have lapsed in view of Section 24(2) of the Act of 2013. Mr. Mehta has relied upon catena of decisions of Supreme Court to submit that the issue whether the proceedings would lapse if either of the two conditions as contemplated in Section 24(2) of the Act of 2013 was satisfied, is no more res integra. Relying upon the decision in case of Pune Municipal Corporation and anr. v. Harakchand Misirimal Solanki and ors. (2014) 3 SCC, 183, he submitted that the proceedings would lapse if either of the two conditions i.e. if physical possession was not taken or if the compensation was not paid, is satisfied. Relying upon the case of in case of Sree Balaji Nagar Residential Association v. State of Tamil Nadu (2014) 10 SCC 388 he submitted that Section 24(2) does not exclude the period during which the land acquisition proceedings might have remained stayed by the order of the court. According to him, the ratio of said decisions was followed in other cases like in case of Rajiv Choudhrie Huf v. UOI Scale (2014) 13, 710, in case of Bharat v. State of Haryana and ors. (2014) 6 SCC 586, in case of Sitaram v. State of Haryana (2015) 3 SCC 597 etc. He has also relied upon the decision in case of Bhenspreadgarh Panchayat Samiti v. State of Rajasthan, (1992) 1 RLW 700, to submit that it is not open for the High Court to say that the decision of Supreme Court is per incuriam

47. However, the learned AAG Mr. Prasad for the respondents has submitted that the plea of Section 24(2) was not available to the petitioners of the petitions mentioned in Category-C as the awards in the said petitions were passed after 1.1.09. The plea was also not available to the petitioners falling in the Category-B, who had surrendered their lands in lieu of compensation, with a view to get the benefit of the Circular of the Government for the allotment of the developed land. As regards the petitioners falling in Category-A, he has submitted that a holistic and harmonious reading and construction of Section 24, its sub-sections and proviso was required to be made so as to apply the said provisions contained in Section 24(2) to the proceedings initiated under the Act of 1894 as a whole and not to the proceedings of acquisition of parcels of lands individually or independently. According to Mr. Rajendra Prasad, Section 24(2) would apply only when neither the possession was taken nor compensation was paid in any case for 5 years since passing of the award till the new Act of 2013 came into force. He has relied upon decision in case of Corporation of Calcutta v. Liberty Cinema AIR 1965 SC 1107 and in case of Vankataramana Davaru v. State of Mysore AIR

1958 SC 255 to submit that all the parts of an Act or a section should be harmoniously construed so that no part of it becomes redundant or result in contradiction or absurdity. Pressing into service, the ratio laid down in various decisions of Supreme Court, on the interpretation of Statutes, he submitted that a proviso is an exception to the main provision and cannot be applied to a foreign territory. According to him, the doctrine of sub-silentio as held in case of Municipal Corporation of Delhi v. Gurnam Kaur AIR 1989 SC 38 and in case of Delhi Airtech Services Pvt. Ltd. v. State of U.P. and anr. AIR 2012 SC 573, applies with full rigour in the instant cases.

48. In order to appreciate the rival contentions raised by the learned counsels for the parties, it would be apposite to reproduce the relevant Section 24, which 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,-

(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 Land Acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases 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 "

49. Section 114 of the Act of 2013 also being relevant is reproduced 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."

50. From the bare reading of the afore-stated provisions, it appears that though Section 114 of the Act of 2013, repeals the Act of 1894, Section 24(1) on account of its non obstante clause overrides Section 114. Similarly Section 24(2) due to its non obstante clause would override Section 24(1). Again, the proviso appended to Section 24(2) qualifies the said sub-section (2) and carves out an exception to the said sub-section. Before adverting to the implication of the proviso to Section 24(2), it may be stated that the said provision of Section 24(2) moves in a very narrow compass. The said provision of Section 24(2) would apply to only such cases when the awards have been passed five years prior to coming into force the Act of 2013 i.e. prior to 1.1.14, and would apply to such cases where despite the expiry of five years to award prior to 1.1.14, either the possession has not been taken or the compensation has not been paid in respect of the land in question. Meaning thereby, Section 24(2) would not apply to the cases, where the awards have been made after 1.1.09 i.e. within five years prior to the coming into force of the Act of 2013. It would also not apply to the cases, where the possession has already been taken and compensation has also been paid pursuant to the awards made prior to 1.1.09.

51. The Supreme Court in the landmark case of Pune Municipal Corporation and anr. v. Harakchand Misirimal Solanki and ors. (supra) on the interpretation of Section 24 has held as under :-

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

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated

under the 1894 Act 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 the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act."

52. On interpretation of the expression "compensation has not been paid" occurring in Section 24(2), it has been further held that:

"14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. ....

16. ....

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. The 1894 Act being an expropriatory legislation has to be strictly followed.

The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad 1) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. .....

20. .....

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

53. In case of Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra) the issue was whether proceedings could be said to have lapsed under Section 24(2) of the Act of 2013 as by virtue of the interim orders passed by the High Court, the State had not taken the possession of the concerned lands under acquisition. The Supreme Court held interalia that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. While cursorily dealing with the proviso to Section 24(2) of the Act of 2013, the court observed as under :-

"11. It was faintly suggested by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to compensation in accordance with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the proviso dealing only with compensation cannot be of any help to the State. Therefore, we are not required to go deeper into the effect and implications of the proviso which prima facie appears to be for the benefit of all the land holders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years? old but the physical possession of the land has not been taken over or the compensation etc. has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality AIR 1944 PC 71 and by this Court in the case of C.I.T. v. Indo Mercantile Bank Ltd. AIR 1959 SC 713. "

54. Since there was no clarity on the issue whether compensation was paid for majority of land owners under the acquisition or not, it was further observed in para 13 of the said case as under :-

"13. From the discussions made above, it is amply clear that though there is lack of clarity on the issue whether compensation has been paid for majority of land holdings under acquisition or not, there is no dispute that physical possession of the lands belonging to the appellants under consideration in these appeals has not been taken by the State or any other authority on its behalf and more than five years have elapsed since the making of the award dated 30.11.2006 and 01.01.2014 when the 2013 Act came into force. Therefore, the conditions mentioned in Section 24(2) of the 2013 Act are satisfied for allowing the plea of the appellants that the land acquisition proceedings must be deemed to have lapsed in terms of Section 24(2) of the 2013 Act. The appeals are disposed of accordingly. It goes without saying that the Government of Tamil Nadu shall be free, if it so chooses to initiate proceedings of such land acquisition afresh in accordance with the provisions of 2013 Act. In the facts and circumstances of the case there shall be no order as to costs."

55. Again in case of Rajiv Choudhrie Huf v. UOI (supra), the Supreme Court following the ratio of the decision in case of Pune Municipal Corporation v. Harakchand (supra) and Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra) held that the proceedings had lapsed under Section 24(2) of the said Act, the physical possession of the land having not been taken and the compensation having not been paid in respect of the lands under acquisition as contemplated in the said provision of Section 24(2). Similarly in case of Bharat Kumar v. State of Haryana and ors. (supra), in case of Bimla Devi and ors. v. State of Haryana and ors. (2014) SCC 583, in case of Govt. of NCT of Delhi and ors. v. Jagjit Singh and ors. (2015) 3 SCC 208, in case of Sitaram v. State of Haryana (2015) 3 SCC 597, in case of Sharma Agro Industries v. State of Haryana and ors. (2014) 12 SCC 681, in case of Magnum Promoters Pvt. Ltd. v. UOI (2015) 3 SCC 327, and in case of Radiance Fincab (P) Ltd. v. UOI (2015) 1

SCC 677, the Supreme Court following the ratio of the decisions laid down in Pune Municipal Corporation (supra) and Sree Balaji Nagar Residential Association (supra) held interalia that the proceedings had lapsed under Section 24(2) of the Act of 2013.

56. However, the issue before the court is whether the proviso to Section 24(2) would apply to the acquisition proceedings under challenge? In this regard, it is required to be noted that in none of the judgments relied upon by Mr. Mehta, the Supreme Court had the occasion to decide the implication of the proviso to Section 24(2). In case of Pune Municipal Corporation (supra), the proviso was merely touched while dealing with the interpretation of Section 24(2), by observing in para 11 thereof that the proviso appended to Section 24(2) deals with a situation where in respect of acquisition initiated under 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of beneficiaries, then all the beneficiaries specified in Section 4 notification would become entitled to the compensation under 2013 Act. The implication of the said proviso was neither argued nor interpreted or decided in the said judgment. Similarly in case of Sree Balaji Nagar Residential Association (supra), the Supreme Court in para 11 observed interalia that: "therefore we are not required to go deeper into the effect and implications of the proviso which prima facie appears to be for the benefit of all the land holders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries." Mr. Anil Mehta for the petitioners has also failed to point out any decision of the Supreme Court in which the implications of the proviso to Section 24(2) were either considered and decided.

57. It is axiomatic that a judgment is a precedent for what is actually decided. It is the ratio and not every observation, which has the value of binding precedent. When the question is neither raised nor argued, any observation or passing reference without analysing the relevant provision in depth could not be said to be a binding precedent. A beneficial reference of the decisions of the Supreme Court in case of Raipur Ruda Meha and ors. v. State of Gujarat AIR 1980 SC 1707, in case of M/s. Raval & Co. v. K.G. Ramachandran and ors. AIR 1974 SC 818 and in case of State of Orissa v. Sudhansu Sekhar Misra and ors. AIR 1968 SC 647 be made in this regard. A very pertinent observation made by Earl of-Halsbury LC in Quinn v. Leathem, 1901 AC 495 are also reproduced as under:-

"Now before discussing the case of Allen v. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

58. As held by the Supreme Court in case of Municipal Corporation of Delhi v. Gurnam Kaur AIR 1989 SC 38, pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. The Supreme Court also discussing the doctrine of sub-silentio in case of M/s. Delhi Airtech Services Pvt. Ltd. and anr. v. State of U.P. and anr. AIR 2012 SC 573, observed in para 38 as under :-

"38. It has been held in the decision of this Court in Municipal Corporation of Delhi v. Gurnam Kaur, reported in AIR 1989 SC 38 that when a point does not fall for decision of a Court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form a part of the ratio of the case but the same is treated as a decision passed sub silentio. The concept of `sub silentio'' has been explained by Salmond on Jurisprudence "12th Edition" as follows:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

59. The decisions of Supreme Court cited by Mr. Mehta on the interpretation of the principle of per incuriam have no relevance to the issue involved in the instant cases, as he has failed to point out any decision of the Supreme Court on the interpretation of the proviso to Section 24(2), which would have binding effect on this court. The judgments relied upon by Mr. Anil Mehta are absolutely silent as to in which of the situations, the proviso would apply. The court therefore is required to consider the implication of the proviso in the light of the submissions made by the learned counsels for the parties.

60. It is settled legal position that a proviso has to be considered with the relevant principal matter to which it stands as a proviso and therefore has to be construed harmoniously with the main enactment. It is also cardial rule of interpretation that a proviso to a particular provision of a Statute only impresses the field which is covered by the main provision. It carves out a exception to the main provision to which it has been enacted as a proviso and to no other. In this

regard a very pertinent observation made by the Supreme Court in case of Commissioner of Income Tax, Mysore v. The Indo Mercantile Bank Ltd. & Anr. AIR 1959 SC 713, may be reproduced as under :-

"9.....The proper function of a proviso is that it qualifies the generality of the main enactment, by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

"It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as proviso ".

Therefore it is to be construed harmoniously with the main enactment (Per Das, C. J.) in Abdul Jabar Butt v. State of Jammu & Kashmir 1957 S.C.R. 51. 59 . Bhagwati, J., in Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax 1955 2 S.C.R. 483, 493 said:

"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other ".

10. Lord Macmillan in Madras & Southern Mahratta Railway Co. v. Bezwada Municipality (1944) L.R. 71 I.A. 113, 122. 267 laid down the sphere of a proviso as follows :-

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms ".

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that is its necessary effect."

61. The Apex Court in case of S. Sundaram Pillai v. V.R. Pattabiraman AIR 1985 SC 582, after discussing the role and function of proviso summarised the purposes of a proviso as under :-

"We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes: (1) [1976]1 S.C.R. 128. (2) [1973] 1

S.C.C.216.

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

62. In the light of the afore-stated legal position, let us examine the implications of proviso to Section 24(2) of 2013 Act. Now Section 24(2) provides interalia that the proceedings initiated under the Act of 1894 shall be deemed to have lapsed, if after the passing of the award under Section 11 of the 1894 Act, either the physical possession of the land has not been taken or the compensation has not been paid for five years prior to coming into force of the Act of 2013. Thus, in any case of land acquisition proceedings, where an award has been made under Section 11 of 1894, the proceedings shall stand lapsed if either of the two conditions as contemplated under Section 24(2) of the said Act is satisfied. However, still there is a proviso attached to Section 24(2), which stipulates that where an award has been made and compensation in respect of 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 Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. Though the learned counsel Mr. Mehta for the petitioners had sought to submit that the said proviso is required to be read as the proviso to Section 24 as a whole and not to Section 24(2) alone, the said submission cannot be accepted inasmuch as it has been categorically held by the Supreme Court in case of Pune Municipal Corporation (supra) that the said proviso is appended to Section 24(2) only. In any case, Section 24(1) takes care of the awards passed before and after the commencement of the Act of 2013, whereas Section 24(2) deals with an award passed five years prior to commencement of the Act of 2013, and in which either of the two conditions contained therein is satisfied. Hence, the said proviso has to travel within the territory and has to operate in the field to the main enactment i.e. Section 24(2) only. With regard to the two conditions contained in Section 24(2), Mr. Rajendra Prasad has sought to rely upon the decisions of the Supreme Court in case of Patel Chunibhai Dajibha v. Narayanrao Khanderao Jumbekar and anr. AIR 1965 SC 1457 and in case of The Punjab Produce and Trading Co. Ltd. v. The Commissioner of Income Tax, West Bengal AIR 1971 SC 2471 to submit that if two negative conditions which are found to be unfulfilled, the condition laid down in the entire clause cannot be said to have been satisfied, and therefore in the instant case the word "or" in

conjunction with the succeeding negatives is required to be read as "nor". However, the said submission of Mr. Rajendra Prasad also cannot be accepted in view of the categorical interpretation made by the Supreme Court in case of Pune Municipal Corporation (supra)to the effect that the proceedings in respect of land sought to be acquired shall be deemed to have lapsed if either of the two conditions contained in Section 24(2) is satisfied. The question therefore is under what circumstances the proviso would be applicable?

63. As stated earlier, the proviso being an exception to the main enactment, it impresses the field covered by the main enactment. It may also be used to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision. Now, the main enactment i.e. Section 24(2) applies, in case of land acquisition proceedings initiated under the L.A. Act 1894, where an award under the Section 11 has been made five years or more prior to the commencement of the Act of 2013. It would therefore be apposite to refer to some of the provisions of the Act of 1894 to understand the real intendment of the main enactment i.e. Section 24(2) and of its proviso. It cannot be gainsaid that the appropriate Government could initiate acquisition proceedings under the Act of 1894 for any public purpose, in respect of one or more than one parcels of lands by issuing single notification under Section 4 of the said Act. It also cannot be gainsaid that the Collector or the LAO has to follow the mandatory requirements of the provisions contained in the various provisions of the said Act of 1894 in respect of each and every parcel of land covered under the same notification under Section 4. When more than one parcels of lands are covered under the same notification, the Collector is required to examine each case separately and to make the award in respect of each parcel of land. He could also make composite Award dealing with each parcel of land individually or in group as the case may be. Hence, when the Award is made by the Collector or LAO under Section 11, it could be in respect of one parcel of land, or in respect of several parcels of lands covered under the same notification. There also could be more than one award in respect of the lands covered under the same notification. In any case, when such proceedings are challenged in the court of law, the court has to examine the facts in respect of each parcel of land separately to come to the conclusion whether the mandatory requirements of the Act are followed or not, or whether the proceedings in respect of such land under challenge have lapsed or not. If the mandatory compliance is found to have been made in respect of one parcel of land and not in respect of other parcels of land covered under the same notification issued under Section 4, the proceedings would stand vitiated or lapsed in respect of only such land where the same were not found to have been complied with, and not in respect of all parcels of land though covered under the same notification.

64. Applying the afore-stated analogy to Section 24(2) of the Act of 2013, as it envisages the award in case of land acquisition proceedings initiated under the L.A. Act of 1894, there remains no shadow of doubt that for the purpose of considering whether the proceedings are deemed to have lapsed under Section

24(2) or not, the status of each and every parcel of lands, when there are more than one parcel of land, covered under the notification under Section 4 of the Act of 1894, will have to be examined individually, as to when the award was made in respect of a particular parcel of land, when the possession was taken and when the compensation was paid in respect of the said parcel of land. The court therefore is unable to agree with the submission made by Mr. Rajendra Prasad that the provisions of Section 24(2) are intended to apply to the proceedings initiated under the Act of 1894 as a whole and not to the proceedings of acquisition of parcels of lands covered under the proceedings individually or independently. In the opinion of the court, Section 24(2) needs to be interpreted in the light of the provisions contained in the Act of 1894 and not otherwise, as it contemplates the award made in case of the land acquisition proceedings initiated under the Act of 1894.

65. The proviso being an exception to the main Section 24(2), the same also will have to be interpreted considering the provisions of the Act of 1894 only. Having regard to the said provisions, the court is of the opinion that the legislature appears to have carved out the exception by way of proviso with a view to save certain proceedings from lapsing, when large chunk of land was sought to be acquired by issuing notification under Section 4 or when the appropriate Government had exercised the special powers in cases of urgency under Section 17 thereof. Since Section 17 of 1894 Act permitted the Collector to take possession of any land needed for public purpose, before the Award was made, there could be a situation where possession might have been taken and the compensation might not have been paid after the award for five years prior to commencement of the Act of 2013. Similarly, in case of acquisition of large chunk of lands, the possession of the entire land might have been taken, however, for one reason or the other under Section 30 or Section 31, the compensation in respect of majority of land holdings might not have been paid or deposited in the account of beneficiaries. Under such circumstances to save the proceedings from the rigours of lapsing, the Legislature appears to have carved out an exception to the said enactment of Section 24(2) to the effect that in such a situation where an award has been made and compensation in respect of majority of land holdings has not been deposited in the account of beneficiaries, then all beneficiaries specified in the notification for acquisition under Section 4 of the said Act of 1894 shall be entitled to the compensation in accordance with the provisions of the Act of 2013. The expression "compensation in respect of majority land holdings" contained in the proviso implies that the same would apply when there are more than one land holdings covered under the single notification. The proviso is silent about the possession and therefore the possession in respect of all the holdings must have been taken under the Act of 1894. Thus, having regard to the provisions contained in the Act of 1894 and considering the cardinal principles of interpretation of Statutes, the only harmonious and logical interpretation of the proviso to Section 24(2) that emerges is that the proviso to Section 24(2) would be applicable in case of land

acquisition proceedings, where large chunk of lands comprising several parcels of lands were sought to be acquired under single notification under Section 4, or where the Government had initiated acquisition proceedings invoking Section 17 of the Act of 1894, and though awards were made, and the possession of such lands was taken, the compensation in respect of majority land holdings was not paid to the beneficiaries, for five years prior to the commencement of the Act of 2013, and that in such cases, the proceedings would not lapse as contemplated under Section 24(2) but all the beneficiaries specified in the notification under Section 4 of the Act of 1894 shall be entitled to the compensation in accordance with the provisions of the Act of 2013.

66. The condition with regard to the possession has to be complied with under the main provision as well as under the proviso for saving the proceedings from lapsing. The submission of Mr. Prasad that the proceedings would lapse only if both the conditions namely that compensation has not been paid and possession has not been taken are satisfied, cannot be countenanced. His submission that if compensation has been paid to the majority of the holdings then the proceedings would be continued by payment of compensation as per the provisions of the old Act of 1894 irrespective of the fact that possession was not taken also cannot be accepted, for the simple reason that such an interpretation of the proviso would make main enactment of Section 24(2) redundant and ineffective. The only harmonious and holistic reading of Section 24(2) appears to be that the proceedings shall be deemed to have lapsed under Section 24(2) in respect of a particular parcel or parcels of land, where the award under 1894 Act has been made five years or more prior to the commencement of the Act of 2013 but either possession has not been taken or compensation has not been paid in respect of that particular parcel or parcels of land as the case may be, covered under Section 4 notification, and that the proviso would be attracted when the large chunk of land comprising many holdings, was sought to be acquired either under Section 17 or otherwise, and the possession of such lands was already taken, but the compensation was not paid in respect of majority of the land holdings after the award was made, for five years or more prior to the commencement of the Act of 2013.

67. In the light of afore stated interpretation, if the facts of the present petitions are appreciated, it clearly transpires that the total holdings of the petitioners all taken together being less than ten percent of the total holdings covered under Section 4 notification, it could not be said that the compensation in respect of majority of the land holdings was not paid, and therefore the question of applying proviso to Section 24(2) of 2013 Act to the holdings of the present petitioners also would not arise. However, in cases of petitions falling under both the categories ''A'' and ''D'', the awards were made under Section 11 of the 1894 Act, before 1.1.09 and though such petitioners had not opted for the allotment of developed land, they were neither given compensation nor their possession was taken on 1.1.14 and hence the proceedings in respect of such parcels of lands shall be deemed to have lapsed under Section 24(2) of the Act of 2013. In cases

of the petitions falling under ''C'' category, awards were made after 1.1.09 and in cases of the petitions falling under ''B'' category, the petitioners had already opted for the developed land in lieu of the compensation as per the circular dated 27.10.05. Their acquisition proceedings had already stood concluded as per the awards made in respect of their respective holdings. As stated earlier, they had never challenged the interim orders passed by the court in earlier petitions, permitting the respondents, LAO to make awards, nor had they challenged the final orders passed by the courts directing them to approach the Empowered Committee. The said petitioners had not challenged the circular dated 27.10.05 in earlier petitions. They have not challenged the same in the present petitions also. Therefore the Section 24(2) would not apply to such category of cases. However, in cases of the petitions falling under both the categories ''A'' and ''D'', the awards having been made more than five years prior to 1.1.14, and the physical possession having been taken and the compensation having been deposited in the court after 1.1.14, the rigours of Section 24(2) would apply and the proceedings in respect of such parcels of lands would be deemed to have lapsed. The petitioners of the said petitions had not applied for the allotment of developed land as per the circular dated 27.10.05 and therefore the court has no option but to hold that the proceedings in such cases have lapsed under Section 24(2) of the Act of 2013. The said petitions are (1) 9126/14, (2) 9127/14, (3) 9132/14, (4) 9133/14, (5) 9134/14, (6) 9135/14, (7) 9137/14, (8) 9138/14, (9) 9139/14, (10) 9140/14, (11) 9141/14, (12) 9144/14, (13) 9145/14, (14) 9147/14, (15) 9148/14, (16) 9149/14, (17) 9150/14, (18) 9152/14, (19) 9153/14, (20) 9154/14, (21) 9155/14, (22)9156/14, (23) 9157/14,(24) 9159/14.

68. At this juncture, it is pertinent to note that the said parcels of lands in respect of which the proceedings are deemed to have lapsed, comprise of a very small portion of entire chunk of lands sought to be acquired for the integrated project of Ring Road and development corridor, and therefore if such few patches of lands are not acquired, which are situated at the scattered places in different villages, the work of the entire project would be stalled, resulting into huge loss of public exchequer. It would thwart the entire project which has been initiated solely for the "public purpose". Therefore considering the larger public interest, the court is of the opinion that instead of declaring such proceedings in respect of very small parcels of lands, as lapsed, the reliefs deserve to be suitably moulded, exercising jurisdiction under Article 226 of the Constitution of India. It is also pertinent to note that the Supreme Court in many cases considering the larger interest of public has moulded the reliefs and instead of quashing the acquisition proceedings, has issued appropriate directions. In case of Ramniklal N. Bhutta v. State of Maharashtra AIR 1997 SC 1236, has observed as under :-

"10. ......The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226-indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings. "

69. At this juncture it would be also appropriate to refer the maxim "Salus Populi Est Suprema Lex." which means, "Regard for the public welfare is the highest law". The underlying principle of this maxim appears to be that the individual welfare of every member of the society shall, in cases of necessity, yield to that of the community, and that his property under certain circumstances be placed in jeopardy or sacrificed for the public good. There cannot be any shadow of doubt that ordinarily the legal rights of the individuals must be protected, however in certain circumstances the individual or personal rights may have to be sacrificed in the larger public purposes.

70. In case of Competent Authority v. Garangore Jute Factory and ors. (2005) 13 SCC 477, though the notification issued under the National Highway Act for acquisition of land, was found to be illegal, and the subsequent steps i.e. Vesting and taking possession were found to have stood vitiated, the Supreme Court considering the national importance of the project and considering the power of the acquiring authority to initiate fresh proceedings, had left the proceedings undisturbed, and directed that the affected parties be paid compensation at the enhanced rates. Similarly in case of Ujjain Vikas v. Rajkumar Johri, (1992) 1 SCC 328, in case of Gauri Shankar v. State of U.P. (1994) 1 SCC 92 and in case of Haji Saeed Khan v. State of U.P. (2001) 9 SCC 513, the Supreme Court had moulded the relief in larger social interest to balance the equities, and instead of quashing the acquisition proceedings shifted the date of notification to the date of taking possession for the purpose of fixing the market value of the lands in question and for the payment of compensation accordingly.

71. Hence, considering the overall purpose and object of the integrated project of Ring Road, and considering the fact that the possession of the entire land sought to be acquired under the Act of 1894 has already been taken over and the compensation has also been paid to the beneficiaries or deposited in the concerned courts, and considering the fact that the State Government has already started incurring huge expenditure by entering into contracts running into crores of rupees with various agencies, it would be in the fitness of the things that instead of quashing the acquisition proceedings in respect of the lands belonging to the petitioners falling in both the categories ''A'' as well as ''D'', which total holdings is less than five percent of the lands acquired, they be duly compensated either by determining the market value of their respective parcels of lands as on the date of the taking possession by the respondents or by allotting them 25% of the developed land as per the circular dated 27.10.05.

72. The upshot of the afore discussed issues and findings is that instead of declaring the acquisition proceedings as lapsed under Section 24(2) of the Act of 2013 in respect of following 24 petitions, it is directed that the respondents shall either pay compensation to the petitioners of the said petitions, at the market value as was prevailing during the period when the possession of their respective lands was taken, or allot them 25% of the developed land as per the circular dated 27.10.05 if such petitioners opt for the same within fifteen days from today.

73. (1) 9126/14, (2) 9127/14, (3) 9132/14, (4) 9133/14, (5) 9134/14, (6) 9135/14, (7) 9137/14, (8) 9138/14, (9) 9139/14, (10) 9140/14, (11) 9141/14, (12) 9144/14,(13) 9145/14, (14) 9147/14, (15) 9148/14, (16) 9149/14, (17) 9150/14, (18) 9152/14, (19) 9153/14, (20) 9154/14, (21) 9155/14, (22)9156/14, (23) 9157/14,(24) 9159/14.

74. The aforesaid 24 petitions stand partly allowed. Rest of the petitions are dismissed. Copy of the judgment be placed in each petition.

24 petitions partly allowed and rest dismissed.

