PRASHANT VILAS RANE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1630 OF 2018
WITH
CHAMBER SUMMONS NO.304 OF 2018
WITH
CHAMBER SUMMONS (L)NO.341 OF 2018
WITH
INTERIM APPLICATION NO.99 OF 2020

1. Zarina Dada
2. Saadia Maqdoom Moosa
3. Nasreen Saleh Salim
4. Farah Dada … Petitioners

Versus

1. The State of Maharashtra
2. The Collector, Mumbai Suburban District
3. The Deputy Collector (Land Acquisition) No. 4.
4. Special Land Acquisition Officer No. 4
5. Mumbai Metropolitan Region Development Authority …Respondents

Ms. Ayesha Damania a/w. Mr. Netaji Gawade, Rahul Sanghvi, Nayan Bhalekar i/b. Sanjay Udeshi & Co. for the petitioners.
Mr. Aseem Naphade with Mr. Himanshu Takke, AGP for respondent nos. 1 to 4.
Mr. Saket Mone a/w. Mr. Devansh Shah i/b. Vidhi Partners for respondent no. 5-MMRDA.
Mr. J.K. Shah a/w. Mohit Darji i/b. R.J. Law for the applicant in CHSWL/341/2018.

CORAM : G. S. KULKARNI &
RAJESH S. PATIL, JJ.
Reserved on : 13 March 2026
Pronounced on : 13 July 2026

Judgment (Per G. S. Kulkarni, J.)

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(I) Prelude

1. During the British regime and about 53 years prior to independence, the Land Acquisition Act, 1894 (for short, "**LA Act**") was promulgated to replace the Act of 1870, which was not found to be entirely effective either for the protection of persons interested in the land acquired or for safeguarding the public exchequer. The LA Act was an expropriatory legislation that enabled the State to acquire property in the exercise of its power of eminent domain for a public purpose and upon payment of compensation. Thereafter, the LA Act underwent several amendments until it was repealed in the year 2013 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "**the 2013 Act**"). Such background is required to be stated as notwithstanding, the fact that as on date, the legislation itself is more than 132 years old and the legal position on a multitude of issues under the LA Act being fairly settled, nonetheless, merely for the reason of the official machinery either being careless or lacking the

proper approach to deal with the intricacies in regard to the basics of the land acquisition procedure and substantive requirements on the application of its provisions, such issues continue to haunt the Courts. The present is one such case. Although the law stands firm and tall, the manner in which the government machinery, in a given situation would act, can be quite unpredictable.

2. As the facts of the present case would reveal, the Special Land Acquisition Officer has acted in such a manner that it has left the petitioners/landowners to litigate since the last 15 years. Considering the methods and actions of the Land Acquisition Officers, in our opinion, the present case surpasses all reasonable and legitimate imagination of a legal mind, nevertheless, falling for adjudication in these proceedings.

3. This petition under Article 226 of the Constitution of India brings before the Court, a peculiar case in relation to the acquisition of the petitioners' land bearing Survey no. 247 Pt. No. 3, CTS 913 (part) admeasuring 3 Acres and 5 ½ Gunthas situated at Kurla, Mumbai, a prime locality, sans a lawful procedure of declaring an award so as to make an offer to pay compensation to the petitioners. According to the petitioners, such admitted lapse of the petitioners' land not being included in the Land Acquisition Award dated 23 September 1986, declared by the Special Land Acquisition Officer, was sought to be corrected after 31 years from the passing of the award, by issuance of a

Corrigendum dated 5 April, 2017, the legality of which is also challenged by the petitioners. It is the petitioners' case that such corrigendum could never have been issued, as also cannot be recognized in law, after a lapse of 31 years from the declaration of the original award, so as to include the petitioners' land within the purview of the said award. In these circumstances, the petitioners have mounted a challenge *inter alia* to the land acquisition award dated 23 September 1986, contending that the same is being foisted on the petitioners by way of the impugned corrigendum to the award dated 5 April, 2017.

(II) Facts

4. As gathered from the pleadings, the relevant facts are as follows:

The petitioners are the heirs and legal representatives of Late Ahamad Izzat Mohammed Hasham Dada (for short, "**Late Dada**"), who expired at Mumbai on 8 December, 1984. Late Dada was the Kabzedar/owner of the land in question, namely, land admeasuring 3 acres 5½ gunthas, bearing Survey No. 247 Pt. No. 3, CTS 913 of Kurla (for short "**the said land**"). His ownership qua the said land was reflected in the revenue record i.e. the 7/12 extract vide Mutation Entry No.127 dated 22 October 1981.

5. The State Government proposed to acquire certain lands for the public purpose of constructing the "Santacruz-Chembur Link Road" for which, a notification under the provisions of Section 6 of the LA Act read with Section

126(2) & (4) of the Maharashtra Regional and Town Planning Act, 1966 (for short '**the MRTP Act**') came to be issued on 21 October 1982, by which acquisition of lands from five survey numbers totaling an area of 10977.5 sq. mtrs. from Village Kurla and 112.5 sq.mtrs. From Village Chembur was notified. The details of such lands as proposed to be acquired and notified for acquisition were as follows :

"LAND NOTIFIED FOR ACQUISITION

District : Bombay Suburban, Taluka Kurla, Village Kurla.

	Survey No.	CTS No.	Area in sq. mtrs.
1.	244 pt.	909pt.	869.4
2.	247pt.	910pt.	73.6
3.	**247pt.**	**913pt.**	**1613.0**
4.	245pt.	914pt.	5441.9
5.	260pt.	926pt.	396.0
6.		462pt.	970.0
		463pt.	1613.6
			10977.5

District : Bombay Suburb, Taluka: Kurla, Village : Chembur

	364pt.	557pt.	112.5

Total 11090.00 sq. mts."

(emphasis supplied)

Note:- Sr. No.3 is 1613 sq. mtrs. land from the total land holding of late Dada admeasuring 3 acres and 5 ½ gunthas.

6. The petitioners contend that it is clear from the description of the lands which were proposed to be acquired as per the aforesaid notification, that there

was no specific inclusion of the land of the description belonging to the petitioners. The land belonging to the petitioners was Survey No. 247 [Pt.No.3], which would be equivalent to CTS No.913pt. (Pt.3) (Hissa No.3). It is the petitioners case that, although specific land of such description was not included in the aforesaid notification, later on it was revealed that steps were taken to acquire the land from Survey No.247 (pt) admeasuring 1613.0 sq.meters, which was discovered to be belonging to the petitioners. This amounted to the acquisition of petitioners' land to such extent. It is the petitioners' case that Survey No.247(pt) (equivalent CTS 913 (pt)) is a large land, out of which Pt. No.3 Hissa No.3 was the petitioners' holding admeasuring 1613 sq.meters, which had no such specific inclusion in the aforesaid notification issued under the provisions of Section 6 of the LA Act read with Section 126(2) & (4) of the MRTP Act.

7. Thereafter, individual notices were issued to the owners of the aforesaid lands under section 9(3) and (4)[1] of the LA Act, calling upon them to file their claims for compensation. The petitioners' predecessor (Late Dada), although was a person interested in the land as the landowner, was never issued a notice under section 9(3) and (4) of the LA Act. According to the petitioners, although respondent no. 4-Special Land Acquisition Officer (for short "SLAO") was aware of the ownership qua the petitioners' land for the reason

[1]* 9. Notice to persons interested.

that the land record i.e. the 7/12 extracts in respect of the said land was obtained by the SLAO on 20 May, 1986 along with the 7/12 extracts of the neighbouring lands, which were the subject matter of acquisition. Also, a copy of the 7/12 extract of the petitioners' land was received by the petitioners from the file of the SLAO under the Right to Information Act, 2005.

8. It is the petitioners' case that no attempt was however made to re-issue notices under section 9 (3) and (4) of the LA Act to Late Dada, although a part of the petitioners' land (1613 sq. mtrs.) was being subjected to the said acquisition. It was also revealed to the petitioners that the SLAO had in fact issued notices under Section 9(3) and (4) of the LA Act to one Baitulbai Faizulla Mukadam and six others who were not the owners of the said land, even then, no attempt was made to take any corrective action to reissue notices under Section 9(3) and (4) of the LA Act to the petitioners considering that such notices were sent to a wrong person i.e. to Baitulbai Faizulla Mukadam, as the ownership of Late Dada qua the said land was reflected in the revenue records i.e. the 7/12 extract by virtue of Mutation Entry No.127 dated 22 October 1981.

9. The petitioners contend that on such backdrop, the SLAO proceeded to pass the impugned award dated 23 September 1986 under the provisions of the LA Act, without the petitioners/petitioners' predecessors, who were the lawful owners of the land being in any manner involved in the land acquisition

proceedings. In the impugned award, qua the said land, under the heading "*Claims for compensation and evidence in support thereof*" and the sub-heading "*Survey No. 247pt./CTS No. 913pt.*" the following was recorded:

> "As per extract of V.F. VII-XII Smt. Baitulbi Faizulla Mukadam and six others are the kabjedars. The extract of property register in respect of CTS No. 913 pt shows that the land is agricultural. As stated above, Smt. Baitulbi has not filed her claim for compensation."

Such fact is also admitted by the SLAO as the record of the petitioners' prior writ petition would indicate, to which we shall

10. On 8 December 1984, Late Dada expired. Consequent thereto, the father of Late Dada, namely, Mohd. Hasham Ahmed Dada, addressed a letter dated 8 March 1987 to the SLAO informing him that Late Dada, who was the owner of the land in question, died on 8 December 1984, leaving behind him the petitioners as his heirs and next of kin. The said letter also recorded that, as per the Development Plan, a portion of the said land of the petitioners was shown as being required under the said plan. The letter also recorded that, however, at no point in time, notices were sent to Late Dada for acquisition of the said land and that such notices should be sent to them at the earliest, to enable them to make their comments on the acquisition of the said land for the "Santacruz-Chembur Link Road" and the Bridge from Kurla East to West. This letter, according to the petitioners, also was indicative of the fact that the petitioners' predecessor in title was not aware of the land acquisition award,

which was declared on 23 September 1986. Although the said letter of the petitioners was received by the SLAO on 20 March 1987, as evidenced by the stamp showing inward No.247 on 20 March 1987, the said letter was not replied/responded, much less a rectification procedure being adopted by the SLAO to resort to any land acquisition proceedings qua the petitioners' land in question. This, according to the petitioners, was fatal inasmuch as, at such point of time on the day the said letter was received i.e., on 20 March 1987, the land acquisition award[2] had, in fact, already been declared, although the same was not to the knowledge of the petitioners, rendering the land acquisition proceedings, qua the petitioners' land to be non-est, null and void.

11. The petitioners also contend that, in fact, it was also available to the SLAO to treat the petitioner's letter dated 8 March 1987 as a reference under Section 18(2) of the LA Act, in the event the award was to lawfully include the petitioners' land being subjected to acquisition. However, also on this count, no action was taken, and the said letter of the petitioner was simpliciter kept in the file All this, including about the said letter, was revealed to the petitioners on inspection of the land acquisition file. A copy of the said letter was obtained by the petitioners under the Right to Information Act ,2005.

12. On such conspectus, the petitioners contend that Section 12(2)[3] of the LA Act cast an obligation on the SLAO, when it provided that the Collector

[2]* Land Acquisition Award dated 23 September 1986

[3]* Award of Collector when to be final.

shall give an immediate notice of the award to the persons interested, who are not present personally or by their respective representatives when the award is made. It is the petitioners' case that such notice was not issued to the petitioners under Section 12(2) of the LA Act, although the petitioners were the owners of the said land. The petitioners contend that the issuance of such notices to any other persons, including to Baitulbai Faizulla Mukadam, dated 9 March 1987, under Section 12(2) of the LA Act, who had nothing to do with the land in question, would not satisfy the requirement of law to expropriate the petitioners' land, hence, any such action on the part of the SLAO had no legal relevance.

13. The petitioners have categorically contended that very peculiarly, although a notice under Section 12(2) of the LA Act was issued to Baitulbai Faizulla Mukadam and others on 9 March 1987, after almost 18 years i.e. on 22 March 2005, once again the SLAO issued an intimation to Baitulbai Faizulla Mukadam and others regarding payment of compensation and taking over possession of the petitioners' land. The petitioners contend that this was clearly on an erroneous assumption, as no notice in respect of the petitioners' land could have been issued to any other third party, namely, Baitulbai Faizulla Mukadam, more so when the petitioners' letter dated 8 March 1987 (supra) was already on the record of the SLAO. This fact was revealed to the

petitioners in the reply affidavit dated 11 July 2011 filed by the SLAO - Mr. Prabhakar Maruti Thorat in the earlier writ petition[4] of the petitioners.

14. The petitioners have contended that although the award was made by the SLAO on 23 September 1986, on 7 April 2005, unilateral possession of the petitioners' land was taken under the said award, which, according to the petitioners, was also vitiated, being non-est, null and void qua the petitioners' land, as the same was taken over without any notice and payment of compensation to the petitioners. It is stated by the petitioners that this fact was revealed from the copy of the possession receipt annexed to the reply affidavit of the SLAO- Mr. Thorat dated 11 July 2011, filed in the earlier petition.

15. The petitioners in paragraph 12 of the memo of the petition contend that although, not relevant, one Mr. Firoze J. Mantri had filed a Suit No. 2234 of 2007 in regard to the land in question *inter alia* seeking specific performance of the agreement for sale entered into between Late Dada and him, pursuant to which he also claimed compensation, under the award dated 23 September 1986. The said civil suit was, however, dismissed on 1 October 2015, and the same was again restored. It was, however, again dismissed by an order dated 18 August 2016, and no order was passed in Notice of Motion No.870 of 2017, which was filed for its restoration. The petitioners have contended that the suit itself was of the year 2007 i.e. almost 18 years after the

[4] Writ Petition No.643 of 2011

said land acquisition award was declared. The petitioners contend that Mr. Firoze J. Mantri had forged and fabricated the document to show himself as the owner merely on the basis of the agreement for sale, which was later on corrected by the petitioners by making an application to the Sub-Divisional Officer, Mumbai Suburban District, dated 8 July 2008. The Sub-Divisional Officer passed an order dated 8 July 2008 deleting Mr. Firoze J. Mantri's name from the 7/12 extract of the land vide mutation entry No.393 dated 27 October 2008 and the petitioners' names were reflected in the 7/12 extracts as the owners. On 16 June 2008, the petitioners addressed a letter to the SLAO pointing out that they being the owners of the said land admeasuring 1613 sq. meters, which was purportedly included in the said land acquisition award dated 23 September 1986 without the petitioners being included in the award and accordingly made a demand for payment of compensation with solatium, 12% component and interest payable under the Award dated 23 September 1986. However, the said letter was not replied by the SLAO.

16. The petitioners on the aforesaid premise, contend that notwithstanding the fact that they per se were not offered any compensation by inclusion in the said award, the petitioners were advised to file an application dated 11 May 2009 under Section 18(2) of the LA Act, on the purported basis that the letter dated 8 March 1987 of Mr. Mohd. Hasham Ahmed Dada (supra), was filed within six months from the date of the said award dated 23 September 1986,

which be considered as an application under Section 18(2) of the LA Act. The petitioners in the said letter contended that the matter relating to the land admeasuring 1613 sq.mtrs. be referred to the Court for determination of the compensation payable to the petitioners under the LA Act. It was also urged that TDR rights be issued to the petitioners in respect of another parcel of land admeasuring 1378.3 sq.mtrs, which had been acquired by the Mumbai Metropolitan Region Development Authority (for short the **"MMRDA"**) in a separate land acquisition proceeding, not relevant to the present proceedings.

17. At this juncture, we must take a note of the fact, that it would remain as a legal issue as to whether the petitioners' letter dated 8 March 1987 (supra) could be treated as an application under Section 18 of the LA Act, in the absence of the petitioners being, in any manner, recognised in the award to be lawful awardees of the compensation under the Award dated 23 September 1986. Considering this to be a foundational fact, whether it could nonetheless be presumed that the petitioners' letter dated 8 March 1987, could be treated as a reference under Section 18 of the LA Act appears to be quite doubtful. Be that as it may, this issue has faded into obscurity, as the further fact demonstrates that the petitioners were not the persons named under the Award to be entitled to any compensation.

18. The SLAO rejected the petitioners' application dated 11 May 2009 by an order dated 16 July 2009 only on the ground that there was a delay of 23

years since the date of the publication of the award, however, it was recorded that for such purpose the petitioners should approach the Court. The said order dated 16 July 2009 passed by the SLAO is required to be noted, which reads thus:

(Official Translation of a photocopy of a Letter, typewritten in Marathi)
Exhibit - "J"

Special Land Acquisition Officer No.4, Mumbai Suburban District
Administrative Building, 9th floor, Government Colony,
Bandra (East), Mumbai 400051.

No. LAQ/S.R.-7(I), Kurla and Chembur.
Date : 16.07.2009.

To,

1) Smt. Zarina Ahmed Dada
2) Smt. Sadiya Moosa
3) Smt. Nasreen Saleh Salim
4) M/s. Faraha Dada
2, Rukiya Manzil,
61-A, Bhulabhai Desai Road,
Mumbai 400026.

Subject :-Land Acquisition : Mumbai Suburban District Land bearing S.No.247, Hissa No.3, C.S.No.913 situated at village Kurla, Tal. Kurla.

Reference :- Your Letter dated 11.05.2009.

Respected Madam,

In connection with your letter dated 11.05.2009, you are hereby informed that the then Special Land Acquisition Officer, Highway, Mumbai Suburban District has acquired the area admeasuring 1613 sq.mt. from out of the land bearing C.S.No.913 from out of the land bearing S.No.247 situated at Mouje-Kurla, Taluka Kurla together with other lands, thus total area admeasuring 11090 sq.mt. and has declared the Award in this matter on the date 23.09.1986. The possession of the acquired land has been handed over to the Land Acquiring Body.

23 years have been completed after declaration of the said Award and therefore, no modification or amendment can be carried out in the said Award as requested by you in your letter dated 11.05.2009. Hence, you are instructed to seek relief from the Hon'ble Court in that regard.

Yours faithfully,

Special Land Acquisition Officer No.4,
Mumbai Suburban District."

(emphasis supplied)

19. The petitioners simultaneously filed an application dated 12 May 2009 with the MMRDA requesting compensation for the land admeasuring 2991.10 square mtrs. (1613 mtrs. plus 1378.3 mtrs.)(subject matter of another acquisition by the MMRDA). However, the petitioners' application seeking compensation was rejected.

20. In the aforesaid circumstances, the petitioners approached this Court by filing Writ Petition No.643 of 2011 assailing the order dated 16 July 2009 (supra) passed by the SLAO/respondent No.4 rejecting the petitioners' claim for compensation. In the proceedings of the said writ petition, on behalf of the State/SLAO, Shri. Prabhakar Maruti Thorat, SLAO, filed a reply affidavit dated 11 July 2011 in which the following relevant statements were made: -

> "3 Without prejudice to what is stated above, I have to state as under: The Superintending Engineer, Road Development Division, Mumbai, sent the proposal to the Special Land Acquisition Officer (Highways) through Additional Collector, M.S.D. for acquisition of private land bearing Survey No.247 (Part), C.TS. No.913 (Part) admeasuring 1613.0 square metres. Kurla and Chembur along with other survey numbers for proposed, Santacruz Chembur Link Road. The Deputy Director of Town Planning, Mumbai Suburban District has informed that the proposal is in accordance with the Development Plan and that there is no objection to acquire the lands for the construction of Santacruz Chembur Link Road. The Commissioner, Bombay Division, by his notification dated 21.10.1982 published in the Government Gazette, Part I, dated 18.11.1982 notified the land bearing Survey No 247 Part. C.T.S. No.913 admeasuring 1613 square metres. Kurla along with the other lands for acquisition of Santacruz - Chembur Link Road under Section 126(4) of the Maharashtra Regional and Town Planning Act. 1966 read with Section 6 of Land Acquisition Act, 1894.

4. I say that as stated in the award the ownership of land bearing Survey No.247 is as follows:

S.No.	CTS No.	Name of Owner
247 pt	910 pt	Baitulbai Faizulla Mukadam & six Ors.
247 pt	913 pt	Baitulbai Faizulla Mukadam & six Ors.

Hereto annexed and marked **EXHIBIT – "1"** is a copy of the said notice under Section 9(3) and 9(4) of Land Acquisition Act to aforesaid owner.

5. Thereafter, notice under Section 12(2) of the land Acquisition Act was also issued on 9.3.1987 to Mr. Baitulbai Faizulla Mukadam and six others, the owner of the land in respect of Survey No 247 Part. CTS. No.913 admeasuring 1613 square metres and also for S No. 247 Part C.T.S. No.910. As nobody was present on 7.4.2005. the possession was taken by the Maintenance Surveyor of City Survey Office, Kurla, on behalf of SLAO and was handed over to the Executive Engineer, Road Division No.4, Andheri. Hereto annexed and marked as EXHIBIT - '2' is a copy of the Possession Receipt dated 7.4.2005. I say that by letter dated 22.3.2005, intimation of payment of compensation and takaing over possession were issued to Mr.Baitulbai Faizulla Mukadam in respect of Survey No.247, Part, C.T.S. No.913 admeasuring 1613 square metres of village Kurla, but neither the occupant nor the legal heirs collected the compensation money till today.

6. I say that it appears that as per a letter dated 8.4.1987 by Mohd. Rashan Ahmed Dada, the said Mohd Hashan Ahmed was aware of the said acquisition. I say that as per by letters dated 31.3.1997, 26.2.2004, 8.3.2007, 19.5.2007, one Firoz Mantri, the power of Attorney holder and the person in whose favour the agreement dated 10.10.1980 and Confirmation Deed dated 30.8.1987 was executed by the petitioner, was aware that the award has been passed on 23.9.1986 and after 25 years the Petitioners are challenging the said award I say that petition suffers from delay and laches and same therefore deserves to be dismissed on that count. I say that under Section 16, after taking possession, land is vested in the State Government. I say that the award is dated 23.9.1986 and therefore, the question of setting aside the said award does not arise. The land has been valued @ Rs.50/ per sq.m. after considering the rights of sale for the year 1976 to 1982. The acquired land was fully encroached upon by the hutment dwellers. As the acquisition has taken place by notification dated 18.11.1982, the question of granting market rate of 2011 does not arise."

21. On the said writ petition filed by the petitioners, a Division Bench of this Court passed the following interim order on 5 September 2011which reads thus :-

> "1. The petitioners claim to be owners of two plots of land bearing Survey No.247 (Part), C.T.S. No.913 (Part) admeasuring 1613 sq. meters and Survey No.247 (Part), C.T.S. No.913 (Part) admeasuring 1378 sq. meters situated at Village Kurla Part 2, Taluka Kurla, Mumbai Suburban Division. The case of the petitioners is that so far as plot admeasuring 1613 sq. meters is concerned, an Award was made on 23/9/1986, no though compensation has been paid to the petitioners till date.
>
> 2. Learned A.G.P. admitted that though the Award was passed on 23/9/1986, the compensation has not been paid to anyone till date. This is so stated in the Affidavit of Mr. Prabhakar Thorat, Special Land Acquisition Officer (4), In the Mumbai Suburban District dated 11/7/2011. circumstances, we direct the State Government to deposit the said amount with accrued interest thereon in this court, within six weeks from today. The rival contentions would be examined thereafter.
>
> 3. So far as plot of land admeasuring 1378 sq. meters is concerned, admittedly, possession thereof is taken by MMRDA. According to the petitioners, they are entitled to TDR in lieu thereof. MMRDA has recommended grant of TDR to the petitioners and the matter is pending with the Mumbai Municipal Corporation. Affidavit has been filed by Mr. B.G. Choudhari, Executive Engineer, D.F. (E.S.), B.M.C. Paragraphs 4(f) and (g) thereof, are material and need to be quoted.
>
> > "(f) I say that thereafter a letter has been received from Urban Development Department under no.TPB 4311/627/UD-11 dated 28.2.2011 requesting corporation to offer the remarks regarding issue of TDR to be granted for the cases where the structure / occupants are rehabilitated by MMRDA / relevant authority as per the provisions of Land Acquisition Act 1894/SRA Act 1971 or as per prevailing policy of the Corporation.
> >
> > (g) I say that a draft policy has been drafted after scrutiny from all aspects of Land Acquisition Act 1894 and SRA Act 1971, as per prevailing policy of the Corporation and is submitted to Hon'ble Municipal Commissioner for their sanction and after approval, the same shall be forwarded to The Principal U.D. in Department, Secretary Government of Maharashtra for their consideration. However, the decision in the matter will have to be taken by U.D. Department in Government of Maharashtra."
>
> 4. This affidavit indicates that the Corporation has to offer its remarks regarding the issue of TDR, to the Urban Development Department and, thereafter, Urban Development Department is to take a decision. The affidavit further states that a draft policy has been prepared. After the Municipal Commissioner approves it, it would be forwarded to the Urban Development Department for its consideration and the decision in the matter

> will be taken by the Principal Secretary in the Urban Development Department of Government of Maharashtra. Counsel for the Corporation states that the decision will be taken within eight weeks. We expect the Urban Development Department and the Corporation to expedite the matter and take a decision within eight weeks.
>
> 5. Office is directed to place this petition on board on 8/11/2011."
>
> (emphasis supplied)

22. It is thus seen from the aforesaid order that the petition was a composite petition in respect of the award in question as also in respect of the other land subject matter of acquisition by the MMRDA, with which the present petition is not concerned. In pursuance of the aforesaid order passed by this Court, the SLAO filed an affidavit dated 14 November 2011 in the said writ petition *inter alia* stating that an amount of Rs. 1,42,038/- being the compensation amount was deposited in this Court, as determined under the Award dated 23 September 1986 in respect of the petitioners' land (CTS No.913, Survey No.247 Part, admeasuring 1613 sq.mtrs). He also stated that a further sum of Rs.1,30,432/- being the interest, (for the period from the date the possession of the land was taken i.e. from 7 April 2005 to 5 October 2011), was also deposited in this Court. The letter addressed to the Prothonotary and Senior Master of this Court, depositing the said amount, was annexed to the said affidavit of Mr. Thorat dated 14 November 2011. On the aforesaid backdrop, the proceedings in Writ Petition No.643 of 2011 filed by the petitioners' were thereafter listed before the Division Bench of this Court on 15 November 2011 when such proceedings came to be disposed of, permitting the petitioners to

withdraw the petition, with liberty to make an application to the appropriate Court under Section 30 of the LA Act. The relevant extract of the said order passed by the Court is required to be noted which reads thus:

> "In so far as the grievance made by the Petitioner in this Petition in relation to the land survey no.247 (part) CTS No.913 (part) 1613 square meters is concerned, the Petition is permitted to be withdrawn with liberty to make an application to the appropriate Court under Section 30. In case that application is made within a period of four weeks from today, the amount which is deposited in this petition shall be transferred to that Court. In case the application is not made within the aforesaid period, the Special Land Acquisition Officer is permitted to withdraw the amount.
>
> 2 So far as the grievance of the Petitioner in relation to land admeasuring 1378.3 square meters from CTS No.913 of village Kurla concerned, the learned counsel appearing for the Corporation states that final decision on the request of the Petitioner for grant of TDR in lieu of acquisition of this land will be taken and communicated to the Petitioner and MMRDA within a period of six weeks from today. The statement is accepted. The learned counsel appearing for the MMRDA states that in case the Corporation decides not to grant any TDR to the Petitioner, the MMRDA shall take steps to have the compensation for the land determined and paid to the Petitioner as expeditiously as possible and in any case within a period of six months from the date of the communication of the decision of the Corporation. The statement is accepted.
>
> 3 The Petition stands disposed of in the above terms. There shall be no order as to costs."
>
> (emphasis supplied)

23. The petitioners contend that also as regards the other land which was the subject matter of acquisition by the MMRDA, with which this petition is not concerned, there was an issue on the non-payment of compensation; hence, common correspondence also to include such land, as noted by us hereinabove, was entered by the petitioners with the SLAO. It is stated that in respect of such other land, compensation was ultimately awarded to the petitioners an amount of Rs.2,35,52,995/- by an order dated 30 June 2024

passed by the MMRDA. We have noted this fact for the sake of completeness of the facts.

24. Now coming to the facts qua the land in question. In pursuance of the orders passed by the Division Bench dated 15 November 2011 in Writ Petition No.643 of 2011 (supra), the petitioners filed in this Court Land Acquisition Reference No. 9 of 2011 (for short, "the **LAR**") under Section 30 of the LA Act, in which the petitioners *inter alia* contended that they had not received any notice in the land acquisition proceedings prior to the declaration of the impugned award dated 23 September 1986. It was hence contended that clearly the petitioners were entitled to claim compensation in respect of the petitioners' land admeasuring 1613 sq.mtrs, the subject matter of the impugned award dated 23 September 1986.

25. It is the petitioners' case that, over a period of five years, no affidavit and/or written statement was filed by the SLAO in the said LAR. Despite repeated adjournments and chances on 13 January 2017, 25 January 2017 and 3 February 2017, a reply to the said proceedings was not filed on behalf of the SLAO. Ultimately, an affidavit dated 8 February 2017, was filed by respondent No.3 (Exhibit Q) of Smt. Archana Kadam, Deputy Collector (Land Acquisition) No.4, Mumbai and Mumbai Suburban District. In such affidavit, respondent No.3 admitted that due to a mistake committed by the earlier land acquisition officer, the petitioners' names were omitted from the Award even

though the "7/12 extracts" and "K.J. Patraks" were in the name of the petitioners. It was stated that respondent No.3 had already approached the second respondent by her letter dated 27 January 2017 which annexed a detailed note, 7/12 extract and possession receipt (Kabje Pavati) pertaining to the petitioners' (claimants') land and requested to amend the Award. The relevant extract of the said affidavit is required to be noted, which reads thus:

> "4. I state that the concerned officer at that point of time i.e. Mr. N.B. Lade, SLAO- Highway, BSD who is currently retired and his whereabouts are not known as of today. I state that the earlier officer has committed an inadvertent mistake by not including the name of the Claimants in the Award with respect to CTS No. 913(pt) corresponding Survey No. 247(pt), Hissa No.3 Part.
>
> 5. I state that I have after verifying the above facts in the records of my office, I have addressed the above issues to the Collector as and by way of letter dated 27.01.2017 along with a detailed note, 7x12 extract and K.J. P pertaining to the Claimants and further requested for amendment of Award in the above matter by following the due process of law so as to effectuate the and process the claim of Claimants. I state that directions are awaited from the Office of the Collector. Hereto annexed and marked as Exhibit. "C" is the copy of the letter dated 27.01.2017 addressed by our office to Collector office."
>
> (emphasis supplied)

26. In pursuance of the aforesaid affidavit, the learned Single Judge passed an order dated 10 February 2017 in the said LAR, *inter alia* observing that there was a mistake in the award, as the name of Smt. Baitulabai Faizulla Mukadam was shown as the claimant in respect of the petitioners' land [Survey No.247(pt) CTS No.913 (pt), at running page No.27 (internal page 3 of the Award)]. The Court also recorded that it was the submission of respondent No.3 that the real owner of the land was Late Dada "", who expired in Mumbai on 8 December 1984 and that the petitioners are his legal heirs. The said order

passed by the Court is required to be noted, which reads thus:-", who expired in Mumbai on 8 December 1984 and that the petitioners are his legal heirs. The said order passed by the Court is required to be noted, which reads thus:-

> "1. Heard. The learned AGP submits that as per order dated 03.02.2017 he handed over a cheque of Rs.20,000/- to the claimant's Advocate towards the cost. The learned counsel for the claimants accepts the same.
>
> 2. The learned AGP filed affidavit dated 08.02.2017 duly affirmed by Mrs. Archana Kadam, Dy. Collector, Land Acquisition (4), Mumbai, wherein it is stated that there is a mistake in the award dated 23.09.1986. She submits that in the award, by mistake the name of Smt. Baitulabi Faizulla Mukadam shown as claimant in respect of Sy.No.247 (pt), CTS No.910 (pt) on running page No.27, internal page No.3 of the award. He submits that as per her enquiry and from the revenue record, the real owner is one Mr. Ahmad Inmat Mohammed Hasham Dada who died in Mumbai on 08.12.1984. She submits that her legal heirs filed the present LAR No.9/2011. In paragraph No.5 of the affidavit, the Special Land Acquisition Officer stated that she has already approached the Collector by way of letter dated 27.01.2017 along with a detail note, 7/12 extract and kabje pavati pertaining to the claimants and requested to amend the award.
>
> 3. **Considering these facts, the applicant is directed to take appropriate steps according to law to carry out amendment in the award dated 23.09.1986.**
>
> 4. At the request of the learned AGP, S. O. to 07.04.2017."
>
> (emphasis supplied)

27. On the backdrop of the aforesaid order, the LAR was listed before the learned Single Judge on 7 April 2017, when the Assistant Government Pleader, on behalf of the SLAO, submitted that a corrigendum dated 5 April 2017 was issued to the impugned Award dated 23 September 1986, and the same was sought to be placed on record of the LAR. Significantly, such a corrigendum was issued under the provisions of Section 33[5] of the 2013 Act. The said

[5] *33. Corrections to awards by Collector. - (1) The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority:

corrigendum, which is being impugned in this petition, is required to be noted, which reads thus:

"Corrigendum

DEPUTY COLLECTOR (LAND ACQUISITION) NO.4 MUMBAI SUBURBAN DISTRICT
Administrative Building, 9th Floor, Government Colony, Bandra (East) Mumbai–51

No.Dy.C/LA No.4/LAR 9 of 2011
Date: - 05/04/2017

Red:- 1) Award Dated, 29/9/1986 declared by Former Special Land Acquisition Officers, Highway, Bombay and BSD.
2) Asst. Govt. Pleaders Letter dated 16.01.2017
3) Hon'ble High Court order dated 13.1.2017 and 10.02.2017
4) Collector, Mumbai Suburban District Letter dated 06.03.2017

Brief History of Case

The land bearing survey no.247, C.T.S. No.910(pt) admeasuring 73.6 Sq. mtrs. and CTS No.913(pt) admeasuring 1613.0 sq.mtrs. of Village Kurla, Taluka- Kurla, acquired for the Public purpose of Santacurz – Chembur Link Road. Notification under section 126(2) (4) of the M.R.T.P. Act, 1966 read with section 6 of the Land Acquisition Act, 1894 the concerned notification L.L.A.O.B.1024/9539/8930 dated 21.10.1982 was Published in the Maharashtra Govt. Gazette Part – I dated 18.11.1982 at (page 142). The award was declared by the former Special Land Acquisition Officer, Highway, Bombay and B.S.D. on dated 23.09.1986 in the award ownership of the concern land is as follow (only Land in question).
iii) (a) Ownership

The position of ownership according to the Record of Right is an under village-kurla.

Sr. No.	S.No.	CTS No.	As per VF VII-XII	As per property Register
2	247(pt)	910(pt)	Smt. Baitulbai Faizulla	Agricultural

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.

			Mukadam & 6 Others	
3	247(pt)	913(pt)	-do-	-do-

About the award (Sr.no.3) Smt Zarina Hashan Dada had filled Land Acquisition Reference No.9 of 2011 in the Hon'ble High Court. In the said Land Acquisition reference she question about serial no.3s ownership and Compensation. After hearing both the side Hon'ble Court has order dated 10/02/2017 as follow (Para no.3) **"Considering those fact, the applicant is directed to take appropriate steps according to law to carry out amendment in the award dated 23/03/1986"**

About this issue. The Collector, Mumbai Suburban District has Directed to this office vide letter dated 6/03/2017 as under. The provision u/s 33 of L. A. Act, 2013 as under.

I) "The Collector may at any time but not later than six months from the date of award or where he has been required under the provisions of the act, to make a reference to The Authority under section 64 before the making of such reference by the order correct any clerical or arthmetical mistakes in either of the award or errors arising the same either on his own motion or on the application of any person intersted or local authority."

Conclusion

Taking into consideration above stated facts and Inspection of the above Land Acquisition proceeding file no.LAQ/SR/7(1). It has come to knowledge that in the Award hissa number has not been mentioned of CTS No.913(pt) Corresponding Survey no.247(pt). After verifying the 20/05/1986, 7/12 abstract and perusal of the Award **it is clearly apparent that due to the absence of mentioning Hissa number with respect to CTS No.913(pt) (Corresponding survey no.247(pt) the name of the "Ahamad Izzat Mohamed Hashan Dada" has not been taken into consideration at the time of passing of the Award. The Former Special Land Acquisition officer Highway, Bombay and BSD should have mentioned the claimants name and hissa number in the Award instead of that he had mentioned "do". He has committed an inadvertent mistake by not including the name of the claimant in the Award with respect to CTS No.913(pt) (corresponding survey no.247(pt) Hissa No.3(pt).**

After verifying the above facts in the records of my office and according to the Hon'ble Court Order dated 10/02/2017 **I issue the following Corrigendum order to Award dated 23/09/1986.** Page no.3 Para no.2 (III)(A). Serial number-3.

Corrigendum

S. No.	S.No.	CTS No.	As per VF VII-XII	As per property Register
3	247(pt)	913(pt)	-do-	-do-

S. No.	S.No.	CTS No.	As per VF VII-XII	As per property Register
3	247(pt) Hissa no.3	913(pt)	Ahamad Izzat Mohamed Hashan Dada	Agricultural

LAQ/SR-7(I) Kurla and Chembur Award dated 23/09/1986 had been amended as above NO other changes.

(emphasis supplied)"

28. Thus, by the aforesaid corrigendum, after 31 years of passing of the Award dated 23 September 1986, it was modified so as to include the petitioners and this land in question. Consequent thereto, at the hearing of the LAR on 21 April 2017 before the learned Single Judge, the learned Advocate appearing for the SLAO made a submission that by an order (corrigendum) dated 5 April 2017, respondent No.4 amended the original award dated 23 September 1986. The effect of the said amendment was that the name of Baitulbai Faizulla Mukadam and six others, who were shown as the original owners of the petitioners' land in the said land acquisition Award dated 23 September 1986, were deleted and the names of the petitioners were incorporated in substitution of such persons. Also, the learned Advocate for the SLAO stated that further steps to issue a notice under Section 12(2) of the L.A. Act to the petitioners, would be taken. The Court accordingly passed the following order on the even date.

"1 Heard the learned counsel for the parties.

2. The learned A.G.P. for the applicant submits that they amended original award dated 23.09.1986 by order dated 5.4.2017. She submits

> that as per the amended award, they undertake to issue notice under Section 12(2) of the Land Acquisition Act, 1894 to the legal heirs of the owner. Statement is accepted.
> 3. On the basis of the statement made by the learned A.G.P., the learned counsel for the Claimants seeks one week time to take decision about the maintainability of this L.A.R.
> 4. Stand over to 28.4.2017."

29. Thereafter, the proceedings of the LAR were listed before the learned Single Judge on 28 April 2017, when the Court was informed that a notice under Section 12(2) of the LA Act was ready, and the same would be served on the petitioners on the same day. In view of such statement, the petitioners sought leave of the Court to withdraw the LAR with liberty to file a fresh proceeding, keeping all rights and contentions open. The LAR was accordingly disposed of as withdrawn, significantly, with liberty as prayed, and all rights and contentions of the petitioners were kept open, including the challenging of the acquisition proceedings. The final order dated 28 April 2017, passed by the learned Single Judge on the LAR, is required to be noted, which reads thus:

> " Heard learned Counsel for the parties.
> 2. The learned AGP appearing on behalf of SLAO submits that Notice under Section 12(2) of the Land Acquisition Act 1894 is ready. They will serve the Claimant today itself and provide one copy to the Claimant's Advocate.
> 3. **In view of this fact, the learned counsel for the Claimant submits that they may be allowed to withdraw the present L.A.R. with liberty to file a fresh keeping all their rights and contentions open**.
> 4. To that effect, he has given in writing on Farad. Same is taken on record and marked "X" for its identification.
> 5. Hence, following order is passed:
> a) L.A.R. No.9 of 2011 is disposed of as withdrawn with liberty as prayed.
> b) **All rights and contentions of Claimants are kept open including the challenging of acquisition proceedings**."
>
> (emphasis supplied)

30. Subsequent thereto, Respondent No.3 - Deputy Collector (Land Acquisition) served on the petitioners a notice dated 27 April 2017 issued under Section 12(2) of the LA Act. In regard to service of such notice, the petitioners have contended that for the first time, the petitioners were officially informed by respondent No.3 – Deputy Collector (Land Acquisition) of an award being declared in regard to the said land and qua the petitioners under Section 11 of the LA Act on 23 September 1986, as also an official intimation of the corrigendum dated 5 April 2017(supra), correcting the Award. By such notice, the petitioners were informed that the compensation to be awarded for the said land admeasuring 1613 sq. meters was an amount of Rs.2,72,470/- and the same was apportioned to the petitioners. The petitioners were also informed that on 7 April 2005, the possession of the petitioners' land was taken without notice to the petitioners and the same was handed over to the Executive Engineer, Development Department No.04, Andheri. The notice also recorded that as per the orders of this Court dated 5 September 2011 passed in the petitioners' Writ Petition No.643 of 2011, the respondents were directed to deposit a sum of Rs.1,42,038/- towards compensation and interest accrued thereon, and accordingly, interest amount from the period 7 April 2005 (i.e. the date of taking possession of the said land), till the period of one year therefrom, calculated at the rate of 9% and thereafter at the rate of 15% till the payment / deposit was calculated. It was recorded that as per the final

award, the compensation payable for 1613 sq. mtrs of land worked out to Rs.1,42,038/- and interest for the first year from 7 April 2005 to 6 April 2006 at 9% amounting to Rs.12783.42, and for the period 7 April 2006 to 15 October 2011 amounting to Rs.1,17,648.32/-. Thus, the total interest amounted to Rs.1,30,432/-. Accordingly, it was informed to the petitioners that an aggregate compensation of Rs.1,42,038/- and interest of Rs.1,30,432/- totaling to Rs.2,72,470/- was deposited with the Registry of the High Court, under the letters dated 11 October 2011 and 24 October 2011 addressed to the Registry of the Court. Further, as LAR No.9 of 2011 was still pending, the compensation was not tendered to the petitioners.

31. On the aforesaid backdrop, the petitioners addressed a letter /representation dated 8 June 2017 to respondent No.3 – Deputy Collector (Land Acquisition) being aggrieved by the approach of respondent No.3, to pass off a grave procedural lapse as a mere clerical error qua the petitioners, contending that the High Court had permitted the petitioners to withdraw LAR No.9 of 2011 with liberty to challenge the acquisition proceedings, in regard to which all rights and contentions were kept open. The petitioners contend that the petitioners' claim for compensation was on the basis of valuation as on 5 April 2017, i.e., the date when the original award dated 23 September 1986 was amended, prior to which it was never applicable to the petitioners. It is the petitioners' case that for such reason, the compensation

awarded under the said award, as communicated in the notice dated 27 April 2017 issued to the petitioners under Section 12(2), was not accepted and was rejected by the petitioners. The petitioners categorically contended that the compensation was required to be calculated and awarded under the provisions of the 2013 Act.

32. The said representation of the petitioners was rejected by respondent No.3 by its communication dated 3 July 2017 *inter alia* recording that the provisions of Section 24(2) of the 2013 Act would become applicable in cases where the Award under the LA Act, 1894, was declared five years or more than five years prior to the implementation of the 2013 Act or if the compensation amount in respect of the majority of land holdings was not deposited in the bank. The said communication, however, candidly recorded that there was an inadvertent mistake made by the then SLAO in the Award dated 23 September 1986, which was corrected by issuing a corrigendum dated 5 April 2017. Hence, considering the issuance of the corrigendum dated 5 April 2017 and the withdrawal of LAR No.9 of 2011, it was stated that the 2013 Act was not applicable. It was also recorded that the Award under Section 11 of the LA Act was passed on 23 September 1986 and the compensation in respect of the land, amounting to Rs.1,42,038/- and interest amount of Rs.1,30,432/- for the period 7 April 2005 to 15 October 2011 was deposited in the High Court,

pursuant to the order dated in Writ Petition No.643 of 2011 filed by the petitioners. in Writ Petition No.643 of 2011 filed by the petitioners.

33. According to the petitioners, the aforesaid letter of respondent no.3 has proceeded on a complete misreading of the order dated passed by this Court in Writ Petition No.643 of 2011, disposing of the said writ petition. passed by this Court in Writ Petition No.643 of 2011, disposing of the said writ petition.

34. The petitioners on the aforesaid conspectus have contended that the entire acquisition proceedings leading to the foisting of the impugned Award dated 23 September 1986 on the petitioners, by issuance of the corrigendum, as also the issuance of notice under Section 12(2) of the LA Act, are patently illegal. It is contended that the petitioners could not have been inflicted with the Award dated 23 September 1986, in such manner which, was totally unknown to law. It is also the petitioners' contention that this is a clear case wherein the provisions of the 2013 Act have become applicable in regard to the acquisition of the petitioners' land, hence, the petitioners have become entitled to an Award of compensation as per the 2013 Act.

35. On the aforesaid conspectus, the petitioners have filed the present proceedings praying for the following

> a) That this Hon'ble Court be pleased to declare that:
>
> i) the acquisition of land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla vide Award dated 23rd September 1986 is bad in law, null and void;

ii) as against the Petitioners, the impugned Award dated 23rd September, 1986 (Exh. E) is vitiated, arbitrary, without or in excess of authority of law, illegal, null and void;

iii) the possession of land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla taken on 7th April 2005 as evidenced by Exh. G, is vitiated, arbitrary without or in excess of authority of law, illegal, null and void and the petitioners are deemed to be continuing in possession of the said land;

iv) the impugned Corrigendum/amendment dated 5th April 2017 (Exh. S) is perverse, arbitrary, illegal, without or in excess of authority of law, null and void;

v) the impugned Notice under section 12 (2) of the Land Acquisition Act, 1894, dated 27th April 2017 (Exh. W) is perverse, arbitrary, illegal, without or in excess of authority of law, null and void;

vi) the impugned Order of the Third Respondent dated 3rd July 2017 (Exh. Y) shows non-application of mind, is perverse, arbitrary, illegal, without or in excess of authority of law, null and void;

vii) as on 1st January 2014 there was no Award as against the Petitioners under the provisions of the Land Acquisition Act, 1894, for acquisition of land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla;

viii) as on 1st January 2014 no compensation had either been tendered or paid to the Petitioners in respect of the land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla;

ix) as on 1st January 2014 possession of the Petitioners' land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla, is deemed to be continuing with the Petitioners;

x) the Petitioners are entitled to compensation for their land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla under the provisions of the Right to Fair Compensation Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, order or direction of like or similar nature under Article 226 of the Constitution of India calling for the files and records of the Respondents relating to the acquisition of the said land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla, and after looking into the

legality and correctness or otherwise of the proceedings and orders therein, be pleased to quash and set aside:

i) the impugned Award dated 23rd September, 1986 (Exh. E)

ii) the impugned Amendment/Corrigendum dated 5th April, 2017 (Exh. S)

iii) the impugned Notice dated 27th April 2017, issued under Section 12(2) of the Land Acquisition Act, 1894 (Exh.W).

iv) the impugned Order of the Third Respondent dated 3rd July 2017 (Exh. Y).

c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction of like or similar nature under Article 226 of the Constitution of India calling for the records and proceedings in respect of the acquisition of land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3. CTS 913 (part) in village Kurla., and after considering the legality and validity of the same be pleased to quash and set aside the compensation awarded to the Petitioners under the impugned Award dated 23rd September 1986 (Exh. E) and the 12 (2) notice dated 27th April 2017 (Exh W), and direct and/or order the Respondents to forthwith pay compensation to the Petitioners for the acquisition of their said land admeasuring 1613 sq. mtrs bearing Survey No. 247 pt No. 3, CTS 913 (part) in village Kurla, in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

(III) Reply affidavits

36. There are two reply affidavits filed on behalf of the respondents. The first reply affidavit is filed on behalf of Respondent Nos.1 to 4 by Shri. Sham Shivaji Gholap, Deputy Collector (Land Acquisition), Mumbai Suburban District/respondent no.3 dated 25 July 2018. The contention as urged on behalf of respondent No.3 is to the effect that the petitioners are not entitled to the reliefs, is on the ground that the Award dated 23 September 1986, had attained finality, as the land of the petitioners' has stood acquired and utilized

for a public purpose. It is next contended that the land acquisition proceedings qua the petitioners' land would also be required to be taken to have attained finality in view of the deposit of the compensation amount with this Court in the proceedings of Writ Petition No.643 of 2011 filed by the petitioners. The affidavit, however, also records the mistake which had taken place, namely, that the ownership qua the petitioners' land as reflected in the record of rights was taken to be of Smt. Baitulbai Faizulla Mukadam & six others instead of Late Dada's/petitioners ownership being recognized. It is stated to be not in dispute that the petitioners are the owners and are ultimately 'persons' who are being held entitled to the award of compensation. The affidavit has further conceded that in regard to the description of the land, i.e. the Award dated 23 September 1986, qua the petitioners' land not describing the land correctly i.e. Hissa number not being incorporated, which otherwise could have correctly earmarked the petitioners' land of which possession was taken, was not described/mentioned to be CTS No.913(pt) corresponding to Survey No.247 (pt). Thus, the land not being correctly described in the name of the petitioners, is stated to be a bonafide mistake which was subsequently corrected by an order dated 10 February 2017 and 7 April 2017 by issuance of Corrigendum dated 5 April 2017. The relevant extract of the said affidavit is required to be noted which reads thus:

> "4. I state that I am enclosing the list of the lands whose inquiries were made and further award was passed and further the apportionment statement is

enclosed hereinbelow:-

Land Notified For Acquisition
Village – Kurla, Taluka, District – Mumbai Suburban

Sr. No.	Survey No.	CTS No.	Area in Sq.Mtrs.
1	244pt	909pt	869.4
2	247pt	910pt	73.6
3	247pt	913pt	1613.0
4	246pt	914pt	5441.9
5	260pt	926pt	396.0
		462pt	970.0
		463pt	1613.6
Total			10977.5

Village- Chembur, Taluka- Kurla, District- Mumbai Suburban

Sr. No.	Survey No.	CTS No.	Area in Sq.Mtrs.
1	364pt	557pt	112.5

OWNERSHIP
The position of ownership according to the Record of Rights is as under
Village-Kurla

No.	Survey No.	C.T.S. No.	Name of Owner as per 7/12	Owner as per Property Card
1	244pt	909pt	Smt. Devkumar Manilal Masrani	Shri. Jagdish Natwarlal Masrani (6/100)
2	247pt	910pt	Smt. Baitulbai Faizulla Mukadam & 6 Others	Agricultural
3	247pt	913pt	-do-	-do-
4	246pt	914pt	Shri. Julias Gabrial Rodrics	-do-
5	260pt	926pt	Maharashtra Housing Boardu	-do-
6		462pt	-do-	Dalit Kamgar Co.Op.Housing Society
7		463pt	-do-	-do-

Village- Chembur

No.	Survey No.	CTS No.	Name of Owner as per 7/12	Owner as per Property Card
1	364pt	557pt	Highway	H/S Otarmal Gulabchand and Co.

APPORTIONMENT STATEMENT:

LAQ.SR.7(1) – Kurla and Chembur. For Santacruz – Chembur Link Road

No.	S No.	CTS No.	Area in Sq.Mts.	Compensation for Land Rs.50/-	30% Solatium	Component	Total Amount	Name of Person	Amout Payable
1	2		3	4	5	6	7	8	9
Village-Kurla									
1	244pt	909pt	869.4	43470/-	13041/-	20046.60	76557.60	Jagdish Natwarlal Masroni (6/100) Natwarlal Makanji Masroni (94/100)	4593.45
2 ----	247pt -------- 247pt	910pt --------- 913pt	73.6 1613.0 ---------- 1686.6	84330/-	25299/-	38869.60	148518.60	Smt. Baitulbi Faizulla Mukadam & Six Others	
3	246pt	914pt	5441.9	272095/-	81628.50	125479.30	479202.80	Julias Gabrial Rodriguous	
4	206PT	920pt	396.0	19800/-	5940	9131.00	34871.00	To be deposited in court.	
5		462pt	970.0 1613.6	129180/-	38754/-	59572.70	227506.70	Dalit Co-Op. Hsg. Society	
		463pt	2583.6						
Village - Chembur									

6	364pt	557pt	112.5	5625.0	1687.50	2594.00	9906.50	To be deposited in court.	
Total			11090.0	554500/-	166350/-	255713.20	976563.20		

> 5. I state that the present Petitioner was given an hearing notice on 18.03.2017 and further 29.03.2017 hearing had taken place and further present petitioner requested for time through their Advocate Amin who took adjournment on the gound that the Petitioner is ill. Hereto annexed and marked as **EXHIBIT – "D"** is the copy of the Notice dated 27.04.2017 issued to the Petitioner by this Office.
>
> 6. **I state that in the Award dated 23.09.1986 Hissa Number was not mentioned of CTS No. 913 (Pt) corresponding Survey No. 247 (Pt) and further due to the missing Hissa Number the name of "Ahamad Izzat Mohammed Hashan Dada" was left out inadvertently through bonafide mistake. I state that thereafter as per the Order dated 10.02.2017 and 07.04.2017 this Office issued corrigendum to award dated 26.09.1986 at page No. 3 para. No.2 (III)(A), Sr. No. 3. Hereto annexed and marked as EXHIBIT - "E" is the copy of the Order dated 05.04.2017**.
>
> 7. I state that the above Orders in the Writ Petition No. 643 of 2011, amount is being deposited in the Court is suppressed by the Petitioner and further they are not entitled further compensation under the new Acquisition Act.
>
> In view of the circumstance above, it is submitted that the present Writ Petition may be dismissed with heavy cost and the reliefs sought by the Petitioner in the Petition be dismissed with cost."
>
> (emphasis supplied)

37. An affidavit is filed on behalf of Respondent No.5 - MMRDA being the acquiring body, for whose purpose the land was acquired, *inter alia,* contending that the petition is not maintainable as the petitioners had withdrawn their earlier Writ Petition (W. P. No. 643 of 2011) with liberty to make an application to the appropriate Court under Section 30 of the LA Act. It is contended that Section 30 of the LA Act provides for apportionment of compensation settled under Section 11 of the LA Act, the consequence being

that the Section 30 proceedings cannot reopen the amount of compensation, which is already settled, as it only permits considering of the grievances, on the apportionment of compensation amongst the eligible interested persons. It is next contended that in pursuance of the order passed by this Court on 15 November 2011, in Writ Petition No.643 of 2011, the petitioners filed LAR No.9 of 2011, which although was withdrawn by the petitioners with liberty to file afresh, also keeping open, the rights and contentions of the petitioners to challenge the land acquisition proceedings. It is next contended that the challenge to the acquisition proceedings on the basis of the notice under Section 9(3) of the LA Act not being served on the petitioners, is entirely misplaced, considering that the lacunae in the issuance of notice under Section 9 do not vitiate the acquisition proceedings. It is contended that the purpose of a Section 9 notice is only to ascertain the rights of interested persons in the land and their claim for apportionment/measurement. Such notice, according to respondent No.5, does not give any new right to raise objections, after the notification under Section 4 of the LA Act or publication of the draft development plan in which reservation is included. It is contended that lacunae in notice under Section 9(3) can open only a reference under Section 30. It is hence contended that the petitioners took a correct step in withdrawing their challenge to the acquisition in Writ Petition No.643 of 2011 when they chose to withdraw the said petition, with liberty to make an application under

Section 30 of the LA Act. It is hence contended that the petitioners' LAR filed under Section 30, was the only relevant proceeding wherein the petitioners could have agitated the apportionment of compensation, as the land had already stood vested in the State Government, which cannot be now divested. For such reasons, this petition filed challenging the acquisition, is not maintainable.

Additional Affidavit on behalf of the Petitioners :-

38. There is an additional affidavit filed on behalf of the petitioners of Nasreen Saleh Salim, petitioner No.3, to contend that the petitioners never treated, nor do they intend to treat, the letter dated 8 June 2017 as an application under Section 18(1) of the LA Act. It is contended that the said letter dated 8 June 2017 was addressed by the petitioners to the respondents much prior to filing the present petition to point out the patent illegalities on the part of the respondents in issuing the impugned notice under Section 12(2) of the LA Act, and to give the respondents an opportunity to rectify such illegal actions. It is, therefore, submitted that the question of treating the letter dated 8 June 2017 as an application under Section 18(1) of the LA Act does not arise, since the petitioners are before the Court challenging the very applicability of the LA Act to the present proceedings.

(IV) Submissions on behalf of the Petitioners :-

39. It is on the aforesaid conspectus, we have heard learned Counsel for the parties. Ms. Damania learned Counsel appearing on behalf of the petitioners although has made exhaustive submissions, we have encapsulated these submissions which are as follows:

(i) The impugned Award dated 23 September 1986 cannot be considered to be an award made or declared against the petitioners hence, the same is illegal and *void ab initio* insofar as the petitioners' land is concerned. In supporting this contention, it is submitted that any action which by law requires it to be taken in a certain way, it needs to be done only in such way or not at all, is the settled principle of law. In this case, no procedure prescribed under the LA Act was followed so as to acquire the petitioners' land. On this count alone, the award is *void ab initio*. This, according to the petitioners, is clear from the following:

(a) The Notification under Section 6 of the LA Act read with Section 126 of the MRTP Act did not identify the petitioners' land correctly, as there was no specific reference to Survey No. 247, Hissa No. 3, which was indisputedly the petitioners' land.

(b) Section 9(3)&(4) of the LA Act notices were not issued to petitioners but to third parties;

(c) An opportunity under Section 11 of the LA Act to place objections and to be heard was not made available to the petitioners at any point of time;

(d) The original award under Section 11 of the LA Act does not name the petitioners as "persons interested" in the apportionment of the compensation, being awarded of the land as acquired;

(e) Also, Section 31 of the LA Act is not complied with as no compensation was tendered to the petitioners or even deposited to the credit of the petitioners as the provision would mandate.

(f) Despite the petitioners' letter dated 8 March 1987 being received by the SLAO, informing that the petitioners are the owners of the land, no attempt to follow any procedure qua the petitioners for acquisition of the land was resorted.

In supporting the aforesaid submissions, reliance is placed on the decision of the Supreme Court in **Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah & ors.**[6].

(ii) It is next submitted that it is a settled position in law that an award is an "offer" which needs to be communicated by the Collector to the person whose land is acquired. Hence, it is only when such offer (award) is communicated that the award can be said to be made, which has not taken place in the present case. The proposition is supported by placing reliance on the decisions in **Raja Harish Chandra Raj Singh Vs. Deputy Land Acquisition Officer & Anr.**[7]**; Sriniwas Radhokrishnan Malani & Ors. Vs. State of Maharashtra**[8]**; Vijay s/o Kashinath Shinde & Ors. Vs.**

[6] **(2024)10 SCC 533**

[7] (1964)1 SCR 676

[8] 2015 LawSuit (Bom) 3167

State of Maharashtra & Ors.[9], to submit that the offer communicated to the petitioners must be the legal and valid culmination of the acquisition proceedings, following due process of law. As in the present case, the first official communication of an offer was made vide notice dated 27 April 2017, under Section 12(2) of the LA Act, such offer as communicated related to the award of 23 September 1986, which was itself *void ab initio*. Hence, such communication itself was not a legal offer, which the petitioners could accept. For these reasons, till date there is no legal award.

(iii) The impugned corrigendum dated 5 April 2017 by which the award dated 23 September 1986 was amended, so as to include the petitioners' land as also to include the names of the petitioners within the said award, is itself an exercise unknown to law, without any basis whatsoever, hence, null and void.

(iv) It is submitted that the impugned corrigendum could not have been issued to breathe life into a void award. In such context, it is submitted that the order dated 10 February 2017 passed by the learned Single Judge in LAR No.9 of 2011 filed by the petitioners directing the respondents to amend the award "in accordance with law" cannot be read as sanctioning an amendment to the award dated 23 September

[9] 2013 MhLJ 566

1986. This would be in contravention of the law. This proposition is supported by placing reliance on the decisions in the case of **Murarilal and others Vs. State of Uttarakhand & Ors.**[10] and **Mohinder Singh Vs. State of Punjab**[11].

(v) It is next submitted that there is no clerical mistake in the award dated 23 September 1986 as the entire process of acquisition qua the petitioners' land was flawed from start to finish, the reasons being that the petitioners' title to the acquired land was not acknowledged in any of the notices or even in the award itself. The landholder cannot be divested of his property on the plea of a clerical mistake by issuing a corrigendum. It is submitted that this is unknown to law. In supporting this proposition, reliance is placed on the decision in **Vipinchandra Vadilal Bavishi (Dead) by Legal Representatives & Anr. Vs. State of Gujarat & Ors.**[12].

(vi) It is next submitted that the provisions of the LA Act do not permit any correction in an award after six months as per the mandate of Section 13A of the LA Act, as in the present case the corrigendum was issued after 31 years from the declaration of the award dated 23 September 1986. This is impermissible. The submission is that even the

[10] 2014 Law Suit (Utt) 331

[11] 2006(1) ILR (Punjab & Haryana) 191

[12] (2016)4 SCC 531

corrigendum cannot revive the award dated 23 September 1986, which is patently illegal and void *ab initio* for the aforesaid reasons.

(vii) In regard to the petitioners' challenge to the corrigendum, it is submitted that it only corrects page 3 para 2(III)(A) Serial No.3 of the original award dated 23 September 1986. Such correction is reflected at only one place in the award and at no other place. Further, incorrect references to the third party in other parts of the award, i.e. in paragraph 4(III) or in the apportionment statement, have continued to remain the same, without any corrections being made in that regard. Thus, the apportionment of the compensation still stands in the name of the third party.

(viii) It is next submitted that the notice dated 27 April 2017 issued under Section 12(2) of the LA Act to the petitioners was illegal, null and void, as the same was required to be issued immediately after the passing of an award to persons who were not present when the award is made. In the present case, such notice was issued 31 years after the award. Also, there is no Award dated 5 April 2017, and only a corrigendum of that date was issued, hence, the Section 12(2) notice, which was issued after 31 years, itself was out of date. It is, therefore, submitted that since the award dated 23 September 1986 being illegal and void as against the

petitioners, consequent thereto, the notice issued to the petitioners under Section 12(2) that follows, is also illegal, null and void.

(ix) It is submitted that thus, till date there is no valid and legal acquisition of the petitioners' property in a manner recognized by law. Once qua the petitioners' land, the award dated 23 September 1986 was *ex facie* illegal, null and void, hence, the possession of such land taken over on the basis of an illegal award, would also render such action to be wholly illegal. Thus, the possession of the land was taken illegally without any notice to the petitioners.

(x) Also, the corrigendum dated 5 April 2017 is *ex facie* illegal, null and void, in the absence of legal acquisition of the petitioners' land.

(xi) As a sequel to the aforesaid submissions, the petitioners submit that the first respondent – State is required to commence the land acquisition proceedings afresh and in accordance with law, acquire the petitioners' land, that is, by issuance of a fresh declaration under Section 126(4) of the MRTP Act, as the old declaration to that effect issued in the year 1982 cannot be operated/utilised after 44 years. It is next submitted that the Deputy Collector-Respondent No.3 could not have recommended in the letter dated 27 January 2017, addressed to the Collector that the notification issued under Section 6 read with Section 126(4) and the award, were required to be amended.

(xii) It is next submitted that the amount of compensation paid to a person whose land is compulsorily acquired cannot be illusory and needs to be sufficient to enable that person to purchase a similar alternate property. In the present case, the compensation being offered is so paltry that it is illusory, meaningless and amounts to no compensation at all. It is submitted that money is what money buys and that the value of compensation fixed under the LA Act must be judged on the day when it is tendered to the person whose land is acquired. In the present case, compensation was allegedly tendered for the 'first time' in 2017 when the Section 12(2) notice was issued to the petitioners on 27 April 2017. Whereas the Petitioners' land was valued in the Award dated 23 September 1986, at Rs. 50/-per sq. mtrs. It is hence, submitted that in the year 2017, when the compensation was allegedly tendered to the petitioners there was nothing which the petitioners could purchase for Rs. 50 per sq. meters. It is submitted that, further, more than nine years have elapsed thereafter and the land prices in 2026 are now even higher. It is hence submitted that it would be absurd to offer compensation in 2026 at the rate allegedly prevailing about half a century earlier. In support of these submissions, reliance is placed on the decisions in

Tukaram Kana Joshi & Ors. v. MIDC & Ors.[13] and **Sriniwas Radhakrishnan Malani & Ors. v. State of Maharashtra** (supra).

(xiii) It is next submitted that offering a total compensation of Rs. 1,42,038/- for 1613 sq.mtrs. land acquired in the Santacruz-Kurla region of Mumbai is a mockery of the legal procedure relating to the land acquisition in question, as it amounts to offering compensation at Rs. 50 per sq. mtrs. of land in Mumbai, which is as good as paying no compensation. This is hence, a fit case where relief is required to be moulded by the Constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution and to shift the date for determination of market value from 1982 to a later date as per law, for the reason that the acquisition of the petitioners' land is illegal even as on date, and the award dated 23 September 1986 is liable to be quashed and set aside. It is submitted that since the land has already been used for a public purpose, the State would be required to commence acquisition again. It is stated that in similar circumstances, the Supreme Court and High Courts have exercised their constitutional authority to mould the relief and direct the acquisition to proceed, provided the date for determination of market value is shifted so as to grant realistic compensation to the petitioners, as required by law.

(xiv) In support of such propositions, reliance is placed on the decisions in **Bernard Francis Joseph Vaz v. Government of Karnataka and Ors**[14], **Loonkaran Gandhi (D) thr.LR v. State of Maharashtra**[15], **Tukaram Kana**

[13] (2013) 1 SCC 353

[14] 2025 7 SCC 580

[15] 2023 INSC 818

Joshi & Ors. v. MIDC & Ors[16]., **Vidya Devi v. State of H.P.**[17], **Bhimadas Ambawani (Dead) thr. LRs. Vs. Delhi Power Co. Ltd.**[18], **Delhi Airtech Services Pvt. Ltd. and another v. State of U.P. and another**[19], **Ujjain Vikas Pradhikaran v. Raj Kumar Johri**[20], **Gauri Shankar Gaur v. State of U.P.**[21], **Haji Saeed Khan v. State of U.P.**[22], **Competent Authority v/s Barangore Jute Factory**[23], **Sumit s/o Ashokkumar Bharadiya v/s Union of India & Ors.**[24], **Umesh Board Paper Mills Pvt. Ltd. v. Union of India**[25] and **Sriniwas Radhakrishnan Malani & Ors. v. State of Maharashtra** (supra).

(xv) Lastly, it is submitted that the cause of action for filing this petition had arisen in the year 2017, the reason being that on 13 January 2017, the respondents had disputed the petitioners' title to the land acquired under the impugned award dated 23 September 1986, as recorded in the order dated 13 January 2017 passed by the learned Single Judge in petitioners' LAR No.9 of 2011. It is submitted that in such proceedings, the affidavit of Deputy Collector Ms. Archana Kadam dated 8 February 2017 (supra), for the first time acknowledged the petitioners' title to the

[16] (2013) 1 SCC 353
[17] (2020) 2 SCC 569
[18] 2013 14 SCC 195
[19] (2022 SCC Online SC 1408)
[20] 1992 1 SCC 328
[21] 1994 1 SCC 92
[22] 2001 9 SCC 513
[23] (2005) 13 SCC 477
[24] 2019(1) Mh.LJ 682
[25] (2018) Bom HC 16 March 2018

land, purported to have been "acquired" under the Award dated 23 September 1986. It is submitted that the admission was clear in regard to the due omission of the Hissa numbers, and that due to an inadvertent mistake, the petitioners' land was acquired under the award dated 23 September 1986, even though the petitioners were not given notices, as also they were not named in the award, although they being persons interested. In this context, it is further submitted that by letter dated 27 January 2017, the Deputy Collector informed the Collector of something untenable, namely that the Notification dated 18 November 1982 and the Award dated 23 September 1986 was required to be amended/corrected. It is submitted that consequent thereto, the impugned corrigendum dated 5 April 2017 was issued and that too, most surprisingly, under Section 33 of the 2013 Act, and thereafter, the impugned notice under Section 12(2) dated 27 April 2017 was issued under the LA Act. It is contended that it was on such backdrop, the petitioners withdrew LAR No. 9 of 2011, with liberty to the petitioners to file fresh proceedings, keeping open all rights and contentions including challenging the acquisition proceedings. It is thus submitted that, looked from any angle, the impugned Award or the corrigendum cannot be recognized to be legal and is a nullity. It is, hence, submitted

that the writ petition accordingly deserves to be allowed considering such clear case made out by the petitioners.

(V) Submissions on behalf of Respondent Nos. 1 to 4 (State of Maharashtra)

40. Mr. Naphade, learned Counsel for the State of Maharashtra, has limited submissions. His first submission is that the entire endeavour of the petitioners is to receive compensation under the 2013 Act, by making an attempt to disown the land acquisition proceedings as adopted by the SLAO, leading to the passing of the impugned award dated 23 September 1986. It is next submitted that the petition is barred by the principles of delay and laches, as the same is filed after thirty-two years from the date of the award. On these two primary grounds, the petition deserves to be dismissed.

41. The aforesaid submissions are being supported by referring to the pleadings in the memo of the writ petition to contend that the frame of the petition itself proceeds on the premise that it is the 2013 Act which is applicable, under which the petitioners would be required to be compensated for the land as acquired. It is submitted that when Section 24(1)(a) of the 2013 Act provides, that in any case of land acquisition proceedings "initiated under the Land Acquisition Act, 1894" where no award under Section 11 of the LA Act is made, then all provisions of the 2013 Act relating to the determination of compensation shall apply. It is submitted that Section 24(1)(b) however,

provides that where the award has been made, such proceedings shall continue under the LA Act as if the Act has not been repealed. Referring to Section 24(2) of the 2013 Act which is an exception to sub-section (1) providing that in case of the land acquisition proceedings "***initiated under the Land Acquisition Act, 1894***", where an award under Section 11 of the LA Act has been made five years or more prior to the commencement of the 2013 Act i.e. prior to 1 January 2014, but the physical possession of the land has not been taken or the compensation has not been paid, the acquisition proceedings shall be deemed to have lapsed and the appropriate government, if it so chooses to continue with the acquisition, shall initiate proceedings afresh in accordance with the 2013 Act. It is submitted that Section 24(1)(a) makes it clear that the 2013 Act would apply if the acquisition proceedings are initiated "***under the Land Acquisition Act 1894***". It is hence submitted that in the present case, there is no dispute that the proceedings have been initiated vide notification dated 21 October 1982 issued under Section 126 of the MRTP Act read with Section 6 of the LA Act, which required no notification to be issued under Section 4 of the LA Act, and consequently, in the present case, the acquisition proceedings are not initiated under the LA Act. The proposition is supported by placing reliance on the decision of the Full Bench in **Sandeep S. Metange V/s. State of Maharashtra**[26], wherein this Court held as to what would amount

[26] 2022 (1) Mh. L.J. 146

to "initiation of proceedings" for the purposes of Section 24(1) of the 2013 Act, and in particular whether the said initiation would be referable to a notification issued under Section 4 or a declaration under Section 6 of the LA Act. It is submitted that the full bench of this Court has held that the pre-condition for application of Section 24(1)(a) of the 2013 Act is that the land acquisition proceedings ought to have been initiated under the LA Act. It was held that the initial proposal/notification under Section 4 of the LA Act is a *sine qua non* in the acquisition proceedings and thus, is a mandatory step. It was held that a plain and ordinary interpretation of the words "**initiation of proceedings**" would mean the issuance of a Section 4 notification. It was held that it would be incorrect to hold that the land acquisition proceedings is initiated only on Section 6 notification, as Section 4 notification is a mandatory step without which no further steps can take place.

42. Further referring to the decision of the Full Bench of this Court **Mehtab Laiq Ahmed Shaikh Vs. State of Maharashtra and others**[27], it is submitted that such decision has held that Section 24(2) of the 2013 Act is applicable only if the proceedings are initiated under the LA Act and cannot apply if the land acquisition proceedings are initiated under **Section 125 to 127** of the MRTP Act read with Section 6 of the LA Act. For such reasons, the prayer for compensation as per the 2013 Act cannot be granted as the land acquisition

[27] 2017(6) Mh. L. J. 408

proceedings have been initiated under the MRTP Act.

43. It is next submitted that in any event, the petition is barred by delay and laches on the ground that the principle of constructive notice becomes applicable even to land acquisition proceedings as held by the Supreme Court in **Rajasthan Housing Board V/s. New Pink City Nirman Sahkari Samiti Ltd.**[28]. It is submitted that the Supreme Court, in the context of acquisition proceedings, has held that constructive notice is a legal fiction, which signifies that an individual, as a reasonable person, should have known in regard to the acquisition proceedings even if there is no actual knowledge. In the present case, the principle of constructive notice is applicable, also because Late Dada's father addressed a letter dated 8 March 1987 to the SLAO wherein a reference was made to the acquisition proceedings and to the purpose of the acquisition, i.e., the development of the Santacruz Chembur Link Road and the Bridge from Kurla East to West.

44. It is next submitted that there is no credible explanation from the Petitioners for the delay in filing the first writ petition, hence, it can be reasonably inferred that at least from 8 March 1987, the petitioners were aware of the existence of the award. Considering this position, there is a delay of 24 years in filing the first writ petition.

45. It is next submitted that on 22 March 2005, a notice under Section 16 of

[28] [(2015) 7 SCC 601]

the LA Act was issued stating that the possession of the land would be taken on 7 April 2005. Further, from the reading of paragraph 7 of the petitioners' earlier Writ Petition (Writ Petition No.643 of 2011), it is clear that from 22 March 2005, the petitioners were aware about the existence of the acquisition proceedings, despite which there was no acceptable explanation for filing the earlier petition on 22 March 2011 after a delay of more than six years. Therefore, given that there is a gross delay in filing the petition, this Court ought not to exercise its discretionary and equitable jurisdiction under Article 226 of the Constitution. In supporting such proposition, reliance is placed on the decision of the Supreme Court in **State of M.P. Vs. Bhailal Bhai**[29] wherein, the Supreme Court has held that although the Limitation Act, 1963 does not apply to writ petitions, if the reliefs sought in the petition could have been obtained through any other proceedings, the same would apply. Also, reliance is placed on the decision in **Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co.(P) Ltd.**[30] wherein, the Supreme Court has held that when there is an inordinate delay in filing the writ petition and all the steps of the acquisition proceedings are final, the Court should not quash the notifications and/or award. Further, reliance is also placed on the decisions in **Sawaran Lata Vs. State of Haryana**[31], **State of Rajasthan Vs. D. R. Laxmi**[32];

[29] AIR 1964 SC 1006

[30] (1996)11 SCC 501

[31] (2010)4 SCC 532

[32] (1996)6 SCC 445

State of Maharashtra vs. Digambar[33] to contend that this petition ought not to be entertained on the ground of delay and laches.

46. It is next submitted that, in any event, the petitioners are precluded from questioning the acquisition, this more particularly in the teeth of the earlier writ petition filed by the petitioners, which had raised all the grounds raised in the present petition and which came to be withdrawn on 15 November 2011 and accordingly, the petitioners had given up their challenge. It is submitted that in pursuance of the order passed in the said petition,the petitioners had invoked the jurisdiction of the Court under Section 30 of the LA Act by filing LAR No.9 of 2011, which also came to be withdrawn with liberty, and having exercised such choice, the petitioners are precluded from filing the present petition once again raising the same grounds and questioning the acquisition. In such context, reliance is placed on the decision in **Sarguja Transport Service Vs. State Transport Appellate Tribunal**[34].

47. Mr. Naphade's next submission is to the effect that non-receipt of notice under Section 9 and Section 12 of the LA Act would not vitiate the award. It is submitted that, in fact, such contention was the subject matter of the petitioners' case in the earlier Writ Petition No.643 of 2011. On such backdrop, the petitioners' claim that Section 12 notice issued by respondent

[33] (1995)4 SCC 683

[34] (1987)1 SCC 5

No.4 on 27 April 2017 was the first official communication of the acquisition proceedings, also need not be accepted, as a contrary stand had been taken by the petitioners in the earlier petition, wherein the petitioners have stated that Notice dated 22 March 2005 under Section 16 of the LA Act was issued and known to the petitioners. It is submitted that non-service of notice under Section 9 or under Section 12(2) of the Act is not fatal, as a constructive notice is sufficient. In this regard, reliance is placed on the decision in **May George Vs. Tahasildar**[35].

48. Lastly, it is submitted that the petitioners ought to have pursued their reference under Section 30 of the LA Act being the correct remedy for the reason that the petitioners are/were persons interested as per Section 3(b) of the LA Act. In such context, reliance is placed on the decision of the Supreme Court in **Sharda Devi Vs. State of Bihar**[36] wherein the Supreme Court has held that all persons interested are bound by the award irrespective of whether they have appeared before the land acquisition officer or not. It is submitted that if a person was not present or represented or served with the notice under Section 12(2), such person can take recourse to a remedy under Section 30 of the LA Act, hence, if the petitioners had no opportunity of opposing the award and were not served with a notice under Section 12(2) of the LA Act, they ought to have pursued the reference under Section 30 of the LA Act. It is therefore

[35] (2010)13 SCC 98

[36] (2003)3 SCC 128

submitted that this petition deserves to be dismissed.

(VI) Submissions on behalf of Respondent No.5 (MMRDA)

49. Mr. Mone, learned Counsel appearing for the acquiring body – MMRDA, has supported Mr. Naphade's submissions on the constructive knowledge of the petitioners qua the acquisition as also the petition being barred by the principles of delay, laches, estoppel and constructive *res judicata* and that the petitioners' case falls purely under the provisions of the LA Act qua the inclusion of the petitioners' land, in the facts and circumstances of the case, within the ambit of the impugned land acquisition award dated 23 September 1986. It is hence contended that there is nothing in the LA Act to show that non-compliance of Section 9 and Section 10 will be fatal, and that if there is an irregularity in the service of notice under Section 9 and 10 of the LA Act, it could be curable and would itself not vitiate the award. It is submitted that once possession of the land was taken on 7 April 2005, the land stood vested with the State, free from encumbrances, and cannot now be divested. It is further contended that the petitioners had earlier challenged the acquisition proceedings in Writ Petition No.643 of 2011 and thereafter withdrew the same with liberty only to make an application under Section 30 of the LA Act, hence, the present challenge to the acquisition proceedings is not maintainable. It is contended that the reference court cannot decide issues as regards the validity of the acquisition proceedings. Therefore, such liberty to file the

present Writ Petition and re-agitate their claims could not have been granted by the learned Single Judge and was clearly beyond the scope of the LAR. It is lastly contended that merely because a corrigendum dated 5 April 2017 was issued and a fresh notice under Section 12(2) was served on the petitioners, the provisions of the 2013 Act would not become applicable and the rights of the petitioners as also the compensation payable under the Award dated 23 September 1986 stood crystallised.

(VII) Submission in Rejoinder to the contentions of Respondent No.1 :-

50. Ms. Damania has made the following submissions in rejoinder to the submissions of the respondents.

51. At the outset, Ms. Damania would submit that none of the contentions as urged on behalf of the respondents are tenable in law, considering the peculiar facts of the case. It is submitted that this is a case where Rule 19(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, (Maharashtra) Rules 2014, becomes applicable, for the reason that there is no legal and valid award in respect of the petitioners' land till date. Hence, the acquisition proceedings would be deemed to continue in accordance with the formula provided under Sections 26 to 30 of the 2013 Act. In such context, it is further submitted that, in order to protect the petitioners' right under Article 300A of the Constitution of India,

the date of the preliminary notification referred to in Section 26 of the 2013 Act would have to be notionally shifted from 1982 to a date determined by the Court. In the event, if the compensation is paid on basis of the 1982 prices, it would amount to no compensation being paid to the petitioners for the 1613 sq. mtrs. of prime land of the petitioners being valued at Rs.1.5 Lakhs only by the impugned award.

52. It is next submitted that the decisions of this Court in **Sandeep Metange** and **Mehtab Laiq Ahmed Shaikh** relied upon on behalf of the respondents do not hold that the 2013 Act in its entirety is not applicable to acquisitions commenced under the MRTP Act. The decisions merely hold that the lapsing provisions under Section 24(1) (a) and 24(2) of the 2013 Act would not apply to proceedings initiated under the MRTP Act.

53. On the respondents' contention that there is a delay in filing of the petition, it is submitted that such submission is wholly misconceived, for the reason that the cause of action for filing of the present petition had in fact arisen to the petitioners in the year 2017, when respondent No.1 acknowledged that there was a 'clerical error' and issued the impugned corrigendum as also the notice under Section 12(2) of the LA Act. It is submitted that the petition was filed 10 months after the petitioners' appeal to determine the compensation under the 2013 Act, which was rejected on 3 July 2017. It is submitted that the petitioners have offered a cogent explanation for the said

delay of 10 months in paragraph 40 of the petition.

54. On the objections as urged on behalf of the respondents, it is submitted that there is no question of any constructive notice of the acquisition proceedings to the petitioners and the respondents' contention of the petitioners having notice of the acquisition proceedings, relying on the decision in **Rajasthan Housing Board** (supra) is an unacceptable proposition in the facts of the present case, for the reason that in the said case, the petitioners/society had appeared before the Collector, such is not the case in the present proceedings, as there was no reason whatsoever for the petitioners being called upon and they were never called to appear in the land acquisition proceedings by the SLAO, in the absence of any notice whatsoever to the petitioners from the SLAO. In such context, it is submitted that the letter dated 8 March 1987 (supra) clearly shows that the petitioners were not aware of any acquisition proceedings as also the impugned award, and on the contrary, it is the respondents who were put to notice of the petitioners' right in regard to the land in question, in regard to which till date there is no explanation whatsoever as to why the petitioners' objections were not considered.

55. It is next submitted that the possession notice dated 22 March 2005 was admittedly not issued to the petitioners, hence, any contention of such notice being issued to third parties would not bring about the situation that the petitioners had notice or had become aware of the acquisition proceedings.

56. It is next submitted that the reliance on behalf of the respondents on the decision of the Supreme Court in **State of M.P. Vs. Bhailal Bhai** in fact supports the case of the petitioners than that of the respondents as the Supreme Court in such case upheld the order passed by the High Court issuing a Writ of Mandamus for refund of tax to the petitioners therein, who had filed the writ petitions within three years of the illegal tax being collected, as clear from paragraph 15 of the said decision of the Supreme Court which reads thus:

> "15. We see no reason to think that the High Courts have not got this power. If a right has been infringed – whether a fundamental right or a statutory right – and the aggrieved party comes to the court for enforcement of the right it will not be giving **complete relief** if the Court merely declares the existence of the such right or the fact that that existing right has been infringed. …It will hardly be reasonable to say that while the court will grant relief by such command in the nature of an order of injunction where the invasion of a right has been merely threatened the court must till refuse, where the right has been actually invaded, to give the **consequential relief** and content itself with merely a declaration that the right exists and has been invaded or with merely quashing the illegal order made."

57. Also, the decisions of the Supreme Court in **Municipal Corporation of Greater Mumbai Vs. Industrial Development Investment Company** (supra) and in **State of Rajasthan Vs. D. R. Laxmi** (supra) as also **Digambar** (supra) are not applicable in the facts of the present case.

58. It is next submitted that the case of the respondents that the petitioners gave up their earlier challenge to the award and accepted the award by filing a reference under Section 30 of the LA Act is totally untenable. In such context, it is submitted that the respondents cannot approbate and reprobate in such

manner, for the reason that in the reply affidavit filed by the respondents in Writ Petition No. 643 of 2011, the respondents denied the petitioners' title to the land acquired under the impugned award dated 23 September 1986. Also, a case was put up by the respondents denying the award being related to the petitioners. For these reasons, it is submitted that the respondents cannot now be heard to say that the petitioners accepted the award in 2011. It is submitted that since an award is nothing but an offer and the offer was never made to the petitioners till 2017, the petitioners could not have accepted the award in 2011. It is submitted that in fact, having filed a false affidavit in the year 2011, the respondents cannot now be allowed to take advantage of their own wrong.

59. It is next submitted by Ms. Damania that in any event, the petitioners cannot be precluded from challenging the acquisition on account of having filed and withdrawn the earlier Writ Petition No.643 of 2011, as the cause of action in both these petitions is totally distinct, inasmuch as an independent cause of action for filing of the present petition had arisen in the year 2017 when the State accepted its "inadvertent mistake" and acknowledged the title of the petitioners to the land allegedly acquired in the year 1986. It is submitted that also in the present petition, the petitioners, *inter alia,* challenge the further action and/or the so-called remedial measure adopted by the State in 2017 to rectify the "inadvertent mistake" which could never have been part of the cause of action in the 2011 Writ Petition.

60. The respondents' contention that non-receipt of notices under Sections 9 and 12 of the LA Act did not vitiate the acquisition proceedings is wholly misconceived. It is submitted that the question in the present proceedings is not of non-receipt of notices, but a question more fundamental, that is, the non-issuance of such notices to the petitioners.

61. It is next submitted that it is not in dispute that the MRTP Act requires the provisions of the LA Act to be followed while acquiring the land, once a notice under Section 126(2) and (4) of the MRTP Act read with Section 6 of the LA Act was issued. In such context, it is submitted that in **May George Vs. Tahsildar** (supra), the Supreme Court in paragraph 12 had noted that the award is an offer and that since the High Court had permitted the petitioners to file a reference under Section 18, no prejudice was caused due to the notice under Section 9(3) not having been personally received by the petitioner. However, such are not the facts of the present case.

62. It is further submitted that in any event, the petitioners cannot be deprived of their right to challenge an award under Section 18 of the LA Act as also the petitioners could not have been confined to a reference under Section 30 of the LA Act, inasmuch as once the 1986 impugned award itself is void *ab initio*, a fresh award will have to be passed either by starting the entire acquisition process again which would require a new notification to be issued under Section 126(4) of the MRTP Act; or by notionally shifting the

notification date for the purpose of calculation of compensation. In either case, the petitioners would be entitled to file a Section 18 reference if the petitioners are dissatisfied with the compensation awarded to the petitioners. Such contention, according to the petitioners, is squarely supported by the decisions of the Supreme Court in **Bernard Francis Joseph Vaz**, **Loonkaran Gandhi** (supra), **Vidya Devi** (supra), **Bhima Das** (supra) and **Delhi Airtech** (supra).

63. The respondents' contention that the petitioners have not pleaded or prayed for shifting the date of the notification and hence this relief cannot be granted, is untenable for the reason that once the award, the corrigendum and Section 12(2) notices under the LA Act are set aside being illegal, the consequential reliefs that the Court would be required to grant, so as to prevent travesty of justice as held by the Supreme Court in **Bernard Francis Joseph Vaz** (supra) **(paragraph 55)** to prevent the respondents from making a travesty of the Constitutional provision of Article 300A of the Constitution of India. For such reasons, the only recourse would be the notional shifting of the date of Section 6 notification from 1982 to either the date of the order of this Court as resorted in **Bhima Das Ambawani (see paragraph 14)** or any other date deemed appropriate as resorted in the decisions cited on behalf of the petitioners.

(VIII) Submissions in Rejoinder to the contentions of Respondent No.5:-

64. The contention of respondent No.5 that the petition is barred by the

principles of constructive *res-judicata*, cannot be accepted. Constructive *res-judicata* is not applicable in the present case, as what is challenged in the present petition could not have been challenged in 2011, namely the remedial measure adopted by the State in the year 2017 to rectify the "inadvertent mistake". It is submitted that, in fact, on 13 January 2017, the learned AGP had sought time to file an affidavit "*explaining whether the Government had acquired the claimant's land by award dated 23 September 1986 or not*" and what follows thereafter forms the basis of the present petition. The effect of the actions taken in 2017 could never have been issues that could have been raised in the 2011 Writ Petition.

65. It is submitted that the decision of the Supreme Court in **M. J. Exports Pvt. Ltd.** (supra) is not applicable in the present facts, as in the said case, the Supreme Court considered a situation where the first writ petition was withdrawn with the petitioners accepting liability for payment of excise duty and penalty, but asking for time to pay the same knowing that this would attract interest. The second writ petition was filed challenging the demand for interest. The second petition was dismissed on the ground of constructive *res-judicata*. This decision hence is clearly not applicable in the facts of the present case. In fact, the petitioners have been clearly granted a liberty to challenge the award vide order dated 28 April 2017 passed by the learned Single Judge in LAR No.9 of 2011, and such order granting liberty has not been challenged by

the respondents. It is submitted that in the present case, the order passed by the learned Single Judge in LAR 9 of 2011 dated 28 April 2017, allowing the petitioners to withdraw the reference and granting the petitioners, liberty to challenge the amended award, being a nullity, as contended on behalf of respondent no.5 is totally untenable/ unacceptable. The reason being that the respondents not only did not object at the time of withdrawal of the reference, but they have also not challenged the order dated 28 April 2017, permitting the petitioners to withdraw as also granting the liberty to challenge the land acquisition proceedings. It is submitted that moreover, the respondents have acted in furtherance of the order by serving notice under Section 12(2) of the LA Act on the petitioners dated 27 April 2017. Also, the respondents did not challenge the order of the Division Bench of this Court directing the petitioners to file a reference under Section 30 of the LA Act. In fact, the respondents participated in the reference and complied with all orders of the reference Court without demur. In these circumstances, now respondents cannot contend that the final order passed by the learned Single Judge allowing withdrawal and granting liberty is a nullity for lack of jurisdiction of the reference Court.

66. It is next submitted that the corrigendum and notice issued to the petitioners under Section 12(2) of the LA Act dated 27 April 2017 are all of the year 2017, which in relation to the impugned award dated 23 September

1986, which is after 31 years of the award. Hence, such actions are *ex-facie* illegal and not recognized by any provisions of the LA Act. It is submitted that the Supreme Court in **Dhurandhar Prasad Singh** (supra) has held that the decree under execution was not void-*ab-initio* when in paragraph 24, the Supreme Court held that "*The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law.*"

67. It is next submitted that in **State of Punjab Vs. Gurdev Singh and Ashok Kumar**[37], the Supreme Court held that even a void order needs to be declared to be void and unless the same is declared to be non-est, the order would continue to operate. The following observations of the Supreme Court in that regard are relied upon:-

> "[8] But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East Elloe Rural District Council, 1956 AC 736 at p. 769 Lord Radcliffe observed:
>
> > "An order even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."
>
> [9] Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the brand of invalidity is plainly visible, for there also the order can effectively be resisted in law only by obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles:
>
> > "The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a

[37](1991) 4 SCC 1

> nullity, but the Court may refuse to quash it because of the plaintiffs lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void order remains effective and is, in reality, valid follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."
>
> **[10] It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation if the statutory time limit expires the Court cannot give the declaration sought for.**"
>
> (emphasis supplied)

(IX) Reasons and Conclusion

68. We have heard learned Counsel for the parties, and with their assistance, we have perused the record.

69. At the outset, we may observe that this is a peculiar case for more than one reason. Firstly, the issue pertains to the acquisition of land, the process for which had commenced in the 1980s, and in respect of which the impugned award against the petitioners came to be passed after 31 years, i.e., in 2017, by a novel method by issuance of the impugned corrigendum dated 5 April 2017 to amend the said award so as to include the petitioners in the award. Hence, whether this could have been done and is permissible in law, is another issue.

70. The reliefs as prayed for in the present proceedings would rest on two basic factors, firstly, whether the petitioners' land at all was the subject matter of acquisition under the procedure set into motion for acquisition of land by

issuance of a notification dated 18 November 1982, under Section 6 of the LA Act read with Section 126(4) of the MRTP Act culminating into the impugned award dated 23 September 1986. If the answer to this question is in the negative, in that event, what would be the legal position in respect of the entitlement of the petitioners for compensation, i.e. whether the petitioners would be entitled to compensation under the LA Act or the petitioners would become entitled for the compensation under the 2013 Act. These are the broad contours of the present proceedings which have fallen for determination of this Court. To answer the aforesaid questions, we are required to note some of the admitted facts.

71. From the facts noted hereinabove, there is no dispute that the petitioners are the legal heirs of the owner of the land in question, which was an issue totally not recognized in the entire acquisition process being undertaken by the SLAO, leading to the passing of the impugned award dated 23 September 1986 (albeit subsequently recognized in the impugned corrigendum). Further, the land belonging to the petitioners of the description as noted hereinabove was not specifically included in the description of the land sought to be acquired under the notification in question. Probably this could be the reason in regard to the admitted position that the petitioners were not issued a notice under Section 9 of the LA Act which provides for a notice to the persons interested, nor any steps subsequent thereto, including the passing of the award

and the requirement of the Collector to give an immediate notice of the Award, to all the persons interested, who were not personally present or by their representatives, when the Award was made, remained to be complied with insofar as the petitioners' land is concerned.

72. It is well settled that the procedure as contemplated by the provisions of the LA Act is required to be strictly followed by the SLAO to expropriate the land belonging to the owner, failing which it would be taken as a breach of the provision of Article 300A of the Constitution of India. There is no dispute that although the acquisition of the land was for the purposes of town planning under the MRTP Act, however, the entire procedure for acquisition as adopted was under the L.A. Act. We, hence, note the mandatory provisions which were required to be taken into consideration by the SLAO, in the SLAO intending to divest/expropriate the petitioners' rights in respect of the land in question, so as to include the petitioners' land for a valid land acquisition award to be passed. Sections 9 and 12 of the LA Act, as also Article 300A of the Constitution of India, read thus:

> "Land Acquisition Act, 1894
>
> Section 9. Notice to persons Interested. -
>
> (1) The Collector **shall** then 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 that claims to compensations for all interests in such land may be made to him.
>
> (2) Such notice **shall state** the particulars of the land so needed, and **shall require** all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such

time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any of such land and on all such persons known or believed to be interested therein, or to entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.)

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in letter addressed to him at his last known residence, address or place or business and [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)].

……

……

Section 12. Award of Collector when to be final. -

"(1) Such award shall be filed in the Collector's office and shall, subject to the provisions of section 15-A and[38] , except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award or the amendment thereof made under section 12-A[39] to such of the persons interested as are not present personally or by their representatives when the award or amendment[40] is made."

"Constitution of India :-

Article 300A. Persons not to be deprived of property save by authority of law -

No person shall be deprived of his property save by authority of law."

(emphasis supplied)

73. A clear reading of sub-sections (1), (2) and (3) of Section 9 is reflective

[38] Bombay Act 35 of 1953, S.4 (w.e.f 6-6-1953) and Maharashtra Act 38 of 1964, S.2 (w.e.f. 7-12-1964)

[39] Bombay Act 35 of 1953, S.4 (w.e.f 6-6-1953) and Maharashtra Act 38 of 1964, S.2 (w.e.f. 7-12-1964)

[40] Bombay Act 35 of 1953, S.4 (w.e.f 6-6-1953) and Maharashtra Act 38 of 1964, S.2 (w.e.f. 7-12-1964)

of its mandatory character, as the legislature has used the word "shall" in different sub-sections as underscored by us. Sub-section (3) categorically provides that the Collector, *inter alia,* shall also serve notice on the occupier, if any, of such land and consequently on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf.

74. In the aforesaid context, we may observe that it is a settled position in law that the LA Act, is an expropriatory Act and hence, would be required to be strictly interpreted in regard to the mandate and what the provisions of the LA Act provide. In **State of M.P. & Ors. Vs. Vishnu Prasad Sharma & Ors.**[41], Sarkar, J., in his Lordship's concurring judgment, observed that as the LA Act is an expropriatory Act, the interpretation of it should be accepted which puts the least burden on the expropriated owner. The decision in **Vishnu Prasad Sharma** (supra) was followed after 40 years in **Hindustan Petroleum Corpn. Ltd vs. Darius Shapur Chenai & Ors.**[42] when S. B. Sinha, J., speaking for the Bench, observed thus:-

> 29. The Act is an expropriatory legislation. This Court in State of Madhya Pradesh and Ors. Vs. Vishnu Prasad Sharma and Ors. [1966 (3) SCR 557] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand and Ors. Vs. State of Rajasthan and Ors., 1967 (1) SCR 120 and Collector of Central Excise, Ahmedabad vs. Orient Fabrics (P) Ltd., (2004) 1 SCC 597].

41 AIR 1966 SC 1593

42 (2005)7 SCC 627

> There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."
>
> (emphasis supplied)

75. In **Laxmanrao Krishtrao Jahagirdar vs. The Provincial Government of Bombay**[43] a Division Bench of this Court observed that the legislature has made a clear distinction between the occupiers of the land and persons who are interested in the land. Chagla, C.J., speaking for the Bench, observed thus:

> "It will be noticed that an obligation is cast upon the Collector to serve a notice on every occupier of the land which is to be acquired. There is also an obligation cast upon him to serve a notice on persons who are known to him to be interested in the land or whom he believes to be interested in the land. Therefore, the Legislature has made a clear distinction between occupiers of the land and persons who are interested in the land. As far as occupiers are concerned, the Collector must serve a notice upon the occupier. As far as persons interested are concerned, the obligation is cast upon him only if he knows of such persons or believes that there are such persons. With regard to the first class the obligation is absolute;….. "
>
> (emphasis supplied)

76. In **Velagapudi Kanaka Durga v. District Collector, Krishna District Chilakapudi**[44], the Court, while considering the implication as brought about by Section 9 of the LA Act, observed thus:-

> "4. It is thus clear that the Act accords great importance to the service of notice on the persons in occupation of the land so that all available information in respect of such land could be secured during the course of the enquiry. It may be difficult to learn about all the persons interested in such land but it is not so to know the person or persons in actual occupation of such land. A person in occupation can reasonably be supposed to have all the necessary particulars about the property of which he is in possession. That is why Sub-section (3) clearly insists upon the service of a notice on the occupier of land and Section 10(1) empowers the Collector to require any such person to make or deliver to

[43] 1949 SCC OnLine Bom 90

[44] AIR 1971 AP 310

him a statement containing particulars relating to the land and the persons interested therein. It is obviously the surest way of gathering the necessary information about the land. The notice contemplated by Sub-section (1) of Section 9 is intended to give intimation to all persons interested and that is required to be published in or near the land to be taken, because it is, in several cases, difficult to know all the persons interested. The case of the occupier of the land is, however, obviously different, because his occupation is certain. **It is for that reason the word 'shall' is used in Sub-section (3) making it obligatory on the part of the Collector to serve notice on the occupier. Once a person is required to make a statement either under Section 9 or under Section 10, he is deemed to be legally bound to do so as per the provisions of Section 10(2). Therefore, there cannot be any doubt that Section 9(3) is a mandatory provision and the notice provided thereunder is an integral and essential part of the land acquisition proceeding**.....

13. It is, however, urged that this lack of notices did not really prejudice the petitioner for the reason that she did, in fact, appear before the Land Acquisition Officer on 14-10-1968 and file her objections. **This attempt to salvage the proceedings is futile because Section 9(3), as I have already held, is a mandatory provision. Strict compliance with such a provision is expected and insisted upon by the statute. Failure to do so would vitiate the subsequent proceedings.** The question of prejudice does not arise in cases of failure to comply with the mandatory provisions of law. Further, it is not shown to me whether the petitioner has had full opportunity to place all her objections before the Land Acquisition Officer within the short time made available to her. It is not therefore possible to hold that no prejudice was caused to the petitioner. It should also be noted in this connection that there had been no Section 5A enquiry because it had been dispensed with. **In the circumstances, failure to give a valid notice under Sections 9(3) and 10 vitiates the proceedings taken subsequent to and in pursuance of Sections 9(3) and 10 notice.** These proceedings including the award passed in pursuance of the said notice are hereby quashed and the respondents are directed to forbear from proceeding with the acquisition proceedings in pursuance of the said invalid notice."

(emphasis supplied)

77. A similar view was taken by the High Court of Punjab & Haryana in the case **Mani Ram Vs. The State of Punjab & Ors.**[45], wherein referring to the decision in **Laxmanrao Kristrao Jahagirdar** (supra) and **Velagapudi Kanaka Durga** (supra) as also the decision of the Division Bench of the Punjab & Haryana High Court in **State of Punjab v. Karnail Singh**[46], the Court held that

[45] 1974 SCC OnLine P&h 156

[46] ILR (1965) 2 Punj 525

the requirement of Section 9(3) to be mandatory when the following observations were made:

> " I, therefore, finding myself in respectful agreement with the view expressed by Chagla, C. J. in Laxmanrao Kristrao's case AIR 1950 Bom 334 (supra) and the one expressed by Sambasiva Rao, J. in Velagapudi Kanaka Durga's case AIR 1971 Andh Pra 310 (supra), as also the observations made, though in passing, in the Division Bench decision of this Court in Karnail Singh's case ILR (1965) 2 Punj 525 (supra), hold that the requirement of Section 9(3) of the Act is mandatory and the failure to comply therewith renders the subsequent proceedings illegal and invalid."
>
> (emphasis supplied)

78. The sequitur, therefore, would be that the provisions of Section 9 and Section 12 of the LA Act qua the petitioners' land were required to be strictly applied.

79. Also about 57 years back, the Division Bench of the Gujarat High Court in **Mohamadsarif Hakimji Chippa & Anr. Vs. State of Gujarat & Anr.**[47] held it to be a settled law that notice under sub-section (3) of Section 9 is mandatory to be issued to the occupants, and failure to give a notice would render the award not binding on the owner. It was also observed that no notice was served on the petitioners therein by the SLAO, hence, the award was held to be invalid in law. Referring to the decision of this Court rendered immediately after independence of the country in **Laxmanrao Krishtrao Jahagirdar v Provincial Govt. of Bombay** (supra) it was held that giving of notice by the Collector to the occupant was mandatory and it was a condition precedent to

[47] AIR 1967 Guj 269

be fulfilled to make the award binding on them, and as such notice was not given to the petitioners, who in the said case were not owners but the tenants. Consequently, it was held that all the proceedings that followed upto the giving of notices to the petitioners and all the subsequent steps leading to the passing of the award to be not binding and illegal.

80. Applying the aforesaid principles to the facts of the present case, it is quite apparent that much prior to the issuance of the notification under Section 6 of the LA Act which was dated 18 November 1982, in October 1981 and more particularly on 22 October 1981 the name of Late Dada of whom the petitioners are legal heirs was entered in the record of rights as owner. Thus, necessarily, the SLAO was deemed to have constructive notice qua the persons who were owners/persons interested in the land. It was, hence, expected that the Collector would make proper inquiries in regard to the rights of such persons qua the petitioners' land. However, it appears that neither such inquiries were made, nor a proper care and the lawful procedure was followed to bring the owners of the land in question within the purview of the acquisition proceedings. Complying with this essential requirement was a *sine qua non*, considering that the basic ownership rights of the land in question were ultimately to be expropriated by the land acquisition proceedings being taken to a further step.

81. A notice under Section 9(3) & (4) of the LA Act was issued in the year

1983, however, not to Late Dada, of whom the petitioners were legal heirs qua the land in question. Thus, the mandate of Section 9(3) admittedly stood breached at such a point in time. Late Dada expired on 8 December 1984, leaving behind his widow and daughters who are the petitioners herein. Significantly, the record of the acquisition proceedings contained a copy of the 7/12 extract dated 20 May 1986 pertaining to the land in question, obtained prior to the declaration of the award by respondent No. 4 – SLAO, which clearly indicated that Late Dada was the owner of the land in question admeasuring 1,613 sq. mtrs, sought to be acquired. Despite this, on 23 September 1986, the impugned award came to be made acquiring the petitioners' land, however, without Late Dada or the petitioners in any manner being referred to in the award, much less any compensation payable to the petitioners being apportioned to be payable in respect of the petitioners' land in question.

82. In our opinion, such illegality of the award qua the petitioners' land was inherently incurable on two basic requirements, firstly, there being an absolute breach of the provisions of Section 9 of the LA Act as no notice was served on Late Dada of whom the petitioners are legal heirs, as also on the petitioners.Secondly, there being a further breach of non-compliance of sub-section (2) of Section 12 of the LA Act so as to serve the award on the petitioners which, in any case, could not have been served, as the petitioners

were never included within the ambit of the award for any purpose whatsoever. Thus, it being the settled position in law that an award is an offer, no offer was made to the petitioners, and once no offer was made to the petitioners, there was no question of the petitioners' right in respect of the land being divested in the absence of any such offer. The obvious consequence was to the effect that even assuming that the award was to include the petitioners' land which apparently was not specifically including the petitioners' land of the correct description as also the name of Late Dada/petitioners not appearing in the award, as to how the award could at all be binding on the petitioners qua the petitioners' land cannot be understood. Thus, the award insofar as it was being applied to the petitioners' land was invalid and non-est, thereby bringing about a situation that there was no award made against the petitioners' land, even assuming that the same was made within the appropriate limitation as provided, i.e., two years under Section 11A from the date of the publication of the declaration under section 6.

83. In the present case there is also a gross illegality inasmuch as, without adhering to the mandate of Section 9 and Section 12(2) of the LA Act, and without the petitioners, in any manner, as known to law forming part of the award in regard to the compensation payable to the petitioners, the land owned by the petitioners was expropriated for the purpose of "Santacruz-Chembur Link Road". Thus, such expropriation of the petitioners' land, without the

mandate of law being followed in any manner by declaration of a valid award and payment of compensation to the petitioners, is writ large from the record.

84. It is significant that on 8 March 1987 the father of Late Dada addressed a letter to respondent No.4/SLAO informing him of the demise of Late Dada, thereby requesting him that all notices in respect of the said land be sent to the petitioners. Such letter was never responded to. In fact, the record indicates that the notices in respect of the petitioners' land were issued to a third party and, further, unilaterally the possession of the petitioners' land was taken over on 7 April 2005, as also the possession receipt was kept in the record, however, not to the knowledge of the petitioners. On such backdrop, it was only on 16 June 2008, that the petitioners, having learnt of the award, addressed a letter informing the SLAO that although the petitioners were the owners of the land admeasuring 1613 sq. metres, their names were not shown in the award. Such position was also replete from the other factual circumstances, that is despite the award, the petitioners' name continued to be shown in the revenue record in relation to the said land even as of 6 December 2008. The petitioners on enquiries and having noticed that in respect of the petitioners' land name of a third person totally unconnected with the land was indicated in the award i.e. of Smt. Baitulbai. The petitioners, oblivious to the legal position, made an application on 11 May 2009 for correction of the award and that the petitioners' name be indicated as the owners of the land instead of the third

person. However, such an application, which possibly was rightly rejected by an order dated 16 July 2009, as noted by us hereinabove, on the ground that as the award was published on 23 September 1986, it was not possible to amend and correct the award as requested by the petitioners. In such context, we may observe that authority of correction of the Award stands conferred on the Collector / SLAO under the provisions of Section 13-A which came to be inserted in the LA Act by Act 68 of 1984, *inter alia* providing that the Collector may, at any time but not later than six months from the date of the award, or where he has been required under Section 18 to make a reference to the Court, before the making of such reference, by order, correct any "*clerical or arithmetical mistake*" in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority. The proviso below sub-section (1) ordains that no correction which is likely to prejudicially affect any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter. Section 13-A is required to be noted, which reads thus:

> **13-A. Correction of clerical errors, etc [Inserted by Act 68 of 1984, Section 10 (w.e.f. 24.9.1984).**
> (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistake in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:
>
> Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.
>
> (2) The Collector shall give immediate notice of any correction made in the

> award to all the persons interested.
> (3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue."

85. The aforesaid facts bring about an admitted position on record of the failure to recognize the petitioners qua the award in question, being compounded by further actions on the part of the respondents, as noted hereinabove, add to the legal peculiarity of the case, apart from the factual blunder at the hands of the SLAO, as we note the further significant happenings.

86. Most pertinently, on the rejection of the petitioners' application for correction of the award so as to include the petitioners' name as persons entitled to compensation, vide communication dated 16 July 2009 of the SLAO (supra), the petitioners approached this Court by filing Writ Petition No.643 of 2011 challenging the impugned award dated 23 September 1986. As noted by us hereinabove, in the reply affidavit dated 11 July 2011,of Shri. Prabhakar Maruti Thorat (SLAO), it was clearly admitted by the SLAO that there was no notice issued to the petitioners of the land acquisition proceedings and more particularly, as also under Section 12(2) of the LA Act, being the notice of the Award, and that the same was issued to a third party. On such premise, this Court by an order dated 5 September 2011 (supra) directed the award amount to be deposited in this Court. However what transpired in the

said proceedings was also peculiar, i.e., by an order dated 15 November 2011 (supra) passed by this Court, the said writ petition of the petitioners was permitted to be withdrawn, with liberty to make an application to the appropriate Court under Section 30 of the LA Act.

87. The legal consequence brought about by the said order in the context as to what Section 30 of the LA Act would provide, permitted the petitioners to raise a dispute as to the apportionment, which pre-supposes that there is a valid award made to include the correct land, enabling a party to invoke Section 30. In the present context, Section 30 could only become applicable provided that there was a valid award in regard to the petitioners' land and as the petitioners were not included in the award and no compensation was offered to the petitioners, as to how the petitioners could take recourse to Section 30 to file a reference and/or vice versa, as to how the petitioners would stand a position under the reference, are issues of substance as rightly urged on behalf of the petitioners. The petitioners rightly contend that such factual position would not satisfy any rationale and/or manner in which the petitioners could be made to fall within the purview of the original award. The petitioners hence rightly submit that they were ill-advised in taking recourse to the proceedings of filing a reference under Section 30 of the LA Act.

88. The petitioners contend that the foundation of the order dated 15 November 2011 passed by the Court itself was on a premise that the petitioners

stood included in the award, albeit the same being not supported by either the award or the the record of the land acquisition proceedings, hence such order passed by the Court, obviously was of no consequence in regard to any implication, it brought about. We find substance in such contention of the petitioner. In the present case, there was no foundation for a valid Award so as to include the petitioners qua their land, as also, as the beneficiaries of any compensation under the Award. It is in this light, we need to consider the order passed by the Division Bench dated 15 November 2011. As to what is the position in law when the Court passed such order, on the premise that the award was legal and valid, when to the contrary, on the SLAO's own showing it was not, leading the SLAO to issue the impugned corrigendum so as to include not only the petitioners' land but also the petitioners names. This position in law, in our opinion, is captured in the Latin Maxim *Actus Curiae neminem gravabit* - An act of the Court shall prejudice no man. The maxim is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law. The celebrated words in Broom's Legal Maxims Tenth Edition[48] are required to be quoted which read thus:

> *"Actus Curiae neminem gravabit* - An act of the Court shall prejudice no man.
>
> ....
>
> The preceding examples will probably be sufficient to illustrate the general doctrine, which is equally founded on common sense and on authority, that the act of a Court of law shall prejudice no man; and in conformity with this doctrine, it has been observed, that, as long as there remains a necessity, in any stage of the proceedings in an action, for an appeal to the authority of the Court, or any occasion to call upon it to exercise its jurisdiction, the Court has, even if

[48] Broom's Legal Maxims Tenth Edition

> there has been some express arrangement between the parties, an undoubted right, and is, moreover, bound to interfere, if it perceives that its own process or jurisdiction is about to be used for purposes which are not consistent with justice."

89. In **South Eastern Coalfields Ltd. vs. State of M.P. & Ors.**[49] the Supreme Court, in the context of Section 144 of the Code of Civil Procedure, which provides for restitution, held that, it is founded on the principle that no one shall suffer by the Act of the Court. While so observing, it was held that this is not a rule confined to an erroneous act of the Court, as the 'act of the Court' embraces within its sweep all such acts, to which the Court may form an opinion in any legal proceedings, that the Court would not have so acted had it been correctly apprised of the facts and the law. The following observations of the Court are required to be noted, which read thus:-

> "7. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. … … …"

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[49] (2003)8 SCC 648

90. We may also observe that once it is established that no person should be prejudiced by the act of the Court, the obvious consequence would be that the petitioners would stand in the position as if the order dated 15 November 2011 was not passed by the Division Bench and its challenge on all counts to the acquisition proceedings had remained intact, which is the position recognized in the subsequent order passed by the learned Single Judge on the petitioners' reference to which we shall advert a little later.

91. On the aforesaid backdrop, we consider what has subsequently happened, which in our opinion is another bitter pill of ill advice to the petitioners. The petitioners, sans a foundation in law, took recourse to Section 30 and filed a "reference application" in this Court, admittedly there being no award qua the petitioners' land as also the petitioners. However, in our opinion considering the ends of justice, the learned Single Judge appropriately passed a final order on the said reference i.e. LAR No.9 of 2011, dated 28 April 2017 permitting the petitioners to withdraw the said reference, thereby keeping open all rights and contentions, to assail the land acquisition proceedings.

92. Despite the aforesaid clear position, as to what has happened in the said LAR is bizarre to say the least, namely the SLAO continued to assume jurisdiction on the Award dated 23 September 1986, when admittedly, the SLAO was *functus officio* having made the award on September 1986, and even September 1986, and even September 1986, and even when the six

months period to correct the clerical or arithmetical errors had expired about 31 years back, the SLAO proceeded to issue the impugned corrigendum dated 5 April 2017 (supra), so as to include the petitioners in the award in the following terms, which we re-note subject to any repetition:

> Conclusion
>
> Taken into consideration above stated facts and Inspection of the above Land Acquisition proceeding file no.LAQ/SR/7(1). It has come to knowledge that in the Award hissa number has not been mentioned of CTS No.913(pt) Corresponding Survey no.247(pt). After verified the 20/05/1986, 7/12 abstract and perusal of the Award it is clearly apparent that due to the absence of mentioning Hissa number with respect to CTS No.913(pt) (Corresponding survey no.247(pt) the name of the "Ahamad Izzat Mohamed Hashan Dada" has not been taken into consideration at the time of passing of the Award. The Former Special Land Acquisition officer Highway, Bombay and BSD should have mentioned the claimants name and hissa number in the Award instead of that he had mentioned "do". He has committed an inadvertent mistake by not including the name of the claimant in the Award with respect to CTS No.913(pt) (corresponding survey no.247(pt) Hissa No.3(pt).
>
> After verifying the above facts in the records of my office and according to the Hon'ble Court Order dated 10/02/2017 I passed the following Corrigendum order to Award dated 23/09/1986. Page no.3 Para no.2 (III)(A). Serial number-3.
>
> Corrigendum

S. No.	S.No.	CTS No.	As per VF VII-XII	As per property Register
3	247(pt)	913(pt)	-do-	-do-

S. No.	S.No.	CTS No.	As per VF VII-XII	As per property Register
3	247(pt) Hissa no.3	913(pt)	Ahamad Izzat Mohamed Hashan Dada	Agricultural

> LAQ/SR-7(I) Kurla and Chembur Award dated 23/09/1986 had been amended as above NO other changes."
>
> (Emphasis supplied)

93. Thus, the aforesaid (impugned) corrigendum brought about a consequence of the land acquisition award being amended after a period of 31 years merely to include the petitioners' name. The corrigendum is completely silent as to under what authority and provision of law such powers could be exercised by the SLAO, when the statute confines the amendment of the award

only in terms of Section 13A of the LA Act (supra), i.e. to the correction of clerical or arithmetical mistakes or such errors in the award, and that too within a stipulated limitation of six months from the date of the award.

94. It is on the basis of such corrigendum, we may observe that the SLAO takes upon himself to enter into a fresh legal blunder of issuance of notice under section 12(2) dated 27 April 2017, as recorded by the learned Single Judge, in the proceedings of LAR 9/2011 in the order dated 21 April 2017, before the proceedings of the Reference were disposed of by a final order dated 28 April 2017 (supra), permitting the petitioners to withdraw the reference with liberty to file a fresh, keeping open all rights and contentions to challenge the acquisition proceedings. For continuity, the said order disposing of the reference, passed by the learned Single Judge, is required to be noted, which reads thus:

> 1. Heard learned Counsel for the parties.
> 2 The learned AGP appearing on behalf of SLAO submits that Notice under Section 12(2) of the Land Acquisition Act, 1894 is ready. They will serve the Claimant today itself and provide one copy to the Claimant's Advocate.
>
> 3. In view of this fact, the learned counsel for the Claimant submits that they may be allowed to withdraw the present L.A.R. with liberty to file a fresh keeping all their rights and contentions open.
>
> 4 To that effect, he has given in writing on Farad. Same is taken on record and marked "X" for its identification.
> F
> 5 Hence, following order is passed:
> a) L.A.R. No. 9 of 2011 is disposed of as withdrawn with liberty as prayed.
> b) All rights and contentions of Claimants are kept open including the challenging of acquisition proceedings."
>
> (emphasis added)

95. It is on the above backdrop that the present petition came to be filed. In

our opinion, the petitioners are correct in their contention that the SLAO had no jurisdiction to issue the impugned corrigendum dated 5 April 2017 so as to modify the award dated 23 September 1986, inasmuch as Section 12 read with Section 13A would bring about a specific legal consequence, namely, that after the declaration of the award and after a period of six months having expired from the declaration of the award, the SLAO/Collector would become *functus officio* and would not retain any seisin over the award and/or would cease to have any jurisdiction over the award, unless the law itself was to confer such jurisdiction. Taking a converse situation and if it is to be assumed that the SLAO is to indefinitely retain jurisdiction over the award after the same is declared, over and above the prescribed limitation as specified under Section 13A, it would not only lead to a patent absurdity, but also bring about consequences unknown to law, and more particularly, if the SLAO tinkers with the award and in the present case after 31 years of its declaration. This is exactly what has happened in the present case.

96. Whether the act of issuance of a corrigendum in the facts of the present case was a patent perversity unknown to the provisions of the Act, as also the well settled principles of the land acquisition jurisprudence in relation to the LA Act, can now be examined. There appears to be no scope for a second thought, that any sanctity whatsoever could be accorded to the notice issued to the petitioners under section 12(2) dated 27 April 2017, so as to incorporate

any compensation being payable to the petitioners after 31 years of the passing of the award, quantifying such compensation at the rate prevailing in the year 1986, namely, on amount of Rs.1,42,038/- and interest at the rate of Rs.1,30,432/- being payable to the petitioners qua their land admeasuring 1613 Sq.mtrs.

97. Thus, this is a classic case where on the edifice of a fundamental illegality of there being no land acquisition award against the petitioners, namely, the award dated 23 September 1986, under the influence of legal proceedings, such illegality stood compounded by the issuance of the corrigendum dated 5 April 2017 and the subsequent notice dated 27 April 2017, issued under Section 12(2) of the LA Act. Further, the only intention of the corrigendum was nothing but to inconsequentially breathe life into a dead award insofar as the petitioners were concerned. The situation was not different insofar as a Section 12(2) notice was being issued to the petitioners.

98. We therefore find much substance in the contentions as urged on behalf of the petitioners, that the entire exercise of acquisition qua the petitioners' land was being made a mockery by the SLAO as also respondent No.3/Deputy Collector. Thus, we are of the clear opinion that the impugned award dated 23 September 1986, read with impugned corrigendum dated 5 April 2017 *qua* the petitioners' land was invalid *non-est* and illegal. Such illegality was incurable and could not have been sought to be improved by the issuance of the

impugned corrigendum dated 5 April 2017. Further, without there being an award, compensation could not have been offered under Section 12(2) notice dated 27 April 2017, after 31 years of the passing of the award.

99. In the aforesaid circumstances, the legal status qua the land in question would now be required to be considered. Admittedly, the petitioners have lost possession of the land, in a manner not known to law and unilaterally, on 7 April 2005, for the land being utilized for the public purpose of the Santacruz-Chembur Link Road. The issuance of the impugned corrigendum would not bring about the consequence of there being a lawful award declared in relation to the petitioner's land. On behalf of the respondents, quite weakly, it is argued that in the proceedings of the first Writ Petition No.643 of 2011, the amount of compensation was deposited. It may be so, however, what matters is whether at such point in time, the amount was deposited under any legal award, being made qua the petitioners land. The answer would be obviously in the negative, inasmuch as on the date when this Court passed the order dated 5 September 2011, directing the respondents to deposit the compensation amount in the Court, there was no award against the petitioners. The petitioners on such day, admittedly, were not in any manner whatsoever included or falling within the ambit of said award, and hence, the deposit of such compensation of Rs.1,42,038/- and interest of Rs.1,30,432/- would have no recognition in law insofar as the petitioners are concerned. In any event,

mere deposit of the award amount, in such manner, in the proceedings before the Court cannot accord any sanctity to the illegalities of non-inclusion of the petitioners' land in the award, much less to the award dated 23 September 1986, so as to be labeled as a valid and legal award qua the petitioners' land. We have noted that the belated attempt to issue the impugned corrigendum was a futile attempt to breathe life into the award, which, insofar as the petitioners' land is concerned was stillborn.

100. At this stage, we may also observe that at all material times without there being any award qua the petitioners' land, the singular fact of the petitioners being rendered landless by unilaterally taking away possession of the land on 7 April 2005, also cannot be recognized to be any act for the respondents to contend that the concluded land acquisition proceedings would have any sanctity for determination of any compensation being awarded to the petitioners after 31 years from the declaration of the award dated 23 September 1986. Such a proposition would not have any legs to stand, being in the teeth of the provisions of the LA Act, 1894.

101. The petitioners, thus would also be correct in their contention that a fresh exercise would be required to be undertaken to make an award qua the petitioners' land on the basis that there is no legal and valid award insofar as the petitioners' land is concerned, as also the corrigendum dated 5 April 2017

read with the notice dated 27 April 2017 issued under Section 12(2) cannot per se be labelled to be any land acquisition award against the petitioners, as such actions of issuing corrigendum and notice itself can have no recognition under the provisions of the LA Act. In our opinion, admittedly, the land of the petitioners was sought to be acquired by taking recourse to the provisions of the LA Act read with the provisions of Section 126(4) of MRTP Act, as a notification under Section 6 of the LA Act was issued invoking the provisions of Section 126(4) of the MRTP Act. Thus, this would be a situation wherein the provisions of Section 114 of the 2013 Act would stand attracted, namely, that once recourse was taken to the provisions of LA Act as also the possession of the land was taken over on 7 April 2005, however, there being no award against the petitioners' land, applying the provisions of Section 6 of the General Clauses Act, 1897 read with the provisions of Section 114 of the 2013 Act, the provisions of the LA Act would continue to apply for a fresh exercise to be undertaken under such notification issued under Section 6 of the LA Act read with Section 126(4) of the MRTP Act as it stood at the relevant time. These subsequent proceedings, that is the fresh action to make an award qua the petitioners' land, necessarily is a prospective exercise to be undertaken notionally as per the mandate of Section 114, under the provisions of the LA Act, for determination of the compensation as per the provisions of the LA Act. It would be appropriate to note the provisions of Section 114 of the 2013

Act, as also the provisions of Section 6 of the General Clauses Act,1897 which read thus:

> Section 114 of the 2013 Act:
>
> **Section 114: Repeal and saving**.–(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.
> (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.
>
> Section 6 of the General Clauses Act, 1897:
>
> **Section 6: Effect of repeal**.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

102. In this view of the matter, fresh proceedings under the initial notification issued by the respondent dated 21 October 1982 under Section 6 of the LA Act 1894 read with Section 126(4) of the MRTP Act would necessarily require that notionally the provisions of the LA Act 1894 be applied for a fresh award, to be declared in accordance with law qua the petitioners' land. For this reason, we cannot accept the petitioners' contention in regard to

applicability of Rule 19(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014 for determination of compensation under the provisions of the 2013 Act. This for the reason that Section 114 of the 2013 Act (supra) would operate as the said notification was acted upon, however, qua the petitioners in an illegal manner, and Rule 19 of the said Rules would be subservient to the substantive provisions of the 2013 Act. There is no question of the subordinate legislation overriding the substantive provisions of the 2013 Act.

103. We may also refer to the decision of the Supreme Court in **Tukaram Kana Joshi & Ors. v. MIDC & Ors.** (supra), in which the Court was considering a situation that although the land was notified under Section 4 of the Land Acquisition Act, 1894, no further proceedings were undertaken and the acquisition proceedings, in fact, lapsed. The Supreme Court categorically observed that, even after the right to property has ceased to be a fundamental right, taking possession of or acquiring the property of a citizen without following the prescribed procedure, most certainly tantamount to deprivation of property and such deprivation can take place only in accordance with the "law", as specifically used in Article 300-A of the Constitution. The Court hence observed that the respondent-authorities would notify the land in dispute under Section 4 of the Act and that the market value of the land in

dispute will be assessed as it prevails on the date on which the Section 4 notification is published in the Official Gazette. The Court further proceeded to hold that the right to property was now considered to be, not only a constitutional or a statutory right, but also a human right which is considered to be in the realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. It was further held that human rights are gaining an even greater multi faceted dimension and the right to property is considered, very much to be a part of such new dimension. The following observations of the Supreme Court are required to be noted:-

> "**11.** There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a "subject" of medieval India, but not as a "citizen" under our Constitution.
>
> 17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons.

The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/ human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom constitutional/statutory benefits are accorded, in accordance with the law.

19. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also disrespect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals, etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage."

(emphasis supplied)

104. Also in **Loonkaran Gandhi (D) thr. LR v. State of Maharashtra** (supra), in similar circumstances, the Court held thus:-

"25. Therefore, the applicability of Section 11 of the LA Act which deals with enquiry and award, and Section 16 of the LA Act which deals with power of Collector to take possession, even in acquisition under the NIT Act is "sine qua non". While making an inquiry under Section 11, the applicability of Section 9 which deals with issuance of notice to persons interested, is an integral procedure in the proceedings. Hence, for the purpose of determination of compensation to pass an award in case of acquisition of land under the NIT Act, applicability of the said provisions of the LA Act has been duly recognised in Section 67 of the NIT Act.

26. As per Section 16 of the LA Act, the Collector on making an

> award may take possession of the land to vest it in the Government. Similarly, under Section 17-A added to Schedule of the NIT Act, passing of an award is a necessary precondition to vest the land with NIT. Further, Section 48-A specifies that if award is not passed by the Collector within a period of two years from the date of final notification, the landowner, if not responsible for delay to a material extent, shall be entitled to receive compensation for damages suffered by him in consequence of delay. The said damage would be determined as per the provisions of Part III of the LA Act."
>
> (emphasis supplied)

105. Ms. Damania has also placed reliance on the decision in **Bernard Francis Joseph Vaz v. Government of Karnataka and Ors.** (supra), wherein the Court recognized the principle of moulding reliefs so as to ensure that the person interested or the owner of the land is entitled to fair compensation. The Supreme Court, in such decision, has recognized the principle that if the compensation to be awarded at the market value as of the year, when the Section 6 notification was issued is permitted, it would amount to permitting a travesty of justice and making the constitutional provisions under Article 300-A a mockery. The Supreme Court, in this judgment, taking a review of several other decisions of the Supreme Court on the principle of moulding the relief to award fair compensation, observed as under:-

> "**36.** The relief, therefore, granted by this Court in the aforesaid case was moulded in the form of para 15, which reads as under: (Barangore Jute Factory case [Competent Authority v. Barangore Jute Factory, (2005) 13 SCC 477] , SCC pp. 488-89)
>
> "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 [Ujjain Vikas

Pradhikaran v. Raj Kumar Johri, (1992) 1 SCC 328]

(b)Gauri Shankar Gaur v. State of U.P. [Gauri Shankar Gaur v. State of U.P., (1994) 1 SCC 92]

(c) Haji Saeed Khan v. State of U.P. [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)

37. It can thus be seen that this Court in Barangore Jute Factory case [Competent Authority v. Barangore Jute Factory, (2005) 13 SCC 477] 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. 19-2-2003.

38. InTukaram Kana Joshi [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] , the land situated in Village Shirwame, Taluka and District Thane, stood notified under Section 4 of the 1894 LA Act on 6-6-1964 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 14-5-1981. 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 para 22 of the aforesaid case [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] , this Court observed that the State concerned 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.

39. In the aforesaid case of Tukaram Kana Joshi [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491], 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.

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

41. This Court inVidya Devi v.State of H.P. [Vidya Devi v.State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] , while surveying the earlier judgments on the issue, has observed thus: (SCC pp. 572-75, para 12)

12. …

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, (1953) 2 SCC 688] , 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.'

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.'

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.'

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.'

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] "

(emphasis in original)

42. In Ultra-Tech Cement Ltd. v. Mast Ram [Ultra-Tech Cement Ltd. v. Mast Ram, (2025) 1 SCC 798 : (2025) 1 SCC (Civ) 379 : (2025) 253 Comp Cas 1] , this Court observed thus: (SCC pp. 820-22, paras 46-53)

"D. Role of the State under Article 300-A of the Constitution

46. The right to property in our country is a net of intersecting rights which has been explained by this Court in Kolkata Municipal Corpn. v. Bimal Kumar Shah [Kolkata Municipal Corpn. v. Bimal Kumar Shah, (2024) 10 SCC 533 : (2024) 4 SCC (Civ) 573] . 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: (SCC pp. 550-51, para 30)

'30. … Seven such sub-rights can be identified, albeit non-exhaustive. These are:

(i) The 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,

(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 efficiently and within prescribed timelines of the proceedings — the right to an efficient and expeditious process, and

(vii) The final conclusion of the proceedings leading to vesting — the right of conclusion.'

This Court held that a fair and reasonable compensation is the sine qua

non for any acquisition process.

47. In Roy Estate v. State of Jharkhand [Roy Estate v. State of Jharkhand, (2009) 12 SCC 194 : (2009) 4 SCC (Civ) 666] ; Union of India v. Mahendra Girji [Union of India v. Mahendra Girji, (2010) 15 SCC 682 : (2013) 2 SCC (Civ) 274] and Mansaram v. S.P. Pathak [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.

48. 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 5-A 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 Corpn. [Kolkata Municipal Corpn. v. Bimal Kumar Shah, (2024) 10 SCC 533 : (2024) 4 SCC (Civ) 573] 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.

49. This Court has held in Dharnidhar Mishra v. State of Bihar [Dharnidhar Mishra v. State of Bihar, (2024) 10 SCC 605 : (2024) 4 SCC (Civ) 611] and State of Haryana v. Mukesh Kumar [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] 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 v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] 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.

50. That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Co. v. State of Maharashtra [Kukreja Construction Co. v. State of Maharashtra, (2024) 14 SCC 594 : 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.

51. 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 300-A and the idea of a welfare State.

52. 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.

53. 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."

(emphasis in original and supplied)

43. 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.

44. 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.

46. Recently, this Court in the aforesaid case of Ultra-Tech Cement [Ultra-Tech Cement Ltd. v. Mast Ram, (2025) 1 SCC 798 : (2025) 1 SCC (Civ) 379 : (2025) 253 Comp Cas 1] 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.

49. 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.

50. 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.**
>
> **51.** 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.
>
> **53.** 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 rigours 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 hypertechnical ground has non-suited the appellants.
>
> **57.** 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."
>
> (emphasis supplied)

106. Now, coming to the contentions and objections as raised on behalf of the respondents. The respondents have firstly contended that the Writ Petition is not maintainable as it is barred by the principle of constructive res-judicata; secondly, it is barred by delay and laches, and thirdly, non receipt of notice under Section 9 would not vitiate the award. All three of these basic contentions are to be stated only to be rejected.

107. In regard to the first objection that the petition is not maintainable on the ground of *constructive res judicata*, the contention of the respondents is that the petitioners had approached this Court by filing the first Writ Petition No.643 of 2011, which was permitted to be withdrawn, hence, the petitioners could not have filed the present petition. We have already set out the reasons as to how the present petition would be maintainable on a liberty being granted by the learned Single Judge to the petitioners to challenge the acquisition proceedings and such order being accepted in-totality by the respondents and more so on the principle of *actus curiae neminem gravabit,* insofar as the order passed on the first Writ Petition is concerned. The respondents, therefore, cannot approbate and reprobate in the same breath to raise such untenable plea of the petition, being not maintainable when specific liberty was granted by the Learned Single Judge in the proceedings of 2011. Undoubtedly, the respondents are bound by such order dated 28 April 2017 in LAR 9 of 2011 granting liberty to the petitioners to challenge the acquisition proceeding.

108. Respondents' contention on delay is also untenable, inasmuch as the present petition was filed on 11 April 2018 assailing the corrigendum dated 5 April 2017 and the notice dated 27 April 2017, by which the respondents intended to contend that there is now an award against the petitioners. Thus, by virtue of the corrigendum and such notice, the respondents intend to take a

position that the award dated 23 September 1986 is applicable qua the petitioners. If this be so, coupled with the order dated 28 April 2017 passed by the learned Single Judge permitting the petitioners to withdraw the LAR (the LAR itself being non-est as discussed hereinabove), as to how the present petition is barred by delay and laches, cannot be understood. It appears to be a contention urged on behalf of the respondents merely for the sake of record Thus, neither the principle of constructive res judicata nor the principle of delay and la Thus, neither the principle of constructive res judicata nor the principle of delay and laches, in any manner whatsoever, would stand attracted in the facts of the present case.

109. Now, we discuss the decisions as relied on behalf of the respondents. In such context, we may observe that we are referring only to those decisions which are cited during the course of the arguments. To avoid prolixity, we are not burdening the judgment with certain decisions which are relied on behalf of the respondents, that are not relevant to the facts of the present case, although the principle of law in such decisions in the facts of the said decisions are well settled.

110. The decisions as cited on behalf of the respondents and as noted by us hereinabove on delay and laches, in our opinion, in the facts of the present case, are not applicable for the reasons as discussed by us hereinabove,

as we have held that the petition was appropriately filed without there being any delay and laches on the part of the petitioners. In fact, the petitioners were pursuing their cause right from the beginning, which is also not in dispute, i.e., not only by filing of the initial Writ Petition but also the land acquisition reference (LAR). It is only on the issuance of the impugned corrigendum dated 5 April 2017 and the subsequent notice issued under Section 12(2) dated 27 April 2017 that a valid cause of action accrued to the petitioners to file the present proceedings.

111. We are also not inclined to accept the contention as made on behalf of the respondents that the award in the present case would not stand vitiated. Certainly, an attempt not tenable in law was made on the part of the respondents to issue a corrigendum dated 5 April 2017, as also by quantifying the compensation in the notice dated 27 April 2017 purportedly issued under Section 12(2). This, in our opinion, would not bring about any situation of any valid award being declared so as to include the petitioners' land. It would also not bring about a situation by which the mandate of Section 9(3), even if it is read with Section 12(2), can accord any sanctity to the award dated 23 September 1986, for the same to be made applicable to the petitioners' land. In such context, reliance by the respondents in **May George Vs. Tahasildar (supra)** is not well founded. In the said case, the writ Court had rejected the contention raised by the appellant after being fully satisfied that the notice under Section

9(3) was affixed on the part of the land in dispute as the appellant was not available. The Court was fully satisfied that notice had been affixed on the land, satisfying the requirement of law, and the Award had been made within limitation. Hence, the appellant's grievance that she was never aware of the land acquisition and was never served with the notice under Section 9(3), was not accepted, as also she was never dispossessed from the part of the land in question. Even assuming, in the facts of the present case, even if it is to be accepted that non service of notice would not vitiate the award, the award stood vitiated not only for this reason but several other reasons which we have noted hereinabove.

112. There are decisions cited on behalf of the respondents to contend that the acquisition initiated in the present case under the provisions of Section 126(4) of the MRTP Act read with Section 6 of the LA Act be not considered to have lapsed under Section 24 of the 2013 Act, relying on the decision of the Full Bench of this Court in **Sandeep S. Metange Vs. State of Maharashtra & Ors.**(supra). Considering the view taken by us as also held by the Full Bench, we are in agreement with the respondents that Section 24 which provides for lapsing of acquisition in the circumstances as set out in sub-section(1)(a) & (1)(b) of Section 24 of the 2013 Act, may not be attracted in the present facts and the land acquisition would be required to be continued under the LA Act as per the provisions of Section 114 of the 2013 Act.

113. Now, coming to the decisions which are cited on behalf of the petitioners. The petitioners would be correct in placing reliance on the recent decision of the Supreme Court in **Kolkata Municipal Corporation Vs. Bimal Kumar Shah & ors.** (supra) in which the basic requirements of any acquisition have been succinctly set out by the Supreme Court, when it was held that there are seven sub-rights which are in tune with Article 300A of the Constitution of India. It was held that in the absence of one of these or some of them being breached, the land acquisition would be required to be held illegal. In dealing with the right to restitution or entitlement to fair compensation, the Court has made the following observations:

> "28. While it is true that after the 44th Constitutional Amendment [the Constitution (44th Amendment) Act, 1978], the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A which declares that "no person shall be deprived of his property save by authority of law" has been characterized both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.
>
> 29. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the "power of eminent domain". Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300-A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

30. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub- rights can be identified, albeit non-exhaustive. These are:

(i) The 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,

(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 efficiently and within prescribed timelines of the proceedings — the right to an efficient and expeditious process, and

(vii) The final conclusion of the proceedings leading to vesting — the right of conclusion.

31. These seven rights are foundational components of a law that is tune with Article 300-A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in K.T. Plantation (P) Ltd. v. State of Karnataka, [(2011) 9 SCC 1] declares that the law envisaged under Article 300-A must be in line with the overarching principles of rule of law, and must be just, fair, and reasonable. It is, of course, precedentially sound to describe some of these sub-rights as "procedural", a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300-A, non-compliance of these will amount to violation of the right, being without the authority of law.

32. These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognised by our constitutional courts while reviewing administrative actions for compulsory acquisition of private property. The following will demonstrate how these seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time.

33. Following are the seven principles:

33.1.The Right to notice

33.1.1. A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

33.1.2. Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3-A of the National Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

33.1.3. In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced.

33.2.The Right to be heard

33.2.1. Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

33.2.2. Section 5-A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3-C of the National Highways Act, 1956, are some statutory embodiments of this right.

33.2.3. Judicial opinions recognising the importance of this right are far too many to reproduce. Suffice it to say that that the enquiry in which a landholder would raise his objection is y ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

33.3.The Right to a reasoned decision

33.3.1. That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

33.3.2. Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3-D of the National Highways Act, 1956, are the statutory incorporations of this principle.

33.3.3. Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

33.4.The Duty to acquire only for public purpose

33.4.1. That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare State and distributive justice.

33.4.2. Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3(1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1), 15(1)(b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3-A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

33.4.3. The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is related to public purpose. If the Court arrives at a conclusion that that there is no public purpose involved in the acquisition, the entire process can be set aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

33.5.The Right of restitution or fair compensation

33.5.1. A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300-A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

33.5.2. Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3-G, and Sections 3-H of the National Highways Act, 1956 are the statutory incorporations of the right to restitute a person whose land has been compulsorily acquired.

33.5.3. Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the sine qua non for any acquisition process.

33.6.The Right to an efficient and expeditious process

33.6.1. The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time-consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300-A.

33.6.2. Sections 5-A(1), 6, 11-A and 34 of the Land Acquisition Act, 1894, Sections 6(1-A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Sections 3-C(1), 3-D(3) and 3-E(1) of the National Highways Act, 1956, prescribe for statutory frameworks for the completion of

individual steps in the process of acquisition of land within stipulated timelines.

33.6.3. On multiple occasions, upon failure to adhere to the timelines specified in law, the courts have set aside the acquisition proceedings.

33.7.The Right of conclusion

33.7.1. Upon conclusion of process of acquisition and payment of compensation, the State takes possession of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300-A.

33.7.2. Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3-D and 3-E of the National Highways Act, 1956, statutorily recognise this right of the acquirer.

33.7.3. This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in a way which ensures non-arbitrariness in this action of the acquirer. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the authority concerned. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the courts have given a large number of decisions as to the time, method and manner by which vesting takes place.

34. The seven principles which we have discussed are integral to the authority of law enabling compulsory acquisition of private property. Union and State statutes have adopted these principles and incorporated them in different forms in the statutes provisioning compulsory acquisition of immovable property. The importance of these principles, independent of the statutory prescription have been recognised by our constitutional courts and they have become part of our administrative law jurisprudence."

(emphasis supplied)

In our opinion, all the aforesaid legal principles stand squarely attracted in the facts of the present case, for the Court to reach to a conclusion that there

is no valid acquisition of the petitioners' land.

114. We are also in agreement with the petitioners relying on the decision of the Supreme Court in **Raja Harish Chandra Raj Singh Vs. Dy. Land Acquisition Officer & Anr.**(supra). In the said case, the land acquisition award was made, signed and filed by respondent No.1 / Deputy Land Acquisition Officer, however, no notice of this award was given to the appellant as required under the provisions of Section 12(2) of the LA Act. Almost after two years i.e. in or about January 1953, the appellant received information about the making of the award. It is in these circumstances that an application was filed by the appellant under Section 18 on 24 February 1953 requiring that the matter be referred to the determination of the Court, as according to the petitioners the compensation amount determined by respondent No.1 was quite inadequate. Respondent No.1, however, was of the view that the application made by the applicant was beyond the prescribed limitation under the proviso to section 18 and accordingly rejected the same. In these circumstances, the appellant filed a Writ Petition before the High Court praying for setting aside of the said order passed by respondent No.1. The Writ Petition came to be allowed, whereby the respondent No.1 was directed to consider the application made by the applicant on merits and to deal with it in accordance with law. The said decision was challenged in an appeal before the Division Bench, which reversed the decision, holding that the application filed by the appellant under

Section 18 was barred by time. The appellant then obtained a certificate of leave to appeal to the Supreme Court. With this certificate the appellant approached the Supreme Court. It is in such context, that the Supreme Court held that SLAO was under a mandate by virtue of the provisions of Section 12(2) to communicate his decision/award to the affected parties by such decision, either actual or constructive knowledge of the party affected, was the essential element which needs to be satisfied before the decision could be brought into force, and hence communication of the award to the party concerned was a necessary requirement. The following observations as made by the Court are required to be noted, which read thus:

> "5. **In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under** s. 12**. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition.** If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer s. 18 gives him the statutory,, right of having the question determined by Court, and' it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In Ezra v. The Secretary of State (1). It has been held that "the meaning to be attached to the word "award" under s. 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded." Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to

question at its own instance before the Civil Court. The said case was taken before the Privy Council in Ezra v. Secretary of State for India (2), and their Lordships have expressly approved of the observations made by the High Court to which we have just referred. Therefore; if the award made by the Collector is in law no more than an offer made on behalf of the Government to, the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the' rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, 'is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way.

7. In this connection it is material to recall the fact that under s. 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under s. 11 followed by its filing under s. 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately

> after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to s. 18. It is because communication of the order is regarded by the Legislature as necessary that s. 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under s. 12(2) should directly tend to make ineffective the right of the party to make an application under s. 18, and this result could not possibly have been intended by the legislature.
>
> (emphasis supplied)

115. Following the aforesaid decision of the Supreme Court in **Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer**, this Court in **Sriniwas Radhakishan Malani v. State of Maharashtra** (supra) held that mere drawing of an Award by the Special Land Acquisition Officer without communicating the same to the landowners or calling upon the claimants to receive compensation by issuing notice under Section 12(2) of the LA Act cannot be equated with declaration of an Award within the contemplation of Section 11 of the LA Act. The Court held that the declaration of an Award must be simultaneously and immediately accompanied by an offer of compensation to the claimants, and that the drawing of an award without offering the amount of compensation to the claimants cannot be construed as an award.

116. We are also in agreement with the petitioners relying on the decision in **Vipinchandra Vadilal Bavishi v. State of Gujarat** (supra) to contend that the corrigendum dated 5 April 2017 could not breathe life into the award dated 23 September 1986 and bind the petitioners after a lapse of 31 years from the date

of the award. The Supreme Court considered the effect of a corrigendum issued after the award in land acquisition proceedings. The Court observed that a corrigendum could be issued only for correction of clerical or typographical mistakes and could not be utilized to make substantive changes in the award or acquisition proceedings. The relevant observations as made by the Supreme Court are required to be noted which read thus:-

> "26. An arithmetical mistake is a mistake in calculation, while a clerical mistake is a mistake of writing or typing error occurring due to accidental slip or omissions or error due to careless mistake or omission. In our considered opinion, substituting different lands in place of the lands which have been notified by a statutory notification under Sections 10(1), 10(3) and 10(5) cannot and shall not be done by issuing a corrigendum unless the mandatory requirements contained in the aforementioned sections is complied with. A landholder cannot be divested from his land on the plea of clerical or arithmetical mistake liable to be corrected by issuing corrigendum."

117. Further, in **Umesh Board Paper Mills Pvt. Ltd. vs. The Union of India & Ors.**(supra) the coordinate Bench of this Court was considering the case of the petitioner therein, concerning acquisition of land under the National Highways Act, 1956 ("**NH Act**"). A notice issued under Section 3A of the NHAI Act in which the name of the petitioner was not included nor the details were given of the part of the land of the petitioner being acquired, namely, petitioner's land Gat No.125 admeasuring 6 hectare 52-R and from the same land only 8040 sq.mtrs. land was acquired. Also, the representation/objections raised by the petitioner were not considered, and eventually a notification under section 3A of the NH Act was published and an award was accordingly passed, and possession of the part of the land was taken over. The petitioner in these

circumstances contended that although the land of the petitioner was effectuated in the acquisition, the notification under Section 3A and 3D did not state that the land of the petitioner was acquired. It was held that even in the award, it was not stated that the land of the petitioner was acquired. In the joint measurement it was found that the land of the petitioner from Gat No.125 to the extent of 2100 square meters was acquired. The respondent thereafter tried to correct the award under the impugned communication. The Court held that the same was not permissible and that fresh acquisition would be required to be undertaken. In such context, the Court referring to the decision in **Competent Authority Vs. Barangore Jute Factory and Ors**.(supra) as also referring to Section 33 of the NH Act which provides for correction of the awards by the collector, the Court observed that there was no provision for amending the award with regard to the description of the property and the name of the persons whose land is acquired. The relevant observations as made by the Court, which are required to be noted, read thus:

> "6. The National Highways Act does not contain any provision, which permits correction to award. Under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 33 permits correction to the award by the Collector. Section 33 of the said Act reads thus:
>
> > "33. Corrections to awards by Collector (1) The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correction any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority;

> Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.
>
> (2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested.
> (3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.

7. Perusal of the said provision reveals that only Clerical and arithmetical correction in the award are permissible.

8. The notification under Section 3A of the Act described the property to be acquired as from Gut No.125 of village Pimpalgaon Pandhari Gut No.125 part 0.216 hectare.

9. It is not disputed that there are six owners of Gut No.125 situated at Pimpalgaon Pandhari and Gut No.125 totally admeasures 6 hectares 52-R. In none of the notifications the details of the land admesauring 0.216 hectares are given. Nor the name of the petitioner is included in any of the notifications and the award. According to the respondents, after the joint measurement was conducted, it transpired that under the notification, the land of the petitioner is also effectuated under acquisition.

10. The notification with regard to land under acquisition from Gut No.125 part is vague. It does not give details about the part of the land from Gut No.125 sought to be acquired. The boundaries are not given. The specifications are not given as to the land to the extent of 0.216 hectares under acquisition in the notification under Section 3A or 3D of the Act or in the award. The name of petitioner is not mentioned in the notification and in the award though the land of petitioner from Gut No.125 is acquired. When such is the position, the notification to the extent of land acquired may not hold good. The Apex Court in the case of Competent Authority Vs. Barangore Jute Factory (supra) has observed thus:

> "So far as the question whether the impugned Notification meets the requirement of Section 3A (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."
>
> 11. Section 3A (2) of the Act of 1956 requires every notification under sub-section (1) to contain a brief description of the land. In the present case, the brief description of the land to be acquired vis-a-vis the petitioner is not given. Even, the name of the petitioner was not included in the notification, nor the details were given of the part of the land of the petitioner being acquired. The land of Gut No.125 is a big chunk of land admeasuring 6 hectare 52-R and from the same land, only 8040 Sq. Mtrs. land is acquired.
>
> 12. The Notification does not stand the test of Section 3A (2) of the Act and the judgment of Apex Court in case of Competent Authority Vs. Barangore Jute Factory (supra). The land was not identifiable. The petitioner had also filed representations/objections under Section 3C of the Act, but the same are not considered.
>
> 13. **As there is no provision for amending the award with regard to the description of the property and the name of the person, whose land is acquired, the notification would not be valid."**
>
> (emphasis supplied)

The aforesaid observations as made by the Supreme Court as underscored by us, are squarely applicable in the present case, considering the defective description of the petitioners' land in the notification dated 21 October 1982.

118. Adverting to the aforesaid principles of law and more particularly the authoritative principles as laid down in **Kolkata Municipal Corporation vs. Bimal Kumar Shah & Ors.** (supra), the following illegalities in the present case are glaring: -

i. There was no notice at all of the acquisition proceedings to the petitioners;

ii. The petitioners were never afforded an opportunity of being

heard prior to the declaration of the award;

iii. There is no reasoned decision justifying the acquisition of the petitioners' land;

iv. As a consequence of the above, it cannot be said that the petitioners' right to receive fair compensation was recognized or duly considered by the SLAO;

v. The manner in which the possession of the land was taken was unilateral and without the knowledge of the landowners, and in complete disregard of the settled principles of land acquisition jurisprudence;

119. Thus, applying the fundamental principles governing land acquisition, as laid down by the Supreme Court in **Kolkata Municipal Corporation Vs. Bimal Kumar Shah & Ors**. (supra), the acquisition in question cannot withstand the test of a lawful exercise of statutory power at the hands of the SLAO/Deputy Collector. Consequently, the corrigendum and the amended award, insofar as they relate to the petitioners, are rendered illegal, null and void.

120. Applying the aforesaid principles, and particularly the decisions of the Supreme Court in **Tukaram Kana Joshi & Ors. v. MIDC & Ors.** (supra), **Vidya Devi v. State of H.P.** (supra), **Loonkaran Gandhi (D) thr. LR v. State of Maharashtra** (supra) and **Bernard Francis Joseph Vaz v. Government of**

Karnataka and Ors. (supra), we are in agreement with the petitioners that, in the present case, the reliefs are required to be moulded as observed by us hereinabove. The case in hand is of the very species with which the Supreme Court was concerned, namely, where the petitioners have been rendered landless under a process not known to law. Further, any action required to be taken pursuant to the notification dated 21 October 1982 issued under Section 6 read with Section 126(4) of the MRTP Act has also lapsed. In these circumstances, the logical conclusion would be that a fresh exercise is required to be undertaken, as held by the Supreme Court in **Tukaram Kana Joshi & Ors. v. MIDC & Ors.** (supra), by issuing a fresh notification and determining the market value of the land as on the date of such notification. However, the only difference between the facts before the Supreme Court in **Tukaram Kana Joshi & Ors. v. MIDC & Ors.** (supra) and the present case is that, with the passage of time, the Land Acquisition Act, 1894 has stood repealed, and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act has come into force and becomes applicable to land acquisition proceedings with effect from 01 January 2014. The question thus was whether the acquisition proceedings are required to be carried forward under the 2013 Act or whether they would continue to be governed by the Land Acquisition Act, 1894.

121. Having regard to the peculiar facts and circumstances of the present

case, including the prior history of litigation and the fact that possession of the petitioners' land was taken in the peculiar manner as noted by us hereinabove, we are of the opinion that as the notification dated 21st October 1982 issued under Section 6 of the LA Act read with Section 126 (4) of the MRTP Act as observed hereinabove, the market value of the land would be required to be determined afresh, notionally applying the provisions of the LA Act 1894 and by declaring a fresh award, considering the fact that the acquisition itself can be said to have been initiated under the original notification dated 21 October 1982.

122. In the light of the above discussion and having carefully considered the provisions of the LA Act and the relevant provisions of the 2013 Act as also applying the principles of law as enunciated in the decisions referred by us in the present case, it appears to be a clear position that neither the award dated 23 September 1986 nor the corrigendum dated 5 April 2017 and the subsequent notice dated 27 April 2017 issued under Section 12(2) of the LA Act, can in any manner be said to have any sanctity, which the law would recognize for the Court to come to a conclusion, that the petitioners' right, title and interest in the land in question stood divested and/or extinguished, to conclude that the petitioners' land stood lawfully expropriated and vested in the State Government. This more so, in the absence of any of the seven paramount requirements as laid down in the case of **Kolkata Municipal**

Corporation (supra) being adhered to, in acquiring the petitioners' land.

123. Thus, necessarily the consequence as brought about, would be that the mandatory steps which the law would require the SLAO to follow i.e. the prescribed statutory procedure being set into motion, for determination of the fair compensation to be awarded to the petitioners, would be the only recourse to be adopted. This is an eminent implication which the law would bring about, failing which, looked from any angle, the lawful divesting of the petitioners' land in favour of the State Government on award of a fair compensation is far to be seen. There cannot be a proposition that an invalid award (i.e. the impugned award dated 23 September 1986), an invalid corrigendum to the said award, issued after 31 years and any subsequent action of a purported notice under Section 12(2), issued on the basis of such *non est* award, can at all be recognized to have any sanctity, merely because the petitioners were deprived of the possession of the land under such invalid actions. It is settled that, when the legitimate course of actions of the nature as contemplated by the provisions of law stand breached, it is something directly affecting the constitutional guarantee of the right as enshrined under Article 300A of the Constitution. Thus, there cannot be recognition of any illegal actions of the nature as resorted to by the SLAO in the present case, which clearly fall foul of the requirements of law. Such actions can never have any sanctity, much less implementation and recognition by the Court. In fact, any

remotest recognition would amount to undermining the principles of the rule of law required to be followed in the compulsory expropriation of the right to property leading to travesty of justice. It is for these reasons that the petitioners would become entitled for compensation at the current valuation, however, by applying the provisions of the LA Act, 1894 and not the 2013 Act.

124. In the light of the above discussion, with certitude we are of the considered opinion that the petition eminently deserves to be allowed. It is accordingly allowed in terms of the following order:

ORDER

(i) The impugned award dated 23 September 1986, read with the corrigendum dated 5 April 2017, as also the impugned notice dated 27 April 2017 issued under Section 12(2) of the LA Act qua the petitioner's land are illegal, bad in law and void. Also, the consequential order dated 3 July 2017 passed by the third respondent is held to be illegal.

(ii) Respondents are directed to undertake a fresh exercise for determination of the compensation as per the provisions of the Land Acquisition Act, 1894 and to determine the current market value of the land by publishing a fresh award, which be undertaken within a

period of three months from today.

(iii) All contentions of the parties in this regard are expressly kept open.

125. The petition stands allowed in the aforesaid terms. No costs.

126. In view of disposal of the writ petition, pending Chamber Summonses as well as Interim Application do not survive, and the same is acordingly disposed of.

(RAJESH S. PATIL, J.) (G. S. KULKARNI , J.)