2025 INSC 3

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP (C) No. 10338 of 2023)

BERNARD FRANCIS JOSEPH VAZ
AND OTHERS **...APPELLANT(S)**

VERSUS

GOVERNMENT OF KARNATAKA
AND OTHERS **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. This appeal takes exception to the final judgment and order dated 22nd November 2022 in Writ Appeal No. 678 of 2022 (LA-KIADB) passed by the High Court of Karnataka at Bengaluru, whereby the Division Bench of the High Court *dismissed* the writ appeal filed by the appellants herein against the judgment and order dated 18th April 2022 in Writ Petition No. 1627 of 2021 passed by the learned Single Judge of the High Court *dismissing* their writ petition.

FACTS:

3. The facts, *in brief*, giving rise to the present appeal are as follows:

3.1. From 1995 to 1997, the appellants herein purchased various residential sites at Gottigere Village, Uttarahalli Hobli, Bengaluru South Taluk, Karnataka vide registered sale deeds and became absolute owners of their respective sites.

3.2. On 3rd April 1997, a Framework Agreement (hereinafter, "FWA") was executed between Government of Karnataka (Respondent No. 1) and Nandi Infrastructure Corridor Enterprise Ltd. (hereinafter, "NICE") (Respondent No. 6) envisaging the Infrastructure Corridor Project connecting Bengaluru-Mysuru (hereinafter, "Bengaluru-Mysuru Infrastructure Corridor Project" or "BMICP"). As per the FWA, the State Government undertook to acquire about 13,237 acres of land from private persons and about 6,956 acres of Government land. In all 20,193 acres of land was agreed to be conveyed and transferred in favour of Respondent No. 6 (NICE) for implementation of the BMICP.

3.3. On 14th October 1998, Respondent No. 6 applied to Karnataka Industrial Areas Development Board (hereinafter,

"KIADB") (Respondent No. 2) to make available the lands for the project.

3.4. On 29th January 2003, a preliminary notification was issued by Respondent No. 2 (KIADB) under sub-section (1) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (hereinafter, "KIAD Act") for acquiring lands for the BMICP. Notices were issued under sub-section (2) of Section 28 of KIAD Act seeking objections from the land-owners. The appellants also submitted their objections.

3.5. On 5th July 2003, upon consideration of the objections to the Preliminary Notification, the Final Notification was issued by Special Deputy Commissioner KIADB (Respondent No. 3).

3.6. On 22nd November 2005, the possession of the appellants' land was taken over by Respondent No. 2 (KIADB) and subsequently handed over to Respondent No. 6 (NICE) and its sister concern Nandi Economic Corridor Enterprises Ltd. (NECE) (Respondent No. 7). However, no Award was passed immediately for such acquisitions.

3.7. In 2009-10, the land-owners filed Writ Petitions before the High Court of Karnataka with a prayer to quash the acquisition notifications insofar as it relates to their lands. *In*

the alternative, the land-owners sought a direction to the concerned authorities to allot residential sites of equal dimension.

3.8. Vide judgment and order dated 15th June 2011, a Division Bench of the High Court held that the acquisition notifications cannot be quashed at such a belated stage and that there cannot be any direction for allotment of alternative sites to the land-owners. In the result, the batch of Writ Petitions filed by the land-owners were *dismissed*, however, liberty was reserved to approach the concerned authorities if any rehabilitation programme is specifically worked out or if any welfare programme is generally available.

3.9. On 12th February 2016, in terms of the judgment and order of the High Court dated 15th June 2011, some of the land-owners submitted a representation *inter-alia* to the Government of Karnataka, KIADB and NICE to frame a rehabilitation scheme as mandatorily required under the FWA and to allot alternative sites along with benefits under the scheme at the earliest.

3.10. On non-consideration of their representation, the landowners filed Writ Petitions before the High Court being

W.P. Nos. 49812-49863 of 2016 (LA-KIADB), with a prayer to direct the State of Karnataka and KIADB to implement the request made in the representation dated 12th February 2016 at the earliest

3.11. Vide order dated 24th March 2017, a learned Single Judge of the High Court *disposed of* the Writ Petitions filed by the land-owners by directing the State of Karnataka and KIADB to consider their representation and pass appropriate orders, in accordance with law, as expeditiously as possible.

3.12. Alleging non-compliance of the order of the learned Single Judge dated 24th March 2017, Contempt Petitions being C.C.C. No. 2434 of 2018 and C.C.C. No. 18-65 of 2019 came to be filed by the land-owners.

3.13. During the pendency of the Contempt Petitions, the Special Land Acquisition Officer-1, KIADB (BMICP), Bengaluru (hereinafter, "SLAO") (Respondent No. 4), on 22nd April 2019, passed an Award for payment of compensation in respect of lands belonging to the erstwhile land-owners. In terms of the legal opinion given by the Advocate General, Respondent No. 4 decided to postpone the date of Preliminary Notification from 29th January 2003 to the year 2011 and decided to consider

the *guideline rates* prevailing in the said year and formulate an award. An amount of Rs. 32,69,45,789/- was, accordingly, awarded for 11 Acre 1.25 Guntas of land.

3.14. In view of the Award dated 22nd April 2019, a compliance report along with an endorsement came to be filed by the KIADB in the contempt proceedings initiated by the land-owners before the High Court. Therefore, a Division Bench of the High Court, vide order dated 27th November 2019, *dismissed as withdrawn* the Contempt Petitions with liberty to challenge the endorsement in accordance with law.

3.15. On 19th June 2019, Respondents No. 6 and 7 (hereinafter collectively referred to as "Project Proponents") filed Writ Petitions being W.P. No. 26085 of 2019 and W.P. No. 31407 of 2019 before the Karnataka High Court challenging several Awards passed by the SLAO, including the Award dated 22nd April 2019. The Project Proponents were aggrieved by the Award dated 22nd April 2019 inasmuch as, on account of delay not attributable to them, they are being called upon to pay higher compensation. It was their contention that the compensation should be determined on the basis of the

market value of land as on the date of the Preliminary Notification and that the date could not have been shifted.

3.16. On 5th January 2021, the erstwhile land-owners filed impleadment application in the Writ Petitions filed by the Project Proponents. The appellants herein, thereafter, filed a substantive Writ Petition being W.P. No. 1627 of 2021 on 1st June 2021. The appellants were aggrieved by the Award dated 22nd April 2019 inasmuch as, even though their lands were acquired in the year 2003, no compensation for such acquisition has been disbursed to the appellants despite a lapse of 18 years. It was their contention that the compensation should be determined as per the current market value of the lands.

3.17. Vide common judgment and order dated 18th April 2022, a learned Single Judge of the Karnataka High Court at Bengaluru *allowed* the Writ Petitions filed by the Project Proponents. The High Court *quashed* the Award dated 22nd April 2019 passed by Respondent No. 4 (SLAO). In view of the decision in the Writ Petitions filed by the Project Proponents, the Writ Petition filed by the appellants herein was *disposed of* as the same did not survive for consideration inasmuch as the

Award dated 22nd April 2019 was *quashed*. Ultimately, the High Court directed the concerned authorities to pass fresh awards in accordance with law and after providing sufficient and reasonable opportunity to the parties as expeditiously as possible and at any rate within a period of three months.

3.18. Aggrieved thereby, the appellants herein filed a Writ Appeal being W.A. No. 678 of 2022 (LA-KIADB). Vide impugned judgment and order dated 22nd November 2022, the Division Bench of the High Court *dismissed* the Writ Appeal filed by the appellants herein. Hence, the present appeal by way of special leave.

4. We have heard Shri R. Chandrachud, learned counsel appearing on behalf of the appellants, Shri Atmaram N. S. Nadkarni, learned Senior Counsel for Respondents No. 6 and 7, Shri Avishkar Singhvi, learned Additional Advocate General appearing for the State of Karnataka and Shri Purushottam Sharma Tripathi for Respondents Nos. 2 to 5.

SUBMISSIONS:

5. Shri Chandrachud submitted that the Division Bench of the High Court erroneously dismissed the Writ Appeal against the judgment and order of the learned Single Judge of the High

Court as "premature". It is submitted that the Writ Appeal was not premature as the appellants' plea to shift the date for considering the market value of land as on the date of the Award and not as on the date of the Preliminary Notification was rejected by the learned Single Judge and thus the issue stood decided against the appellants. It is further submitted that more than 21 years have passed since the Preliminary Notification was passed acquiring the appellants lands and they have not received any compensation yet for the same. Relying on the judgments of this Court in ***Ram Chand and Others v. Union of India and Others***[1] and ***Tukaram Kana Joshi and Others Through Power-of-Attorney Holder v. Maharashtra Industrial Development Corporation and Others***[2]**,** it is submitted that in exceptional cases, the authorities must be directed to determine compensation on the basis of market value of the land as on the date of the Award by notionally shifting the date of the Preliminary Notification. It is lastly submitted that the compensation be determined as per the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition,

[1] **(1994) 1 SCC 44 : 1993 INSC 315**
[2] **(2013) 1 SCC 353 : 2012 INSC 503**

Rehabilitation and Resettlement Act, 2013 (hereinafter, "2013 LA Act") inasmuch as in terms of Section 30 of the KIAD Act, the provisions of the Land Acquisition Act 1894 (hereinafter, "1894 LA Act") have been made applicable *mutatis mutandis* for the purposes of determination and award of compensation. Reliance in this regard was placed by the learned counsel for the appellants on the judgment of this Court in ***Maharashtra State Road Transport Corporation v. State of Maharashtra and Others***[3]**.**

6. *Per contra*, Shri Nadkarni for Respondents No. 6 and 7 submitted that between 2009 and 2012, the Project Proponents wrote several letters to Respondent No. 2 (KIADB) requesting for awards to be passed. It is further submitted that as no awards were passed by the SLAOs, the Project Proponents were constrained to file Writ Petition before the High Court seeking direction to pass awards which was allowed in 2013, thereafter, on non-compliance the Project Proponents initiated contempt proceedings in 2015 as no awards were still passed. It was, therefore, submitted that if this Court is inclined to grant any relief in the form of

[3] **(2003) 4 SCC 200 : 2003 INSC 137**

additional compensation or direct shifting of date as sought for, it may be seen that there was no error or delay on part of the Project Proponents, who have deposited compensation with Respondent No.2 (KIADB) as per the agreement and therefore any additional liability should fall on the State Government and/or the KIADB. Relying on the judgment of this Court in ***Competent Authority v. Barangore Jute Factory and Others***[4]**,** it is submitted that shifting of date can only take place in very rare circumstances. It is further submitted that there is no question of awarding compensation under the 2013 LA Act and a completely new case has been sought to be made out before this Court, which was not contended before the learned Single Judge or Division Bench of the High Court. It is lastly submitted that the appellants never sought directions to the State Government/SLAO to pass awards and that steps in that regard were taken only in the year 2021 which was pursuant to the various proceedings initiated by the Project Proponents.

7. Shri Singhvi for Respondent No. 1 submitted that the appellants' claims are premature and speculative, as they have

[4] **(2005) 13 SCC 477 : 2005 INSC 585**

yet to exhaust remedies available under the ongoing award proceedings. It is further submitted that the Division Bench of the High Court in the impugned judgment and order, expressly held that the issue of shifting the date of acquisition notification can only be examined after the award has been passed by the SLAO. It was, therefore, submitted that present appeal is untenable at this stage.

8. Shri Purushottam Sharma Tripathi for Respondent Nos. 2 to 5 submitted that the SLAO passed the Award dated 22nd April 2019, on the basis of specific opinion tendered by the learned Advocate General with regard to shifting of the date. It is submitted that the learned Single Judge of the High Court, upon consideration of the material placed before it, has *quashed* the Award and directed the SLAO to pass fresh awards within a stipulated timeframe. It is further submitted that pursuant to the directions by the learned Single Judge of the High Court, the SLAO has now passed fresh awards for the acquired lands and if the appellants are aggrieved by the compensation awarded, they may take such steps as are permissible in law. It is, therefore, submitted that this Court should not interfere with the concurrent findings of the

learned Single Judge and the Division Bench of the High Court.

DISCUSSION AND ANALYSIS:

9. To consider the case of the appellants, it would be appropriate to refer to the prayer clause of their Writ Petition before the High Court. The appellants herein had filed Writ Petition being W.P. No. 1627 of 2021 (LA-KIADB) with the following prayers:

> "WHEREFORE, the Petitioners most respectfully prays that this Hon'ble Court be pleased to:
>
> a. Issue a writ of *certiorari* or any other writ of the same nature to quash and setting aside the Impugned Award dated 22.04.2019 passed by the Respondent No. 4 bearing No. LAQ, SR/39 (26B, 10, 13, 14)/1998-99, 39 (30, 31, 37, 38, 40)/2002-03 SLAO-1, produced at ANNEXURE – A;
>
> b. Consequent to prayer (a) issue a writ of *mandamus* or any other writ of the same nature to direct the Respondents to issue notice to Petitioners for determining compensation and pass the Award as per market value of land closest to date of passing the Award;
>
> c. Grant such other reliefs as this Hon'ble Court deems fit in the above circumstances of the case, in the interests of justice and equity."

10. It is relevant to note that prior to the appellants herein Respondents No. 6 and 7 (Project Proponents) had also filed Writ Petitions before the High Court. From a perusal of the judgment and order of the learned Single Judge dated 18th April 2022, it is clear that the Project Proponents by way of Writ Petitions being W.P. No. 26085 of 2019 and W.P. No. 31407 of 2019 had also challenged the awards. Therefore, in the three writ petitions before the learned Single Judge, a common question with regard to the legality, validity and correctness of the Award dated 22nd April 2019 was raised.

11. Before adverting to the findings of the learned Single Judge on the legality of the Award dated 22nd April 2019, it would be appropriate to reproduce certain extracts from the Award, as under:

> "14. Valuation of land:
>
> In the notification dated: 29/01/2003 issued under Section 28(1) of the Survey number lands, based on the above sales figures, the value is Rs. 2,90,532/- per acre and the guidance value is Rs. 6.00 lakhs. Therefore, if the guidance value is Rs. 6.00 lakhs including all other allowances, this rate will be found to be real and fair. Accordingly, it was decided and declared the award on 05/07/2018 and submitted for approval.
>
> Chief Executive Officer and Executive Member wrote a letter vide No. KIADB/CEO&EM/16/2019-20 dated 16/04/2019. Along with the said letter,

Government's letter and Advocate General's opinion are attached, it is suggested to prepare the revised award as per the opinion given by the Advocate General and submit it for approval. In this regard, this office letter No. KIADB/BMICP/LAQ(1)/G.I/01/2019-20 dated 22/04/2019 has been written to the Special Deputy Commissioner, KIADB (BMICP) seeking clarification on other issues that there is no scope for revising the current decision. On 22/04/2019 as per the Chief Executive Officer and Executive Member's letter No. KIADB/BMICP/LAQ/CR/31/2013-14 dated 22/04/2019, it is said that it has been suggested to submit again as per the Advocate General's opinion and based on the previous judgments of the Hon'ble Supreme Court in several cases regarding framing of compensatory rate/award in land acquisition cases that even for the lands acquired for BMICP scheme, it has been again instructed to prepare a revised decision immediately as per the rules and submit it for the approval of the government. **For revising the award and not considering the preliminary notification, the Advocate General in his legal opinion dated 16/04/2019 has given the following legal opinion:**

> **"KIADB and the State do not have any choice but to pass the award which may be passed taking into account and consideration the market value of the property as on date."**

As per the opinion given by the present Advocate General, the award has to be made at current market rate equal to the current market rate. In this regard, the Hon'ble Supreme Court in several cases has issued preliminary notification, final notification and handed over the assets to the Claims Department, but in the case where no award has been made for ten years, it is appropriate to pay real and fair land compensation to the land owners to avoid injustice, in such cases, the date of preliminary notification should be changed to the date of handing

over the assets to the Claims Department, which was prevailing on that date. The order is to create a judgment considering the market rate. The following civil appeal cases of the Hon'ble Supreme Court have been perused to form a award in this regard.

1. CA No. 7015-7018/2005 (Competent Authority V/s Barangore Jute Factory and Others)
2. SLP (Civil) No. 1787473/2004 (State of M.P. V/s Onkar Prasad Patel)
3. CA No. 965/1979 with CA No. 3325/1984, 2185-87/1980, 2381/1980, SLP No. 12352-53/1984, 10572-74/1984 and others (Gauri Shankar Gaur and others V/s State of U.P. and others)
4. CA No. 2739/2000 with Nos. 2737/2000, 2738/2000, 2736/2000 Contempt Petition (C) No. 62/1999 (Haji Saeed Khan and others V/s State of U.P. and others).

In the above cases the Hon'ble Supreme Court has ordered to change the preliminary notification to the date of handing over of the asset or to an appropriate date conducive to giving equitable relief in cases where there is severe delay in adjudication.

Based on the above judgments of the Hon'ble Supreme Court, in the present case, the possession of the land was handed over on 05/04/2004, 22/11/2005 and 25/11/2005, if the award is framed considering the guideline rates of 2011 (*sic*), it is not possible to give real and fair compensation to the land owner.

Therefore, with a view to providing real and fair land compensation to the landowners, it was decided to postpone the date of preliminary notification to the year 2011 and decided to consider the guideline rates prevailing in the said year and formulate an award as per the legal

opinion given by the Advocate General."

(emphasis supplied)

12. It can thus be seen that the learned Advocate General rendered an opinion on 16th April 2019, wherein it was stated that while passing the awards, the market value as on date has to be taken on account of enormous delay in passing the awards. KIADB forwarded the opinion to the Special Deputy Commissioner (BMICP) and SLAO directing them to pass the awards as per the opinion. On 22nd April 2019, the SLAO wrote letters to the Special Deputy Commissioner (BMICP) raising certain queries with regard to passing of fresh awards and the compensation to be calculated in view of awards already passed by them and sent for approval on 3rd November 2018. In response to the said letters, the CEO of KIADB once again addressed a letter dated 22nd April 2019, to the Special Deputy Commissioner (BMICP) and the SLAO instructing them to pass the awards as directed in the opinion of the learned Advocate General.

13. It can further be seen that the opinion of the learned Advocate General as well as the judgments of this Court referred to in the Award were the *only* two factors that were

taken into account for the purpose of passing the Award dated 22nd April 2019, by Respondent No. 4 (SLAO) by shifting/postponing the date of the Preliminary Notification to the year 2011 and by considering the guideline rates prevailing in the said year.

14. Aggrieved by the *suo-motu* shifting/postponing of the date of the Preliminary Notification, the Project Proponents, who as a result were called upon to pay higher compensation, had filed a Writ Petition before the High Court. The appellants herein filed an impleadment application in the Writ Petition filed by the Project Proponents so also a substantive Writ Petition with prayers referred to hereinbefore. Their grievance was two-fold to *quash* the Award and to *direct* passing of an Award as per market value of land closest to date of passing the Award.

15. For the common prayer qua *quashing* of the Award dated 22nd April 2019, it will be profitable to refer to the following paragraphs of the judgment and order dated 18th April 2022, passed by the learned Single Judge of the High Court:

> "17.8 A perusal of the impugned awards will indicate that the opinion of the learned Advocate General as well as the judgments of the Apex Court referred to

in the awards were the only two factors that were taken into account for the purpose of passing the awards by the SLAOs. As stated supra, **in so far as the opinion of the learned Advocate General is concerned, the same with regard to shifting of the date to reckon the market value of the land from the date of the preliminary notification to a later date is concerned, the said opinion was beyond the scope and ambit of the query put forth to him and consequently, the said opinion could not have been made the basis by the SLAOs to pass the impugned awards**.

X—X —X —X —X —X —X

17.10 The second factor/circumstance that has been taken into account by the SLAOs to shift the date to reckon the market value of the lands from the date of the preliminary notification to a later/subsequent dates is by placing reliance upon the following decisions of the Apex Court viz.,

a. *Competent Authority Vs. Barangor Jute Factory C/w State of Madhya Pradesh Vs. Onkar Prasad Patel – (2005) 13 SCC 47*

b. *Gaurishankar Gaur Vs. State of Uttar Pradesh – (1994) 1 SCC 92; and*

c. *Haji Saeed Khan Vs. State of Uttar Pradesh – (2001) 9 SCC 513.*

17.11 In this context, it is relevant to state that as can be seen from the aforesaid decisions as well as various decisions of the Apex Court as well as this Court referred to supra by both sides, that **the market value of the acquired lands has to be taken as on the date of the preliminary notification as contemplated under Section 11 of the L.A. Act, 1894; it has been held that under exceptional circumstances, where either the Apex Court or High Courts came to the conclusion that**

the acquisition proceedings themselves were liable to be quashed on account of certain illegalities or infirmities in the acquisition process/procedure, it was permissible only for the Apex Court in exercise of its powers under Article 32/142 or the High Courts under Article 226 of the Constitution of India to shift the date to a later/subsequent date; however, this power to shift the date is available only to either the Apex Court or the High Courts and not definitely/certainly to the SLAOs or the State Government; in other words, a perusal of the decisions referred to supra, will indicate that in cases, where the Apex Court as well as this Court deemed it necessary to shift the date in order to do complete and substantial justice, inherent powers of the Courts were invoked and the dates were shifted in order to ensure no hardship, loss or prejudice would be caused to the land losers.

17.12 A perusal of the decisions relied upon by the SLAOs in the impugned awards referred to supra, will clearly indicate that in the said cases, the Apex Court has invoked its extraordinary jurisdiction and powers under Article 142 of the Constitution of India and in the peculiar/special facts and circumstances obtaining in the said cases, the Apex Court had shifted the date to reckon the market value. **The SLAOs clearly fell in error in placing reliance upon the said decisions of the Apex Court for the purpose of shifting the date from the date of the preliminary notification without appreciating that the said shifting of the date by the SLAOs or the State Government is not legally permissible in law either under the provisions of the L.A. Act, 1894 or the KIAD Act or the Rules or by any judicial precedent.** It is also relevant to state that even as per the aforesaid judgments, shifting of the date from the date of the preliminary notification to any later/subsequent date has been done only up to the date of taking possession from the land losers. In

> the instant case, the impugned awards disclose that the SLAOs have shifted the date to a date subsequent/later to the date of taking possession. Under these circumstances, it is clear that the impugned awards purporting to shift the date suffers from several legal and factual infirmities and illegalities which vitiate the impugned awards, which deserve to be quashed on this ground also."
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> (emphasis supplied)

16. It can thus be seen that the learned Single Judge of the High Court, upon appreciation of the material placed on record, was of the view that insofar as the opinion of the learned Advocate General with regard to shifting of the date of the preliminary notification to a later date is concerned, the said opinion was beyond the scope and ambit of the query put forth to him and consequently, the said opinion could not have been made the basis by the SLAO to pass the Award. It is further to be seen that the learned Single Judge of the High Court after considering the provisions of 1894 LA Act, KIAD Act and various decisions of this Court, observed that the market value of the acquired land has to be taken as on the date of the preliminary notification as contemplated under Section 11 of the 1894 LA Act. Further, the learned Single Judge of the High Court observed that only in exceptional circumstances, where either this Court or the High Court

comes to the conclusion that the acquisition proceedings themselves were liable to be quashed on account of certain illegalities or infirmities in the acquisition process/procedure, it was permissible only for this Court in exercise of its powers under Article 32/142 or the High Courts under Article 226 of the Constitution of India to shift the date to a later/subsequent date. It was further observed that this power to shift the date is available only to either this Court or the High Courts and not definitely/certainly to the SLAOs or the State Government.

17. We are in agreement with the findings of the learned Single Judge of the High Court, inasmuch as the SLAO cannot shift/postpone the date of preliminary notification. In case, upon appreciation of the material placed on record if this Court or the High Court, in exceptional circumstances, came to the conclusion that the acquisition proceedings themselves were liable to be quashed only then by exercising inherent powers this Court under Article 32/142 or the High Courts under Article 226 of the Constitution of India respectively can shift/postpone the date of preliminary notification to a later date. In our considered opinion, therefore, the learned Single

Judge of the High Court rightly came to the conclusion that the Award dated 22nd April 2019 be quashed and set aside and ordered accordingly.

18. Having decided thus, in the Writ Petitions filed by the Project Proponents, the learned Single Judge of the High Court came to the conclusion that the Writ Petition filed by the appellants herein before the High Court does not survive for consideration and the same was, accordingly, *disposed of*.

19. Aggrieved thereby, the appellants herein filed an intra-court appeal being Writ Appeal No. 678 of 2022 (LA-KIADB) before the Division Bench of the High Court.

20. The Division Bench of the High Court vide impugned judgment and order dated 22nd November 2022 upon consideration of the material placed before it, in paragraph 9, observed thus:

> "9. Further, the learned Single Judge held that the SLAO has to determine the compensation as on the date of issuing the preliminary notification as contemplated under Section 11 of the Land Acquisition Act, 1894, and not to shift the date to a later/subsequent date. The learned Single Judge has set aside the award passed by the SLAO and directed the SLAO to reconsider and pass award. **The grievance of the petitioner regarding shifting the date at any later or subsequent date could be considered only if award is passed by the SLAO.**

> **The SLAO is yet to pass an award. The grievance raised by the petitioner in this writ appeal is premature. If the petitioner is dissatisfied with the award to be passed by the SLAO, liberty is reserved to the petitioner to raise the grounds urged in this appeal in the appropriate proceedings before the appropriate forum.** The question of considering the shifting of date from the date of preliminary notification to any other date would arise only when the award is passed. The cause of action arose for the petitioner to raise the said issue only after the award is passed. The shifting of the date to a later/subsequent date is available only to the Hon'ble Apex Court and this Court, but not to the SLAO or State Government…"
>
> (emphasis supplied)

21. It can thus be seen that the Division Bench of the High Court *dismissed* the Writ Appeal on the ground that the learned Single Judge has set aside the award passed by the SLAO and directed the SLAO to reconsider and pass award and so the grievance regarding shifting the date at any later or subsequent date could be considered only if an award is passed by the SLAO. The Division Bench of the High Court was, therefore, of the opinion that the grievance sought to be raised in the writ appeal is *premature* and that the question of considering the shifting of date of preliminary notification to any other date would arise only when the award is passed.

22. In the present appeal, it was sought to be contended by the learned counsel for the appellants that the Writ Appeal was not pre-mature inasmuch as the prayer to shift the date for considering the market value of the land as on the date of the award and not as on the date of the preliminary notification was rejected by the learned Single Judge of the High Court and thus the issue stood decided against the appellants, as a consequence of which the cause of action remained.

23. We are of the opinion that the contention of the learned counsel for the appellants is liable to be accepted. We say so because upon adjudication of the Writ Petitions filed by the Project Proponents, the learned Single Judge of the High Court came to the conclusion that the Award dated 22nd April 2019, is liable to be quashed and set aside and ordered accordingly. However, upon consideration of the extant position of law, the learned Single Judge further directed that the SLAO has to determine the compensation as on the date of issuance of the preliminary notification and not to shift the date to a later/subsequent date. Therefore, the learned Single Judge of the High Court while exercising inherent powers under Article 226 of the Constitution quashed and set aside the Award

dated 22nd April 2019, but decided against granting relief to the appellants by shifting/postponing the date of the preliminary notification to a later/subsequent date. In our opinion, therefore, the cause of action with regard to prayer clause (b) of the Writ Petition filed by the appellants herein still survives for consideration. The Division Bench of the High Court should have, especially taking into consideration the facts and circumstances of the present case, at least considered the case of the appellants herein with regard to said prayer. We are, therefore, of the opinion that the impugned judgment and order dated 22nd November 2022, passed by the Division Bench of the High Court is liable to be quashed and set aside on this short ground alone. We order accordingly.

24. Having set aside the impugned judgment and order passed by the Division Bench of the High Court on the aforesaid ground, we shall now proceed to examine if the relief sought by the appellants herein in prayer clause (b) of the Writ Petition referred to hereinbefore is liable to be granted or not.

25. For the purpose of consideration of the relief sought by the appellants herein, it will be appropriate to refer to a few

judgements of this Court on which reliance has been placed by the learned counsel for the parties.

26. In the case of ***Ram Chand*** (supra), proceedings were instituted for quashing the land acquisition proceedings, which had been initiated between the years 1959 and 1965 by issuance of notifications under Section 4 of the 1894 LA Act but in which no awards were made upto the years 1979-80, although the declarations under Section 6 of the 1894 LA Act had been made in the years 1966 and 1969. The question sought to be answered by this Court in the aforesaid case was as to if a person is paid compensation in the year 1980/81 at the market rate *prevailing twenty years back,* will that be in compliance of the constitutional and statutory mandate. In this regard, this Court observed thus:

> **"14.** … **Ignoring the escalation of the market value of the lands, especially near the urban agglomeration or metropolitan cities, will amount to ignoring an earthquake and courts can certainly take judicial notice of the said fact.** The interest and the solatium, which have to be paid under the provisions of the Act, are linked with the market value of the land with reference to the date of the notification under sub-section (1) of Section 4 of the Act. **If a decision had been taken as early as in the year 1966, by issuance of declarations under Section 6, that the lands belonging to the different cultivators, who held those lands within**

> **the ceiling limit for cultivation, were needed for public purpose, respondents should have taken steps for completion of the acquisition proceedings and payment of compensation at an early date.** In the present cases, unless a justification is furnished on behalf of the respondents, can it be said that the statutory power of making an award under Section 11 has been exercised within a reasonable time from the date of the declaration under Section 6? **Due to escalation in prices of land, more so in this area, during the preceding two decades, in reality, the market rate, on the date of the notification under Section 4(1) is a mere fraction, of the rate prevailing at the time of its determination in the Award."**
>
> (emphasis supplied)

27. It can thus be seen that this Court in the aforesaid case has observed that the respondents therein should have taken steps for completion of the acquisition proceedings and payment of compensation at an early date. It was further observed that due to escalation in prices of land, more so in the area in question, during the preceding two decades, in reality, the market rate, on the date of the notification under Section 4(1) of the 1894 LA Act is a mere fraction of the rate prevailing at the time of its determination in the Award. This Court, however, in the aforesaid case was also dealing with a challenge to the acquisition proceedings itself. In this regard, this Court observed thus:

"16. On behalf of the respondents, it was pointed out that the petitioners have approached this Court only after making of the awards, or when awards were to be made, having waited for more than fourteen years, without invoking the jurisdiction of the High Court under Article 226 or of this Court under Article 32. **It is true that this Court has taken note of delay on the part of the petitioners concerned in invoking the jurisdiction of the High Court or of this Court for quashing the land acquisition proceedings on the ground that the proceedings for acquisition of the lands in question have remained pending for more than a decade, in the cases of *Aflatoon* v. *Lt. Governor of Delhi* [(1975) 4 SCC 285] and *Ramjas Foundation* v. *Union of India* [1993 Supp (2) SCC 20 : AIR 1993 SC 852].** According to us, the question of delay in invoking the writ jurisdiction of the High Court under Article 226 or of this Court under Article 32, has to be considered along with the inaction on the part of the authorities, who had to perform their statutory duties. Can the statutory authority take a plea that although it has not performed its duty within a reasonable time, but it is of no consequence because the person, who has been wronged or deprived of his right, has also not invoked the jurisdiction of the High Court or of this Court for a suitable writ or direction to grant the relief considered appropriate in the circumstances? The authorities are enjoined by the statute concerned to perform their duties within a reasonable time, and as such they are answerable to the Court why such duties have not been performed by them, which has caused injury to claimants. **By not questioning, the validity of the acquisition proceedings for a long time since the declarations were made under Section 6, the relief of quashing the acquisition proceedings has become inappropriate, because in the meantime, the lands notified have been developed and put to public use. The lands are being utilised to provide shelter to thousands and to implement the scheme of a planned city, which is a must in the present set-up. The outweighing**

> **public interest has to be given due weight. That is why this Court has been resisting attempts on the part of the landholders, seeking quashing of the acquisition proceedings on ground of delay in completion of such proceedings.** But, can the respondents be not directed to compensate the petitioners, who were small cultivators holding lands within the ceiling limit in and around Delhi, for the injury caused to them, not by the provisions of the Act, but because of the non-exercise of the power by the authorities under the Act within a reasonable time?"
>
> (emphasis supplied)

28. It can thus be seen that this Court in the aforesaid case observed that by not questioning the validity of the acquisition proceedings for a long time since the declarations were made under Section 6 of the 1894 LA Act, the relief of quashing the acquisition proceedings has become inappropriate, because in the meantime, the lands notified have been developed and put to public use. It was further observed that the lands are being utilized to provide shelter to thousands and to implement the scheme of a planned city, which is a must in the present set-up and that the outweighing public interest has to be given due weight.

29. Ultimately, this Court in paragraph 27 of the aforesaid case, taking into consideration the interest of the public, instead of quashing the proceedings for acquisition, directed

that the petitioners therein shall be paid an additional amount of compensation to be calculated at the rate of 12% per annum, after expiry of two years from August 23, 1974, till the date of the making of the awards by the Collector, to be calculated with reference to the market value of the lands in question on the date of the notifications under sub-section (1) of Section 4 of the 1894 LA Act.

30. In the case of ***Haji Saeed Khan and Others v. State of U.P. and Others***[5]**,** land was acquired for the purposes of construction of a housing colony under the "Planned Development Scheme" in Village Dhimri Pargana, District Moradabad by the Moradabad Development Authority. The challenge to the land acquisition proceedings before the High Court in the aforesaid case was dismissed. Aggrieved thereby, this Court was called upon to adjudicate the *lis.* This Court, having regard to the peculiar facts of the aforesaid case, *instead of deciding the matter on merits*, suggested to the counsel on both sides that it would be reasonable in the interests of justice if they agreed that the market value of the property could be fixed by treating 15th June, 1998, i.e., the

[5] **(2001) 9 SCC 513**

date of taking possession as the date of notification under Section 4(1) of the 1894 LA Act instead of the actual date of notification under Section 4(1) of the 1894 LA Act i.e., 30th March, 1995. When the suggestion came from the Bench, the counsel appearing on both sides accepted the suggestion from the Court. Accordingly, this Court upheld the judgment and order of the High Court, thereby the land acquisition proceedings were upheld with modification to the limited extent *qua* the date of notification under Section 4(1) of the 1894 LA Act shifted to the date of taking possession.

31. In the case of ***Barangore Jute Factory*** (supra), the subject matter of the appeals before this Court was the compulsory acquisition of certain lands by the Central Government by a notification dated 11th June 1998 under Section 3-A of the National Highways Act, 1956 (hereinafter, "NH Act"). The landowners challenged the acquisition of their land on various grounds before the Calcutta High Court. The Division Bench of the High Court by a judgment and order dated 7th April 2004, *disposed of* the writ-petition holding the impugned notification regarding compulsory acquisition of land to be bad in law, however, keeping in view the fact that

possession of the acquired land had already been taken by the authorities, the High Court felt that *no useful purpose* would be served by quashing the notification. The High Court also took note of the power of the acquiring authority to issue a fresh notification for acquisition of the land which could only lead to possible increase in the amount of compensation payable to the owners. Keeping these aspects in view, it ordered that an additional amount of compensation (calculated at 30% over and above the above the compensation already determined) be awarded to the landowners. Aggrieved by the judgment and order of the Calcutta High Court, three appeals by way of special leave were filed before this Court. The first by the competent authority *qua* validity of acquisition notification, second by the National Highways Authority of India (hereinafter, "NHAI") *qua* award of additional compensation to the landowners and third by the landowners *qua* the acquisition notification not being quashed in spite of having been declared as illegal.

32. The acquisition of land in the aforesaid case was under the NH Act. The *power to acquire land* is contained in Section 3-A of the NH Act. According to sub-section (1) of Section 3-A

of the NH Act, where the Central Government is satisfied that for a public purpose any land is required for building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. Sub-section (2) of Section 3-A of the NH Act provides that every notification under sub-section (1) thereof shall give a brief description of land. Under sub-section (3) of Section 3-A of the NH Act, the competent authority is required to cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language. The acquisition notification in the aforesaid case was challenged on the ground that it does not give a brief description of the land sought to be compulsorily acquired. This Court, upon consideration of the acquisition notification, observed thus:

> "**5.** …So far as the question whether the impugned notification meets the requirement of Section 3-A(1) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of lands in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any

> objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law."

33. It can thus be seen that this Court in the aforesaid case observed that *it is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone*. It can further be seen that this Court held that the acquisition notification therein failed to meet the statutory mandate and that it was vague. It was further held that the least that was required was that the acquisition notification therein should have let the person whose land was sought to be acquired know what he was going to lose. It was, therefore, held that the acquisition notification was not in accordance with law.

34. Having held that the notification regarding acquisition of land was invalid because it failed to meet the statutory requirements and also having found that taking possession of

the land of the landowners in the aforesaid case in pursuance to the acquisition notification was not in accordance with law, the question that arose for the consideration of this Court was as to what relief can be granted to the landowners. In that regard, this Court observed thus:

> "**14.** … The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance i.e. the construction of a national highway. The construction of a national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the landowners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the landowners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the landowners, that is, the writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action."

35. It can thus be seen that this Court in the aforesaid case observed that the Calcutta High Court rightly observed that the *acquisition of land was for a project of great national importance i.e., the construction of a national highway*. This Court further observed that the construction of a national highway on the acquired land had already been completed. It was further observed that no useful purpose would be served by quashing the acquisition notification at this stage. Pertinently, this Court observed that the acquiring authority could always issue a fresh notification for acquisition of the land in the event the acquisition notification therein was quashed and that the consequence of that would only be that the amount of compensation payable to the landowners may be more. Therefore, this Court observed that the ultimate question would be about the quantum of compensation payable to the landowners. Having observed so, this Court held that *the better course would be to compensate the landowners appropriately for what they have been deprived of and that the interests of justice persuade this Court to adopt that course of action*. The relief, therefore, granted by this

Court in the aforesaid case was molded in the form of *paragraph 15*, which reads as under:

> **"15. Normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned notification, this Court shifted the date of the notification so that the landowners are adequately compensated.** Reference may be made to:
>
> (*a*) *Ujjain Vikas Pradhikaran* v. *Raj Kumar Johri* [(1992) 1 SCC 328]
>
> (*b*) *Gauri Shankar Gaur* v. *State of U.P.* [(1994) 1 SCC 92]
>
> (*c*) *Haji Saeed Khan* v. *State of U.P.* [(2001) 9 SCC 513]
>
> **In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19-2-2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19-2-2003, the date on which they were deprived of possession of their lands. We do not quash the impugned notification in order not to disturb what has already taken place by way of use of the acquired land for construction of the national highway.** We direct that the compensation for the acquired land be determined as on 19-2-2003 expeditiously and within ten weeks from today and the amount of compensation so determined, be paid to the writ petitioners after adjusting the amount already paid by way of compensation within eight weeks thereafter. **The claim of interest on the**

amount of compensation so determined is to be decided in accordance with law by the appropriate authority. We express no opinion about other statutory rights, if any, available to the parties in this behalf and the parties will be free to exercise the same, if available. The compensation as determined by us under this order along with other benefits, which the respondents give to parties whose lands are acquired under the Act, should be given to the writ petitioners along with what has been directed by us in this judgment."

(emphasis supplied)

36. It can thus be seen that this Court in the aforesaid case observed that normally, compensation is determined as per the market price of land on the date of issuance of the notification regarding acquisition of land but there are judgments of this Court where in similar situations *instead of quashing the impugned notification*, this Court shifted the date of the notification so that the landowners are adequately compensated. This Court directed that compensation payable to the landowners be determined as on the date when possession of land was taken by the respondents therein i.e., 19th February 2003.

37. In the case of ***Tukaram Kana Joshi*** (supra), the land situated in Village Shirwame, Taluka and District Thane, stood notified under Section 4 of the 1894 LA Act on 6th June 1964 for establishment of Ulhas Khore Project i.e., a project

for industrial development. However, no subsequent proceedings were taken up thereafter, and the acquisition proceedings lapsed. The respondent-authorities therein realised, in 1981, that grave injustice had been done to the appellants therein and so a fresh notification under Section 4 of the 1894 LA Act was issued on 14th May 1981. However, no further proceedings were initiated and therefore, such proceedings also died a natural death. In the aforesaid case, when the appellants therein reached this Court, this Court in unequivocal terms observed that even after the *right to property* ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with "law", as the said word has specifically been used in Article 300-A of the Constitution. In paragraph 22 of the aforesaid case, this Court observed that the concerned-State therein came forward with a welcome suggestion stating that in order to redress the grievances of the appellants therein, the respondent authorities would notify the land in dispute under Section 4 of the 1894 LA Act and that the market value of the land in dispute would be

assessed as it prevails on the date on which Section 4 notification is again published in the Official Gazette.

38. In the aforesaid case of ***Tukaram Kana Joshi*** (supra), this Court observed that the *right to property* is now considered to be not only a constitutional or a statutory right but also a "human right". It was further observed that human rights are considered in the realm of individual rights, such as right to health, right to livelihood, right to shelter and employment, etc. This Court further observed that now, however, human rights are gaining an even greater multifaceted dimension and that the *right to property* is considered very much to be a part of such new dimension.

39. It would be appropriate to refer to two recent pronouncements of this Court on the *right to property.*

40. This Court, in the case of ***Vidya Devi v. State of Himachal Pradesh and Others***[6], while surveying the earlier judgments on the issue, has observed thus:

> **"12.1.** The appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property [*State of W.B.* v. *Subodh Gopal Bose*,

[6] **(2020) 2 SCC 569 : 2020 INSC 23**

(1953) 2 SCC 688 : AIR 1954 SC 92] , which could not be deprived without due process of law and upon just and fair compensation.

12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right [*Tukaram Kana Joshi* v. *MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [*K.T. Plantation (P) Ltd.* v. *State of Karnataka*, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in *Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai* [*Hindustan Petroleum Corpn. Ltd.* v. *Darius Shapur Chenai*, (2005) 7 SCC 627] , wherein this Court held that: (SCC p. 634, para 6)

> "*6.* … Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and *reasonable compensation therefor must be paid*."
>
> (emphasis supplied)

12.4. In *N. Padmamma* v. *S. Ramakrishna Reddy* [*N. Padmamma* v. *S. Ramakrishna Reddy*, (2008) 15 SCC 517] , this Court held that: (SCC p. 526, para 21)

"*21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law*. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of *the provisions of Article 300-A of the Constitution of India, must be strictly construed*."

(emphasis supplied)

12.5. In *Delhi Airtech Services (P) Ltd.* v. *State of U.P.* [*Delhi Airtech Services (P) Ltd.* v. *State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673] , this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)

"*30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government*. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that *property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists*."

(emphasis supplied)

12.6. In *Jilubhai Nanbhai Khachar* v. *State of Gujarat* [*Jilubhai Nanbhai Khachar* v. *State of Gujarat*, 1995 Supp (1) SCC 596] , this Court held as follows: (SCC p. 627, para 48)

"*48*. … In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. *There has to be*

no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

(emphasis supplied)

12.7. In this case, the appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8. The contention of the State that the appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi* v. *MIDC* [*Tukaram Kana Joshi* v. *MIDC*, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana* v. *Mukesh Kumar* [*State of Haryana* v. *Mukesh Kumar*, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

.....

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [*P.S. Sadasivaswamy* v. *State of T.N.*, (1975) 1 SCC 152 : 1975 SCC (L&S) 22]"

41. In the case of ***Ultra-Tech Cement Ltd. v. Mast Ram and Others***[7], this Court observed thus:

"**D. <u>Role of the State under Article 300-A of the Constitution</u>**

43. The Right to Property in our country is a net of intersecting rights which has been explained by this Court in *Kolkata Municipal Corporation* v. *Bimal Kumar Shah*, 2024 SCC OnLine SC 968. A division bench of this Court identified seven non-exhaustive sub-rights that accrue to a landowner when the State intends to acquire his/her property. The relevant observations of this Court under the said judgment are reproduced below:

"…27.

… Seven such sub-rights can be identified, albeit non-exhaustive. These are : i) duty of the State to inform the person that it intends to acquire his property - the right to notice, ii) the duty of the State to hear objections to the acquisition - the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose - the duty to acquire only for public purpose, ***<u>v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition</u>***

[7] **2024 SCC OnLine 2598 : 2024 INSC 709**

efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process, *and vii) final conclusion of the proceedings leading to vesting - the right of conclusion…"*

[Emphasis Supplied]

This Court held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

44. In *Roy Estate* v. *State of Jharkhand*, (2009) 12 SCC 194; *Union of India* v. *Mahendra Girji*, (2010) 15 SCC 682 and *Mansaram* v. *S.P. Pathak*, (1984) 1 SCC 125, this Court underscored the importance of following timelines prescribed by the statutes as well as determining and disbursing compensation amount expeditiously within reasonable time.

45. The subject land came to be acquired by invoking special powers in cases of urgency under Section 17(4) of the 1894 Act. The invocation of Section 17(4) extinguishes the statutory avenue for the landowners under Section 5A to raise objections to the acquisition proceedings. These circumstances impose onerous duty on the State to facilitate justice to the landowners by providing them with fair and reasonable compensation expeditiously. The seven sub-rights of the landowners identified by this Court in *Kolkata Municipal Corporation* (supra) are corresponding duties of the State. We regret to note that the amount of Rs. 3,05,31,095/- determined as compensation under the Supplementary Award has not been paid to the landowners for a period of more than two years and the State of Himachal Pradesh as a welfare State has made no effort to get the same paid at the earliest.

46. This Court has held in *Dharnidhar Mishra (D)* v. *State of Bihar*, 2024 SCC OnLine SC 932 and *State of Haryana* v. *Mukesh Kumar*, (2011) 10 SCC 404 that the right to property is now considered to be not only a constitutional or

statutory right, but also a human right. This Court held in *Tukaram Kana Joshi thr. Power of Attorney Holder* v. *M.I.D.C.*, (2013) 1 SCC 353 that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non-fulfilment of such obligations under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.

47. That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in *Kukreja Construction Company* v. *State of Maharashtra*, 2024 SCC OnLine SC 2547 wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.

48. In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the Appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300A and the idea of a welfare State.

49. Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. When such

a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.

50. The State Government, in peculiar circumstances, was expected to make the requisite payment towards compensation to the landowners from its own treasury and should have thereafter proceeded to recover the same from JAL. Instead of making the poor landowners to run after the powerful corporate houses, it should have compelled JAL to make the necessary payment."

42. Right to Property ceased to be a Fundamental Right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continues to be a human right in a welfare State, and a constitutional right under Article 300-A of the Constitution.

43. Article 300-A of the Constitution provides that *no person shall be deprived of his property save by authority of law*. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law.

44. This Court in the aforesaid case of ***Vidya Devi*** (supra) observed that in a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. It was further observed

that the State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

45. Recently, this Court in the aforesaid case of ***Ultra-Tech Cement Ltd.*** (supra) observed that the Government as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. It was further observed that the State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings. It was, therefore, observed that the delay in the payment of compensation, in accordance with law, to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300-A and the idea of a welfare State.

46. In the aforesaid case of ***Ultra-Tech Cement Ltd.*** (supra), this Court further observed that acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which gets acquired. It was, therefore, observed that

when such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.

47. It will also be appropriate for the purpose of the present discussion to refer to the judgment of this Court, in the case of ***K. Krishna Reddy and Others v. Special Deputy Collector, Land Acquisition Unit II, LMD Karimnagar, Andhra Pradesh***[8], specifically in paragraph 12, observed thus:

> **"12.** We can very well appreciate the anxiety and need of claimants to get compensation here and now. No matter what it is. The lands were acquired as far back in 1977. One decade has already passed. Now the remand means another round of litigation. There would be further delay in getting the compensation. After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation, the delayed payment may lose all charms and utility of the compensation. In some cases, the delay may be detrimental to the interests of claimants. The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw.

[8] **(1988) 4 SCC 163 : 1988 INSC 265**

> They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated. In all such cases, it is of utmost importance that the award should be made without delay. The enhanced compensation must be determined without loss of time. The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. If remand is imperative, and if the claim for enhanced compensation is tenable, it would be proper for the appellate court to do modest best to mitigate hardships. The appellate court may direct some interim payment to claimants subject to adjustment in the eventual award."

48. It cannot be gainsaid that the appellants herein have been deprived of their legitimate dues for almost 22 years ago. It can also not be controverted that *money is what money buys*. The value of money is based on the idea that money can be invested to earn a return, and that the purchasing power of money decreases over time due to inflation. What the appellants herein could have bought with the compensation in 2003 cannot do in 2025. It is, therefore, of utmost importance that the determination of the award and disbursal of compensation in case of acquisition of land should be made with promptitude.

49. We find that in the present case, the appellants were required to knock at the doors of the courts on number of occasions during the period of last twenty-two years. The appellants have been deprived of their property without paying any compensation for the same in the said period of last twenty-two years. As already discussed hereinabove, the appellants had purchased the plots in question for construction of residential houses. Not only have they not been able to construct, but they have also not been even paid any compensation for the same. As discussed hereinabove, though Right to Property is no more a fundamental right, in view of the provisions of Article 300-A of the Constitution of India, it is a constitutional right. A person cannot be deprived of his property without him being paid adequate compensation in accordance with law for the same.

50. In the present case, it can clearly be seen that there is no delay which can be attributed to the appellants in not getting compensation, but it was on account of the lethargic attitude of the officers of the State/KIADB that the appellants were deprived of compensation.

51. Only after the notices were issued in the contempt proceedings, the compensation was determined by the SLAO on 22nd April 2019 taking guideline values prevailing in the year 2011 for determining the market value of the acquired land.

52. No doubt that as already observed by us hereinabove, we do not find any error in the approach adopted by the learned Single Judge of the High Court in holding that the SLAO could not have shifted the date and it could have been done only by this Court in exercise of powers under Article 32/142 of the Constitution of India or by the High Court under Article 226 of the Constitution of India. However, the learned Single Judge of the High Court instead of relegating the appellants to again go through the rigors of determination by SLAO, ought to have exercised powers under Article 226 of the Constitution to do complete justice. Even the Division Bench of the High Court on a hyper technical ground has non-suited the appellants.

53. In that view of the matter, we find that it is a fit case wherein this Court in exercise of its powers under Article 142 of the Constitution should direct shifting of the date for

determination of the market value of the land in question of the appellants.

54. If the compensation to be awarded at the market value as of the year 2003 is permitted, it would amount to permitting a travesty of justice and making the constitutional provisions under Article 300-A a mockery.

55. Since the State/KIADB was in deep slumber from 2003 to 2019 and acted for the first time only after the notices were issued in contempt proceedings, we find that though SLAO had no power to shift the date for determination of market value, he had rightly done so. The learned Single Judge of the High Court also does not say that the determination of compensation to be awarded by shifting of the date by the SLAO to that of 2011 was unjust but only sets aside the award on the ground that SLAO had no jurisdiction to do so.

56. There is another reason for doing so. If on account of the inordinate delay in paying the compensation and thereby depriving the constitutional right to the appellants under Article 300-A, the land acquisition proceedings are quashed, the only recourse available to the State/KIADB in order to save the project will be to now issue a fresh acquisition notification

by invoking the provisions as applicable under the 2013 LA Act which would entail huge expenditure to the public exchequer.

57. We, therefore, in exercise of power of this Court under Article 142 of the Constitution of India, find it appropriate in the interest of justice that the SLAO be directed to determine the compensation to be awarded to the appellants herein on the basis of the market value prevailing as on 22nd April 2019. The appellants shall also be entitled to all the statutory benefits as are available to them under the 1894 LA Act. This shall be without prejudice to the rights/contentions of either party, in case they make a reference before an appellate authority, if they are so aggrieved by the fresh determination of compensation by the SLAO. We further clarify that, any other award which may have been passed pursuant to the directions of the learned Single Judge of the High Court shall stand nullified by this judgment.

58. Respondent Nos.6 and 7 contend that they cannot be imposed with a liability for this huge additional expenditure. It is their contention that the delay in determination of compensation and payment of the same is not attributable to

them but is on account of inaction on the part of the State and KIADB. We clarify that we are not observing anything about the *inter se* dispute between the State and KIADB on the one hand and Respondent Nos.6 and 7 on the other hand, inasmuch as the same shall be governed by the FWA and/or any other agreement between them. We only say that Respondent Nos.6 and 7, will be at liberty to take recourse to such remedies as are available to them in law for redressal of their *inter se* dispute.

59. In the result, the appeal is disposed of in the following terms:

(i) The judgment and order passed by the Division Bench of the High Court dated 22nd November 2022 in Writ Appeal No. 678 of 2022 (LA-KIADB) is quashed and set aside;

(ii) The writ petition filed by the appellants herein before the High Court being W.P. No. 1627 of 2021 is allowed;

(iii) The SLAO shall pass a fresh award taking the market value prevailing as on 22nd April 2019 within a period of two months from today after hearing the parties;

(iv) The appellants herein shall be entitled to all statutory benefits as are available to them in law;

(v) The rights of parties to challenge the award in reference, if they are aggrieved by it, shall remain open; and

(vi) As we have not expressed our opinion on the claims, if any, of Respondent Nos.6 and 7 against the State/KIADB qua the delay in passing the award by the SLAO, Respondent Nos. 6 and 7 are at liberty to take such steps as are permissible in law in case they are aggrieved by the award to be passed by the SLAO.

60. Pending application, if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(K. V. VISWANATHAN)

NEW DELHI;
JANUARY 02, 2025.