NEUTRAL CITATION
2025:GUJHC:42551-DB

Reserved On : 25/06/2025
Pronounced On : 25/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14518 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 14764 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15223 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 15904 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16164 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	

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TRIVEDI JANARDAN GHANSHYAMBHAI & ORS.
Versus
COMPETENT AUTHORITY & ANR.

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Appearance:
MR.MAULIK NANAVATI, ADVOCATE WITH MS. MANVI DAMLE, ADVOCATE FOR NANAVATI & CO.(7105) FOR THE PETITIONER(S)NO.1,10,11,12,13,14,15,16,17,18,19,2,20,21,22, 23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,7,8,9
MS. HETAL PATEL, AGP FOR THE RESPONDENT NO.1
MR. MIHIR THAKORE,SR.COUNSEL WITH MS. MANISHA NARSINGHANI, ADVOCATE WITH MS. PARINAZ FANIBANDA , ADVOCATE WITH MR. RITURAJ MEENA, ADVOCATE WITH MS. NIYATI CHAUHAN, ADVOCATE(3224) for the Respondent(s) No. 2

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and

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HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. Heard Mr. Maulik G Nanavati, learned counsel assisted by Ms. Manvi Damle, learned advocates for the petitioners and Mr. Mihir Thakore, learned Senior advocate assisted by Ms. Manisha Narsinghani, Ms.Parinaz V. Fanibanda, Mr. Rituraj Meena and Ms. Niyati Chauhan, learned advocates for the respondent no.2. Ms. Hetal Patel, learned Assistant Government Pleader appears for the State respondent no.1.

2. In this set of Writ petitions, the petitioners are the persons whose lands have been acquired by the Central Government under the provisions of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (in short as the "Act' 1962") conferring the 'right of user' upon the Oil & Natural Gas Corporation Limited (ONGC) namely respondent no.2.

3. The limited challenge in the Writ petitions to the validity and legality of the award passed in the year 2024 with respect to the lands belonging to different petitioners, determining compensation, is on the ground that the benefit of Solatium and additional compensation at the rate of 12% as payable under Section 30 of the Right to Fair Compensation and Transparency in Land

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Acquisition, Rehabilitation and Resettlement Act, 2013 (in short as the "RFCTLARR Act, 2013") have not been included in the award. The contention is that the benefit of Solatium and additional compensation of 12% are statutory benefits available to the landholders in all the acquisitions made under different enactments enumerated in the Fourth Schedule to the RFCTLARR Act, 2013. The Act' 1962 whereunder the lands-in-question had been acquired is one of the enactments included in the list enumerated in the Fourth Schedule of the RFCTLARR Act, 2013.

4. Vide Notification dated 28.08.2015, the Central Government has notified that it considers necessary to extend the benefits available to the land owners under the RFCTLARR Act, 2013 to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule of the RFCTLARR Act, 2013; and accordingly, it was notified that the Central Government has decided to extend the beneficial advantage to the land holders and uniformly apply the beneficial provisions of the RFCTLARR Act, 2013 relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the said enactments (13 enactments specified in the Fourth Schedule to RFCTLARR Act, 2013), in the interest of land owners. It was, thus, notified that :-

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"MINISTRY OF RURAL DEVELOPMENT

ORDER

New Delhi, the 28th August, 2015

S.O. 2368(E).- Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, *inter-alia*, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);

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And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

As whereas, as per the provisions of article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Scheduled to the RFCTLARR Act as extended to the land owners under the said Ordinance;

And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the REUTLARK Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

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> 1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.
>
> (2) It shall come into force with effect from the 1st day of September, 2015.
>
> 2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."

5. The contention is that by virtue of the Notification dated 28.08.2015, brought into force with effect from 01.09.2015, the provisions of the RFCTLARR Act, 2013 relating to determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule, have been made applicable to all cases of land acquisition under the enactment specified in the Fourth Schedule to the RFCTLARR Act, 2013.

6. The contention is that though additional compensation of 12% as provided under sub-section (3) of Section 30 of the RFCTLARR Act, 2013 does not form part of the First, Second and Third Schedule of the RFCTLARR Act, 2013, yet being a beneficial provision of the RFCTLARR Act, 2013, such benefits have already been extended to

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various cases of acquisitions under all statutes enlisted in the Fourth Schedule of the RFCTLRR Act' 2013.

7. Even the language of the Notification dated 28.08.2015 issued by the Central Government makes it clear that the said Notification was issued to remove difficulties in extending the benefits to the land holders and for uniform application of the beneficial provisions of the RFCTLARR Act, 2013 relating to the determination of compensation, whose lands are acquired under other enactments specified in the Fourth Schedule of the RFCTLARR Act, 2013. The contention is that the RFCTLARR Act, 2013 is a beneficial legislation to address the concern of the land holders and those whose livelihood are dependent on the land being acquired, balancing facilitation of land acquisition for industrialisation, infrastructural facilities and urbanisation in timely and transparent manner. The whole purpose of enforcement of the RFCTLARR Act, 2013 with the repeal of the Land Acquisition Act, 1894 was to provide security to the land holders whose lands are acquired for public purposes in exercise of the statutory power of the State for involuntary acquisition of the private lands and properties and also to address the issue of rehabilitation and resettlement to the affected persons and their families.

8. Referring to Section 105 of the RFCTLARR Act, 2013, it was argued by Mr. Nanavati that Section 105(3) empowered the State Government to bring in a

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Notification within one year of the date of commencement of the RFCTLARR Act (01.01.2014) to direct that any provisions of the RFCTLARR Act, 2013 relating to the determination of the compensation in accordance with the First, Second and Third Schedules being beneficial to the affected families shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule. The only exception provided therein is that such Notification can not reduce the compensation or dilute the provisions of the Act relating to compensation or rehabilitation and resettlement, as may be notified in the Notification.

9. Placing the content of the Notification dated 28.08.2015 of the Central Government issued in the purported exercise of power under Section 113 of the RFCTLARR Act, 2013, it was submitted that though no notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act, 2013 was issued by the Central Government, however, (Amendment) Ordinance' 2014 (9 of 2014) was promulgated on 31.12.2014, thereby *inter alia* amending Section 105 of the RFCTLARR Act, 2013, to extend the provisions of the Act relating to determination of compensation and rehabilitation and resettlement of cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act, 2013. Another (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 03.04.2015 to give continuity to the provisions of the (Amendment)

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Ordinance of 2014 (9 of 2014). Further, (Amendment) Ordinance, 2015 (5 of 2015) was promulgated on 30.05.2015 to give continuity to the provisions of the (Amendment), 2015 (4 of 2015). The replacement Bill relating to (Amendment), 2015 (4 of 2015) was referred to the Joint Committee of two Houses for examination and the same was pending with the Joint Committee. Noticing that the second (Amendment) Ordinance, 2015 (5 of 2015) would lapse on 31.08.2015, which will resulting in placing the landholders at disadvantageous position, the Notification dated 28.08.2015 in exercise of the power under Section 113 of the RFCTLARR Act, 2013 was published.

10. The contention is that the Central Government being the appropriate Government having right to acquire the land in its Power of eminent domain, once has decided to extend the benefits of the RFCTLARR Act, 2013 and such benefits have already been provided to similarly situated landholders whose lands were acquired under different enactments enlisted in the Fourth Schedule of the RFCTLARR Act, 2013, the petitioners whose lands were acquired under the Act' 1962 cannot be denied the benefit of Solatium as enumerated in the First Schedule and additional compensation of 12% under Section 30(3) of the RFCTLARR Act, 2013 which form part of the compensation package. The denial to the said benefits is violative of Article 14 of the Constitution of India and, as

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such, the prayers made in the Writ petitions deserve to be granted.

11. The learned counsel for the petitioners further argued that the Apex Court in the case of **Union of India v. Tarsem Singh[1],** applying the doctrine of equality enshrined in Article 14 of the Constitution of India and taking note of the Notification dated 28.08.2015, has extended the benefit of Solatium and interest payable under the provisions of the RFCTLARR Act, 2013 to acquisitions under the enactments mentioned in the Fourth Schedule.

12. The attention of the Court is invited to the contents of the award dated 28.05.2024 in the lead petition, viz. Special Civil Application No. 14518 of 2024 to submit that the award itself incorporates that by virtue of the Notification dated 28.08.2015, published by the Government of India, Ministry of Rural Development, the market value is to be fixed as per Section 10(1) and 10(4) of the Act' 1962 and Rule 4A of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963 read with the Central Government Notification dated 28.08.2015, wherein the provisions of the RFCTLARR Act, 2013 relating to the determination of compensation in accordance with the First Schedule has been made applicable to all cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act, 2013.

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13. The contention, thus, is that this award has been accepted by the acquiring body, namely the ONGC and hence, it is not open to the ONGC to dispute the claim of the petitioners for award of Solatium, which is one of the component of the compensation package in respect of the lands acquired under the RFCTLARR Act, 2013, enumerated in the First Schedule. It is not permitted to ONGC to approbate and reprobate in the matter of grant of Solatium in accordance with the First Schedule to the RFCTLARR Act, 2013 in determining the compensation with respect to the acquired lands under the Act' 1962. As regards the additional compensation of 12% under Section 30(3) of the RFCTLARR Act, 2013 it was argued that the said benefit is payable to the land holders on the market value computed in accordance with the provisions of Section 26 of the RFCTLARR Act, 2013 read with Section 10(1) and Section 10(4) of the Act' 1962 and Rule 41 of the Rules' 1963 framed thereunder.

14. Attention of the Court is invited to Rule 4A of the Rules' 1963, which provides that while conducting inquiry for granting compensation, the competent authority may inquire the rate of the land prevailing in the locality on the date of publication of the Notification under Section (3) of Section 3 of the Act' 1962 from the land acquisition authority under the Land Acquisition Act, 1894, if any land has been acquired during such period in the locality. The submission is that the said provision has been enacted in order to see that the land holders

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whose lands in the same locality have been acquired under different enactments may not be deprived of the equal treatment in the matter of grant of compensation.

15. Reliance is placed on the decision of the Apex Court in **National Highway Authorities of India v. P. Nagaraju**[2] to submit that that even in the said decision delivered on 11.07.2022 (post **Tarsem Singh**[1]), it was noted that by virtue of the Notification dated 28.08.2015, the provisions of the RFCTLARR Act, 2013 are made applicable. In the said decision pertaining to acquisition and determination of compensation under the National Highways Act which finds place in the Fourth Schedule of the RFCTLARR Act, following has been noted in paragraph '25' as under :-

> "25. While arriving at the conclusion that the Notification bearing S.O. No. 2368(E) dated 28-8-2015 whereunder the provisions of the Rfctlarr Act, 2013 are made applicable, it is noted that the NH Act is also one of the enactments specified in the Fourth Schedule. The relevant portion of the Notification dated 28-8-2015 reads as hereunder:
>
> > "And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the Rfctlarr Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the

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> beneficial provisions of the RfctlarrAct, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;
> Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely—
>
> 1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.
>
> (2) It shall come into force with effect from the 1st day of September, 2015.
>
> 2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."

16. It was further noted in paragraph '26' in **P. Nagaraju[2],** that the Apex Court in **Tarsem Singh[1]** was concerned about the discrimination in the determination of the compensation under different enactments though in the said case the issue was limited to Solatium and interest.

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The observations in paragraphs '29', '30' and '31' in **Tarsem Singh[1],** as noted in paragraph '26' in **P. Nagaraju[2],** are relevant to be extracted hereinunder :-

> "26. The observations contained also in paras 29, 30 and 31 in *Tarsem Singh* [*Union of India* v. *Tarsem Singh*, (2019) 9 SCC 304 : (2019) 4 SCC (Civ) 364] will make it more than evident that this Court was concerned about discrimination in determination of compensation under different enactments though in that case the issue was limited to solatium and interest. The said paragraphs read as hereunder : (SCC p. 332, paras 29-31)
>
> > "*29*. Both, *P. Vajravelu Mudaliar* [*P. Vajravelu Mudaliar* v. *Collector (LA)*, 1964 SCC OnLine SC 22 : (1965) 1 SCR 614 : AIR 1965 SC 1017] and *Nagpur Improvement Trust* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] clinch the issue in favour of the respondents, as has been correctly held by the Punjab and Haryana High Court in *Golden Iron & Steel Forging* [*Golden Iron & Steel Forging* v. *Union of India*, 2008 SCC OnLine P&H 498] . First and foremost, it is important to note that, as has been seen hereinabove, the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved in the manner set out hereinabove. It will be noticed that the awarding of solatium and interest has nothing to do with achieving this object, as it is nobody's case that land acquisition for the purpose of National Highways slows down as a result of award of solatium and interest. Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object

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sought to be achieved by the Amendment Act i.e. speedy acquisition of lands for the purpose of National Highways. On this ground alone, the Amendment Act falls foul of Article 14.

30. Even otherwise, in *P. Vajravelu Mudaliar* [*P. Vajravelu Mudaliar* v. *Collector (LA)*, 1964 SCC OnLine SC 22 : (1965) 1 SCR 614 : AIR 1965 SC 1017] , despite the fact that the object of the Amendment Act was to acquire lands for housing schemes *at a low price*, yet the Amendment Act was struck down when it provided for solatium @ 5% instead of 15%, that was provided in the Land Acquisition Act, the Court holding that whether adjacent lands of the same quality and value are acquired for a housing scheme or some other public purpose such as a hospital is a differentiation between two sets of landowners having no reasonable relation to the object sought to be achieved. More pertinently, another example is given—out of two adjacent plots *belonging to the same individual* one may be acquired under the principal Act for a particular public purpose and one acquired under the amending Act for a housing scheme, which, when looked at from the point of view of the landowner, would be discriminatory, having no rational relation to the object sought to be achieved, which is compulsory acquisition of property for public purposes.

31. *Nagpur Improvement Trust* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] has clearly held that ordinarily a classification based on public purpose is not permissible under Article 14 for the purpose of determining compensation. Also, in para 30, the seven-Judge Bench unequivocally states that it is immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired, as, if the

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> existence of these two Acts would enable the State to give one owner different treatment from another who is similarly situated, Article 14 would be infracted. In the facts of these cases, it is clear that from the point of view of the landowner it is immaterial that his land is acquired under the National Highways Act and not the Land Acquisition Act, as solatium cannot be denied on account of this fact alone."
>
> (emphasis in original)"

17. Considering the doctrine of equality, it was held **P. Nagaraju**[2] that though Section 3G(7)(a) of the National Highways Act provides parameters to be taken into consideration, but they are to be treated as basic parameters for determining the amount payable as compensation. It was held that while applying the said parameters for determination of compensation, since RFCTLARR Act, 2013 is also applicable as the National Highways Act is contained in the Fourth Schedule, the factors as provided under Sections 26 and 28 of the RFCTLARR Act, 2013 (including the Seventh Factor), which is not part of Section 3G(7)(a) of the National Highways Act, will also be applicable in appropriate cases for the determination of the market value as fair compensation for the acquired land. It was, thus, held in paragraph '28' as under :-

> **"**28. When land is acquired from a citizen, Articles 300-A and 31-A of the Constitution will have to be borne in mind since the deprivation of property should be with authority of law, after being duly compensated. Such law should provide for adequately compensating the landloser keeping in

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> view the market value. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired. In that light, if Section 28 of the Rfctlarr Act, 2013 is held not applicable in view of Section 3-J of the NH Act, the same will be violative of Article 14 of the Constitution. In that circumstance, the observation in *Tarsem Singh* [*Union of India* v. *Tarsem Singh*, (2019) 9 SCC 304 : (2019) 4 SCC (Civ) 364] that Section 3-J of the NH Act is unconstitutional to that extent though declared so while on the aspect of solatium and interest, it is held so on all aspects relating to determination of compensation."

18. Taking aid of the said decision, it was argued by the learned counsel for the petitioners herein that the Apex Court considering the Notification dated 28.08.2015 of the Central Government has observed that it is explicit that the benefits available to the land holders under the RFCTLARR Act, 2013 are available to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, and rejected the contention of the acquiring body and the Union of India that the applicability of the provisions of the RFCTLARR Act, 2013 is limited to the provisions contained in Section 26 thereof for determination of the market value by the Collector which provides the basic factors to be taken into consideration, and in view of the Notification dated 28.08.2015 the RFCTLARR Act, 2013 cannot be made applicable beyond the same.

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19. By placing the decision of the Apex Court in **P. Nagaraju[2],** it was further submitted by the learned counsel for the petitioners that even the Union of India has relied on the Notification dated 28.08.2015 therein to argue that the RFCTLARR Act, 2013 has been made applicable to the acquisitions under the National Highways Act. It is, thus, not open for the respondent Corporation (ONGC) to argue that the provisions of the First Schedule to the RFCTLARR Act, 2013 will not be applicable in the matter of determination of compensation under the Act' 1962, which is also one of the enactments specified in the Fourth Schedule of the RFCTLARR Act, 2013. The stand taken by the Union of India in paragraph '22' in **P. Nagaraju[2]** and the final observations of the Apex Court in paragraph '29' are also relevant to be noted hereinunder :-

> "22. It is contended that the applicability of the provisions of the Rfctlarr Act, 2013 is limited to the provision contained in Section 26 thereof for determination of the market value by the Collector which provides the basic factors to be taken into consideration in view of the Notification dated 28-8-2015 and the Act cannot be made applicable beyond the same."
>
> "29. In any event, the extracted portion of the Notification dated 28-8-2015 is explicit that the benefits available to the landowners under the Rfctlarr Act are to be also available to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, among which the NH Act is one. Hence all aspects contained in Sections 26 to 28 of the Rfctlarr Act for determination of compensation

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will be applicable notwithstanding Sections 3-J and 3-G(7)(*a*) of the NH Act."

20. Taking note of the above decision of the Apex Court in **P. Nagaraju**[2]**,** we are further required to take note of the observations in paragraphs '46', '47' and '48' in **Tarsem Singh**[1]**,** where the Apex Court has referred to the Notification dated 28.08.2015 to observe that even the Central Government has considered it necessary to extend the benefits available to land owners generally under the RFCTLARR Act, 2013 to the similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule. Taking note of the 2015 Notification, it was observed therein that it is clear that the Government has itself accepted that the principle of **Nagpur Improvement Trust v. Vithal Rao**[3] would apply to the acquisitions which takes place in other enactments, and that Solatium and interest would be payable under the RFCTLARR Act, 2013 to the persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those land owners whose lands have been acquired for other public purpose under the RFCTLARR Act, 2013.

21. It was opined that even the Government is of the view that it is not possible to discriminate between the land owners covered under the RFCTLARR Act, 2013 and the land owners covered by other enactments, when it

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comes to compensation to be paid for lands acquired under either of the enactments. This position of law as noted in paragraphs '46', '47' and ' 48' of the decision in **Tarsem Singh**[1] is relevant to be noted hereinunder :-

> "46. It is worthy of note that even in acquisitions that take place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. In fact, with effect from 1-1-2015, Amendment Ordinance 9 of 2014 was promulgated amending the 2013 Act. Section 10 of the said Amendment Ordinance states as follows:
>
> "10. In the principal Act, in Section 105—
>
> (*i*) for sub-section (3), the following sub-section shall be substituted, namely—
>
> (3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1-1-2015;'
> (*ii*) sub-section (4) shall be omitted."
>
> 47. It is only when this Ordinance lapsed that the Notification dated 28-8-2015 was then made under Section 113 of the 2013 Act. This notification is important and states as follows:
>
> "ministry of rural development
>
> Order
>
> New Delhi, 28-8-2015
>
> S.O. 2368(E).—Whereas, the Right to Fair

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Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as "the Rfctlarr Act") came into effect from 1-1-2014;

And whereas, sub-section (3) of Section 105 of the Rfctlarr Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the Rfctlarr Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the Rfctlarr Act was not issued, and the Rfctlarr (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31-12-2014, thereby, inter alia, amending Section 105 of the Rfctlarr Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the Rfctlarr Act;

And whereas, the Rfctlarr (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3-4-2015 to give continuity to the provisions of the Rfctlarr (Amendment) Ordinance, 2014;

And whereas, the Rfctlarr (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30-5-2015 to give continuity to the provisions of the Rfctlarr (Amendment) Ordinance, 2015 (4 of 2015);

And whereas, the replacement Bill relating to the Rfctlarr (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

And whereas, as per the provisions of Article 123 of the Constitution, the Rfctlarr (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the

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landowners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the Rfctlarr Act as extended to the landowners under the said Ordinance;

And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the Rfctlarr *Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule*; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the beneficial provisions of the Rfctlarr Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

   (2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of

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compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

[F. No. 13011/01/2014-LRD]
K.P. Krishnan, Addl. Secy."

48. It is thus clear that the Ordinance as well as the notification have applied the principle contained in *Nagpur Improvement Trust* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] , as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to *similarly placed* landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of *Nagpur Improvement Trust* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] would apply to acquisitions which take place under the National Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore, require a re-look in the light of this development. [The Defence of India Act, 1971, was a temporary

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> statute which remained in force only during the period of operation of a proclamation of emergency and for a period of six months thereafter — vide Section 1(3) of the Act. As this Act has since expired, it is not included in the Fourth Schedule of the 2013 Act.] In any case, as has been pointed out hereinabove, *Chajju Ram* [*Union of India* v. *Chajju Ram*, (2003) 5 SCC 568] , has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court [*Union of India* v. *Tarsem Singh*, 2018 SCC OnLine P&H 6036] , [*Jang Bahadur* v. *Union of India*, 2018 SCC OnLine P&H 6034] , [*Union of India* v. *Abhinav Cotspin Ltd.*, 2016 SCC OnLine P&H 19319] is correct, whereas the view of the Rajasthan High Court [*Banshilal Samariya* v. *Union of India*, 2005 SCC OnLine Raj 572 : 2005-06 Supp RLW 559] is not correct."

22. We may further note that the arguments made on behalf of the Union of India in **Tarsem Singh**[1] of the National Highways Act being "self-contained code" to deny benefits available to land holders whose lands were acquired under the National Highways Act, were rejected holding that merely because the land has to be acquired under different enactments, differential treatment to the land holders to deny benefit of compensation under the RFCTLARR Act, 2013 was impermissible as held by the Apex Court in **Nagpur Improvement Trust**[3]**.** While deciding the validity of Section 3J of the National Highways Act, which has resulted in denial of benefit of Solatium and interest to the land holders, the Apex Court has applied the test of permissible classification to the equality principle under

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Article 14 of the Constitution of India to note in paragraphs '32' to '36' as under :-

> 32. A contention was taken by Shri Divan in that Article 31-A second proviso would make it clear that compensation at a rate which shall not be less than the market value would be payable only in the circumstances mentioned therein and not otherwise. For this reason, *Nagpur Improvement Trust case* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] is distinguishable, as one of the instances given therein is that it would not be possible to discriminate between landowners who are similarly situate by giving one landowner compensation at let us say 60% of the market value and the other owner 100% of the market value.
>
> 33.*Nagpur Improvement Trust case* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] has to be read as a whole. Merely emphasising one example from the passages that have been extracted above (supra) will not make the ratio of the said judgment inapplicable. Besides, the second proviso to Article 31-A deals with persons whose lands are acquired when such person is cultivating the same personally. The reason for awarding compensation at a rate which is not less than market value is in order that a farmer, who is cultivating the land personally, gets other land of equivalent value, which he can then cultivate personally. As such farmer is at the centre of agrarian reform legislation, such legislation would be turned on its head if lands were to be acquired without adequately compensating him instead of from absentee landlords whose lands are then to be given to the landless and to such persons if they personally cultivate lands less than the ceiling area under State Agricultural Ceiling Acts. We think that any reference to the second proviso of Article 31-A is wholly irrelevant to the question before us and cannot under any circumstance be used in order to

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distinguish a judgment which otherwise applies on all fours.

34. However, it was argued that a line of judgments have distinguished *P. Vajravelu Mudaliar* [*P. Vajravelu Mudaliar* v. *LAO*, (1965) 1 SCR 614 : AIR 1965 SC 1017] and *Nagpur Improvement Trust* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] and that this line of judgments should be followed in preference to the aforesaid two judgments.

35. In *Union of India* v. *Hari Krishan Khosla* [*Union of India* v. *Hari Krishan Khosla*, 1993 Supp (2) SCC 149] , this Court upheld the Requisitioning and Acquisition of Immovable Property Act, 1952 and stated that non-grant of solatium and interest which were otherwise grantable under the Land Acquisition Act would not render the 1952 Act constitutionally infirm. The Court undertook a minute distinction between the Land Acquisition Act on the one hand and the 1952 Act on the other. Thus, the Court stated : (SCC pp. 160 & 165-66, paras 43-45, 46 & 58-59)

> "*43*. Coming to dissimilarities, in the case of requisition, one of the important rights in the bundle of rights emanating from ownership, namely, the right to possession and enjoyment has been deprived of, when the property was requisitioned. It is minus that right for which, as stated above, the compensation is provided under Section 8(2), the remaining rights come to be acquired.
>
> *44*. In contradistinction under the Land Acquisition Act, as stated above, the sum total of the rights, namely, the ownership itself comes to be acquired. We may usefully quote from *Salmond on Jurisprudence* (1966) 12th Edn., Chapter 8 at pp. 246-47:

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'Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. Though in certain situations some of these rights may be absent, the normal case of ownership can be expected to exhibit the following incidents.

First, the owner will have a right to possess the thing which he owns....

Secondly, the owner normally has the right to use and enjoy the thing owned : the right to manage it i.e. the right to decide how it shall be used; and the right to the income from it....

***

Fifthly, ownership has a residuary character. If, for example, a landowner gives a lease of his property to *A*, an easement to *B* and some other right such as a profit to *C*, his ownership now consists of the residual rights i.e. the rights remaining when all these lesser rights have been given away....'

45. Then again, under the Act, the acquisition even though it is for a public purpose is restricted to the two clauses of Section 7(3) of the Act to which we have already made a reference. Thus, two clauses of Section 7(3) constitute statutory embargo.

46. Under the Land Acquisition Act, the power of eminent domain could be exercised without any embargo so long as there is an underlying public purpose. In our considered view, these vital distinctions will have to be kept in mind while dealing with the question of violation of Article 14 of the Constitution. We may, at once, state, when examined in this light, the

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reasonings of the High Court to make out a case of discrimination, seem to be incorrect.

***

58. We are of the firm view that cases of acquisition of land stand on a different footing than those where such property is [**Ed.** : The matter between two asterisks has been emphasised in original.] *subject to a prior requisition before acquisition* [**Ed.** : The matter between two asterisks has been emphasised in original.]

59. Therefore, the cases relating to acquisition like *Vajravelu Mudaliar case* [*P. Vajravelu Mudaliar* v. *LAO*, (1965) 1 SCR 614 : AIR 1965 SC 1017] , *Balammal case* [*Balammal* v. *State of Madras*, (1969) 1 SCR 90 : AIR 1968 SC 1425] , *Nagpur Improvement Trust case* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] and *Peter case* [*State of Kerala* v. *T.M. Peter*, (1980) 3 SCC 554] are not helpful in deciding the point in issue here. *Goverdhan* v. *Union of India* [*Goverdhan* v. *Union of India*, Civil Appeal No. 3058 of 1983, decided on 31-1-1983 (SC)] no doubt was a case of acquisition under the Defence of India Act, 1962 but it contains no discussion. It has already been noticed that the award of solatium is not a must in every case as laid down in *Prakash Amichand Shah case* [*Prakash Amichand Shah* v. *State of Gujarat*, (1986) 1 SCC 581]"

(emphasis supplied)

36. Similarly, in *Union of India* v. *Chajju Ram* [*Union of India* v. *Chajju Ram*, (2003) 5 SCC 568] , a case which arose under the Defence of India Act, 1971, this Court followed *Hari Krishan Khosla* [*Union of India* v. *Hari Krishan Khosla*, 1993 Supp (2) SCC 149] , finding that the provisions of the Defence of India Act were *in pari materia* to those of the 1952 Act. The Court, therefore, held :

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(*Chajju Ram case* [*Union of India* v. *Chajju Ram*, (2003) 5 SCC 568] , SCC pp. 576-77, paras 25-30)

> "*25*. Here it is not a case where existence of the Acquisition Act enables the State to give one owner different treatment from another equally situated owner on which ground Article 14 was sought to be invoked in *First Nagpur Improvement Trust case* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500] . The purposes for which the provisions of the said Act can be invoked are absolutely different and distinct from which the provision of the Land Acquisition Act can be invoked for acquisition of land. In terms of the provisions of the said Act, the requisition of the land was made. During the period of requisition the owner of the land is to be compensated therefor. Section 30 of the said Act, as referred to hereinbefore, clearly postulates the circumstances which would be attracted for acquisitioning of the requisitioned land.
>
> *26*. The purposes for which the requisitioning and consequent acquisition of land under the said Act can be made, are limited. Such acquisitions, inter alia, can be made only when works have been constructed during the period of requisition or where the costs to any Government of restoring the property to its condition at the time of its requisition would be excessive having regard to the value of the property at the relevant time.
>
> *27*. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. In terms of the provisions of the said Act, acquisition of the property would be in relation to the property which has been under requisition during which period the owner of the land

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would remain out of possession. The Government during the period of requisition would be in possession and full enjoyment of the property.

28. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. The formulation of the criteria for payment of compensation in terms of Section 31 of the Act was clearly made having regard to the said factor, which cannot be said to be arbitrary or unreasonable. Parliament while making the provisions for payment of compensation must have also taken into consideration the fact that the owner of the property would have received compensation for remaining out of possession during the period when the property was under acquisition.

29. The learned Attorney General appears to be correct in his submission that the provision for grant of solatium was inserted in the Land Acquisition Act by Parliament having regard to the fact that the amount of compensation awarded to the owner of the land is to be determined on the basis of the value thereof as on the date of issuance of the notification under Section 4 of the Act. It has been noticed that the process takes a long time. Taking into consideration the deficiencies in the Act, the Land Acquisition Act was further amended in the year 1984. In terms of sub-section (2) of Section 23 of the Land Acquisition Act, therefore, solatium is paid in addition to the amount of market value of the land.

30. We are, therefore, of the opinion that the classification sought to be made for determination of the amount of compensation

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> for acquisition of the land under the said Act vis-à-vis the Land Acquisition Act is a reasonable and valid one. The said classification is founded on intelligible differentia and has a rational relation with the object sought to be achieved by the legislation in question."

23. Further referring to the decisions of the Apex Court in **Union of India v. N. Murugesan**[4] and **Suzuki Parasrampuria Suitings (P) Ltd. v. Official Liquidator**[5]**,** it was argued by the learned counsel for the petitioners that the ONGC cannot be permitted to "approbate and reprobate", inasmuch as, once it has accepted the award for grant of benefit of RFCTLARR Act, 2013, it cannot reject the same award, when benefit of Solatium is asked for.

24. Referring to the decision of the Apex Court in **Kolkata Municipal Corpn. v. Bimal Kumar Shah**[6]**,** it was argued that the Apex Court while considering the phrase "authority of law" in Article 300A of the Constitution of India, has held that the minimum content of Constitutional right to property comprised of seven sub-rights, one of which is the right of restitution or fair compensation. These sub rights have attained judicial recognition for exercise of a valid power of acquisition.

25. Mr. Mihir Thakore, learned Senior advocate appearing for the ONGC, in rebuttal, would submit that the

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acquisition in question has been an acquisition of "right of user" and not an acquisition which would result in complete deprivation of the land holders of their landed property. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Act' 1962) is a special enactment wherein the determination of compensation for any damages, loss or injury sustained by any person interested in the land under which the pipeline is proposed to, or is being or has been laid, is governed by Section 10 of the Act. Sub-section (4) of Section 10 provides for "vesting of right of user" and payment of compensation by reason of such vesting, to any person whose right of enjoyment in the acquired land has been affected in any manner, calculated at 10% of the market value of that land on the date of the Notification in sub-section (1) of Section 3.

26. Sub-rule (3) of Rule 4 of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963 (in short as the "Rules' 1963") framed under the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 provided for making inquiry for the purposes of determination of compensation having due regard to the damages or loss sustained by any person interested in the land as per the provisions of Rule 4A of the Rules' 1963 and fix the compensation. Rule 4A of the Rules 1963 framed under the Act' 1962 further empowers the competent authority to inquire into the "rate of land" prevailing in the locality (where

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the acquired land situates) on the date of publication of the Notification under sub-section (1) of Section 3 of the Act' 1962. The result is that only market value of the acquired land for the deprivation of the right of enjoyment of any person interested in the land, is payable as compensation under Section 10 of the Act' 1962.

27. The competent authority is empowered to determine the 'rate of land' only from the sources mentioned in clauses (a) to (c) of sub-rule (1) of Rule 4A. The reference to the Land Acquisition Act, 1894 in sub-rule (1)(b) of Rule 4A of 1963 Rules cannot be read to mean that the provisions of the Land Acquisition Act, 1894 were imported in the Act' 1962 in the matter of determination of compensation under the RFCTLARR Act, 2013. It was argued that the provisions contained in Section 10(4) of the Act' 1962 read with the Rules made thereunder do not contemplate application of any other law for the purposes of determination of compensation under the RFCTLARR Act, 2013. No analogy can be drawn from the provisions of the RFCTLARR Act, 2013 in the matter of determination of compensation for the lands acquired under the Act' 1962, for the limited purpose of vesting of 'right of user' with the Central Government and the ONGC by virtue of Section 10(4) of the Act' 1962. It was further argued that the petitioners have an alternative remedy of filing appeal invoking the jurisdiction of the District judge under Section 10(5) of

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the Act' 1962, if the valuation of the land determined by the competent authority is not acceptable to them. The present petition is, thus, liable to be rejected outrightly in view of the effective statutory remedy available to the petitioners where the inquiry into the entitlement of the petitioners towards compensation can be duly made.

28. Coming to the issue with regard to the applicability of the Notification dated 28.08.2015 issued by the Central Government purportedly under Section 113 of the RFCTLARR Act, 2013, it was vehemently argued by the learned Senior counsel appearing for the respondent Corporation that Section 105 of the RFCTLARR Act, 2013 is to be looked into. Section 105(1) of the RFCTLARR Act, 2013 clearly provides that the provisions of the RFCTLARR Act, 2013 shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule, subject to sub-section (3) of Section 105. Sub-section (3) of Section 105, however, empowers the Central Government to issue a notification within a period of one year from the date of commencement of the RFCTLARR Act, 2013 (01.01.2014), directing that any of the provisions of the RFCTLARR Act, 2013 relating to the determination of compensation in accordance with the First, Second and Third Schedules shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule. Sub-section (2) of Section 105 of the RFCTLARR Act, 2013, however, confers power upon the

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Central Government by notification to omit or add to any of the enactment specified in the Fourth Schedule.

29. The draft of such notification proposed to be issued under sub-section (3) of Section 105 was to be laid before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or two or more successive sessions. Admittedly, no such notification has been issued by virtue of the exercise of power under sub-section (3) of Section 105 of the RFCTLARR Act, 2013. The Notification dated 28.08.2015 published in purported exercise of power under Section 113 of the RFCTLARR Act, 2013 cannot be read to be in exercise of the power under Section 105(3) of the said Act. The power under Section 113 of the RFCTLARR Act, 2013 could have been exercised by the Central Government only in case of any difficulty arising in giving effect to any of the provisions of the RFCTLARR Act, 2013. The contention is that the power for removal of difficulties in giving effect to the provisions of that part of the RFCTLARR Act, 2013 can only be exercised to make such provision or give such directions, which are not inconsistent with the provisions of the RFCTLARR Act, 2013.

30. The provision pertaining to removal of difficulty was enacted under Section 113 of RFCTLARR Act, 2013 for a limited purpose giving power to the Central Government to make such provision by issuing notification within a period of two years from the date of commencement of

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the RFCTLARR Act, 2013 (01.01.2014) where it is necessary or expedient for removal of the difficulties in giving effect to the provisions of the RFCTLARR Act, 2013. The Notification dated 28.08.2015 which seeks to apply the provisions of the First, Second and Third Schedules of the RFCTLARR Act, 2013 to the acquisitions under any of the enactments specified in the Fourth Schedule, therefore, cannot be invoked, in the instant case, for such a Notification under Section 105(3) could have been issued only within one year of the commencement of the RFCTLARR Act, 2013, which has not been done. The submissions it that the Notification dated 28.08.2015 is liable to be ignored or to be considered as invalid or *void ab initio* as it was beyond the powers of the Central Government. In any case, the Central Government is not empowered to amend the provisions of the statutory enactment more so when sub-section (1) of Section 105 clearly provided that the provisions of the RFCTLARR Act, 2013 cannot be made applicable to the enactments relating to land acquisition specified in the Fourth Schedule, except as provided under sub-section (3) of Section 105.

31. Reliance is placed on the decision of the Apex Court in **Madeva Upendra Sinai**[7] **v. Union of India** to substantiate the submission that the "difficulty" contemplated by the clause (removal of difficulty) Order cannot be invoked on a difficulty arising aliunde, or an

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extraneous difficulty. The Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. The Executives have been assigned a very limited power by the legislature to make minor adaptions and peripheral adjustments in the statute, for making its implementation effective, without touching its substance, in order to obviate the necessity of approaching the legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of the statute. As such an exercise would be time consuming amendatory process, the legislature sometimes thinks it expedient to invest such limited power with the Executive. In exercise of such power, the Central Government may slightly tinker with the Act to round off angularities and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, under the guise of removing a difficulty, the Central Government can change the scheme and essential provisions of the Act.

32. It was argued that when there is a specific provision in the RFCTLARR Act as to how it would apply to the enactments in the Fourth Schedule, the removal of difficulties Order cannot be passed except as per the procedure provided in the RFCTLARR Act, 2013. Schedule Four of the RFCTLARR Act, 2013 is a separate

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provision and it is not part of the RFCTLARR Act, 2013; unless and until the provisions of the RFCTLARR Act, 2013 were made applicable by invoking the powers under Section 105 (3) of the RFCTLARR Act, 2013, applying the provisions of the RFCTLARR Act, 2013 by removal of difficulties Order issued under Section 113, cannot be said to be a valid exercise of power conferred on the Central Government.

33. Reliance is further placed upon the decision of the Apex Court in **State of West Bengal. v. Anindya Sundar Das**[8] (paragraphs '53' to '55') to substantiate the above submissions about the scope of power of the Central Government to use "removal of difficulty" clause for making necessary changes in the statutory provision.

34. It was, thus, vehemently argued by the learned Senior counsel appearing for the respondent Corporation that the Notification dated 28.08.2015 is to be treated as a nullity and no action can be taken thereupon to apply the provisions of the RFCTLARR Act, 2013 to the acquisitions under 13 other enactments specified in the Fourth Schedule of RFCTLARR Act, 2013.

35. As regards the decision of the Apex Court in **Tarsem Singh**[1]**,** it was argued that the said decision was rendered in the peculiar facts and circumstances of the said case and on the concession given by the Union of India pertaining to grant of Solatium and interest to the

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land holders whose lands were acquired under the National Highways Act where the benefits were available prior to the 1997 Amendment Act. The contention is that for the acquisitions under the National Highways Act, it was noted by the Apex Court that the provisions of the Land Acquisition Act, 1894 were applicable and by way of the 1997 amendment to the National Highways Act, the benefits of Solatium which was applicable to the acquisitions under the National Highways Act, 1956 had been taken away. Paragraph '52' of the decision in **Tarsem Singh[1]** has been placed before us to argue that it was a concession on the part of the Union Government on account of the peculiar situation where general provisions of the Land Acquisition Act; 1894 were always applicable in the matter of acquisition of lands under the National Highways Act, 1956.

36. The submission is that the decision in **Tarsem Singh[1]** cannot be said to be the ratio or even an obiter of the Apex Court so as to draw any binding or persuasive conclusion therefrom about the applicability of the provisions of the RFCTLARR Act, 2013 to the acquisitions of the "right of user" under the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962.

37. Lastly, heavy reliance is placed on the decision of the Bombay High Court in **Gangadhar Karbhari Jadhav v.**

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Union of India[9] to submit that with respect to the acquisition under the same enactment namely Act' 1962, it was held by the Bombay High Court therein that the Notification dated 28.08.2015 under Section 113 of the RFCTLARR Act, 2013 has not been issued to give effect to the provisions of the Act, but it has been issued to cover up the lapses made by the Government by not issuing Notification under Section 105(3) of the RFCTLARR Act, 2013 within the time prescribed in Section 105(3), which was not permissible. For such lapses or for curing the difficulty in following the mandatory procedure, powers under Section 113(1) of the RFCTLARR Act, 2013 read with Section 105 having not been exercised in the mode and manner prescribed thereunder, the Central Government could not have given effect to the provision under Section 105(3) by issuing a removal of difficulties order.

38. It was the submission of the learned Senior counsel appearing for the respondent ONGC that the Bombay High Court has rightly considered the decision in **Tarsem Singh**[1] to opine that the said decision was based on the concession given by the learned Solicitor General and there was no issue about the failure on the part of the Central Government to issue Notification under Section 105(3) within the time prescribed or whether the exercise of power under Section 113 of issuing removal of difficulties Order and giving effect to

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the same could have been valid except by issuing Notification under Section 105(3) and not otherwise.

39. It is lastly submitted by the learned Senior counsel for the respondent ONGC that on a challenge to the above mentioned decision of the Bombay High Court, a Special Leave to Appeal (C) No.(s) 8363 of 2023 has been entertained by granting leave vide order dated 10.12.2024. The result is that the issue raised here is engaging attention of the Apex Court and this court may desist from any forming opinion about the applicability of the RFCTLARR Act, 2013 with respect to the acquisitions under the Act' 1962 by virtue of the Notification dated 28.08.2015 issued by the Central Government.

40. Taking note of the above arguments of the learned counsels for the parties, at the outset, it is pertinent to note that the ONGC is the acquiring body appearing as the respondent in the present set of Writ petitions. In one of the Writ petitions in this set, viz. Special Civil Application No. 16164 of 2024, Union of India is a party respondent. However, there is no response or stand of the Union of India which substantiate the stand of the ONGC, which is merely an acquiring body. The 'Power of eminent domain' to acquire the land in question under the Act' 1962 is exercised by the Central Government (Union of India) and the land in question has been given for the limited 'right of user' to the ONGC.

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41. There cannot be any dispute to the fact that with the vesting of "right of user" with the Central Government or the ONGC, the land owners have been deprived of the full enjoyment of their landed property, inasmuch as, the ONGC has a right to enter into the land in question to carry out its operations wherein the gas pipelines have been laid down.

42. Under the scheme of the Act' 1962, the land owners though would be able to utilise the land in question for agricultural purposes, but they cannot improve upon their property by seeking permission for usage for non-agricultural purposes, if they so desire. The right of full enjoyment to the lands in question by its owners, therefore, stands curtailed with the acquisition of the "right of user" and vesting of the lands with the Central Government or the acquiring body by virtue of the Act' 1962. It is for this reason that the provisions of the Act' 1962 provide for payment of compensation to the land holders.

43. Coming to the provisions of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, the long title reads that the Act' 1962 is an enactment providing for acquisition of "right of user in land for laying pipelines for the transport of petroleum and minerals and for matters connected therewith". The Act applies to the whole of India.

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44. Section 3 of the Act' 1962 confers power on the Central Government to acquire the right of user in any land under which pipelines for transport of petroleum or any minerals is to be laid by notification in Official Gazette declaring its intention to so acquire. Sections 4 and 5 of the Act' 1962 provide the procedure, in the interregnum, for conducting survey and hearing objections of the land holders.

45. A declaration under Section 6 of the acquisition of 'right of user' is to be made after receipt of the report on the objections of the land holders, if any, by the competent authority as per Section 5 of the Act' 1962. Section 6 sub-section (2) provides that on publication of the declaration under sub-section (1), the 'right of user' in the land specified therein shall vest absolutely in the Central Government free from all encumbrances. Sub-section (4) of Section 6 further provides that notwithstanding anything contained in sub-section (2), the Central Government by an order in writing may direct that the right of user in the land in laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the Corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in

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that State Government or Corporation, as the case may be, free from all encumbrances.

46. Section 7 sub-section (1) (ii) further provides that where the right of user in any land has been vested in the Central Government or in any State Government or Corporation under Section 6, such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act necessary for any of the aforesaid purposes or for the utilisation of such pipelines.

47. There is a restriction regarding the use of land by the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of Section 6, which reads as under :-

> **"9. Restrictions regarding the use of land.**—(1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3:
>
> Provided that, such owner or occupier shall not after the declaration under sub-section (1) of section 6—
>
> (i) construct any building or any other structure;
>
> (ii) construct or excavate any tank, well, reservoir or dam; or
>
> (iii) plant any tree,

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on that land.

(2) The owner or occupier of the land under which any pipelines has been laid shall not do any act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to the pipeline.

(3) Where the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6,—

(a) constructs any building or any other structure, or

(b) constructs or excavates any well, tank, reservoir or dam, or

(c) plants any tree,

on that land, the Court of the District Judge within the local limits of whose jurisdiction such land is situate may, on an application made to it by the competent authority and after holding such inquiry as it may deem fit, cause the building, structure, reservoir, dam or tree to be removed or the well or tank to be filled up, and the costs of such removal or filling up shall be recoverable from such owner or occupier in the same manner as if the order for the recovery of such costs were a decree made by that Court."

48. A perusal of sub-section (1) of Section 9 clearly indicates that the owner or the occupier of the land with respect to which a declaration has been made under sub-section (1) of Section 6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of Notification under sub-section (1) of

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Section 3 and he cannot make any improvement upon the same by planting tree, raising any construction of building, construction or excavating any tank, well etc. The reading of the provisions of the Act' 1962 from Section 3 to Section 9 makes it clear that the acquisition of right of user, agitated as limited right of acquisition by the ONGC, results in compulsory deprivation of the land holders to utilise his property to the fullest as per his own wish and future requirement. The Act provides for absolute vesting of the 'right of user' in the lands acquired, free from all encumbrances with the Central Government or the State Government or the Corporation as per the order of the Central Government, as the case may be.

49. The owner or the occupier of the land is entitled to use the land only for the purpose for which it was being used immediately before the date of the Notification under sub-section (1) of Section 3 of the Act' 1962, i.e. the declaration of intention to acquire the right of user by the Central Government. Thus, the purpose and nature of the user of the lands by the land holders, freezes on the date of the Notification under sub-section(1) of Section 3 of the Act' 1962. The land owners of such land are left with no free will to utilise it for any other purposes. Section 10, as such, provides for determination of compensation for any damage, loss or injury sustained by any person interested in the land as per the factors to be taken into consideration as

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provided in sub-section (3) of Section 10. And in addition to the damages or loss sustained by any person interested in the land by reasons given in sub-section (3), for the vesting of 'right of user' in the Central Government or the Corporation, as the case may be, the compensation is liable to be paid to the owner and to any other person whose right of enjoyment in the acquired land has been affected by reason of such vesting. The compensation calculated at 10% of the market value on the date of Notification under sub-section (1) of Section 3 is, thus, required to be paid as per sub-section (4) of Section 10. Section 10(5) provides a further remedy to the land holder to agitate on the issue of wrong determination of the market value by the competent authority.

50. Section 10 is to be extracted hereinunder for ready reference :-

> **10. Compensation.—**(1) Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation , as the case may be , shall be liable to pay compensation to such person for such damage, loss or injury , the amount of which shall be determined by the competent authority in the first instance.
>
> (2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of

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the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.

(3) The competent authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of—

(i) the removal of trees of standing crops, if any, on the land while exercising the power under section 4, section 7 or section 8;

(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury to any other property, whether movable or immovable , or the earnings of such persons caused in any other manner:

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.

(4) Where the right of user of any land has vested in the Central Government, the State Government or the corporation , the Central Government, the State Government or the corporation , as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent. of the market value of that land on the date of the notification under sub-section (1) of section 3.

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> (5) The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.
>
> (6) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.

51. By reading of the above noted provisions, it is evident that the compensation payable under Section 10 (4) of the Act' 1962 is for diminution of the land value. It is true that the title of the land is not vested in the Government or the Corporation and it continues with its original owner, but the land owner is deprived of his "property" and the Central Government or the Corporation acquires his "property" though not title, inasmuch as, the acquiring body is free to carry out its operations over the land in question and the owner or the occupier of the land is entitled to use the land only for limited purposes. The status quo as to the nature and usage of the land acquired as on the date of the Notification under sub-section (1) of Section 3 of the Act' 1962 is continued to be maintained throughout, inasmuch as, vesting of the acquired land in the Central Government or the Corporation is complete though title of the land remains with the owner. The compensation calculated as per sub-section (4) of Section 10 is 10% of the market value of the land on the date of Notification under sub-section (1) of Section 3.

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52. Considering the above, we may further go through the Rules' 1963 framed under the Act' 1962, which is an enactment with the sole object of acquisition of right of user of any private land for laying pipeline for transport of petroleum and minerals. The provisions of the Rules' 1963 provide procedure as to the manner in which the Notification under sub-section (1) of Section 3 would be published; any person interested in any land may be able to file his claim before the competent authority for compensation; and the procedure to be adopted by the competent authority while conducting inquiry for granting compensation.

53. Sub-rule (3) of Rule 4 and Rule 4A of the Rules' 1963 are relevant for our purposes and to be extracted hereinunder :-

> "4.(3) - The Competent Authority shall, on receipt of the claim for compensation, make such inquiry as provided in rule 4A and fix the compensation and thereafter inform the parties referred to in sub-sections (2) and (5) of section 10 of the amount of compensation, so fixed."
>
> "4A. While conducting enquiry and for granting compensation under sub-rule (3) of rule 4 the Competent Authority shall follow the following procedure, namely:-
>
> (1) for compensation of land due to the deprivation in right of enjoyment to any person interested in the land the Competent Authority may enquire the rate of land prevailing in that locality on the date of publication of the notification under sub-section (1)

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of section 3 of the Act, from the following sources, namely:-

> (a) local registration authority such as the Registrar, Sub-Registrar or any Officer or authority for the time being authorised to register the documents under the Indian Registration Act, 1908 (16 of 1908);
>
> (b) land acquisition authority, under the land Acquisition Act, 1894 (1 of 1894) if any land has been acquired during such period in the locality; and
>
> (c) Officer or authority of the Government who fixes the reserve price of the land for any purpose under any law for the time being in force;

Provided that any rate taken for consideration shall not be less than the reserve price fixed by such officer or authority.

(2) For compensation for other damages or loss while exercising the powers conferred under the Act of rules made thereunder the competent authority shall-

> (a) obtain the Panchanama prepared by a team appointed by him duly signed preferably by the person interested in the land we by to independent and respectable Inhabitants of the locality and the representative of work executing agency. The said Panchanama shall contain the details of damages or losses caused while exercising the powers conferred by section 4, 7 or 8 of the Act;
>
> (b) enquire the yield vid crops, trees, and fruits, etc., from the Government agency such as horticulture or agriculture department of the Central Government or State Government or as per the statistics of the Central

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> Government and/or State Government from any local Government body;
>
> (c) make requisition of the market value of the crops, timber, wood, fruit, etc, from the agriculture department or any other concerned Government agency of semi Government agency such as the Agricultural Marketing Board, Krishi Upaj Mandi, or any other agency authorised under any law to sens the market value of crops, wood, fruits, etc.;
> (d) get the other losses, if any, assessed from the Government agency or from any qualified engineer or through any valuer registered under section 34AB of the Wealth Tax Act, 1957 (27 of 1957); and
>
> (e) In case of Presumptive Crop Compensation, le, compensation for the profits which the cultivator would have received for crop normally cultivated on the land during the season or period, to which the compensation relates, but for being prevented from cultivating the land, the competent authority may deduct twenty per cent. of net value as saving in seeds, fertilisers, labour, etc."

54. It is only relevant to note here that amongst various sources from which the competent authority may make inquiry about the rate of land prevailing in the locality on the date of publication of Notification under sub-section (1) of Section 3, there is the one which is the land acquisition authority under the Land Acquisition Act, 1894, in case of any acquisition held under the said Act during such period in the locality. From reading of this provision, only this much can be drawn that the legislature had intended to maintain uniformity in the

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matter of determination of the market value of the lands on the date of Notification under sub-section (1) of Section 3 of the Act' 1962, in different acquisitions of the same time. The calculation for payment of 10% of the market value for determination of compensation, as per sub-section (4) of Section 10, would only refer to the computation of the rate of market value at which compensation is to be awarded.

55. By reading of the above provisions, we are afraid to accept the submission of the learned Senior counsel for the respondent ONGC that apart from the market value, nothing more can be given to the land holders for acquisition of the "right of user" under the Act' 1962, more so by ignoring the Notification dated 28.08.2015 read with Schedules First to Fourth of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 when the Act' 1962 is one of the enactments specified at Item no.8 in the Fourth Schedule.

56. Before deliberating on the effect of the Notification dated 28.08.2015, we find it pertinent to go through the decision of the Apex Court in **Tarsem Singh**[1] wherein the Apex Court has taken note of its previous decision in **Sunder v. Union of India**[10] to understand the meaning of the expression "Solatium" elaborated by a Five Judges bench of the Apex Court. Elaborating on the concept of payment of compensation in consideration of the

10 (2001) 7 SCC 211

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compulsory nature of acquisition, the Apex Court in **Sundar[10]** has held that the "Solatium" envisaged in sub-section (2) of Section 23 of the Land Acquisition Act, 1894 is in consideration of the compulsory nature of acquisition where land owner is deprived of the right and opportunity to negotiate with regard to the sale price and this is to be distinguished from voluntary sale or transfer.

57. The Apex Court in **Tarsem Singh[1]** has noted that a land owner who may not be willing to part with his land has to do so at a value fixed legislatively and not through negotiations, by which, arguably such land owner would get the best price for the property to be sold. It was held that understanding the concept in its correct perspective, it is clear that "Solatium" is part and parcel of compensation that is payable for compulsory acquisition of land. The observation of the Apex Court in paragraph '11' in **Tarsem Singh[1]** are to be noted hereinunder :-

> "11. Before embarking on a discussion as to the constitutional validity of the Amendment Act, it is important to first understand what is meant by the expression “solatium”. In Sunder v. Union of India [Sunder v. Union of India, (2001) 7 SCC 211], a Bench of five Judges of this Court laid down the nature of solatium as follows : (SCC p. 229, paras 21 and 22)
>
> > “21. It is apposite in this context to point out that during the enquiry contemplated under Section 11 of the Act the Collector has to consider the objections which any person

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interested has stated pursuant to the notice given to him. It may be possible that a person so interested would advance objections for highlighting his disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional, etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide 'in consideration of the compulsory nature of the acquisition'.

22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling, normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the court fixes as per the provisions of the Act. The solatium envisaged in sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired."

(emphasis supplied)

Thus, the solatium that is paid to a landowner is on account of the fact that a landowner, who may

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> not be willing to part with his land, has now to do so, and that too at a value fixed legislatively and not through negotiation, by which, arguably, such landowner would get the best price for the property to be sold. Once this is understood in its correct perspective, it is clear that “solatium” is part and parcel of compensation that is payable for compulsory acquisition of land."

58. The Apex Court has further proceeded on the principle of equality enshrined in Article 14 of the Constitution in the matter of acquisition of lands under different legislative schemes, considering its previous decisions of the Apex Court in **P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition**[11] and **Nagpur Improvement Trust**[3]. The relevant observations in paragraphs '31' to '36' in **Tarsem Singh**[1] have already been extracted hereinabove.

59. At this juncture, we may take note of the observations in paragraphs '26' to '30' of **Tarsem Singh**[1] (paras '29' & '30' at the cost of repetition) as under :-

> "26. In P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] , the Madras Legislature amended the Land Acquisition Act providing for acquisition of land for housing schemes by laying down principles for fixing compensation different from those prescribed in the principal Act. These differences are set out in the judgment as follows : (SCR pp. 629-30 : AIR pp. 1025-26, para 17)
>
> > “17. The next question is whether the amending Act was made in contravention of

11 (1965) 1 SCR 614 : AIR 1965 SC 1017]

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Article 31(2) of the Constitution. The amending Act prescribes the principles for ascertaining the value of the property acquired. It was passed to amend the Land Acquisition Act, 1894, in the State of Madras for the purpose of enabling the State to acquire lands for housing schemes. “Housing scheme” is defined to mean “any State Government scheme the purpose of which is increasing house accommodation” and under Section 3 of the amending Act, Section 23 of the principal Act is made applicable to such acquisition with certain modifications. In Section 23 of the principal Act, in sub-section (1) for clause first, the following clause is substituted:

‘first, the market value of the land at the date of the publication of the notification under Section 4, sub-section (1) or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less.’

After clause sixthly, the following clause was added:

‘seventhly, the use to which the land was put at the date of the publication of the notification under Section 4, sub-section (1).’

Sub-section (2) of Section 23 of the principal Act was amended by substituting the words, in respect of solatium, “fifteen per centum” by the words “five per centum”. In Section 24 of the principal Act after the clause seventhly the following clause was added:

‘eighthly, any increase to the value of the land acquired by reason of its suitability or adaptability for any use other than the use to which the land was put at the date of the publication of the notification under Section 4,

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sub-section (1).'

> Under Section 4 of the amending Act, the provisions of Section 3 thereof shall apply to every case in which proceedings have been started before the commencement of the said Act and are pending. The result of the amending Act is that if the State Government acquires a land for a housing purpose, the claimant gets only the value of the land at the date of the publication of the notification under Section 4(1) of the principal Act or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less. He will get a solatium of only 5 per centum of such value instead of 15 per centum under the principal Act. He will not get any compensation by reason of the suitability of the land for any use other than the use for which it was put on the date of publication of the notification."

27. A challenge made to the said Amendment Act on the ground that it is hit by Article 14 succeeded, the Court holding : (P. Vajravelu Mudaliar case [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] , SCR pp. 634-35 : AIR pp. 1027-28, para 20)

> "20. Now what are the differences between persons owning lands in the Madras City or between the lands acquired which have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences based upon the said criteria have no relevance to the object of the amending Act. To illustrate : the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a

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university or for a network of hospitals under the provisions of the principal Act and also for a housing scheme under the amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the amending Act and the other for a hospital under the principal Act; out of two adjacent plots belonging to the same individual and of the same quality and value, one may be acquired under the principal Act and the other under the amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the amending Act. So too, for

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> a public purpose any such land can be acquired under the principal Act. We, therefore, hold that discrimination is writ large on the amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the amending Act clearly infringes Article 14 of the Constitution and is void."
>
> (emphasis supplied)

28. In Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , this Court referred to the Nagpur Improvement Trust Act, under which lands were to be acquired with reference to the Land Acquisition Act, as modified. We are concerned in this case with the modification that has to do with acquisition for the purposes of the Improvement Act, which did not provide for solatium of 15% that would have been obtained under the Land Acquisition Act. A seven-Judge Bench of this Court examined the matter in some detail, and followed P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] together with another judgment, Balammal v. State of Madras [Balammal v. State of Madras, (1969) 1 SCR 90 : AIR 1968 SC 1425] . The Court held : (Nagpur Improvement Trust case [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , SCC pp. 506-07, paras 27-30)

> "27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?
>
> 28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or

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an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words, can the legislature lay down different principles of 41. One more judgment needs to be referred to, namely, Girnar Traders (3) v. State of Maharashtra [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578] , which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 Amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3-J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the “self-contained code” argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been

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held in Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] .compensation for lands acquired say for a hospital or a school or a government building? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a government building at 70% of the market value? All three objects are public purposes and as far as the 41. One more judgment needs to be referred to, namely, Girnar Traders (3) v. State of Maharashtra [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578] , which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 Amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3-J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the “self-contained code” argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been held in Nagpur

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> Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] .owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words, can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.
>
> 30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14."
>
> (emphasis supplied)

29. Both, P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] and Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] clinch the issue in favour of the respondents, as has been correctly held by the Punjab and Haryana High Court in Golden Iron and Steel

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Forging [Golden Iron and Steel Forging v. Union of India, 2008 SCC OnLine P&H 498 : (2011) 4 RCR (Civil) 375] . First and foremost, it is important to note that, as has been seen 41. One more judgment needs to be referred to, namely, Girnar Traders (3) v. State of Maharashtra [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578] , which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 Amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3-J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the “self-contained code” argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been held in Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] .hereinabove, the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved in the manner set out hereinabove. It will be noticed that the awarding of solatium and interest has nothing to do with achieving this object, as it is nobody's case that land acquisition for the purpose of National Highways slows down as a result of award of

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solatium and interest. Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act i.e. speedy acquisition of lands for the purpose of National Highways. On this ground alone, the Amendment Act falls foul of Article 14.

30. Even otherwise, in P. Vajravelu Mudaliar [P. Vajravelu Mudaliar v. LAO, (1965) 1 SCR 614 : AIR 1965 SC 1017] , despite the fact that the object of the Amendment Act was to acquire lands for housing schemes at a low price, yet the Amendment Act was struck down when it provided for solatium @ 5% instead of 15%, that was provided in the Land Acquisition Act, the Court holding that whether adjacent lands of the same quality and value are acquired for a housing scheme or some other public purpose such as a hospital is a differentiation between two sets of landowners having no reasonable relation to the object sought to be achieved. More pertinently, another example is given — out of two adjacent plots belonging to the same individual one may be acquired under the principal Act for a particular public purpose and one acquired under the amending Act for a housing scheme, which, when looked at from the point of view of the landowner, would be discriminatory, having no rational relation to the object sought to be achieved, which is compulsory acquisition of property for public purposes."

60. The Apex Court has in **Tarsem Singh**[1] further observed in paragraphs '37' to '41' as under :-

"37. We may hasten to add that a Division Bench of this Court in H.V. Low & Co. (P) Ltd. v. State of W.B. [H.V. Low & Co. (P) Ltd. v. State of W.B., (2016) 12 SCC 699 : (2017) 1 SCC (Civ) 794] has found on a

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prima facie examination that Chajju Ram [Union of India v. Chajju Ram, (2003) 5 SCC 568] requires reconsideration.

38. For our purposes, it is enough to state that the line of judgments under the 1952 Act and the Defence of India Act, 1971, which contained a two-step process, namely, requisition which may be followed by acquisition, are wholly 41. One more judgment needs to be referred to, namely, Girnar Traders (3) v. State of Maharashtra [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578] , which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 Amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3-J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the “self-contained code” argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been held in Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] .distinguishable for the reasons stated in those judgments. As was stated in Chajju Ram [Union of India v. Chajju Ram, (2003) 5 SCC 568] , the object of a Requisition Act

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is completely different from an Acquisition Act. In a Requisition Act, private property is taken for public purposes only temporarily — when the reason for requisition ends, ordinarily the property is handed back to the owner. This being the case, in requisition statutes handing back of the property is the rule and acquisition of the property the exception, as property can only be acquired for the two reasons set out in Section 7 of the 1952 Act and Section 30 of the Defence of India Act, 1971. Also, as has been pointed out in Hari Krishan Khosla [Union of India v. Hari Krishan Khosla, 1993 Supp (2) SCC 149] , what gets acquired is only rights as to ownership, possession having been taken over by requisition. In addition, the owner has already received compensation for remaining out of possession during the period when the property is under requisition. For all these reasons, the aforesaid judgments are wholly distinguishable from the acquisition measure in this case.

39. The next judgment relied upon by the learned counsel on behalf of the appellants is Prakash Amichand Shah v. State of Gujarat [Prakash Amichand Shah v. State of Gujarat, (1986) 1 SCC 581] . This judgment contained a challenge to the Bombay Town Planning Act. Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] judgment was distinguished in this judgment by stating that the scheme of the Bombay Town Planning Act is wholly different from the scheme of the Land Acquisition Act. In particular, the Court held : (Prakash Amichand case [Prakash Amichand Shah v. State of Gujarat, (1986) 1 SCC 581] , SCC pp. 609-10, para 34)

> “34. … Under Section 53 of the Act all rights of the private owners in the original plots would determine and certain consequential rights in favour of the owners would arise therefrom. If in the scheme, reconstituted or final plots are allotted to them they become owners of such final plots subject to the rights

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settled by the Town Planning Officer in the final scheme. In some cases the original plot of an owner might completely be allotted to the local authority for a public purpose. Such private owner may be paid compensation or a reconstituted plot in some other place. It may be a smaller or a bigger plot. It may be that in some cases it may not be possible to allot a final plot at all. Sections 67 to 71 of the Act provide for certain financial adjustments regarding payment of money to the local authority or to the owners of the original plots. The development and planning carried out under the Act is primarily for the benefit of public. The local authority is under an obligation to function according to the Act. The local authority has to bear a part of the expenses of development. It is in one sense a package deal. The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act, 1894. Nor are the provisions of the Land Acquisition Act, 1894 made applicable either without or with modifications as in the case of the Nagpur Improvement Trust Act, 1936. We do not understand the decision in Nagpur Improvement Trust case [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] as laying down generally that wherever land is taken away by the Government under a separate statute compensation should be paid under the Land Acquisition Act, 1894 only and if there is any difference between the compensation payable under the Land Acquisition Act, 1894 and the compensation payable under the statute concerned the acquisition under the statute would be discriminatory. That case is distinguishable from the present case. In State of Kerala v. T.M. Peter [State of Kerala v. T.M. Peter, (1980) 3 SCC 554] also Section 34 of the Cochin Town Planning Act, which came up for consideration, was of the same pattern

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> as the provision in the Nagpur Improvement Trust Act, 1936 and for that reason the court followed the decision in Nagpur Improvement Trust case [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] . But in that decision itself the Court observed at SCR pp. 302 and 303 thus : (SCC p. 564, para 21)
>
> > '21. ... We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our mind that under given circumstances differentiation even in the scale of compensation may comfortably comport with Article 14. No such circumstances are present here nor pressed.' "
> >
> > (emphasis supplied)

40. This judgment is again distinguishable in that it was found, having regard to the Bombay Town Planning Act, that the person from whom the land was expropriated gets a package deal in that he may be allotted other lands in the final Town Planning Scheme, apart from compensation that is payable. However, it is worthy of comment that State of Kerala v. T.M. Peter [State of Kerala v. T.M. Peter, (1980) 3 SCC 554] , which was relied upon in this case, expressly followed Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , holding : (T.M. Peter case [State of Kerala v. T.M. Peter, (1980) 3 SCC 554] , SCC pp. 564-65, paras 20-23)

> "20. Is it rational to pay different scales of compensation, as pointed out by Sikri, C.J., in Nagpur Improvement Trust case [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] , depending on whether you acquire for housing or hospital, irrigation scheme or town improvement, school building or police

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station? The amount of compensation payable has no bearing on this distinction, although it is conceivable that classification for purposes of compensation may exist and in such cases the statute may be good. We are unable to discern any valid discrimen in the Town Planning Act vis-à-vis the Land Acquisition Act warranting a classification in the matter of denial of solatium. 41. One more judgment needs to be referred to, namely, Girnar Traders (3) v. State of Maharashtra [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578] , which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 Amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3-J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the “self-contained code” argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been held in Nagpur Improvement Trust [Nagpur

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Improvement Trust v. Vithal Rao, (1973) 1 SCC 500] .

21. We uphold the Act in other respects but not when it deals invidiously between two owners based on an irrelevant criterion viz. the acquisition being for an improvement scheme. We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our minds that under given circumstances differentiation even in the scale of compensation may comfortably comport with Article 14. No such circumstances are present here nor pressed. Indeed, the State, realising the force of this facet of discrimination, offered, expiratory fashion, both before the High Court and before us, to pay 15%, solatium to obliterate the hostile distinction.

22. The core question now arises. What is the effect even if we read a discrimination design in Section 34? Is plastic surgery permissible or demolition of the section inevitable? Assuming that there is an untenable discrimination in the matter of compensation does the whole of Section 34 have to be liquidated or several portions voided? In our opinion, scuttling the section, the course the High Court has chosen, should be the last step. The court uses its writ power with a constructive design, an affirmative slant and a sustaining bent. Even when by compulsions of inseverability, a destructive stroke becomes necessary the court minimises the injury by an intelligent containment. Law keeps alive and “operation pull down” is de mode. Viewed from this perspective, so far as we are able to see, the only discriminatory factor as between Section 34 of the Act and Section 25 of the Land Acquisition Act vis-à-vis quantification of

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compensation is the non-payment of solatium in the former case because of the provision in Section 34(1) that Section 25 of the Land Acquisition Act shall have no application. Thus, to achieve the virtue of equality and to eliminate the vice of inequality what is needed is the obliteration of Section 25 of the Land Acquisition Act from Section 34(1) of the Town Planning Act. The whole of Section 34(1) does not have to be struck down. Once we exclude the discriminatory and, therefore, void part in Section 34(1) of the Act, equality is restored. The owner will then be entitled to the same compensation, including solatium, that he may be eligible for under the Land Acquisition Act. What is rendered void by Article 13 is only "to the extent of the contravention" of Article 14. The lancet of the court may remove the offending words and restore to constitutional health the rest of the provision.

23. We hold that the exclusion of Section 25 of the Land Acquisition Act from Section 34 of the Act is unconstitutional but it is severable and we sever it. The necessary consequence is that Section 34(1) will be read omitting the words "and Section 25". What follows then? Section 32 obligates the State to act under the Land Acquisition Act but we have struck down that part which excludes Section 25, of the Land Acquisition Act and so, the "modification" no longer covers Section 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34(2) provides for compensation exactly like Section 25(1) of the Land Acquisition Act and in the light of what we have just decided Section 25(2) will also apply and "in addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition."

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> "41. One more judgment needs to be referred to, namely, Girnar Traders (3) v. State of Maharashtra [Girnar Traders (3) v. State of Maharashtra, (2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578] , which was relied upon by Shri Divan to argue that, like Chapter VII of the Maharashtra Regional and Town Planning Act, the amendment to the National Highways Act is a complete self-contained code and must, therefore, be followed on its own terms. This judgment dealt with whether Section 11-A introduced by the 1984 Amendment to the Land Acquisition Act could be said to apply to acquisitions made under the Maharashtra Regional Town Planning Act. The answer to this question was that Section 11-A could not be so applied as the Maharashtra Regional Town Planning Act referred to the Land Acquisition Act as legislation by way of incorporation and not legislation by way of reference. In the present case, the Land Acquisition Act, by virtue of Section 3-J of the National Highways Act, does not apply at all. The controversy in the present case does not, in any manner, involve whether the Land Acquisition Act applies by way of incorporation or reference. This case is also, therefore, wholly distinguishable. Further, the "self-contained code" argument based on this judgment cannot be used as a discriminatory tool to deny benefits available to landowners merely because land has to be acquired under a different Act, as has been held in Nagpur Improvement Trust [Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500]."

61. From a reading of the paragraphs '26' to '41' in **Tarsem Singh[1]** extracted hereinbefore, it is evident that the Apex Court has proceeded to examine the validity of Section 3J of the National Highways Amendment Act of 1997 on the touchstone of the principles enshrined in Article 14 of the Constitution of India. The principle in

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Nagpur Improvement Trust[3] that if the existence of two Acts could enable the State to give one owner different treatment from another equally situated, the owner who was discriminated can claim protection under Article 14 was emphasized to hold that a classification made between the different sets of land owners whose land happened to be acquired for the purpose of National highways and land owners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act 1997, which was enacted for speedy acquisition of lands for the purposes of National Highways.

62. Considering the law laid down by the Apex Court in **P. Vajravelu Mudaliar[11]** and **Nagpur Improvement Trust[3]** that discrimination between two sets of land owners whose lands are acquired under different legislative enactments is impermissible, it was held in **Tarsem Singh[1]** that on this ground alone, the Amendment Act' 1997 falls foul of Article 14. Noticing paragraph '30' in **Nagpur Improvement Trust[3] ,** it was observed in paragraph '31' in **Tarsem Singh[1]** that the Seven Judges Bench unequivocally states that it is immaterial whether it is one acquisition Act or another acquisition Act under which the land is acquired, as, if the existence of these two Acts would enable the State to give one owner different treatment from another who is similarly situated, Article 14 would be infracted.

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63. It was, thus, held that such classification based on public purposes is not permissible under Article 14 for the purpose of determining the compensation. The other decisions, which have taken contrary view have been considered to finally reject the argument of the “self-contained code” to hold that the controversy in **Tarsem Singh[1]** in no manner involve whether the Land Acquisition Act applies by way of incorporation or reference and the arguments of "self-contained code" cannot be used as a discriminatory tool to deny the benefits available to the land owner merely because the land has to be acquired under different Act as has been held in **Nagpur Improvement Trust[3].**

64. While elaborating on the aspect of violation of Article 14 in the matter of award of compensation, specifically Solatium in the acquisition under different enactments of the State or the Central legislature, the Apex Court has noted the Notification dated 28.08.2015 issued by the Central Government with approval in paragraphs '46', '47' and '48', extracted hereinbefore. The Apex Court in **Tarsem Singh[1]** has, thus, observed that even the Government is of the view that it is not possible to discriminate between the land owners covered by the RFCTLARR Act, 2013 and the land acquisition covered by other 13 enactments specified in the Fourth Schedule when it comes to compensation to be paid for land acquired under either of the enatments.

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65. The result is that the land owners whose lands are acquired resulting in the vesting of 'right of user' with the Central Government or the State Government or the Corporation by virtue of sub-section (2) and sub-section (4) of Section 6 of the Act' 1962, are entitled for the same treatment in the matter of benefits by inclusion of different components of compensation as prescribed in the First Schedule of the RFCTLARR Act, 2013.

66. At the cost of repetition, it may be noted that the Apex Court taking note of the Notification dated 28.08.2015 issued by the Central Government, has stated in paragraph '48' in **Tarsem Singh**[1] that the Ordinances as well as the Notification have applied the principles contained in **Nagpur Improvement Trust**[3] as the Central Government also considered it necessary to extend the benefits available to the lands owners generally under the RFCTLARR Act, 2013 to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule.

67. We, thus, find that the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 being one of the enactments specified at Item No.8 in the Fourth Schedule, by virtue of the Notification dated 28.08.2015 of the Central Government, the components of compensation package in respect of the land acquired under the RFCTLARR Act, 2013 as contained in the First Schedule of the RFCTLARR Act, 2013, will be available to the land owners whose lands have been

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acquired under the Act' 1962 resulting into vesting of the 'right of user' in such lands with the Central Government or the respondent Corporation, as the case may be.

68. In the present set of Writ petitions, there is no contrary stand of the Central Government which is the appropriate Government with whom the 'right of user' vest by virtue of sub-section (2) of Section 6 of the Act' 1962.

69. For the above discussion, it is not possible for us to appreciate the arguments of the learned Senior counsel appearing for the respondent ONGC that the Notification dated 28.08.2015 is to be held as nullity, not being a notification under Section 105 (3) of the RFCTLARR Act, 2013. Further, it is not possible for us to ignore the benefits conferred upon the land holders by virtue of the Notification dated 28.08.2015 of the Central Government by holding that the Act' 1962 being a "self-contained code", nothing more than the market value of the land as provided under Section 10(4) of the Act' 1962 can be given to the land owners towards compensation for deprivation of their full right of enjoyment of their own land. It is not possible for us to draw any exception to or ignore the observations made by the Apex Court in **Tarsem Singh[1],** about the Ordinances of the year 2014/2015 as well as the Notification dated 28.08.2015 issued by the Central

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Government for applying the principles contained in **Nagpur Improvement Trust[3].**

70. The contention raised by Mr. Thakore as referred to in paragraph No.36 hereinabove, that the decision in **Tarsem Singh[1]** in respect of the Notification dated 28.08.2015 is neither a ratio nor even an obiter of the Apex Court, deserves to be rejected for the following reasons :-

71. In the decision of **Career Institute Educational Society Vs. Om Shree Thakurji Educational Society[12]** , the Hon'ble Apex Court has held as under:-

> *"5. The distinction between obiter dicta and ratio decidendi in a judgment, as a proposition of law, has been examined by several judgments of this Court, but we would like to refer to two, namely, State of Gujarat & Ors. vs. Utility Users' Welfare Association & Ors.3 and Jayant Verma & Ors. vs. Union of India & Ors.4.*
>
> *6. The first judgment in State of Gujarat (supra) applies, what is called, "the inversion test" to identify what is ratio decidendi in a judgment. To test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inversed, i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case."*

12 (2023) 16 SCC 458

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72. In our view, if the entire reference of the Notification dated 28.08.2015 and its attendant observations are removed from the body of the decision in **Tarsem Singh[1]**, the judgment will remain incomplete and the aspect of violation of Article 14 in the matter of award of compensation, specifically Solatium in acquisition under different enactments, will be unclear. Therefore, the Notification dated 28.08.2015 and the observations in paragraph No.46, 47 and 48 etc. are essential to explain paragraph Nos. 26 to 41 of the said decision. Therefore, applying the "inversion test" as noted in **Career Institute**[12], we are of the opinion that the Notification dated 28.08.2015 and its attendant observations in **Tarsem Singh**[1] would qualify as the *ratio decidendi* of **Tarsem Singh**[1] .

73. In **P. Nagaraju[2],** the Apex Court was dealing with the controversy as to whether the parameters contained in Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are also applicable to the acquisition under the National Highways Act, which finds place in the Fourth Schedule of the RFCTLARR Act, 2013. The decision of the Apex Court in **Tarsem Singh[1]** was noted therein with approval. Referring to the Notification dated 28.08.2015 and the observations in paragraphs '29' to '31' in **Tarsem Singh[1],** it was held therein that for applying all parameters for determination of compensation, the factors as provided

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in Sections 26 and 28 of the RFCTLARR Act, 2013 will be applicable in appropriate cases for determination of the market value as fair compensation for the acquired land even under the National Highways Act.

74. It was held by the Apex Court in **P. Nagaraju**[2] that while dealing with the acquisition, Articles 300A and 31A of the Constitution will have to be borne in mind, inasmuch as, the deprivation of the property should be with the authority of law, after being duly compensated. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired.

75. The Apex Court in **P. Nagaraju**[2] has, thus, applied the principles in **Tarsem Singh**[1] based on the decision of the Apex Court in **Nagpur Improvement Trust**[3]**.** We, therefore, do not find any substance in the submission of the learned Senior counsel for the respondent ONGC to object to the applicability of the Notification dated 28.08.2015 issued by the Central Government, which has received recognition of the Apex Court in the matters of determination of just and fair compensation for acquisition of lands in different enactments, which would also include the Petroleum and Minerals

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Pipelines (Acquisition of Right of User in Land) Act, 1962, being one of the enactments specified in the Fourth Schedule of the RFCTLARR Act, 2013. All arguments to the contrary made by the learned Senior counsel for the ONGC to assail the applicability of the Notification dated 28.08.2015 are, therefore, untenable.

76. We, thus, hold that in exercise of the Power of Eminent Domain, the appropriate Government cannot discriminate in the matter of grant of compensation for compulsory deprivation of the property in all acquisitions irrespective of the enactments under which proceedings are conducted. Even for the deprivation of the right of the owner/landholder for full enjoyment of his property, in the cases of compulsory acquisition for the limited 'right of user with the vesting of the lands in the Central Government, the statutory benefits to bring solace to the expropriated soul (owner), will have to be equally distributed.

77. There is another aspect of the matter. The original award No.3 of 2024 dated 28.05.2024 under Section 10(4) of the Act' 1962 while making determination of compensation rate has itself referred to the RFCTLARR Act, 2013 and the Government of India Notification dated 28.08.2015 to record that the market value is to be determined as per Section 26(1) of the RFCTLARR Act, 2013. The categorical statement in the award is that the market value is fixed as per Sections 10(1) and 10(4) of the Act' 1962 and Rule 4A of the Rules' 1963

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read with the Gazette Notification dated 28.08.2015 and the relevant statement in the Award are :-

> "The Market Value is fixed as per Section 10(1) and 10(4) of PMR Act' 1962, read with Gazette No. S.O.2368(E) dated 28.08.2015 wherein it is ordered that the provision of the RFCTLARR Act 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."

78. While calculating compensation amount as per the provisions of Section 10(4) of the Act' 1962, the award further refers to the applicability of Multiplication factor in line with the First Schedule of the RFCTLARR Act, 2013.

79. Thus, while determining the market value and calculation of compensation amount payable to the land owners, Factor 2 in line with the First Schedule of the RFCTLARR Act, 2013 has been taken into consideration in light of the Notification dated 28.08.2015. The acquiring body, viz. ONGC was directed by the competent authority in the award itself to deposit the compensation amount and it was placed before us that without any demur, the ONGC had made the deposits of the compensation amount determined under the Award.

80. It was, thus, argued by the learned counsel for the petitioners that once the ONGC has accepted the award

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in toto and has never challenged the same on the premise of non-applicability of the Notification dated 28.08.2015, it is not permitted for the ONGC to raise any objection about the validity of the said notification or the applicability thereof in the proceedings for determination of compensation under the Act' 1962.

81. In response to the said stand of the petitioners, we may also go through the affidavit in reply filed on behalf of the ONGC wherein primarily relying on the decision of the Bombay High Court in **Gangadhar Karbhari Jadhav[9],** it was submitted that the acquisition under the Act' 1962 being only of the 'right of user' and does not affect the ownership or right for possession of the land, the petitioners' demand of Solatium under the RFCTLARR Act, 2013 is not maintainable.

82. During the course of argument, from a fact noted in the judgment of the Bombay High Court in **Gangadhar Karbhari Jadhav[9],** it is placed before us by Mr. Maulik G. Nanavati, learned advocate for the petitioners that the counsel for the Union of India appearing before the Bombay High Court had referred to the letter dated 21.08.2020 from the Secretary, Government of India, Ministry of Petroleum and Natural Gas to the Secretary, Department of Land Resources, New Delhi, requesting to initiate action to delete the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 from the Fourth Schedule of the RFCTLARR Act, 2013, in order to bring clarity that the RFCTLARR Act,

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2013 is applicable only to cases where complete land is acquired and not to cases where only acquisition of 'right of user' in land is made. It was noted by the Bombay High Court that, so far, the Act' 1962 has not been deleted from the Fourth Schedule by invoking the provisions of Section 105(2) of the RFCTLARR Act, 2013.

83. The contention, thus, is that the Act' 1962 being one of the enactments specified in the Fourth Schedule, no exception can be taken to the applicability of the provisions of the First Schedule of the RFCTLARR Act, 2013 to the acquisitions made under the Act' 1962. The component of compensation package in respect of the land acquired under the RFCTLARR Act, 2013 as indicated in the First Schedule would include Solatium. Further, in view of the law laid down by the Apex Court in **Tarsem Singh**[1] and **P. Nagaraju**[2]**,** it is not open for the respondent ONGC to raise any dispute about the grant of Solatium.

84. At this juncture, we may refer to **Tarsem Singh II**[13]**,** wherein the Apex Court has further reaffirmed **Tarsem Singh** as under :-

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

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Consequently, we deem it appropriate to dismiss the present Miscellaneous Application.

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

85. In **C.N. Rudramurthy Vs. K. Barkathulla Khan and Others[14],** the Hon'ble Apex Court has held as under :-

"8. Yet another argument was pressed upon us to the effect that when a provision of law in an enactment has been declared to be invalid and when the Supreme Court declares the law with reference to another enactment of similar nature, it would not be open to the High Court to say that the decision of this Court should be taken to have been overruled or upset the decisions rendered by the High Court declaring the law to be invalid. This principle has no application in the present case at all because this Court itself considered the effect of D.C. Bhatia case with reference to the provisions of the Karn[13]ataka Rent Control Act and applied the same thereto and thereafter declared what the law should be. Though this Court did not specifically refer to the decision in Padmanabha Rao case it is needless to say that the same stood overruled because the law declared by this Court was contrary to what was stated in Padmanabha Rao case. Therefore that argument also is not sound and needs to be rejected."

14 (1998) 8 SCC 275

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86. In view of the categorical reaffirmation of the **Tarsem Singh** by **Tarsem Singh II**[13] and in view of the *doctrine of implied overruling* as stated in **Rudramurthy**[14], we are of the opinion that the decision of the Bombay High Court in the case of **Gangadhar Karbhari Jadhav**[9] by which the Bombay High Court had declined to follow **Tarsem Singh**[1] stands impliedly overruled by **Tarsem Singh II**[13]**.**

87. In view of the above discussion, we find substance in the arguments of the learned counsel for the petitioners that the petitioners cannot be denied the benefit of Solatium which is part of the First Schedule of the RFCTLARR Act, 2013, made applicable to acquisitions under the Act' 1962 by virtue of the Notification dated 28.08.2015 of the Government of India, which extends benefits available in the RFCTLARR Act, 2013 to the acquisitions under the enactments specified in the Fourth Schedule. All arguments to the contrary made by the learned Senior counsel appearing on behalf of the ONGC and to assail the validity of the Notification dated 28.08.2015, are liable to be turned down.

88. Lastly, about the claim of the petitioners for additional compensation at the rate of 12% in the line of Section 30(3) of the RFCTLARR Act, 2013, the submissions made by the learned counsel for the petitioners is that in all the acquisitions under different enactments including the acquisitions under the National Highways Act, the additional amount calculated at the rate of 12% on the

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market value is being paid to the land holders. The submission, thus, is that the petitioners cannot be discriminated. Considering the above, we would go through the purpose and object of incorporation of the additional amount of 12% in the scheme of acquisitions under the original Land Acquisition Act, 1894 and further incorporated thereof under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

89. A perusal of Section 23 of the Land Acquisition Act, 1894 (the principal Act) shows that the additional amount at the rate of 12% per annum on the market value calculated under the award was payable under Section 23(1A) of the Land Acquisition Act, 1894 which was inserted by the Land Acquisition (Amendment) Act, 1984 (68 of 1984), which came into force on 24.09.1984. Section 30(1) of the Amendment Act 68 of 1984 made applicable the provisions in Section 23(1A) of the additional amount of 12%, applicable to the proceedings pending on or after 30.04.1982.

90. A question arose before the Constitutional Bench of the Apex Court in **K.S. Paripoornan v. State of Kerala**[15] as to whether the benefit of sub-section (1A) of Section 23 of the Land Acquisition Act, 1894 (the Principal Act) was to be granted only in the proceedings of the acquisition of land referred to in clauses (a) and (b) of Section 30(1) of the Land Acquisition (Amendment) Act, 1984 (amending

15 [(1994) 5 SCC 593]

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Act) or it is to be granted in all proceedings pending before the Courts on 24.09.1984. While dealing with the said issue, the Apex Court has considered the object and purpose of the amendment brought by the Amendment Act, 1984 with effect from 24.09.1984, for insertion/introduction of sub-section (1A) in Section 23 of the Principal Act, viz. the Land Acquisition Act,1894. Justice P.B. Sawant, in his dissenting judgment, on the question posed before the Bench on the issue and while concluding that in all proceedings pending before the reference court on 24.09.1984, the reference court has to give benefit of the provisions of Section 23(1A), made the observations in the following manner :-

> "13. Against the background of the aforesaid relevant provisions of the principal and the amending Act, we have to interpret the provisions of Section 23(1-A) of the principal Act. Section 23(1) speaks of the factors which the reference Court has to take into consideration while determining the amount of compensation to be awarded for the acquired land. The compensation so determined is to be the market value of the land in question on the date of the publication of the notification under Section 4(1) of the principal Act. The legislature had originally provided for a further sum in every case to be paid in addition to the market value of the land in consideration of the compulsory nature of the acquisition. That sum was 15 per centum on the market value. This additional sum known as 'solatium' was provided for in sub-section (2) of Section 23. By the amending Act, it has been increased to 30 per centum of the market value. The solatium was thus a part of the compensation from the very inception of the principal Act and all that was done by the amending Act, was to increase its amount.

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"14. It was, however, found that there was a considerable time lag between the date of the publication of the notification under Section 4(1) and the date of the award of the Collector. The market value of the land acquired was however frozen to the date of the notification under Section 4(1). In order to relieve the hardship of the persons interested in the land (hereinafter compendiously termed as 'landowners' for the sake of convenience), the legislature for the first time introduced sub-section (1-A) in Section 23 of the principal Act by the amending Act. This sub-section enjoins the grant, in every case, of a further amount in addition to the market value. The amount is to be calculated at the rate of 12 per centum per annum on the market value for a specific period, namely, the period commencing on and from the date of the publication of the notification under Section 4(1) and ending with the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The Explanation to the said sub-section (1-A), states that in computing the period for which the said amount is to be granted, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court, shall be excluded. This provision like the one for solatium in sub-section (2) of Section 23, is a substantive one. Unless therefore, there is a statutory mandate, neither this provision nor the provision for the increased solatium can be given retrospective effect. It is here that the role of Section 30 of the amending Act (hereinafter referred to as 'Section 30') which makes provisions for the transitional period, viz., the period between the introduction of the Bill of the amending Act and the commencement of the said Act, comes into play. It is the interpretation of the said Section 30 and its bearing on the provisions of Section 23 which has become a matter of controversy and a subject of conflicting decisions of this Court as stated at the outset."

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91. Justice S.C. Agrawal, speaking for the majority, has also noted that Section 23(1A) confers a substantive right to claim the additional amount calculated as set out in the said sub-section in the circumstances set out therein. It was observed that on construction of Section 23 (1A), it would be evident that under Section 23(1A), an obligation to pay additional amount by way of compensation has been imposed.

92. Considering the above, for our purposes, it is relevant to note that Section 23(1A) was inserted by the Land Acquisition (Amendment) Act, 1984 to bring a statutory mechanism to compensate land holders for the time lag between the date of the publication of the Notification under Section 4(1) and the making of award or taking possession as a result of acquisition. The Apex Court has noted that the legislature has found that the market value of the land acquired was frozen on the date of the Notification under Section 4(1) though actual payments were often delayed due to delay in making of the awards, resulting in significant hardship to the land owners. Sub-section (1A) enjoins grant of further amount in addition to the market value to be calculated @ 12% per annum on such market value for the period commencing on and from the date of publication of the Notification under Section 4(1) till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. The *pari materia* provisions have been incorporated, after repeal of the Land

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Acquisition Act, 1894, in Section 30(3) of RFCTLARR Act, 2013, which provides that in addition to the market value of the land provided under Section 26, the Collector shall, in every case, award the amount calculated at 12% per annum on the market value for the period commencing on and from the date of Notification under Section 4(2) (the first Notification of the Social Impact Assessment Study) of the RFCTLARR Act, 2013, in respect of such land till the date of the possession of the land, whichever is earlier.

93. Thus, even under the scheme of RFCTLARR Act, 2013, the legislature has recognised the substantive right of the land holders to get an additional amount of 12% against the time lag, loss of money, deprivation in full usage of its landed property where payment of compensation is delayed. The additional amount of 12% per annum on the market value for a specified period accorded in Section 30(3), has been considered to be as one of the component of the award made under the RFCTLARR Act, 2013 by the Apex Court in **R.B. Dealers (P) Ltd. v. Metro Railway, Kolkata**[16]. It was held therein that an award declared by the Collector under the scheme of the RFCTLARR Act, 2013 shall be in three parts; (i) the amount of compensation (which shall include the market value of the land acquired and value of the assets attached to the land); (ii) the Solatium determined and payable under sub-section (1) of Section

16 (2019) 20 SCC 658

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30 which shall be equivalent to one hundred percent of the compensation amount (the market value + value of assets attached to the land); and (iii) the amount calculated at the rate of 12% per annum of such market value (as per sub-section (3) of Section 30 of the RFCTLARR Act, 2013).

94. Considering the above, in light of the law stated by the Apex Court in **P. Nagaraju**[2] relying on the law laid down in **Nagpur Improvement Trust**[3] that there can be no discrimination between the land owners whose lands are acquired under the general provisions of the Land Acquisition Act and others whose lands are acquired under other enactments specified in the Fourth Schedule of the general provisions of the RFCTLARR Act, 2013, we find that the prayer of the petitioners herein to grant benefit of the additional amount calculated at the rate of 12% per annum on the market value for the period commencing from the date of Notification under Section 3(1) of the Act' 1962 till the date of the award of the competent authority or the date of taking possession of the land, whichever is earlier, shall have to be granted. Any contrary opinion of denial of such benefits to the land holders, which is held to be one of the components of the award made under the RFCTLARR Act, 2013, would be in violation of the principle of equality enshrined in Article 14 of the Constitution as held by the Apex Court in paragraph '30' in **Nagpur Improvement**

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Trust[3] and relied in the recent decisions of the Apex Court in **Tarsem Singh**[1] and **P. Nagaraju**[2].

95. We may note that in both the above noted decisions, **Tarsem Singh**[1] and **P. Nagaraju**[2], specific arguments made by the acquiring body that the acquisitions have been made under the National Highways Act, which being a "self-contained code" is to be followed on its own term, have been rejected to hold that such an argument cannot be appreciated to be used as a discriminatory tool to deny the benefits available to the land holders merely because the land has to be acquired under different enactments, as against the principle in **Nagpur Improvement Trust**[3]**.**

96. With the above, the present set of Writ petitions stand allowed with the direction to the competent authority to make an amended award by granting benefits of Solatium as per the First Schedule and additional amount of 12% calculated in accordance with the above directions. The above directed computed amount towards Solatium shall carry further interest from the date of award, i.e. 28.05.2024 @ 15% per annum as the benefit of Solatium was required to be included in the final award considering the Notification dated 28.08.2015. The additional amount of 12% shall have to be computed from the date of the Notification under Section 3(1) of the Act' 1962 uptil the date of the award and shall be payable alongwith the simple interest @ 8% per annum from the date of award, i.e. 28.05.2024 till

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the date of deposit by ONGC. The process of computation shall be completed within four weeks of the receipt of the copy of this order and disbursement shall be made thereafter to the landholders/persons interested after due verification, as early as possible.

97. With the above, the writ petitions being Special Civil Application No.14518 of 2024, Special Civil Application No.14764 of 2024, Special Civil Application No.15223 of 2024 and Special Civil Application No.16164 of 2024 stand disposed of.

Order in Special Civil Application No.15904 of 2024 :-

98. In Special Civil Application No. 15904 of 2025, the dispute is about the award dated 19.04.2024 made by the competent authority as an amended award. Referring to page '43' of the paper book, it was placed before us that initially an award dated 30.01.2024 was declared by the competent authority with respect to the land in question. However, on the letters written by ONGC dated 17.04.2024 and the Padra Nagarpalika dated 12.03.2024, reference of which can be found in the impugned award itself, the final award dated 30.01.2024 was cancelled from beginning (*ab initio)* and the impugned award dated 19.04.2024 has been made determining compensation by application of multiplication Factor 1 only. From the the discussion made in the award itself, we find that there is a reference of the Notification dated 28.08.2015 of the

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Government of India published under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to the effect that the market value is to be determined as per Section 26(1) of the RFCTLARR Act, 2013.

99. Challenging this award, adding to the submissions on the issue of Solatium and additional amount @ 12% as per the RFCTLARR Act, 2013, discussed hereinbefore, it was argued by the learned counsel for the petitioners that after declaration of the award on 30.01.2024, the competent authority had become *functus officio* and it had no jurisdiction to cancel the award declared on 30.01.2024 on its own, that too on the letters of the ONGC dated 17.04.2024 and of Padra Nagarpalika dated 12.03.2024 referred therein. The statement in this regard at page '43' of the paperbook is relevant to be noted hereinunder:-

> "Read letter from ONGC dated 17.04.2024 (mentioend above as Ref.1) and from Padra Nagar Palika Dated 12.03.2024 (mentioned above as Ref.2). Amended award needs to be declared in place of award declared earlier on 30.01.2024. So this amended award is being declared and the award declared earlier on 30.01.2024 be treated as "Cancelled" from beginning (ab initio)

100. It is further submitted by the learned counsel for the petitioners that the initial award dated 30.01.2024 was never communicated to them and hence they are not aware of the contents of the original award. The challenge to the validity of the award dated 19.04.2024

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is on this additional ground apart from the ground adjudicated hereinbefore about the non-payment of Solatium and 12% additional compensation. The contention of the petitioner is that the amended award passed by the competent authority is without jurisdiction, wrongly classifying the land in question as falling within the urban area and thereby applying only Multiplication Factor 1. The contention is that the land in question is situated in a village which is classified as 'rural area' and in terms of the Government Resolution dated 29.07.2006, Multiplication factor 2 to the market value for the purpose of calculating the total amount of compensation, was required to be taken into consideration.

101. The submission in the Writ petition is that the land surrounding the petitioners' land in the same village wherein 'right of user' has been acquired by the Central Government under the Act' 1962, have been treated as falling in 'rural area' and Multiplication Factor 2 has been applied to assess the market value for such lands, which action of the competent authority is *ex facie* arbitrary and discriminatory being violative of Article 14 of the Constitution of India. The substituted/amended award dated 19.04.2024 passed by the competent authority by reviewing the earlier award dated 30.01.2024, therefore, is wholly without jurisdiction.

102. Taking note of the above submissions made by the learned counsel for the petitioners, suffice it to note that

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from the statement in the impugned award dated 19.04.2024 itself, it is evident that an award was declared by the competent authority on 30.01.2024, which was cancelled *ab initio* for declaring a revised award on the premise that the amended award needed to be declared in place of the award declared earlier on 30.01.2024, in view of the letters of the ONGC and Padra Nagarpalika referred therein. This statement is sufficient to hold that the revised award dated 19.04.2024 was without jurisdiction, inasmuch as, the competent authority became *functus officio* after declaration of the award dated 30.01.2024. In absence of any statutory power of review, it was not open for the competent authority to review or revise the award declared by it on 30.01.2024, on its own.

103. We, therefore, hold that the award dated 19.04.2024 passed by the competent authority is manifestly illegal. While setting aside the same, the matter is remitted back for making of the fresh award strictly in accordance with law, after giving due notice and opportunity to the petitioners/land holders and the ONGC, for determination of the market value in accordance with the provisions in Section 10(1) and 10(4) of the Act' 1962 and Rule 4 of the Rules' 1963 read with Section 26 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and to award compensation taking into consideration of all components of

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compensation as per the Notification dated 28.08.2015 of the Central Government and also 12% additional amount as per Section 30(3) of the RFCTLARR Act, 2013, keeping in mind the directions contained in the foregoing paragraph (No.96) of this judgment.

104. The entire exercise of fresh computation for making a fresh award in light of the directions given hereinbefore shall be completed, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of the copy of this order and the exercise of disbursement of compensation shall be completed thereafter after due verification.

105. With the above observations and directions, the Special Civil Application No. 15904 of 2024 also stands disposed of.

106. All pending applications would not survive and shall stand disposed of accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BIJOY B. PILLAI