



AFR
RESERVED

Court No.39

Case :- WRIT - C No. - 43934 of 2017

Petitioner :- Vijay Singh Tyagi And 25 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shiv Kant Mishra

Counsel for Respondent :- C.S.C., Ms. Meenakshi Singh, Anoop Trivedi

Hon'ble Dilip Gupta, J.

Hon'ble Dinesh Kumar Singh-I, J.

(Delivered by Hon'ble Dilip Gupta, J.)

This petition has been filed for quashing the award dated 19 November 2013 made by the Additional District Magistrate (Land Acquisition)¹ under Section 11 of The Land Acquisition Act, 1894² as also the amended award dated 4 March 2014 that seeks to make corrections under Section 12-A(1) of the 1894 Act in the aforesaid award dated 19 November 2013. A further relief that has been claimed is that compensation should, thereafter, be determined in accordance with the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013³.

The petitioners claim to be owners of 0.165 hectares of land situated in Khasra No. 126 in village Rasulpur, Yaqoobpur, Tehsil and District Ghaziabad. A notification under Section 4(1) of the 1894 Act read with sub-sections (1) and (4) of Section 17 of the 1894 Act was issued on 16 October 2004 for acquisition of 68.537 hectares of land

1 'ADM (LA)'

2 'the 1894 Act'

3 the 2013 Act

situated in village Rasulpur, Yakoobpur, including 0.165 hectares of land situated in Khasra No.126, for construction of a residential colony by the Ghaziabad Development Authority, Ghaziabad⁴ under a Planned Development Scheme. This was followed by a declaration made under Section 6 of the 1894 Act on 28 October 2005. The award was made under Section 11 of the 1894 Act by the ADM(LA) on 19 November 2013. Possession of 61.522 hectares of land was taken on 18 May 2006; of 1.971 hectares of land on 21 March 2009; of 0.747625 hectares on 31 December 2009 and of 4.2607375 hectares on 2 June 2010. It needs to be stated that the award was made under Section 11(1) of the 1894 Act for 6.648125 hectares of land, while the award for 19.214875 hectares of land was made under Section 11 (2) of the 1894 Act under the provisions of The Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997⁵. The award for the remaining 42.585 hectares of land was not made because of the interim orders passed by the Court. However, as there were clerical mistakes in the award dated 19 November 2013, the Collector on his own motion corrected the same on 4 March 2014.

Learned counsel for the petitioners submitted that there were no clerical or arithmetical mistake in the award dated 19 November 2013 and, therefore, the date of award should be treated as 4 March 2014, on which date the amended award was made. The submission is that the compensation for the land should, therefore, have been determined in accordance with the provisions of the 2013 Act as is provided for under

⁴ 'the Development Authority'

⁵ 'the 1997 Rules'

Section 24(1)(a). In the alternative, learned counsel for the petitioners submitted that all the beneficiaries specified in the notification for acquisition of land are entitled to receive compensation in accordance with the provisions of the 2013 Act as contemplated under the proviso to Section 24(2) of the 2013 Act since compensation in respect of a majority of the land holdings was not deposited in the account of the beneficiaries. To support this submission, learned counsel for the petitioners placed reliance upon the decision of a Full Bench of the Bombay High Court (Nagpur Bench) in **Writ Petition No.3447 of 2015**⁶; a Division Bench judgment of the Delhi High Court in **Writ Petition (C) No.8596 of 2014**⁷ which was subsequently followed by the Division Benches of the Delhi High Court in **Writ Petition (C) No. 5095 of 2014; Writ Petition (C) No. 8273 of 2014**⁸ and **Writ Petition (C) No.1103 of 2016**⁹. It has, therefore, been submitted that the award dated 19 November 2013 should be set aside and it should be made in accordance with the principles set out in the proviso to Section 24(2) of the 2013 Act.

Ms. Meenakshi Singh, learned Standing Counsel appearing for the State respondents and Sri Anoop Trivedi learned counsel appearing for the Development Authority, however, submitted that the date of the award would continue to remain as 19 November 2013 even if some corrections were subsequently made on 4 March 2014 and, therefore, the provisions of the 2013 Act so far as they relate to payment of

6 'Dayaram Bhondur Koche & Ors., Vs. The State of Maharashtra, & Ors., decided on 5 December 2016

7 Tarun Pal Singh & Anr. Vs. Lt. Governor, Govt. of NCT of Delhi & Ors., decided on 21 May 2015

8 Guru Nanak Vidya Bhandar Trust Vs. Union of India & Ors., decided on 4 January 2017

9 Mahendra Vs. Union of India & Ors., decided on 30 August 2017

compensation would not apply. Learned counsel for the respondents further submitted that the proviso to Section 24(2) of the 2013 Act would apply to only those awards that were made five years or more prior to 1 January 2014, which is the date of commencement of the Act and, therefore, it would have no application to the case of the petitioners since the award was made on 19 November 2013.

We have considered the submissions advanced by learned counsel for the parties.

In order to appreciate the first contention advanced by learned counsel for the petitioners, it would be appropriate to reproduce Section 12-A of the 1894 Act as inserted by UP Amendment on 19 November 1954 and the same is as follows:

“12A. Power to correct award.”-(1) The Collector may, at any time but not later than six months from the date of award, or where a reference is required to be made under section 18, before making of such reference, correct any clerical or arithmetical mistake in the award either on its own motion or on the application of any person interested.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested and, where the acquisition of land is not for the purposes of the Union, also to the State Government.

(3) Where any excess amount is provided to have been paid to any person as a result to the correction made under sub-section (1), such person shall be liable to refund the excess, and if he defaults or refuses to pay, the same may be realised as an arrear of land revenue.”

The submission advanced by learned counsel for the petitioners is that the date of the award made under Section 11 of the 1894 Act should

be treated as 4 March 2014 and not 19 November 2013. The Court had required the ADM (LA) to explain what clerical or arithmetical corrections were required to be carried out in the award dated 19 November 2013. A detailed affidavit has been filed by the ADM (LA) explaining the corrections that were required to be made. The corrections are basically with regard to wrong dates or spelling mistakes or wrong area of the land mentioned in the award dated 19 November 2013. The mistakes are all covered under Section 12-A(1) of the 1894 Act and were corrected within six months from the date of the award. The date of the award would continue to remain as 19 November 2013, even if certain corrections were subsequently carried out on 4 March 2014. In this view of the matter when the award under Section 11 of the 1894 Act was made on 19 November 2013 prior to the commencement of the 2013 Act, the provisions of Section 24(1)(a) of the 2013 Act would not apply and compensation was not required to be determined under the provisions of the 2013 Act. The first submission advanced by learned counsel for the petitioners, therefore, cannot be accepted.

The second submission of learned counsel for the petitioners is that the petitioners are entitled to receive compensation in accordance with the provisions of the 2013 Act as contemplated under the proviso to Section 24(2) of the 2013 Act since compensation in respect of a majority of land holdings was not deposited in the account of the beneficiaries. It is, however, important to note that details to substantiate that compensation in respect of the majority of land holdings was not deposited in the

account of the beneficiaries have not been provided by the petitioners and only a bald statement has been made.

To appreciate the contention, it would be appropriate to refer to some of the relevant provisions of the 2013 Act. Section 11 deals with publication of a preliminary notification. It provides that whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (called preliminary notification) to that effect along with details of the land to be acquired shall be published. Section 15 provides for hearing of objections by any person interested in the land which has been notified under Section 11(1) as being required or likely to be required for a public purpose, within sixty days from the date of the publication of the preliminary notification. Section 19 deals with publication of declaration and summary of Rehabilitation and Resettlement. It provides that when the appropriate Government is satisfied, after considering the report, if any, made under Section 15(2) that any particular land is needed for a public purpose, a declaration shall be made to that effect which shall be published in the manner provided for in sub-section (4) of Section 19. Section 21 (1) provides that the Collector shall publish public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land and claims to compensation and rehabilitation and resettlement for all interests in such land may be made to him. Section 23 provides that the Collector shall proceed to enquire into the objections (if

any), which any person interested has stated pursuant to a notice given under Section 21 and shall make an award.

Section 24, on which reliance has been placed by learned counsel for the petitioners, is reproduced hereinbelow:

“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 (1 of 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.”

Section 26 deals with the determination of the market value of the land by the Collector and Section 27 deals with determination of amount

of compensation. It provides that the Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner by including all assets attached to the land.

Section 30 (1) deals with award of solatium and is as follows:-

“30. Award of solatium.-(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a “Solatium” amount equivalent to one hundred per cent of the compensation amount.

Explanation.- For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

Section 77 of the 2013 Act which deals with payment of compensation or deposit of the same in the Authority is reproduced below:

“77. Payment of Compensation or Deposit of Same in Authority (1) On making an award under section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their

bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).

(2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of section 64:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

Section 114 of the 2013 Act deals with repeal and savings and is reproduced below:

“114. Repeal and savings.-(1) The Land Acquisition Act, 1894, (1 of 1894) is hereby repealed.

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

It is in the light of the aforesaid provisions of the 2013 Act that the second submission of learned counsel for the petitioners, based on the proviso to Section 24(2) of the 2013 Act, is required to be examined.

Section 24(1) of the 2013 Act deals with land acquisition proceedings that have been initiated under the provisions of the 1894 Act. Clause (a) of Section 24(1) of the 2013 Act provides that where no

award under Section 11 of the 1894 Act has been made, then, all the provisions of the 2013 Act relating to the determination of compensation shall apply. Clause (b) of Section 24 (1) of the 2013 Act, however, provides that where an award under Section 11 of the 1894 Act has been made, then such proceedings shall continue under the provisions of the 1894 Act, as if the said Act has not been repealed.

Sub-section (2) of Section 24 also deals with acquisition proceedings initiated under the provisions of the 1894 Act. It provides that notwithstanding anything contained in sub-section (1) of Section 24, where an award under Section 11 of the 1894 Act has been made **five years or more prior to the commencement of the 2013 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 the 2013 Act.

The proviso to Section 24(2) stipulates 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 1894 Act, shall be entitled to compensation in accordance with the provisions of the 2013 Act.

A bare perusal of Section 24(2) of the 2013 Act shows that like Section 24(1), it also deals with land acquisition proceedings that have

been initiated under the provisions of the 1894 Act but it is restricted to an acquisition in which the award has been made under Section 11 of the 1894 Act five years or more prior to 1 January 2014. It provides that in such a case, the land acquisition proceedings shall be deemed to have lapsed if the physical possession of the land has not been taken or the compensation has not been paid. The proviso to Section 24(2) is preceded by a grammatical punctuation '**colon**'. The submission of learned counsel for the petitioners is that the proviso to Section 24(2) would, when land acquisition proceedings have been initiated under the provisions of the 1894 Act, apply to awards made under Section 11 of the 1894 Act within five years prior to 1 January 2014. The contention of learned counsel for the respondents, however, is that the proviso has necessarily to cover only such awards which have been made five years or more prior to 1 January 2014 as is contemplated in Section 24(2).

As noticed above, sub-section (1) of Section 24 of the 2013 Act, deals with two situations when land acquisition proceedings have been initiated under the provisions of the 1894 Act. The first situation contained in clause (a) is when the award under Section 11 of the 1894 Act has not been made prior to 1 January 2014. In such a situation all the provisions of the 2013 Act relating to determination of compensation shall apply. The second situation contained in clause (b) is when the award has been made under Section 11 of the 1894 Act prior to 1 January 2014. In such an event, the proceedings shall continue under the provisions of the 1894 Act, as if the said Act has not been repealed. Sub-

section (2) of Section 24 also deals with land acquisition proceedings initiated under the provisions of the 1894 Act. It seeks to carve out an exception to Section 24(1) and provides that notwithstanding anything contained in sub-section (1), where an award has been made under Section 11 of the 1894 Act five years or more prior to the commencement of the 2013 Act but the physical possession of the land has not been taken or the compensation has not been paid then the land acquisition proceedings shall be deemed to have lapsed.

The Supreme Court has time and again examined the provisions of Sections 24(1) and 24(2) of the 2013 Act. It has explained the conditions under which Section 24(1) of the 2013 Act would apply and the conditions under which Section 24(2) of the 2013 Act would apply. It has been observed by the Supreme Court that Section 24(1) of the 2013 Act, which deals with acquisition proceedings that have been initiated under the provisions of the 1894 Act, covers situations where either no award has been made under Section 11 of the 1894 Act, in which case the beneficial provisions of 2013 Act would apply for determination of compensation or where an award has been made under Section 11 of the 1894 Act, in which case the provisions of the 1894 Act would apply as if the said Act has not been repealed. In relation to Section 24(2) of the 2013 Act, it has been pointed out that the State cannot be permitted to expropriate the property of a citizen if the award has been made and the necessary steps to complete the acquisition have not been taken for a period of five years or more. These steps, the Supreme Court explained,

include taking physical possession of the land and payment of compensation. The Supreme Court has also explained that 'compensation' would be considered as paid if the compensation has been deposited in the Court where a Reference under Section 18 could be made, in view of the provisions of Section 31 of the 1894 Act.

In this connection it would be pertinent to refer to the decision of the Supreme Court in **Delhi Development Authority Vs. Sukhbir Singh & Ors.**¹⁰. While examining the provisions of sub-section (2) of Section 24, the Supreme Court held that in a case where the award under Section 11 of the 1894 Act was made five years or more prior to 1 January 2014, the acquisition would lapse either when physical possession of the land has not been taken or compensation has not been paid by 1 January 2014. It rejected the contention that “or” should be read as “and”. The observations are as follows:

“11. Section 24(1) begins with a non-obstante clause and covers situations where either no award has been made under the Land Acquisition Act, in which case the more beneficial provisions of the 2013 Act relating to determination of compensation shall apply, or where an award has been made under Section 11, land acquisition proceedings shall continue under the provisions of the Land Acquisition Act as if the said Act had not been repealed.

12. To Section 24(1)(b) an important exception is carved out by Section 24(2). The necessary ingredients of Section 24(2) are as follows:

- (a) Section 24(2) begins with a non-obstante clause keeping sub-section (1) out of harm's way;
- (b) For it to apply, land acquisition proceedings should have been initiated under the Land Acquisition Act;

¹⁰ (2016) 16 SCC 258

(c) Also, an award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act;

(d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land Acquisition Act;

(e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again.

13. **The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more.** These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. **A faint submission to the effect that ‘or’ should be read as ‘and’ must be turned down for two reasons.** The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. **Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen’s right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been**

paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition.”

(emphasis supplied)

It would also be pertinent to refer to the decision of the Supreme Court in **Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.**¹¹. The Supreme Court observed that for the purposes of Section 24(2), compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the Court where a Reference under Section 18 can be made on the happening of any of the contingency contemplated under Section 31 of the 1894 Act. In other words even if compensation is deposited in the Court, it would be considered as “paid”.

The observations are as follows:-

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

¹¹ (2014) 3 SCC 183

contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.”

(emphasis supplied)

It, therefore, follows that the land acquisition proceedings initiated under the provisions of the 1894 Act, in view of the provisions of Section 24(2) of the 2013 Act, shall be deemed to have lapsed where the award has been made under Section 11 of the 1894 Act five years or prior to 1 January 2014 but the physical possession of the land has not been taken or the compensation has not been paid. The foremost condition that needs to be satisfied before the benefit of Section 24(2) of the 2013 Act is available is that the award should have been made under Section 11 of the 1894 Act five years or more prior to the date of commencement of the 2013 Act i.e. 1 January 2014.

These factors have to be kept in mind to understand what the proviso to Section 24(2) of the 2013 Act contemplates. Section 24(2) of the 2013 Act deals with an award made under Section 11 of the 1894 Act five years or more prior to 1 January 2014. The proviso to Section 24(2) also talks of an award. It has, therefore, to be examined whether the award referred to in the proviso is an award made five years or more prior to 1 January 2014 or to an award made within five years prior to 1 January 2014. It needs to be noted that the proviso to Section 24(2) of the 2013 Act is preceded by a grammatical punctuation “**colon**”. It would,

therefore, be necessary for the Court to first examine the effect of the grammatical punctuation “**colon**” before the proviso and then understand what is the true meaning of a “**proviso**”.

However, before examining this it would be pertinent to note that the Supreme Court in **State of Gujarat Vs. Reliance Industries Ltd.**¹² emphasised the importance placed on punctuation. In **Ashwini Kumar Ghosh Vs. Arabinda Bose**¹³, the Supreme Court had earlier also pointed out that when a statute is carefully punctuated, weight should be given to the punctuation. In **A.K. Gopalan Vs. State of Maharashtra**¹⁴, the Supreme Court also while construing Article 22(7)(a) of the Constitution, referred to the punctuation and derived assistance from it in reaching a conclusion that the Parliament was not obliged to prescribe both the circumstances under which, and the class or classes of cases, in which a person may be detained for a period longer than three months, without obtaining the opinion of the Advisory Board and that the Parliament on a true construction of the clause could prescribe either or both.

The World Book Encyclopedia Volume IV, defines “**Colon**” as:

“**Colon** is a mark of punctuation shown as: Its primary function is to separate an introduction from what it introduces: a list, a long quotation, an illustration, or an explanation. A colon is most often used when the words preceding it form a complete sentence, as in the second sentence of this article.”

¹² Civil Appeal Nos.13047-13048 of 2017, decided on 22 September 2017

¹³AIR 1952 SC 369

¹⁴AIR 1950 SC 27

Webster's Encyclopedia Unabridged Dictionary of the English Language also defines '**Colon**' as:

“The sign : used to mark a major division in a sentence, to indicate that what follows is an elaboration, summation, implication, etc. of what precedes.”

A colon is used between independent clauses when the second sentence explains, illustrate, paraphrases, or expands on the first sentence. The most common use of the word 'Colon' is to inform the reader that what follows the 'colon' proves, explains, defines, describes or lists elements of what preceded it. A colon in grammatical use is a punctuation which is associated with what immediately precedes it. The Colon introduces the logical consequence, or effect, of a fact stated before.

A Division Bench of this Court presided over by Hon'ble the Chief Justice Dr. D.Y. Chandrachud, (as His Lordship then was) in **Rahul Upadhyay Vs. Union of India Thru' Ministry of Road Transport & 3 Ors.**,¹⁵ explained the use of the grammatical punctuation “**Colon**” as also “**proviso**”. The petitioner had sought to challenge the legality of a notification issued by the Union Government on 2 January 2015 in exercise of the power conferred by Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 by which the Central Government exempted eight bridges in the State of Uttar Pradesh from the levy of a user fee. The petitioner placed reliance of Section 7 of the National Highways Act, 1956. The first submission of the petitioner was based on the proviso to Section 7(3) of the National Highways Act,

¹⁵ 2015(5) ADJ 217

1956. The submission that was advanced was that the proviso applies to the entire Section 7 and not only to Section 7(3). This was repelled by the Division Bench holding that the proviso which follows is evidently a proviso to sub-section (3) of Section 7 on a plain language of the proviso and also because it was preceded by a "colon". The observations are as follows:-

"The submission is that the proviso which is extracted above under which the Central Government has been empowered to exempt the payment of fees in public interest leviable on any bridge is a proviso which applies to the entire Section 7 and not only to Section 7 (3).

Under Section 7 (1), the Union Government has been empowered to levy fees at such rates as may be prescribed by rules made in that behalf for services or benefits rendered inter alia in relation to the use of ferries and permanent bridges the cost of construction of each of which is in excess of rupees twenty-five lakhs and which are opened to traffic on or after 1 April 1976, as well as temporary bridges and tunnels on national highways. **Sub-section (3) deals with fees leviable immediately before the commencement of the Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on any highway specified in the Schedule.** These fees under sub-section (3) were to continue to be leviable under the Act unless and until they were altered in exercise of the powers conferred by sub-section (1). **The proviso which follows is evidently a proviso to sub-section (3) of Section 7. This is evident from two aspects. The first is the plain language of the proviso** which stipulates that the Central Government may, if it is of the opinion that it is necessary in public interest to do so, specify that fees shall not be leviable "under this sub-section" on any bridge specified. The expression "under this sub-section" is in reference to sub-section (3). **Secondly, the proviso which is preceded by a colon. A colon in grammatical use is a punctuation which is associated with what immediately precedes it. Hence, there would be no merit in the submission that the proviso qualifies the entire Section 7.**

The power which has been exercised by the Central Government is under the proviso to Rule 3 (1) of the Rules of 2008 under which the Central Government has been empowered to issue a notification exempting any section of a national highway, permanent bridge, bypass or tunnel constructed through a public funded project from the levy of such fee or part thereof.

(emphasis supplied)

The real nature of a “**proviso**” also needs to be understood. It has been explained by Justice G.P. Singh, in “**Principles of Statutory Interpretation-11th Edition 2008**” in the following words:-

“The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment..... The proviso may, as LORD MACNAGHTEN laid down, be “a qualification of the preceding enactment which is expressed in terms too general to be quite accurate”. The general rule has been stated by HIDAYATULLAH, J., in the following words: “As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule”. And in the words of KAPUR, J., “The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.”

The function of a proviso to a section has been elaborately dealt with by the Supreme Court in **Haryana State Cooperative Land Development Bank Ltd. Vs. Haryana State Cooperative Land Development Bank Employees Union**¹⁶. It has been held that the normal

16 (2004) 1 SCC 574

function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. It has also been held that the proviso carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

The learned author Justice G.P. Singh has also explained that a proviso has to be construed in relation to the section or sections to which it is appended. The same are as follows:-

“The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words normally a proviso does not travel beyond the provision to which it is a proviso.”

It would also be pertinent to refer to cases which highlight the aforesaid position.

The Supreme Court in **Ram Narain Sons Ltd. and Ors., Vs. Asst. Commissioner of Sales Tax and Ors.**,¹⁷ observed that a proviso has to be construed in relation to the subject-matter covered by the section to which the proviso is appended. The Supreme Court observed that it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. It, therefore, held that the proviso appended to Article 286(2) of the Constitution authorising the President to lift the ban imposed by the said provision was not available for lifting the ban imposed by Article 286(1).

¹⁷ AIR 1955 SC 765

On the same principle, in **CIT Mysore etc. Vs. Indo Mercantile Bank, Ltd.**¹⁸ the first proviso to Section 24(1) of the Indian Income-tax Act, 1922 was construed as limited in its application to set-off of profits and losses arising under different heads, a subject dealt with by Section 24(1) and was held inapplicable to set-off of profit and losses dealt with under sections 7 to 12-B.

In **Dwarka Prasad Vs. Dwarka Das Saraf**,¹⁹ the Supreme Court also observed that a proviso must be limited to the subject matter of the enacting clause and that it is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. The Supreme Court also observed that the golden rule is to read the whole section, inclusive of the proviso, in such a manner that they mutually throw light on each other and result in a harmonious construction. The observations are as follows:-

“We may mention in fairness to Counsel that the following, among other decisions, were cited at the Bar bearing on the uses of provisos in statutes: CIT Vs. Indo-Mercantile Bank Ltd.; M/s. Ram Narain Sons Ltd. Vs. Asstt. C.S.T.; Thompson Vs. Dibdin; Rex Vs. Dibdin and Tahsildar Singh Vs. State of U.P.. The law is trite. **A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso.** It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context'. If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso,

18 AIR 1959 SC 713

19 AIR 1975 SC 1758

sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. **A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.**”

(emphasis supplied)

In **Vijayalakshamma and Anr. Vs. B.T. Shankar**²⁰ the Supreme Court pointed out that the proviso and the explanation appended to Section 7 of the Hindu Adoption and Maintenance Act, 1956 cannot be permitted to be read in Section 8 of the Act.

It would also be pertinent to refer to the decision of the Supreme Court in **State of Punjab Vs. Kailash Nath**²¹. Rule 2.2 of the Punjab Civil Services Rules reserves to a Government the right of withholding or withdrawing pension or any part of it, or to order for recovery from pension if the pensioner is subsequently found guilty of grave misconduct or negligence during the period of his service in departmental or judicial proceedings. This rule, however, stipulates that no such judicial proceedings, if not instituted while the officer was in service, shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution. The Supreme Court held that the proviso had to be read as an exception to the main provision meaning that if the judicial proceeding is not instituted within the period mentioned in the proviso, the Government will not have a right to withhold or withdraw the pension and the proviso does not provide a

²⁰ (2001) 4 SCC 558

²¹ (1989) 1 SCC 321

general embargo on the prosecution of an officer after the expiry of that period.

Justice G.P. Singh, in **“Principles of Statutory Interpretation”** has also explained the consequences of using different words in the same statute and they are as follows:-

“When in relation to the same subject-matter, different words are used in the same statute, there is a presumption that they are not used in the same sense.”

Section 24(2) of the 2013 Act refers to **payment of compensation**. The proviso to Section 24(2) of the 2013 Act, as noted above, stipulates 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. The proviso does not use the words **“compensation has been paid”**. On the other hand, it uses the words **“compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries”**. The Legislature has intentionally used the words **“compensation has not been paid”** in Section 24(2) and the words **compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries** in the proviso to Section 24(2). The use of different words in the same Section 24 has, therefore, to be taken into consideration while analyzing the situation covered by the proviso to Section 24(2) of the 2013 Act.

At this stage it would be pertinent to refer to the provisions of Section 77 of the 2013 Act. It provides that on making an award under Section 30 of the 2013 Act, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto **by depositing the amount in their bank accounts** unless prevented by one or more of the contingencies mentioned in sub-section (2). Sub-section (2) provides that if a person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land and or if there be any dispute as to the title to receive the compensation or to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under Section 64 would be submitted. Thus, while Section 24 (2) refers to payment of compensation in the sense that compensation shall also be considered to have been paid if deposited in the Court as contemplated under Section 77(2), the proviso to Section 24 (2) refers to deposit of compensation in the account of the beneficiaries as contemplated under Section 77(1) of the 2013 Act.

The proviso to Section 24(2) of the 2013 Act would obviously not cover a case where the land acquisition proceedings shall be deemed to have lapsed because then, the tenure holders would not be entitled to any compensation. The land acquisition proceedings, as contemplated under Section 24(2) lapse in a case where the award has been made five years or more prior to 1 January 2014 but the physical possession of the land has not been taken or the **“compensation has not been paid”**. Thus, if land

acquisition proceedings have not to lapse, the proviso should cover cases where possession has been taken, (otherwise the acquisition would lapse), and compensation has been paid (because if it has not been paid the acquisition would also lapse).

It is, therefore, clear that the proviso would cover a case where in regard to land acquisition proceedings initiated under the 1894 Act an award has been made under Section 11 of the 1894 Act five years or more prior to 1 January 2014 and physical possession of the land has been taken and compensation has also been paid to the tenure holders either by actual payment or deposit in the Court but compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries. It is only in such a situation that the Legislature has provided that all the beneficiaries specified in the notification for acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act.

The situation can also be understood by making reference to the following illustration. Supposing there are 100 holdings that are acquired under the provisions of the 1894 Act by issuance of a notification under Section 4(1) and the declaration under Section 6 of the 1894 Act and the award has been made under Section 11 of the 1894 Act five years or more prior to 1 January 2014. For the acquisition not to lapse under Section 24(2) of the 2013 Act, possession of the land must have been taken and compensation must have been paid to the tenure-holders. Payment of compensation would include both actual payment by deposit in the

account of the beneficiaries as also deposit in a Court where a reference under Section 18 of the 1894 Act could have been filed. It is possible that compensation in respect of a majority of land holdings has been deposited in the account of majority of land holdings or it may not have been deposited. In case the compensation has not been deposited in the account of more than 50 land holdings, then in that situation alone compensation for the acquisition of land would be determined in regard to all the holdings under the provisions of the 2013 Act. This in fact is an additional benefit provided to a tenure holder in cases where the land acquisition proceedings have not lapsed even if the award has been made more than five years prior to 1 January 2014.

The submission of learned counsel for the petitioners that the proviso would only cover cases where the award under Section 11 of the 1894 Act has been made within five years from 1 January 2014 can also be tested by taking a hypothetical case where the award is made on 31 December 2013. It would not be possible to deposit the compensation in the account of a majority of land holdings in one day. Thus, compensation in accordance with the provisions of the 2013 Act would then have to be disbursed to all the beneficiaries specified in the notification for acquisition under Section 4 of the 1894 Act. This is certainly not the intention of the Legislature because if it was such, a provision could have been specifically inserted at the relevant place.

Thus, from the use of the grammatical punctuation 'Colon' coupled with the meaning assigned to a proviso, the proviso to Section 24(2) of

the 2013 Act has to be read in the context of the main enactment and cannot be read in isolation dehors the provisions of Section 24(2) of the 2013 Act. The “award” referred to in the proviso to Section 24(2) of the 2013 would necessarily refer to an award made five years or more prior to 1 January 2014 as is contemplated under Section 24(2) of the 2013 Act. There is, therefore, no difficulty in holding that the proviso to Section 24(2) has to, where land acquisition proceedings have been initiated under the provisions of the 1894 Act, cover only those awards which have been made five years or more prior to 1 January 2014. The proviso does not deal with awards made within five years prior to 1 January 2014.

What, therefore, follows from a harmonious construction of the provision of sub-sections (1) and (2) of Section 24 of the 2013 Act and the proviso contained to sub-section (2) of Section 24 of the 2013 Act is as follows;

(1). Under Section 24(1) of the 2013 Act, there can be two situations when acquisition proceedings have been initiated under the provisions of the 1894 Act. The first is when an award has not been made upto 1 January 2014 and the second is when an award has been made. In case the award has not been made, then all the provisions of the 2013 Act relating to determination of compensation shall apply but if an award has been made then the proceedings shall continue under the provisions of the 1894 Act as if the said Act has not been repealed;

(2). Section 24(2) provides that where an award under Section 11 has been made five years or more prior to 1 January 2014 in case of land

acquisition proceedings initiated under the provisions of the 1894 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. However, compensation shall be considered as paid to the tenure holder even if it is deposited in a Court where a Reference can be filed under Section 18 of the 1894 Act.

(3) However, where an award under Section 11 of the 1894 Act has been made five years or more prior to 1 January 2014 in case land acquisition proceedings had been initiated under the 1894 Act and the physical possession of the land was taken and compensation was paid in the sense that it was either deposited in the account of the tenure holder or deposited in the Court but compensation in respect of a majority of land holdings was not deposited in the account of the beneficiaries, then all the beneficiaries specified in the notification for acquisition under Section 4 of the 1894 Act shall be entitled to receive compensation in accordance with the provisions of the 2013 Act.

(4). The benefit of the proviso to Section 24(1) of the 2013 would not be available to a tenure holder if the award is made within five years prior to 1 January 2014.

The view taken by us finds support from a Division Bench judgment of the Kerala High Court in **Writ Appeal No.2041 of 2015**²². The Division Bench presided over by Hon'ble the Chief Justice Ashok Bhushan (as His Lordship then was), repelled the contention of the appellant that the proviso to Section 24(2) of the 2013 Act would be

22 M.M. Jeevan & Anr. Vs. State of Kerala & Ors., decided on 14 October 2015

applicable in regard to those awards which were made within five years prior to 1 January 2014. It held that if this was the intention of the Legislature, it could have inserted the proviso to Section 24(1) and not to Section 24(2). The Division Bench observed that the proviso has to be interpreted in a manner so as to embrace the field covered by the main provision. The observations are:-

“12. What is the object and intend of the proviso appended to Section 24(2) is the core question to be answered. Whether the proviso is applicable even in cases where although award was made prior to the enforcement of the 2013 Act it was not made prior to five years or more of the commencement of the 2013 Act as required by Section 24(2). As noted above under Section 24(1)(b) it is provided that where an award under Section 11 of the 1894 Act has been made, then such proceedings shall be continued under the provisions of the 1894 Act as the said Act has not been repealed. In event the Legislature wanted to extend the benefit of the proviso to all cases where award has been made prior to enforcement of the 2013 Act, proviso could have been very well appended to Section 24(1). What is the object of appending the proviso to Section 24(2) is to be found out. In a case where award has been made five years or more prior to the commencement of the 2013 Act and physical possession of the land has not been taken or compensation has not been paid, the acquisition proceedings are deemed to be lapsed. In the present case it is not disputed that petitioners were not paid compensation prior to enforcement of the 2013 Act and physical possession was also taken subsequent to the enforcement of the 2013 Act but the conditions enumerated in Section 24(2) that award has to be made five years or more before the enforcement of the 2013 Act is not satisfied. Thus the present case does not fall in the condition precedent prescribed in Section 24(2) for lapsing the proceedings.

13. A plain reading of the proviso indicate that the proviso contemplates that when award has been made compensation in respect of majority of land holdings was not deposited in the account of the

beneficiaries then all beneficiaries under Section 4(1) notification shall be entitled to compensation in accordance with the provisions of the 2013 Act. **The proviso contemplates a situation in which although award has been made, but in majority of the cases compensation has not been deposited, then all beneficiaries are to be given the benefit of the 2013 Act including those with regard to whom compensation has not been deposited and those who have received the compensation covered by the same notification.** Thus in the normal circumstance when compensation has not been deposited in respect of majority of land holdings, the acquisition is deemed to be lapsed as per Section 24(2) but proviso provides that even in those cases compensation is to be paid in accordance with the 2013 Act, an exception has been carved out in the proviso where the acquisition is not to be lapsed.

.....

17. A proviso thus appended to a provision has to be interpreted in the manner so as to embrace the field which is covered by the main proviso. The proviso is only an exception to the main provision to which it has been enacted and no other. A proviso deals with the situation which takes something out of the main enactment to provide a particular course of action which course of action could not have been adopted in the absence of the proviso.

18. Proviso appended to Section 24(2) indicates that it carves out an exception for a situation where the land acquisition proceedings shall not be deemed to lapse. Thus for applicability of the proviso a case has to be covered by Section 24(2), i.e., (i) award has been made five years or more prior to the enforcement of the 2013 Act and (2) either physical possession of the land has not been taken or compensation has not been paid.

19. Proviso contemplates a situation where majority of the land holders were not paid compensation nor compensation is deposited in their accounts meaning thereby that for majority of land holders acquisition has to lapse but for the proviso. The proviso in fact extend the benefit even to those land holders who have received compensation as per the 1894 Act. Thus all the land holders are to receive benefit of higher and liberal compensation under Section 2013 Act. This situation is one where land acquisition proceedings shall not lapse and are saved.

(emphasis supplied)

In **Writ Appeal No.175 of 2015**²³ the Gauhati High Court also took the same view and the observations are:-

“6. The next question to be considered is whether compensations can be paid to the appellants in terms of the proviso to Section 24(2) of the Act of 2013. The submission of Mr. A.M. Bbuzarbaruah, the learned senior counsel for the respondents is that inasmuch as the compensation amounts were not disbursed to the respondents even after the commencement of the Act of 2013, all the landowners are entitled to compensations in accordance with the proviso to Section 24(2) of the Act of 2013. **In my opinion, the learned Senior Counsel appears to have overlooked the fact that a proviso cannot be read in isolation, and must be read in the context of the main enactment.** Before proceeding further, let us first ascertain the meaning of the term “proviso”. The text of the proviso to Section 24(2) of the Act of 2013 has already been extracted earlier. The language of a proviso, even if general, is normally to be construed in relation to the subject-matter covered by the Section to which the proviso is appended. In other words, normally, a proviso does not travel beyond the provision to which it is a proviso.

7. In my opinion, the proviso in question will come into play once it is established that an award has been made under Section 11 of the Act five years or more before the commencement of the Act and possession of the lands of the landowners was taken but compensation was not paid to majority of such landowners. In other words, this is a case where the acquisition proceedings of the land cannot be deemed to have lapsed under Section 24(2) of the Act of 2013 but Section 24(1)(b) will apply. As already noticed, once the criteria for deemed lapsed of the land acquisition proceedings under Section 24(2) of the Act of 2013 are fulfilled, then the question of payment of compensation in terms of the award already made under Section 11 of the old Act will not and cannot arise since the land acquisition proceeding itself will have died a natural death. In such eventualities, the legislature has left it to the discretion

²³ M/s Athena Demwe Power Limited, Vs. Sh. Laideo Tayan and Ors.,, decided on 5 January 2016

of the State Government whether or not to initiate a fresh proceeding for acquisition of the same land in accordance with the Act of 2013. **However, as already noticed, there could be a situation where the land acquisition proceedings cannot be deemed to have lapsed under Section 24(2) since the conditions for the deemed lapsed thereunder are not satisfied such as when possession of land has already been taken but compensation has not been paid even after making of the award five years or more prior to the commencement of the Act of 2013.** In the meantime, the market value of the lands of such landowners could have increased by leaps and bounds but, to the misfortune of these landowners, an award was already made under the old Act on the basis of the market value obtaining on the date of the notification under Section 4 of the old Act i.e. five years or more before the commencement of the Act of 2013. This is most likely to cause heavy losses to the landowners without their fault. In my judgment, it is for these landowners that the proviso has been inserted by the legislature to give protection to such landowners. **Thus, where an award has been made five years or more prior to the coming into force of the Act of 2013 but the lands of the landowners were already taken possession of, but compensations for majority of the land holdings have not been deposited in the account of these landowners, such landowners shall be entitled to compensation in accordance with the provisions of the Act of 2013.** However, the landowners such as the private respondents herein, for whom an award was made within five years of the coming into force of the Act of 2013, cannot obviously take advantage of the proviso to Section 24(2) of the Act of 2013 as there was no delay in making the award for them; to hold otherwise will amount to conferring upon them unjust enrichment at the expense of the appellants. Consequently, neither Section 24(2) nor the **proviso** to Section 24(2) of the Act of 2013 can be held applicable to the facts of these appeals. **Thus, to sum up, the proviso will operate in a field not covered by Section 24(2) and will operate only when an award has been made under Section 11 of the old Act and possession of the land was taken but majority of the landowners are not paid their compensations five years or more before the coming into force of the Act of 2013.** Consequently,

in the instant case, the land acquisition proceedings shall be allowed to continue, and compensations to the appellant paid in accordance with the award made under the provisions of the Land Acquisition Act, 1894 as if this Act has not been repealed.”

(emphasis supplied)

The Division Benches of both the Kerala High Court and the Gauhati High Court have taken a view that the proviso to Section 24(2) of the 2013 Act would cover only such awards that have been made under Section 11 of the 1894 Act five years or more prior to 1 January 2014.

Reliance has, however, been placed by learned counsel for the petitioners on a Full Bench decision of the Bombay High Court in **Dayaram Bhondur Koche**. The Full Bench considered a case where an award under Section 11 of the 1894 Act was made within a period of five years prior to 1 January 2014 as the award was made under Section 11 of the 1894 Act on 17-11-2010. The benefit of the proviso to Section 24(2) of the 2013 Act was held to be available where the award was made within five years prior to 1 January 2014 by reading the proviso as an exception to Section 24(1)(b) of the 2013 Act. The observations are:-

10. The proviso below sub-section (2) deals with the subject of applicability of the provisions of the 2013 Act relating to the determination of compensation covered by clause (b) of sub-section (1) of Section 24 therein, subject to the satisfaction of condition that the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries. **In our view, the proviso has to be read as an exception to the provision of clause (b) in sub-section (1) of Section 24 of the 2013 Act so as to advance the intention of the Legislature to strike the balance of conflicting interest between the land holders and the State, and to award a fair compensation.**”

(emphasis supplied)

A Division Bench of the Bombay High Court in **Writ Petition No. 1923 of 2014**²⁴ with which another Division Bench of the Bombay High Court had not agreed as a result of which the matter had been referred to the Full Bench in **Dayaram Bhondur Koche**, however, observed that the provisions of Section 24(2) of the 2013 Act would apply only to awards made five years or more prior to 1 January 2014 and the observations are as follows:

“On hearing the learned counsel for the parties and on a perusal of the provisions of the Act of 2013, it appears that the petitioners would not be entitled to compensation under the Act of 2013. On a reading of the provisions of Section 24 of the Act of 2013, it appears that the provisions of Section 24(2), to which the proviso is appended, would apply only to the Awards that are made five years or more, prior to the commencement of the Act of 2013. The award was not made five years or more, prior to the commencement of the Act of 2013. The Award was made on 09.07.2009 and the Act of 2013 came into force on 01.01.2014. The Award was not made five years or more, prior to the commencement of the Act on 01.01.2014. Since, the proviso appears to have been appended to sub-section (2) of Section 24 of the Act of 2013, the petitioners would not be entitled to seek compensation under the provisions of the new Act. The object of the proviso is to provide to the beneficiaries, who have already received the compensation under the Act of 1894, higher compensation under the Act of 2013, if the compensation in respect of the majority of land holdings has not been deposited in the account of the beneficiaries. The proviso would come into play only if the Award is made five years or more, prior to the commencement of the Act of 2013. For example, if an Award is made just a day before the commencement of the Act of 2013 or a fortnight before its commencement, there is no occasion for the State Government to deposit the amount of compensation in the accounts of the beneficiaries as certain procedure under the Act of 1894 like issuance

24 Shrikant Shankarrao Daulatkar & Ors., Vs. State of Maharashtra & Ors., decided on 22 June 2015

of notice to the claimants to receive the compensation and securing necessary documents in respect of their identification, would be required to be undergone. Under Section 31 of the Land Acquisition Act, 1894, after making the Award under Section 11, the Collector is required to tender payment of the awarded compensation to the persons entitled to receive it and if they do not consent to receive it, the Collector is required to deposit the compensation in the Court. Also, it is clear from the provisions of Section 24(1)(b) that where the Award is made under Section 11 of the Land Acquisition Act, 1894, then such proceedings shall continue under the provisions of the Land Acquisition Act, 1894 as if the Act was not repealed. The provisions of sub-section (2) of Section 24 carve out an exception to the provisions of Section 24(1)(b) of the Act of 2013 and create a class of acquisitions in respect of the Awards, which have been made five years or more, prior to the commencement of the Act of 2013 under the Land Acquisition Act, 1894, but where the physical possession of the land is not taken or the compensation has not been paid, for the purpose of lapsing. **The proviso, being applicable to the provisions of sub-section (2) of Section 24, the condition precedent for seeking compensation under the Act of 2013 would be the making of the award five years or more prior to the commencement of the Act of 2013.** In the instant case, the Award is not made five years or more, prior to the commencement of the Act of 2013. The petitioners would, therefore, not be entitled to the compensation under the Act of 2013. Though, the petitioners are not entitled to compensation under the Act of 2013, since the petitioners have not received the compensation determined under the Act of 1894 till date, it would be necessary to direct the respondents to pay the same to the petitioners along with the other benefits flowing from the provisions of the Act of 18894, within a time frame.”

(emphasis supplied)

Reliance has also been placed by learned counsel for the petitioners on a Division Bench judgment of the Delhi High Court in **Tarun Pal**

Singh & Anr. The Division Bench took the same view as was taken by the Full Bench of the Bombay High Court and the observations are:-

“7. It is, therefore, clear that in those cases where the Awards have been made more than five years prior to the commencement of the Act, section 24(2) would have applicability, subject to the other conditions being fulfilled. But, in cases where the Awards have been made within five years of the commencement of the 2013 Act, section 24(2) would not apply. It is also clear that once the conditions of section 24(2) are met, the acquisition itself lapses and therefore, no occasion would arise for invoking the first proviso which is set out after section 24(2). This is so because the first proviso entails a situation where the acquisition is saved but the compensation is awarded under the 2013 Act. The proviso cannot blow life into the acquisition which has lapsed under the main provision of sub-section (2) of Section 24 of the 2013 Act. It is for this reason that we think that the first proviso which has been placed after section 24(2) is not really a proviso to section 24(2) but, a proviso to Section 24(1)(b). The said first proviso and Section 24(1)(b) can easily be read together. Section 24(1)(b) in effect relates to all cases where awards have been under the 1894 Act except those which are covered under Section 24(2). Clearly, awards made less than five years prior to the commencement of the 2013 Act would fall under Section 24(1)(b). As such, the general rule in such cases is that the provisions of the 1894 Act would continue to be applicable, as if the 1894 Act had not been repealed. However, the said first proviso carved out an exception to this general rule by providing that in cases where 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. This is a provision for the benefit of landowners inasmuch as even in cases of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act.

8. Thus, while the said first proviso can harmoniously exist when read as a proviso to Section 24(1)(b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act.”

(emphasis supplied)

For all the reasons stated above, it is not possible to accept the view taken by the Full Bench of the Bombay High Court in **Dayaram Bhondur Koche** or the Division Bench of the Delhi High Court in **Tarun Pal Singh**. The proviso to Section 24(2) of the 2013 Act cannot be read as an exception to Section 24(1)(b) of the 2013 Act. In fact, the award under Section 11 of the 1894 Act should have been made five years or more prior to 1 January 2014. In the present case, the award was made within five years prior to 1 January 2014. The petitioners would not be entitled to the benefit of the proviso to Section 24(2) of the 2013 Act.

There is, therefore, no merit in the second contention advanced by learned counsel for the petitioners.

Thus, for all the reasons stated above, the writ petition deserves to be dismissed and is, accordingly, dismissed.

Date :-6 November 2017
NSC

(Dilip Gupta, J.)

(Dinesh Kumar Singh-I, J.)