REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.25-36 OF 2018
(Arising out of SLP(C)Nos.10286-10297 OF 2017)

STATE OF TELANGANA AND ORS. ETC. ...APPELLANT(S)

VERSUS

D. MAHESH KUMAR ETC. AND ANR. ...RESPONDENT(S)

WITH

C.A. Nos.37-38/2018 @ SLP(C)Nos.10301-10302/2017

C.A. No.39/2018 @ SLP(C)No.10300/2017

C.A. No.41/2018 @ SLP(C)No.10306/2017

C.A. No.43/2018 @ SLP(C)No.10307/2017

C.A. No.44/2018 @ SLP(C)No.10304/2017

C.A. No.45/2018 @ SLP(C)No.10309/2017

C.A. No.48/2018 @ SLP(C)No.223/2018 @ SLP(C)D.No.20849/2017

O R D E R

1. Leave granted.

2. The main question which arises in the present appeals is whether the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as, "the Act of 2013") has to be read as a part of Section 24(2), or as a proviso to part of Section 24(1)(b). Yet another question which arises is with respect to the meaning to be given to the expression "where an award under Section 11 has been made", as occurring under Section 24(1)(b) of the Act of 2013; whether the date of communication of the award has to be taken as the date on which award has been made and lastly whether the award in the instant case, has been ante-dated.

3. The land acquisition proceedings had been initiated on 09.07.2013 by the issuance of a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894"). On 10.08.2013, the appellants Vaishali Tholia and Another purchased property. As per landowners, no proper inquiry under Section 5-A was held. District Collector, Hyderabad on 26.09.2013, overruled objections. For

determining compensation, notice under Section 9 of the Act of 1894 was issued on 18.10.2013. On 19.10.2013, the declarations under Section 6 of the 1894 Act was issued. After approval of the award, it was purportedly passed on 23.12.2013. The said landowners received notice 26.7.2014 under section 12(2) on 05.08.2014 mentioning therein that the award has been passed on 23.12.2013 and compensation had been determined. When asked to vacate and hand over the premises to the Land Acquisition Collector, the landowners questioned the award dated 23.12.2013 by filing Writ Petitions in the High Court. Learned Single Judge allowed the Writ Petition No.1468/2015 and held that award was made on 23.12.2013 and it was communicated after 01.01.2014, thus, the case would be governed under Section 24(1)(b) of the Act of 2013 and the landowners were not entitled to benefit of the provision of Act of 2013. However, the learned Single Judge further observed that as with respect to the "majority of holding", compensation has not been deposited in the account of landowners as

required by the proviso to Sec.24 (2), as such, they would be entitled to compensation under the Act of 2013.

4. Writ Appeal before the Division Bench was preferred by the State of Telangana. Landowners also filed cross-objections on the ground that award was antedated. The Division Bench of the High Court has held that award is not antedated. The award had been passed on 23.12.2013, and the date of its communication could not be taken to be the date of the award. However, as per proviso under Section 24(2) of the Act of 2013, it has been held that, though the award was passed on 23.12.2013, the landowners were entitled to payment of compensation under the Act of 2013.

5. The learned counsel appearing for the State of Telangana urged that the proviso under Section 24(2) is a part of Section 24(2), and the High Court has erred in treating it as an independent provision. Secondly, it was urged that the award was passed on 23.12.2013,

and its communication was not material; only the signing of the award is material under the Act of 1894. The date of award is the date on which it was made/signed. Thus, the High Court has erred in applying, to the facts of the instant case, the proviso to Section 24(2); and, the instant case was covered by the provisions contained in Section 24(1)(b) of the Act of 2013. Compensation was, thus, payable under the Act of 1894. The High Court has erred in holding otherwise.

6. Learned senior counsel appearing on behalf of the landowners contended that as per proviso to Section 24(2) as compensation was not deposited in respect of "the majority of holdings" in the account of beneficiaries. The provision of the Act of 2013 would apply for determination of compensation. The award was antedated. It was not passed on 23.12.2013; rather, was passed after 01.01.2014. The date of the award has to be taken to be the date of its communication. Even on

that ground, the provisions of the Act 2013 for payment of compensation would be applicable.

7. This Court in the case of *Delhi Metro Rail Corporation Limited (DMRC) v. Tarun Pal Singh and Ors.* decided on 15th November 2017 has considered the first question, with respect to the proviso of Section 24(2) of the Act of 2013. The learned senior counsel, appearing on behalf of the landowners, in this case, was also heard before deciding the question. This Court has decided that as per rules of construction of a proviso has to be read as the part of Section 24(2), and not as independent provision neither a proviso to Section 24(1)(b). It would be applicable, as provided under Section 24(2), with respect to an award passed before five years or more and in a case when compensation has not been deposited in the account of beneficiaries/landholders with respect to the "majority of the holding" and not in a case where award has been passed within five years of the commencement of the Act

of 2013. In case, an award has been passed within five years, the proceedings would continue under the Act of 1894 as if it had not been repealed, as provided in Section 24(1)(b) of the Act of 2013.

8. In *DMRC* (supra), this Court, after quoting from 'Craies on Statute Law', referred to various decisions as also rules of construction in relation to the proviso. The relevant Para of *DMRC* (supra) is extracted hereunder:

> **"8(a) Craies on Statute Law, Seventh Edition referring to various decisions for construction of provisos has observed:**
>
> > **"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."**
> >
> > **"When one finds a proviso to a section," said Lush J. in *Mullins v. Treasurer of Surrey* (1880) 5 Q.B.D. 170, 173, "the natural presumption is that, but for the proviso, the enacting part of**

the section would have included the subject-matter of the proviso."

In *West Derby Union v. Metropolitan Life Assurance Co.* [1897] A.C. 647, 652 Lord Watson said: "I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisos, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light on the ambiguous import of the statutory words."

And Lord Herschell in the same case said: "I decline to read into any enactment words which are not to be found there and which would alter its operative effect because of provisions to be found in any proviso," though he admitted that a proviso may be a useful guide in the selection of one or other of two possible constructions of words in the enactment or to show the scope of the latter in a doubtful case.

In *R. v. Dibdin* [1910] P.57, 125 Moulton L.J. said: "The fallacy of the proposed method of interpretation is not far to seek. It sins against the

fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts, as, for instance, in *Ex p. Partington*, (1844) 6 Q.B. 649, 653, *Re Brocklebank* (1889) 23 Q.B.D 461, and *Hill v. East and West India Dock Co.* (1884) 9 App.Cas.448 have frequently pointed out this fallacy, and have refused to be led astray by arguments such as these which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they appearing in the proviso."

So where section 65 in a group of sections from section 62 onwards in a private Act at the side of which was a note "Sewers – Sanitary arrangements," provided that "nothing in the Act shall authorise the Corporation of Newcastle-on-Tyne to commit a nuisance," and the Improvement Act of 1885 by section 22 authorised the corporation to erect posts, rails, and fences for the protection of passengers and traffic, it was argued that this authority must be read subject to the proviso as to nuisance; but the court held that the proviso affected only the group of sections to which it was attached and was not a proviso to section 22. But sections, though framed as provisos upon

preceding sections, may exceptionally contain matter which is in substance a fresh enactment, adding to and not merely qualifying what goes before."

9. In *DMRC* (supra), this Court has relied on the following decisions:

> **"In *H.E. H.Nizam's Religious Endowment Trust, Hyderabad v. Commissioner of Income-tax, Andhra Pradesh, Hyderabad* AIR 1966 SC 1007; *Kedarnath Jute* Manufacturing *Co. Ltd. v. The Commercial Tax Officer & Ors.*, AIR 1966 SC 12; *Ishverlal Thakorelal Almaula (Deceased) after him his heirs and Legal Representatives v. Motibhai Nagjibhai*, AIR 1966 SC 459; *Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596; *S.Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors.*, (1985) 1 SCC 591; *Dibyasingh Malana v. State of Orissa & Ors*. AIR 1989 SC 1737; *Kush Sahgal & Ors. v. M.C. Mitter & Ors.*, AIR 2000 SC 1390; *Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr.*, (2004) 1 SCC 574; *Romesh Kumar Sharma v. Union of India & Ors.*, (2006) 6 *SCC* 510; *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti & Ors.*, AIR 2009 SC 187 and in Shimbhu & Anr. v. State of Haryana, (2014) 13 SCC 318."**

Ultimately, this Court in the *DMRC* (supra), has observed:

> **"9. What follows from aforesaid enunciation that effect of a proviso is to except all preceding portion of the enactment. It is only**

occasionally that proviso is unrelated to subject matter of preceding section, it may have to be interpreted as a substantive provision. Ordinarily, a proviso is not interpreted as stating a general rule. Provisos are often added as saving clauses. A proviso must be construed with reference to the preceding parts of the clause to which it is appended. The proviso is ordinarily subordinate to the main section. A construction placed on proviso which brings general harmony to the terms of the section should prevail. A proviso may sometime contain substantive provision. Ordinarily, proviso to a section is intended to take out a part of the main section for special treatment. Normally, a proviso does not travel beyond the main provision to which it is a proviso. A proviso is not interpreted as stating a general rule, it is an exception to main provision to which it is carved out as a proviso. Proviso can not be construed as enlarging the scope of enactment when it can be fairly and properly constructed without attributing that effect. It is not open to read in the words of enactment which are not to be found there and which would alter its operative effect.

11.An exception is also carved out by a non-obstante clause contained in Sub-Section (2) of Section 24; it begins with "notwithstanding anything contained in Sub-Section (1)". Thus, it would supersede provisions of section 24(1) also. In case of land acquisition proceedings, initiated under the Act of 1894, wherein an Award has been made within 5 years or more prior to the commencement of the Act of 2013, if physical possession has not been taken or compensation has not been paid, then the said proceedings shall be deemed to have lapsed. The proviso to Sub-Section (2) makes it clear that when the Award has been made and, compensation in respect of majority of holdings has not been deposited in the account of

beneficiaries the acquisition would not lapse. However, all the beneficiaries shall be entitled to enhanced compensation under the Act of 2013. This proviso is to be necessarily part of Sub-Section (2) of section 24 only. The legislative intention is clear that it is enacted as proviso to section 24(2), and otherwise also if read as if it were a proviso to Section 24(1)(b), it would create repugnancy with said provision and the provisions of section 24(1)(b) and proviso to 24(2) would become wholly inconsistent with each other. This is a trite law that the interpretation which creates inconsistency or repugnancy has to be avoided and proviso has to be part of Section 24(2) as enacted. As per fundamental rule of its construction, no contrary intention is available in the provisions so as not to read it as part of Section 24(2). As section 24(1)(b) provides, in case award has been passed under Act of 1894, the proceedings shall continue of the said Act as if it has not been replaced whereas Section 24 (2) provides deemed lapse in case award is passed 5 years or more before commencement of Act of 2013 and possession has not been taken or compensation has not been paid and as per the proviso with respect to majority of holding compensation has not been deposited in account of land owners. In case award has been passed few days before commencement of the Act of 2013, then deposit of compensation with respect to majority of holding is bound to take time, that is why legislature has made difference of consequences based upon time gap in passing of award as requisite steps to be taken are bound to consume some time by providing proceedings to continue under the Act of 1894.

12. Section 24(1) begins with non-obstante clause. The Parliament has given overriding effect to this provision over all other provisions of Act of 2013. Section 24(2) also begins with non-obstante clause. This provision has overriding effect over Section 24(1). It is

apparent that Sub-Section (2) of Section 24 deals with the lapse of acquisition in case the award had been made five years or more prior to commencement of 2013 Act but the physical possession of the land had not been taken or the compensation had not been paid. The provision of Section 24(2) and its proviso together further clarify that, in case the award has been made and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries, then, all the beneficiaries specified in the notification for Acquisition shall be entitled to compensation in accordance with the provisions of Act of 2013. Even if, minority of the claimants are disbursed with the compensation such claimants also would get benefit of compensation under the Act of 2013. Thus it is clear that even if the acquisition does not lapse, all the beneficiaries to whom the compensation is payable would be entitled to compensation under the Act of 2013.

If the proviso to Sub-Section (2) of Section 24 is read as part of Sub-Section (1) of Section 24, the same makes the said provision completely different and inconsistent. When we consider the expression "where an Award under Section 11 has been made" provided under Section 24(1)(b), the proceedings have to continue under the provisions of Act of 1894. If the proviso to Sub-Section (2) of Section 24 read as proviso to Section 24(1), then Section 24(1)(b) will be rendered nugatory and/or becomes otiose. True effect has to be given to the provision contained in Section 24(1)(b) which says that when award under Section 11 has been made, then such proceedings shall continue under the provisions of Land Acquisition Act 1894, as if the said Act has not been repealed.

The three contingencies are provided under Sub-Section (2) of Section 24 i.e. (i) in case if award was passed five years or more prior to the

commencement of Act of 2013 and (ii) if compensation has not been paid, or (iii) possession has not been taken. Exception is carved out by adding the proviso to Section 24(2) - wherein the land acquisition would not lapse, in case some of the land losers are paid compensation but land owners of majority of holding are not paid. Thus we are of the considered opinion that the proviso to Section 24(2) cannot be lifted and made part of Section 24(1)(b).

At the cost of repetition, we observe that reading of Sections 24(1) and 24(2) conjointly & homogenously makes it abundantly clear that they operate in two different fields. Section 24(1)(b) unequivocally indicates that in case the award has been passed under the Act of 1894, all the proceedings shall continue as if the Act of 1894 has not been repealed. Section 24(1)(a) makes the provision of Act of 2013 applicable only in case where the award has not been passed. In other words, it gives a clue that when an award has been passed, obviously further proceedings have to be undertaken under the Act of 1894, to that extent proceedings under the said Act is saved, and the Act of 2013 will not apply. In such cases, there is no necessity of initiation of acquisition proceedings afresh except in cases as provided under Section 24(2). Whereas Section 24(2) would be applicable if the Award under Section 11 of the old Act has been made five years or more prior to commencement of 1894 but physical possession of the land has not been taken or the compensation has not been paid. Proviso to Section 24(2) further makes it clear that in case the compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries, then, all the beneficiaries, specified in the notification for Acquisition shall be entitled to compensation in accordance with the provisions of Act of 2013. The legislature has provided different consequences in

the provisions keeping in mind the time gap as enumerated in Sections 24(1) and 24(2). The legislature has visualized and expected that the things would not happen overnight on passing of an award.

13.We have already clarified supra based on catena of judgments, that a proviso appended to a provision has to be specifically interpreted in the manner so as to enable the field which is covered by the main provision. The proviso is only an exception to main provision to which it has been enacted and no other. The proviso deals with a situation which takes something out of the main enactment to provide a particular course of action, which course of action could not have been adopted in the absence of the proviso.

The proviso appended to Section 24(2) indicates that it carves out an exception for a situation where the land acquisition proceedings shall not be deemed to lapse. Thus, for the applicability of the proviso, a case has to be covered by Section 24(2) i.e. (1) award has been made five years or more prior to the enforcement of the 2013 Act.

The proviso to Section 24(2) contemplates a situation where with respect to majority of the holding compensation not deposited event of minority of holding the landowners are paid, meaning thereby that for majority of the landholding in case amount is deposited acquisition is saved by the proviso. The proviso in fact extends the benefit even to those land holders who have received compensation as per the 1894 Act. Thus all land holders are to receive benefit of higher and liberal compensation under 2013 Act. This situation is one where land acquisition proceedings shall not lapse and are saved. The purpose and object of the proviso is to give benefit of computation of compensation to all landholders and to save land acquisition proceedings. Hence, it is evident that the proviso

is appropriately be treated as a proviso to Sub-Section (2) of Section 24 and cannot be read as proviso to Section 24(1)(b) of Act of 2013."

10. Thus, for the aforesaid reasons in the instant case, the first question raised is answered against the landowners, and we set aside the decision of the High Court and hold that the compensation would be payable as per the provisions contained in the Act of 1894.

11. Coming now to the question of the award being antedated. The Single Bench, as well as the Division Bench, of the High Court, has rightly found that award is not antedated. It was pronounced on 23.12.2013; there is a presumption of correctness of official acts under Section 114(e) of Evidence Act the anti-dating has not been proved, the notices issued under section 12(2) were received on different dates by the landowners. The purchasers after the notification issued under Section 4 of the Act of 1894; had received the notice a little later; however, that would not make

any difference with respect of the date of the award being 23.12.2013. Original records have also been perused by the High Court, and the finding on facts recorded is that the award had not been antedated. We fully endorse the said finding. We have no hesitation to reject the contention to the contrary, advanced on behalf of the landowners.

12. Coming next to the third question i.e. what date is to be taken as the 'effective date' of the award; whether the date on which it was made or the date on which it was communicated, in the instant case, it was signed on 23.12.2013. Basing their arguments upon the factum of communication of the award having been made vide notice under Section 12(2) of the Act of 1894 subsequent in point of time to the coming into force of the Act of 2013, it was contended that compensation becomes payable under the Act of 2013.

13. When we consider the provisions contained in the Act of 1894 the following statutory scheme comes to fore, Section 11 deals with the passing of awards by the Collector; sub-section (1) of Section 11 provides enquiry; and, the first proviso to Section 11(1) makes it mandatory for the Collector to obtain approval from the appropriate Government or from such officers as the appropriate Government may appoint. Section 11-A provides the period within which the Land Acquisition Collector under Section 11 shall make the award; it has to be made within the period of two years from the date of a declaration made under Section 6. It is also provided that if an award is not made within the period of two years, the land acquisition proceedings shall lapse. The explanation appended to Section 11-A of the Act of 1894 provides that while computing the aforementioned period of two years, a period during which any action or proceedings, to be taken pursuant to the declaration under Section 6, is stayed by the

order of the Court, shall be excluded. Section 11-A is extracted hereunder:

> **"Section 11-A Period within which an award shall be made – (1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:**
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> **Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1894, the award shall be made within a period of two years from such commencement.**
>
> **Explanation-In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."**

14. Section 12(1) provides that award shall be filed in the collector's office, and the same shall be final and conclusive evidence as between Collector and the persons interested; and, the section mandates, that this would be the position regardless of whether such interested person has appeared before the Collector or not. Next, Section 12(2) requires the Collector to give immediate notice of the award to such interested

persons as were not present personally or through their representatives, when the award had been made. Section 12 of the Act of 1894 is extracted hereunder:

> **"Section 12 Award of the Collector when to be final – (1) Such award shall be filed in the Collector's office and shall, 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 apportionment of the compensation among the persons interested.**
>
> **(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."**

15. It is apparent, from a conjoint reading of Sections 11-A and 12, that when the award is made, the period of limitation of two years for passing of award is to be adhered to, as provided in Section 11-A, it has to be computed from the date in terms of provisions of Section 12 read with Section 6; and none of the provisions is dependent upon the service of notice under Section 12(2) on the such of the interested

persons as were not present when the award had been made.

16. In discerning the statutory scheme with regard to the question at hand, Section 18 of the Act of 1894 is also relevant. Section 18 provides for the grounds on which Collector can make Reference to the Court on behalf of any interested person. The first proviso of Section 18(2) requires of a person who was present when the award had been made to seek the reference within six weeks from the date of the Collector's award. The second proviso of Section 18(2) provides for all cases other than the one provided for by the first proviso; six weeks from the date of receipt of the notice from the Collector under Section 12(2), or within six months from the date of the Collector's award which is to be treated as date of knowledge whichever period first expire. Thus, the date of passing of Collector's award has been legislatively provided for to be the date on which it is made. Communication is relevant only for

the purpose of computing the period of limitation within which reference can be sought. Section 18 of the Act of 1894 is extracted hereunder:

> **"Section 18 Reference to Court – (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.**
> **(2) The application shall state the ground on which objection to the award is taken:**
> **Provided that every such application shall be made, -**
> **(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;**
> **(b) In other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section(2), or within six months from the date of the Collector's award, whichever period shall first expire."**

17. No period is provided for seeking reference under Section 30, which is on limited grounds not as wide as the one under Section 18. Under Section 18 measurement and quantum of compensation can be also be questioned

whereas it is not so under Section 30 in that apportionment and entitlement of compensation between interested persons can be raised.

18. In view of the aforementioned statutory scheme provided for by the legislature, in our considered opinion, date of communication of an award cannot be said to be the 'date of the award' as suggested on behalf of the landowners.

19. Reliance has been placed by the landowners on a three Judges' Bench decision in *State of Punjab v. Mst. Qaisar Jehan Begum and another* AIR 1963 SC 1604 so as to contends that date of effective communication would be relevant as per concept of fair play and natural justice and the proviso to Section 18(2) means the date when the award is communicated or is known by him actually or constructively. Knowledge of the award means knowledge of the content of the award. This Court has referred to decision in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and*

***another AIR 1961 SC 1500*. The question arose whether reference sought was within limitation, the landowners were neither present nor were represented before the Collector when the award was made. No notice under Section 12(2) was issued. In the aforesaid context, this Court considered the decision in *Raja Harish Chandra* (Supra) that literal meaning of six months from the date of Collector's award would not be appropriate. The exception in the proviso must be the date of the award communicated to either party or was known by him either actually or constructively. This Court has discussed the question as:**

> **"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 [(1903) I.L.R. 30 Cal. 36.]. 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 MANU/PR/0013/1905 (1905) I.L.R. 32Cal. 605, 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."

This Court has made aforesaid observation clearly in the context of period of limitation during which reference is provided under Section 18 read with Section 12(2) of the Act of 1894. This Court was not concerned at all in the said decision what date is to be taken as the date of award. The decision is distinguishable and cannot be said to be applicable.

20. Reliance has also been placed on *Dr. G. H Grant v. The State of Bihar* AIR 1966 SC 237. The Court observed:

"12. After a notification is issued under s. 6 of the Land Acquisition Act, the appropriate Government may acquire the land notified in the manner set out in Sections 7 to 16 Section 9 provides for an enquiry into the area of the land, into compensation which is payable and apportionment of compensation. The Collector is by s. 11 authorised to make an award setting out the true area of the land, the compensation which, in his opinion, should be allowed for the land and the apportionment of the said compensation among all the persons known or believed to be interested in the land, or of whose claims, he has information, whether or not they have respectively appeared before him. The award, when filed in the Collector's office, becomes 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 apportionment of compensation among the persons interested. The land vests absolutely in the Government, free from all encumbrances when possession is taken by the Collector under s. 16. By s. 17 authority is conferred upon the Collector, when in cases of urgency the appropriate Government so directs, to take possession of waste or arable land even before making an award. Section 48 authorises the Government to withdraw from the acquisition any land of which possession has not been taken. By S. 18 the Collector is enjoined to refer to the District Court for determination, objections as to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment thereof amount the persons interested. Part IV deals with apportionment of compensation. If the persons interested agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award (s. 29) : if there be no such agreement, the Collector may, if a dispute arises as to the apportionment of the compensation

or any part thereof or as to the persons to whom the same or any part thereof is payable, refer such dispute under s. 30 for decision by the court. Part V of the Act which contains Sections 31 to 34 deals with payment of compensation. Under s. 31 the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award. By the third proviso to sub-sec. (2) of s. 31, liability of any person, who may receive the whole or any part of the compensation awarded under the Act, to pay the same to the person lawfully entitled thereto, is not affected. Sections 32 & 33 deal with investment of money deposited in respect of land belonging to persons incompetent to alienate the land and in other cases, but with these, we are not concerned. Section 34 obliges the Collector to pay interest at the rate of six per centum per annum if compensation is not paid or deposited on or before taking possession of the land from the time of taking possession until it is so paid or deposited.

13. There are two provisions Sections 18(1) and 30 which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By sub-s. (1) of s. 18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed by sub-s. (2) of that section of a person interested who has not accepted the award. Section 30 authorises the Collector to refer to the Court after compensation is settled under S. 11, any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is

served under sub-S. (2) of S. 12, must, if he does not accept the award, apply to the Collector within the time prescribed under S. 18(2)AND ACQUISITION ACT, 1894^ to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference under S. 30, for determination of his right to compensation which may have existed before the award, or which may have developed upon him since the award. Whereas under S. 18 an application made to the Collector must be made within the period prescribed by sub-S. (2) Clause (b), there is no such period prescribed under S. 30. Again under s. 18 the collector is bound to make a reference on a petition filed by a person interested. The Collector is under s. 30 not enjoined to make a reference: he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award."

21. It is apparent from the aforesaid discussion that date of award is final and conclusive and there cannot be different dates of award with respect to different persons based on date of its communication. It is not provided under the scheme of the Act of 1894. In *Mrs. Khorshed Shapoor Chenai and Others v. Assistant Controller of Estate Duty, Andhra Pradesh and Others*

(1980) 2 SCC 1 this Court considered the right to receive compensation for acquisition of land in the Act of 1894 it observed that there was no separate right to receive further compensation after Collector's award and right to challenge award in further proceedings would be part of right to receive compensation. This Court has explained the nature of the Collector's award under Section 11 of the Act of 1894. Right to compensation does not merge in the award. The payment can indicate the correctness of award because the right to compensation is not fully redeemed. The decision does not espouse the proposition urged by the landowners.

22. In *Kaliyappan v. State of Kerala and others* (1989) 1 SC 113 this Court considered the date of the award under Section 11-A. This Court held that limitation period of two years for making an award is to be computed from the date of the declaration under Section 6 till signing of the award and not till service of the

notice of the award to the person whose land is acquired. This Court has considered earlier decision in *Raja Harish Chandra (Supra)* also and has held:

> **"4. Part III which deals with reference to Court and procedure thereon opens with s. 18. Section 18(1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by him for determination of the Court, inter alia, whether the amount of compensation is adequate or not. It is under this provision that the appellant made an application from which the present appeal arises. Section 18(2) requires that the application shall state the grounds on which objection to the award is taken. These grounds have been stated by the appellant in his application. The proviso to s. 18 deals with the question of limitation. It prescribes that every such application shall be made (a) if the person making it was present represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award; (b) in other cases within six weeks of the receipt of the notice from the Collector under s. 12(2), or within six months from the date of the Collector's award whichever shall first expire. The appellant's case falls under the latter part of clause (b) of the proviso. It has been held by the Allahabad High Court that since the application made by the appellant before respondent 1 was made beyond six months from the date of the award in question it was beyond time. The view taken by the High Court proceeds on the literal construction of the relevant clause. As we have already seen the award was signed and delivered in his office by respondent 1 on March 25, 1951, and the application by the appellant was made under s. 18 on February 24, 1953. It has been**

held that the effect of the relevant clause is that the application made by the appellant is plainly beyond the six months permitted by the said clause and so respondent 1 was right in rejecting it as barred by time. The question which arises for our decision is whether this literal and mechanical way of construing the relevant clause is justified in law. It is obvious that the effect of this construction is that if a person does not know about the making of the award and is himself not to blame for not knowing about the award his right to make an application under s. 18 may in many cases be rendered ineffective. If the effect of the relevant provision unambiguously is as held by the High Court the unfortunate consequence which may flow from it may not have a material or a decisive bearing. If on the other hand, it is possible reasonably to construe the said provision so as to avoid such a consequence it would be legitimate for the Court to do so. We must, therefore, enquire whether the relevant provision is capable of the construction for which the appellant contends and that naturally raises the question as to what is the meaning of the expression "the day of the Collector's award".

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 [(1903) I.L.R. 30 Cal. 36.]. 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 MANU/PR/0013/1905 (1905) I.L.R. 32Cal. 605, 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."

23. In *Bailamma (Smt) Alias Doddabailamma (Dead) and Others v. Poornaprajna House, Building Cooperative Society and Others (2006) 2 SCC 416* this Court has held that the signing of the award is material and not the presence of the incumbents. Date of signing of the award is to be taken as the date of the award. This Court has held thus:

"5. The award was challenged by the appellants herein contending that there was nothing on record to indicate that after approval was granted by the Government the Collector signed the award. The contention was that Section 11 read with Section 11A of the Act provided that after the award is approved by the Government, the Collector can make an award, meaning thereby, that after the award submitted by the Collector is approved by the Government, the Collector must formally sign the

award as approved and inform the parties concerned. If he fails to do so within the period prescribed by Section 11A of the Act the entire proceeding for the acquisition must lapse. The learned single Judge who heard the writ petition upheld the contention of the respondents and quashed the acquisition proceedings. Appeals were preferred by the State of Karnataka and other interested parties to the High Court which were initially placed for disposal before a division bench of the High Court which referred it to a larger bench since it appeared to the learned judges that an earlier division bench judgment of the High Court in Writ Petition No. 4244 of 1989, which took the view that Section 11A will be satisfied if approval is granted by the Government within the specified period to the award made by the Collector, required reconsideration. That is how the matter came up for hearing before a bench of three learned judges of the High Court."

24. In *Premji Nathu v. State of Gujarat and Another* (2012) 5 SCC 250 this Court has observed that notice issued under Section 12(2) should accompany a copy of the award, to be supplied to the landowner who is not present or not represented before the Collector at the time of making of the award. Whereas there is no such requirement under Section 12(2) to send copy of award. Other decisions also indicate that there is no need of supplying a copy of the award along with a notice under

Section 12(2) of the Act of 1894. But this is not the question involved in the case, as such; it is not necessary to examine correctness of decision in *Premji Nathu* case. This Court was not concerned in *Premji Nathu case* (supra) with question what date is to be taken as the date of the award under Section 11-A. Thus, decision is of no avail to landowners, to invoke the provisions of the Act of 2013.

25. In *Bhagwan Das and Others v. State of Uttar Pradesh and Others* (2010) 3 SCC 545 this Court has considered the proviso contained in clause (b) of Section 18 of the Act of 1894 and has observed that if person interested was not present when the award was made, and if he does not receive notice under Section 12(2) from Collector, he can make application within six months of the date on which he actually or constructively came to know about contents of the award. This Court held that the expression six months from date of Collector's

award is not to be literally construed but from the date of knowledge of award. This Court has observed:

> **"26. If the words six months from the "date of the Collector's award" should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under Section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the landowner as required under Section 45 of the Act. If the words "date of the Collector's award" are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award.**
>
> **27. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300-A of the Constitution of India. To avoid such consequences, the words "date of the Collector's award" occurring in proviso (b) to Section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award.**
>
> **28. The following position, therefore, emerges from the interpretation of the proviso to Section 18 of the Act.**
>
> **(i) If the award is made in the presence of the person interested (or his authorized representative), he has to make the application**

within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorized representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under Section 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under Section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under Section 12(2) of the Act was the date of knowledge of the contents of the award."

It is apparent that this Court has distinguished between the date of the award and the date of the knowledge. Date of knowledge is material for the purpose of seeking the reference but the date of award remains static and final.

26. Resultantly, the date of award in the instant case has to be taken as 23.12.2013. Thus, the provisions of

the Act of 1894 would be applicable as provided under Section 24(1)(b) the proceedings shall continue under the provisions of the said Act as if it has not been repealed, though notice of award is served when the Act of 2013 has come into force.

27. Impugned orders passed by the High Court are set aside. Appeals filed by the State Government of Telangana are allowed and the appeals preferred by the landowners are hereby dismissed. Compensation would be payable under the Act of 1894 not under the Act of 2013. Parties to bear their own costs.

……J.
(ARUN MISHRA)

……J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI,
NOVEMBER 21, 2017

ITEM NO.9 COURT NO.10 SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).10286-10297/2017

(Arising out of impugned final judgment and order dated 16-11-2016 in WA Nos.259 & 260 of 2015 and 12, 13, 14, 15, 16, 17, 22, 25, 123 & 135 of 2016 passed by the High Court Of Judicature At Hyderabad for the State of Telangana and the State of Andhra Pradesh)

STATE OF TELANGANA & ORS.ETC.ETC. Petitioner(s)

VERSUS

D. MAHESH KUMAR ETC.ETC. & ANR. Respondent(s)

WITH
SLP(C) No. 10301-10302/2017 (XII-A)
SLP(C) No. 10300/2017 (XII-A)
SLP(C) No. 10306/2017 (XII-A)
SLP(C) No. 10307/2017 (XII-A)
SLP(C) No. 10304/2017 (XII-A)
SLP(C) No. 10309/2017 (XII-A)
SLP(C)No.223/2018 @ Diary No(s).20849/2017-(with appln.(s) for c/delay in filing SLP)

Date : 21-11-2017 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) **Mr. Krishan Venugopal,Sr.Adv.**
Mr. Mayur Reddy,Adv.
Mr. Ashish Rana,AOR
Mr. Shaveer Ahmed,Adv.
Mr. Shivendre Singh,Adv.
Ms. Deepanshi Ishar,Adv.

Mr. Neeraj Kishan Kaul,Sr.Adv.
Mr. J. Ramchandra Rao,AAG
Mr. P. Venkat Reddy,Adv.
Mr. Prashant Kr. Tyagi,Adv.
For M/s. Venkat Palwai Law Associates,AOR

Mr. S. Udaya Kumar Sagar,AOR

For Respondent(s) **Mr. A.T.M. Sampath,AOR**
Mr. Rahul Nagpal,Adv.

Mr. V. Giri,Sr.Adv.
Mr. V. Seshagiri,Adv.
Mr. Adhish Rajvanshi,Adv.
Ms. Anushka Sharma,Adv.
Mrs. Bela Maheshwari,AOR

Mr. Annam D.N. Rao,AOR
Mr. Sudipto Sircar,Adv.
Mr. Rahul Mishra,Adv.
Ms. Tulika Chikker,Adv.
Mr. Annam Venkatesh,Adv.

Mr. K. Maruthi Rao,Adv.
Ms. K. Radha,Adv.
Mrs. Anjani Aiyagari,AOR

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The appeals filed by the State Government of Telangana are allowed and the appeals preferred by the landowners are dismissed in terms of the signed Reportable order. Pending applications stand disposed of.

Parties to bear their own costs.

(Sarita Purohit) **(Jagdish Chander)**
Court master **Branch Officer**

(Signed Reportable order is placed on the file)