

**Court No. - 21****Case :-** WRIT - C No. - 12796 of 2024**Petitioner :-** Hem Chandra**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Sanjay Kumar Mishra**Counsel for Respondent :-** C.S.C.,Nipun Singh**Hon'ble Manoj Kumar Gupta,J.****Hon'ble Kshitij Shailendra,J.****(Per Manoj Kumar Gupta, J.)**

1. Heard Sri Shiv Kant Mishra, holding brief of Sri Sanjay Kumar Mishra, learned counsel for the petitioner, Sri Rajiv Gupta, learned Additional Chief Standing Counsel for the State-respondents and Sri Nipun Singh, learned counsel for respondent no.4.

2. The petitioner has prayed for quashing of the award dated 27.02.2024 passed by Additional District Magistrate (Land Acquisition), Agra in respect of Khasra Nos. 109/1, area 0.2910 hectare, 109/2, area 0.6450 hectare, 70M, area 0.0890 hectare, 72, area 0.2150 hectare, 74, area 0.1900 hectare, 67, area 0.1900 hectare, 68, area 0.0510 hectare, 69, area 0.4170 hectare, 70M, area 0.5560 hectare, 71, area 0.3920 hectare situated at Village Bhood, Tehsil and District Bulandshahr and for a further direction to the said authority to prepare a fresh award treating 'relevant date' with reference to which market value is to be determined as 01.01.2014, i.e. the date of enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the New Act, 2013').

3. The petitioner, indisputably, was bhumidhar with transferable rights of the aforesaid plots. A notification under Section 28 of U.P. Avas Evam Vikash Parish Adhiniyam, 1965 (hereinafter referred to as 'the

Adhiniyam') was issued on 11.08.1979. It was followed by notification under Section 32 of the Adhiniyam dated 07.07.1982. The petitioner filed Writ Petition No.6695 of 1983 for putting a restraint on the respondents from enforcing Grihstha Yojana No.1 Scheme in pursuance of the aforesaid notifications and to declare Sections 55(1) and 32(2) of the Adhiniyam as ultra vires of the Constitution. The writ petition was dismissed in default on 15.03.2000 and, thereafter, the restoration application was also dismissed on 19.07.2002. Possession of the land was taken by the Parishad on 28.06.2002, however, award of the subject land was not made until 27.02.2024.

4. In the impugned award dated 27.02.2024, the reference date for calculating compensation for the acquired land has been taken to be the date of notification under Section 28 dated 11.08.1979 treating it to be at par with notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the LA Act'). Accordingly, the exemplar sale deeds of the period three months prior to notification under Section 28 dated 11.08.1979 alone have been considered in determining compensation for the subject land. Market value of the acquired land has been determined by applying the principle of betting system. For the land situated upto a distance of 100 feet from the road, compensation determined is at the rate of Rs.31.42 per sqr. yard, for the land upto 600 feet at the rate of Rs.21.05 per sqr yard and beyond it, at the rate of Rs.15.71 per sqr yard, apart from other statutory benefits.

5. The sole contention of learned counsel for the petitioner is that after coming into force of New Act of 2013, the compensation has to be determined with reference to the date of enforcement of the said Act, i.e. 01.01.2014. In support of his contention, he places reliance on Section 24(1) of the New Act, 2013 and the recent judgment of

Supreme Court in **U.P. Avas Evam Vikas Parishad Vs. Chandra Shekhar and others (Civil Appeal No.3855 of 2024 arising out of SLP (C) No.779 of 2016, decided on 05.03.2024)**<sup>1</sup>.

6. On the other hand, Sri Nipun Singh, learned counsel appearing on behalf of Parishad, submits that by virtue of Section 55 of the Adhiniyam, the provisions of Land Acquisition Act, 1894 applies, subject to modifications specified in the Schedule. There has been no amendment in the said provision so as to make applicable the provisions of the New Act, 2013, therefore, the claim of the petitioner is unsustainable. In support of his submissions, he places reliance on a Division Bench judgment of this Court in **Atul Sharma and another Vs. State of U.P. and others**<sup>2</sup>.

7. We have considered the rival submissions and perused the material on record.

8. It is noteworthy that by virtue of Section 55 of the Adhiniyam read with the Schedule, the provisions of the Land Acquisition Act, 1894, as amended in the State of Uttar Pradesh, subject to modifications specified in the Schedule, have been made applicable. Section 55 of the Adhiniyam is as follows:

**"55. Power to acquire land.**—(1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. 1 of 1894), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modification specified in the Schedule to this Act.

(2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of the land under the Land Acquisition Act, 1894 (Act No. 1 of 1894)."

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1 (2024) 3 SCR 585

2 2017 (10) ADJ 308

9. By Act No. 68 of 1984, drastic amendments were made in the LA Act. The Statement of Objects and Reasons – emphasizes the need to balance individual interest with larger interest of the community. Two main features of the Amending Act, 1984 was to provide (i) timelines in initiating and concluding various stages of the proceedings so as to avoid delay of long periods which 'renders unrealistic the scale of compensation offered to the affected persons' and (ii) to provide adequate measures to compensate for the delay. To meet these concerns, main proposals for amendments, inter alia, are as follows:

"(iii) A time-limit of one year is proposed to be provided for completion of all formalities between the issue of the preliminary notification under Section 4(1) of the Act and the declaration for acquisition of specified land under Section 6(1) of the Act.

(v) It is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of the land would lapse. He has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.

(viii) Solatium now payable at the rate of fifteen per centum of the market value of the land acquired in consideration of the compulsory nature of the acquisition, is proposed to be increased to thirty per centum. Similarly, the rate of interest payable on the excess compensation awarded by the Court and on the compensation in cases where possession of land is taken before payment of compensation, are also proposed to be increased substantially.

(ix) Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it

is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act.

(x) As a large number of cases for the acquisition of land are pending before various authorities for a very long time and payment of the market value of the land obtaining on the date of the preliminary notification under Section 4 of the Act in respect of such land is likely to be unrealistic and iniquitous, it is proposed to provide for payment of simple interest at ten per centum per annum on the amount of compensation for the period commencing from the date of issue of the notification under Section 4 of the Act to the date of tender of payment or deposit of compensation awarded by the Collector in respect of all pending proceedings on the 30th April, 1982, the date when the earlier Bill for the amendment of the Act was introduced in the House of the People."

10. After amendments in LA Act, question arose before the Supreme Court in **Gauri Shankar Gaur v. State of U.P.**<sup>3</sup> whether the provisions of LA Act as amended by Amending Act, 1984 stood incorporated in the Adhiniyam by virtue of Section 55 read with the Schedule. There was difference of opinion in the Two Judges Bench and the matter was referred to Larger Bench of Three Judges. The issue came to be decided by Three Judges Bench in **U.P. Avas Ewam Vikas Parishad v. Jainul Islam and Another.**<sup>4</sup> In paragraph 13 of the judgment, the point of difference between the Two Judges was noted as follows:

"13. Ramaswamy, J. was of the view that Section 55 of the Adhiniyam read with the Schedule made an express incorporation of the provisions of Section 4(1) and Section 6 as modified and incorporated in the Schedule and that the Schedule effected necessary structural amendments to Sections

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3 (1994) 1 SCC 92

4 (1998) 2 SCC 467

4, 5, 17 and 23 incorporating therein the procedure and principles with necessary modifications and that it is a complete code in itself. He, therefore, held that Section 55 and the Schedule adopted only by incorporation Sections 4(1) and 6(1) and the subsequent amendments to Section 6 did not become part of the Adhiniyam and they have no effect on the operation of the provisions of the Adhiniyam. Sahai, J. however, took a contrary view. He was of the opinion that whether a legislation was by way of incorporation or by way of reference is more a matter of construction by the courts keeping in view the language employed by the enactment, the purpose of referring or incorporating provisions of an existing Act and the effect of it on the day-to-day working. According to the learned Judge such legislation by incorporating is subject to exceptions and that one such situation where legislation by incorporation is excluded is if it creates difficulty in day-to-day working. The learned Judge was of the view that in our constitutional set-up the exception can be extended further and the courts should lean against a construction which may result in discrimination. He, therefore, held that the amendments introduced in the LA Act by the 1984 Act would be applicable to acquisition of land for the purpose of the Adhiniyam and restriction of three years added by the first proviso to Section 6 of the LA Act was applicable to acquisition for the purposes of the Adhiniyam also. The learned Judge, however, took note of the fact that the Parishad had entered into possession and had constructed housing colonies as there was no interim order in favour of the landowners during pendency of the writ petitions in the High Court and observed that larger social interest requires this Court to mould the relief in such a manner that justice may not suffer. He, therefore, held that even though publication of declarations under the Act were beyond the period of three years it was not in the interest of justice to quash the proceedings but the landowners should be paid compensation of the land acquired on market value prevalent in the year in which the declaration analogous to Section 6 of the earlier Act was published/issued by fictionally assuming that fresh notification under the Act analogous to Section 4 was issued in that year."

11. The Supreme Court considered the plea of the Parishad that by virtue of Section 55 of the Adhiniyam, the provisions of the LA Act, subject to modifications provided under the Schedule alone would apply as it is legislation by incorporation. On behalf of the land owners, it was contended that the provisions of the Amending Act at least to the extent the same relates to award of additional statutory benefits if not applied would offend Article 14 of the Constitution and would render Section 55 of the Adhiniyam unconstitutional. The Supreme Court relied on its previous judgment in **Nagpur Improvement Trust**<sup>5</sup> decided by a Special Bench of Seven Judges. Therein, Section 61 of the Nagpur Improvement Trust Act, 1936, which is identical to Section 55 of the Adhiniyam, was under consideration and it was ruled that –

"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.

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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 enables 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."

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5 AIR 1962 SC 955

12. The contention that when acquisition is under two different Legislations, Article 14 cannot be invoked, was repelled relying on **State of M.P. v. G.C. Mandawar**<sup>6</sup> by observing as follows –

"28. The principle laid down by this Court in *State of M.P. v. G.C. Mandawar* that Article 14 cannot be invoked when the alleged discrimination is on account of laws made by two different legislatures has no application in the present case because under the LA Act as well as under the provisions of the Adhiniyam the acquisition is to be made by the same authority, viz., the State Government of Uttar Pradesh, and discrimination arises on account of action taken by the same authority."

13. The Supreme Court after considering the rival contentions held that the provisions of the Amending Act in so far as it relates to determination of compensation, if not applied to acquisitions made under the Adhiniyam, "the consequence would be that the provisions of the LA Act, as applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination". Such a consequence could be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the LA Act, as amended by the 1984, Act, relating to determination of compensation would apply to acquisitions of land for the purposes of the Adhiniyam. The relevant discussion is in paragraphs no.31 and 32 and the same is extracted below:-

"31. Since the present case involves acquisition of land under the provisions of the L.A. Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this Court in *Nagpur Improvement Trust Vs. Vithal Rao*: (1973) 1 SCC 500. Keeping in view the principles laid down in the said decision of this Court, it has to be held that if the provisions of the Adhiniyam are so construed as to mean that the provisions of the L.A. Act, as they stood on the date of enactment of the Adhiniyam, would be applicable to acquisition or land for the purpose of the Adhiniyam and that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation are not applicable, the consequence would be that the provisions of the L.A. Act, as applicable

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6 AIR 1954 SC 493



under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the L.A. Act, as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of the Adhiniyam. There is nothing in the Adhiniyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhiniyam show that the intention of the Legislature, while enacting the Adhiniyam, was to confer the benefit of solatium @ 15% by modifying Section 23(2) in the Schedule, which benefit was not available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. It cannot, therefore, be said that the intention of the Legislature, in enacting the Adhiniyam, was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the L.A. Act after the enactment of the Adhiniyam. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the L.A. Act in the Adhiniyam the intention of the legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation, viz, Section 23(1-A) and Section 23(2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purpose of the Adhiniyam under Section 55 of the Adhiniyam.

32. In view of the construction placed by us on the provisions of Section 55 of the Adhiniyam that the provisions of the L.A. Act, as amended by the 1984 Act relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of the Adhiniyam, it is not necessary to deal with the submission that if the provisions of the 1984 Act are held to be not applicable in the matter of acquisition of land for the purposes of the Adhiniyam the provisions of the L.A. Act, as applicable under the Adhiniyam, would be void on the ground of repugnance under Article 254 of the Constitution.”

(emphasis supplied)

14. The effect of aforesaid enunciation of law is that even though Section 11-A of the Act of 1894, which stipulated that the acquisitions would lapse in case award is not declared within two years, would not have the effect of acquisitions made under the Adhinyam getting lapsed but the beneficial provisions relating to determination of compensation would apply.

15. In **Union of India and others Vs. Tarsem Singh and others**<sup>7</sup> the Supreme Court considered the vires of Section 3-J of the National Highways Act, 1956 as amended by National Highways Laws (Amendment) Act, 1997. It excluded the applicability of Land Acquisition Act, 1894 to acquisitions made under the said Act. It was held that the said provisions resulting in non-grant of solatium and interest in respect of lands acquired under National Highways Act, which were available if lands were acquired under Land Acquisition Act, 1894 was violative of Article 14 of the Constitution of India. The plea based on Article 31-C read with Article 39(b) of the Constitution was held to be not tenable. The classification between landowners, whose land were acquired for National Highways under the National Highways Act, 1956 and landowners whose land was acquired for other public purposes was held to have no rational nexus with the object sought to be achieved by the National Highways Laws (Amendment) Act, 1997. Again the fundamental principle reiterated in the said case was that the State cannot accord different treatment to affected persons based on legislation under which acquisition is made. In arriving at the said conclusion, once again reliance was placed on **Nagpur Improvement Trust** (supra). The beneficial provisions of LA Act relating to solatium and interest were held to be applicable to acquisitions made under the National Highways Act, 1956. The

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7 (2019) 9 SCC 304

relevant conclusion contained in para-52 of the Law Report is as follows:

"We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional."

16. Here, it is worthwhile to note the relevant provisions of the New Act, 2013. Section 24 of the Act contemplates lapsing of certain acquisition proceedings and also determination of compensation as per provisions of the New Act in cases where no award had been made under Section 11 of the Land Acquisition Act, 1894. For ready reference, Section 24 is extracted below:-

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

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited

in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

17. Section 114 repeals the Land Acquisition Act, 1894 but, at the same time, saves the action taken under the said Act by applying Section 6 of the General Clauses Act, 1897. Section 114 is extracted below:-

“(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

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

18. In this regard, we may also take note of Section 6 of the General Clauses Act, 1897, which is as follows:-

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

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

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

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

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

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty,

forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

(emphasis supplied)

19. A combined reading of Section 114 of the New Act along with Section 6 of the General Clauses Act 1897 would establish beyond doubt that the repeal of Land Acquisition Act, 1894 would not affect any right, privilege, obligation or liability acquired, accrued or incurred under the said enactment, consequent to its repeal. Thus, the acquisition made by U.P. Avas Evam Vikas Parishad in the instant case would not lapse but, at the same time, the right of the petitioner to receive compensation also gets saved.

20. Under the New Act, undoubtedly, the rate of compensation is much higher as compared to LA Act. Thus, while repealing LA Act, the New Act, by virtue of Section 24(1)(a) mandates determination of compensation in cases where no award has been made, as per the provisions of the New Act. Obviously, it is a balancing act of the legislature. While it saves acquisitions under the LA Act in larger interest of the community, it protects the interest of the affected persons by providing them with compensation as per the principles enshrined under the New Act.

21. In **Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v. Mahesh and others**<sup>8</sup>, the Supreme Court considered the issue as to whether limitation of two years prescribed under Section 11-A for making award under LA Act, 1894 would apply even after repeal of the said Act, or the twelve months period specified in Section 25 of the New Act, 2013 will apply for award made under clause (a) of Section 24(1) of LA Act, 1894? Giving a purposive interpretation, the Supreme

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<sup>8</sup> (2022) 2 SCC 772

Court ruled that in such cases, the limitation of twelve months prescribed under Section 25 of the New Act, 2013 would apply. In so holding, the Supreme Court held that notification under Section 6 of the LA Act, 1894 is to be treated at par with notification under Section 19 of the Act. Consequently, the award is to be made in such cases within twelve months from 01.01.2014, the date of commencement of New Act, 2013 if the limitation had not expired as per Section 11-A of the LA Act. We may usefully refer to the relevant extract from the said judgment –

**"30.** A rational approach so as to further the object and purpose of Sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24(1) of the 2013 Act there would be no notification under Section 19, but declaration under Section 6 of the 1894 Act. When the declarations under Section 6 are valid as on 1-1-2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act.

**31.** Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1-1-2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1-1-2014. This dictum is subject to the caveat stated in paras 20 to 23\* (supra) that a declaration which has lapsed in terms of Section 11-A of the 1894 Act before or on 31-12-2013 would not get revived."

22. Where the award is declared under the saving clause embodied in Section 24(1)(a) of the New Act, 2013, it has been held in several judgments of Coordinate Benches that the reference date for making the award would be 01.01.2014, the date of commencement of New Act. While coming to the said conclusion, reliance has been placed on

the judgment of Supreme Court in **Hori Lal vs. State of U.P. & others**<sup>9</sup> and D.O. letter of the State Government dated 26.10.2015 clarifying that the reference date in such cases would be 01.01.2014. In **Pyare Lal and 24 others vs. Union of India and 4 others**<sup>10</sup>, we have taken the same view. The relevant paragraphs from the said judgment are extracted below:

"10. In **Smt. Sabita Sharma** (supra), a Co-ordinate Bench of this Court, after examining various earlier Division Bench judgements of this Court and most of which were upheld with the dismissal of special leave petitions filed before the Supreme Court and in one case, namely, **Hori Lal vs. State of U.P. and 3 Others** with dismissal of Civil Appeal No.1462 of 2019, held that the relevant date would be 01.01.2014 i.e., the date of commencement of the new Act, 2013. The judgement takes notice of Section 113 of the new Act, 2013, which empowers the Central Government to make such provisions or give such directions not inconsistent with the provisions of the new Act, 2013, as may appear to it to be necessary or expedient for removal of the difficulty. It has been held that in exercise of said power, the Central Government had issued a D.O. No.13013/01/2014-LRD(Pt) dated 26.10.2015 wherein the issue at hand was specifically answered in reference to a query raised by the Government of Maharashtra. The relevant part of the said D.O. is extracted below:

S. No.	Issues raised by the Government of Maharashtra	Opinion of the DoLR
1.	While determining the amount of compensation under Section 27 of the RFCTLAR&R Act, 2013 of Hon'ble Supreme Court's orders are followed or cost of assets have to be separately computed in addition to cost of land?	Under Section 26 of the RFCTLAR&R Act, 2013 market value of land is determined while under section 27, value of all assets attached to the land is added to the market value to determine the amount of compensation. Thus, it is not contradictory to the Supreme Court's orders quoted in the letter of Maharashtra Government.

9 2019 SCC OnLine SC 129

10 2024 (153) ALR 771

2.	Under Section 24(1), the reference date for calculating 12% interest should be date of preliminary notification under Land Acquisition Act, 1894.	Under section 24(1), the reference date for calculating 12% interest should be date of preliminary notification under Land Acquisition Act, 1894. Department of Land Resources agrees to this, as there is no other reference date, that can be treated as equivalent to date of SIA notification under the RFCTLAR&R Act, 2013.
3.	For calculation of market value, under Section 24(1)(a), reference date should be 01.01.2014 (commencement of RFCTLAR&R Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894?	<u>The reference date for calculation of market value, under Section 24(1)(a) should be 01.01.2014 (commencement of RFCTLAR&amp;R Act, 2013), as the Section reads "in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply. Under section 26 reference date is date of preliminary notification, but section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e., 01.01.2014) with a view to ensure that the land owners/farmers/affected families get enhanced compensation under the provisions of the RFCTLAR&amp;R Act, 2013 (as also recommended by Standing Committee in its 31st report).</u>

11. The Division Bench, thereafter, concluded as follows:

"From a perusal of the D.O. letter dated 26th October, 2015, issued by the concerned Ministry of the Central Government forwarded to the Principal Secretary of the State of U.P., for information and necessary action, it is evident that the said direction was made in order to remove difficulty arose in giving effect to the provisions of



the RFCTLARR Act, 2013, in the matter of calculation of market value under Section 24(1)(a), in the land acquisition proceedings initiated under the Act, 1894. The said directions issued by the Central Government being in exercise of the power under Section 113 of the RFCTLARR Act, 2013 have statutory force and are binding on all the State Government being in view of the power conferred on the Central Government to make such provision or give such directions which are not inconsistent with the provisions of the RFCTLARR Act, 2013, for removal of any difficulty arising in giving effect to the provisions of the RFCTLARR Act, 2013."

12. It is noteworthy that when same view was taken by an earlier Division Bench in **Hori Lal** (supra), the matter travelled to Supreme Court and the **Civil Appeal No.1462 of 2019 (Hori Lal vs. State of U.P. and Others)** was dismissed by the Supreme Court repelling the contention that the relevant date would be the date on which the award was made. The view taken by the Division Bench of this Court that relevant date would be 1st of January, 2014 was thereby upheld. The relevant extract from the said judgement of the Supreme Court is as follows:

"20. We, therefore, find no good ground to accept the submission of the learned counsel for the appellant when he contended that the date for determining the compensation should be the date on which the Land Acquisition Officer passed the award. This argument does not have any basis and is, therefore, not acceptable for the simple reason that such date is not provided either in the old Act, 1894 or in the Act, 2013.

21. Indeed, how the compensation is required to be determined and with reference to what date, is provided under the Act and admittedly the date suggested by the learned counsel is not the date prescribed either in the old Act or the new Act. This submission has, therefore, no merit and deserves to be rejected. It is accordingly rejected.

22. We, therefore, find no good ground to take a different view than what was taken by the High Court in the impugned order"

13. In view of the above discussion, we are of the opinion that the issue is no more *res integra*. The relevant date for determining the compensation in respect of acquisition initiated under the old Act but where award could not be made by the time the new Act, 2013 came into force, would be 1st of January, 2014 i.e., the date of commencement of the new Act, 2013. "

23. In the instant case, admittedly, the notification under Section 32 of the Adhiniyam, which is at par with Section 6 notification under LA Act, was made on 07.07.1982. However, award was not made for

almost 42 years. This became possible because the timelines under the Amending Act are held to be inapplicable. Now, should the Parishad continue to delay the awards taking benefit of the non-applicability of the timelines and at the same time, also not pay compensation according to the New Act?

24. This controversy has now been settled by the Supreme Court in **Chandra Shekhar (supra)**. The said case also arose out of the acquisition made under the Adhiniyam. The notification under Section 28 was issued on 17.07.2004. It also appears that the subsequent action of the Parishad was subjected to challenge and it was held that the same was not valid as proper opportunity, as contemplated under Section 5-A of the Land Acquisition Act 1894, was not given. The Supreme Court upheld the judgment of the High Court quashing the subsequent action of Parishad on the ground of non compliance of the procedure. The Supreme Court, however, held that since substantial development had already taken place, therefore, it would not be proper to quash the acquisition but the land holder should be substantially compensated. It specifically considered the impact of Section 55 of Adhiniyam and held that the New Act shall be deemed to be read in place of Old Act, 1894 on the ground that the acquisition had not attained finality before 01.01.2014. The relevant observations in this regard are as follows:-

“18. Having held so, the question that falls for further consideration is as to what should be the future course of action for the appellant-Board, so that neither the public interest to utilize the subject-land for the Scheme that has been substantially developed is frustrated nor the true tenure holders are deprived of the adequate compensation for their land. It may be seen from Section 55 of the 1965 Act that the compensation for the acquired land was required to be assessed in accordance with the provisions of the Land Acquisition Act 1894, which stood repealed w.e.f. 01.01.2014 by the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”). Section 55 of the 1965 Act cannot be given effect unless it is declared by way of a deeming fiction that instead of 1894 Act which now stands repealed, the compensation shall be assessed in accordance with the provisions of the 2013 Act. We hold accordingly. Since the acquisition could not attain finality before 01.01.2014, we are of the considered opinion that the Acquiring Authority/Board are obligated to pay compensation to the ex-propriated owners, as is to be assessed in accordance with Section 24(1) of the 2013 Act.

19. Consequently, we hold that the tenure-holders/owners of Khasra No.673, which was still under the acquisition process when 2013 Act came into force, shall be entitled to be paid compensation in accordance with Section 24(1) of the 2013 Act.”

25. The Supreme Court, at the same time, did not make applicable the procedure relating to carrying out of Social Impact Assessment Study under the New Act and only determination of compensation was directed to be made as per the New Act.

26. In the instant case also, admittedly, the acquisition proceedings were not finalized before 01.01.2014 as no award was declared by the Parishad by that time. The award has been declared, as noted above, on 27.02.2024 and, therefore, in our opinion, the Competent Authority should have determined compensation as per the provisions of the New Act, 2013 by treating the reference date as 01.01.2014, i.e. the date of enforcement of the New Act as emerges from combined reading of **Chandra Shekhar** (supra) and **EE, Gosikhurd Project** (supra).

27. In **Jainul Islam** (supra), the Larger Bench of Supreme Court has held that the beneficial provisions of the Amending Act, 1984 relating to determination of compensation would apply to the acquisitions made under the Adhinyam to save it from arbitrariness and

discrimination. As the Act, 1894, as amended from time to time, stands replaced by the New Act, 2013, we are of the considered opinion that the affected persons would be entitled to compensation as per the New Act, 2013, again to save Section 55 of the Adhiniyam from being rendered unconstitutional on the touchstone of Article 14 of the Constitution.

28. In the impugned award, reliance has been placed on Division Bench decision of this Court in **Atul Sharma (supra)**, which in view of the judgment of Supreme Court in **Chandra Shekhar (supra)** stands impliedly overruled in so far as it holds that compensation for acquired land under the Adhiniyam would be payable under the Land Acquisition Act, 1894 even in respect of acquisition which could not be finalized until the enforcement of the said Act, i.e. 01.01.2014. The judgment in **Jainul Islam (supra)**, in our opinion, has wrongly been interpreted in the impugned award and the said judgment, when read with the recent pronouncement made in **Chandra Shekhar (supra)**, clarifies the legal position that the acquisitions made under the Adhiniyam which could not be finalized until coming into force of New Act, 2013, would be governed by the New Act in respect of determination of compensation.

29. Accordingly, the impugned award is hereby quashed and the matter is remitted back to the Additional District Magistrate (Land Acquisition), Agra (respondent no.3) for determining the compensation afresh in the light of observations made herein above.

30. The writ petition stands **allowed**. There is no order as to costs.

**Order Date :- 20.5.2024**

AKShukla/-

**(Kshitij Shailendra, J.) (Manoj Kumar Gupta, J.)**