

Before S.S. Saron, Rajiv Narain Raina and Lisa Gill, JJ. (FB)

DEEPAK AGGARWAL AND ANOTHER—Petitioners

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.4371 of 2015

August 31, 2017

(A) Constitution of India, 1950 – Art. 226 – Land Acquisition Act, 1894 – Ss. 4, 5-A and 6 – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Ss. 24 and 114 – General Clauses Act, 1897 – S.6 – Notification under Section 4 of 1894 Act – It cannot be said that acquisition proceedings ‘initiated’ as contemplated by Section 24 (1) of 2013 Act – Proceedings for acquisition can be said to be initiated only after due application of mind i.e. stage of declaration under Section 6 of 1894 Act – In case acquisition proceedings were ‘initiated’ under 1894 Act, but no award under Section 11 made, then provisions of 2013 Act relating to determination of compensation are to apply – Notification published under Section 4 of 1894 Act in Official Gazette but in the newspaper after the commencement of 2013 Act i.e. 01.01.2014 – Not sustainable as last date of such publication and giving of public notice is to be taken as the date of publication of notification – Hearing of objections under Section 5-A and publication of notification under Section 6 of 1894 Act impermissible after 01.01.2014 – Proceedings under the Old 1894 Act cannot be said to have been ‘initiated’ with the issuance of the notification under Section 4.

Held that, it cannot be said that the acquisition proceedings had been ‘initiated’ as contemplated by Section 24 (1) of the New 2013 Act as the notification under Section 4 of the Old 1894 Act had been issued before the coming into effect of the New 2013 Act from 01.01.2014. Section 24 of the New 2013 Act relates to land acquisition process under the Old 1894 Act to be deemed to have lapsed in certain cases. The said heading of Section 24 is for providing of lapse of proceedings under the Old 1894 Act in certain cases. Sub-section (1) (a) thereof mentions that notwithstanding anything contained in the New 2013 Act, in any case of land acquisition proceedings initiated under the Old 1894 Act, where no award under Section 11 of the Old 1894 Act had been made, then all provisions of the New 2013 Act relating to the

determination of compensation are to apply. Therefore, for the applicability of the provisions of clause (a) of sub-section (1) of Section 24 of the New 2013 Act are that the proceedings under the Old 1894 Act must have been initiated. It is only then that where no award under Section 11 of the Old 1894 Act had been made, then, the provisions of the New 2013 Act for determining the payment of compensation are to apply. Initiation of proceedings under the Old 1894 Act is a sine qua non for the applicability of the New 2013 Act for the purpose of determining the payment of compensation. With the mere issuance of notification under Section 4 of the Old 1894 Act on 28.10.2013 before the New 2013 Act came into force from 01.01.2014, it cannot be said that the land acquisition proceedings had been initiated and consequently the Award having not been passed, the provisions relating to the determination of compensation in terms of the new 2013 Act were to apply. In fact, it is the declaration under Section 6 of the Old 1894 Act which has an element of firmness of the proposed acquisition being finalized that it can be said that the acquisition proceedings had been initiated. What was a mere proposal under Section 4, it was said, becomes the subject-matter of a definite proceeding for the acquisition under the Old 1894 Act. The declaration under Section 6 having been issued on 27.10.2014 after the New 2013 Act had come into effect would clearly spell out that the land acquisition proceedings had not been initiated under the Old 1894 Act before the New 2013 Act came into force.

(Para 93)

Further held that, the provisions of Section 24(1) of the new 2013 Act would not apply and the acquisition proceedings being conducted under the Old 1894 Act shall be deemed to have lapsed. The provisions of Section 114 of the New 2013 Act also envisage that the Old 1894 Act had been repealed. This would mean that it had been repealed with the coming into force of the new 2013 Act from 01.01.2014. Sub-section (2) of the Section 114 of the new 2013 Act would not be held to prejudice or affect the general application of Section 6 of the 1897 GC Act with regard to the effect of repeals. Clause (c) of Section 6 of the 1897 GC Act, which is relevant for the present controversy, envisages that where any Central Act repeals any enactment hitherto made or hereafter to be made, unless a different intention appears, the repeal shall not effect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The applicability of Section 6 of the 1897 GC

Act would not be relevant as the land acquisition proceedings with the mere issuance of Section 4 notification before the new 2013 Act had come into operation, it has been held, would not amount to initiating the acquisition proceedings under the Old 1894 Act.

(Para 94)

(2) *Notification issued under Section 4 of the Old 1894 Act before the appointed day of 01.01.2014 would not continue to remain operative in view of Section 6 or by virtue of Section 24 of the 1897 GC Act.*

Held that, as has already been noticed and considered above, the notification issued under Section 4 of the Old 1894 Act before the appointed day i.e. 01.01.2014 would not continue to remain operative in view of Section 6 of the 1897 GC Act. This for the reason that Section 6 of the 1897 Act is not to be read in isolation and it is to be considered in the context of Section 24(1) of the new 2013 Act. The provisions of the Old 1894 Act that have been repealed would continue to be operative in case proceedings under the Old 1894 Act had been initiated before the nominated day of 01.01.2014 and not otherwise. Therefore, in a case where a declaration under Section 6 of the Old 1894 Act is published and notified before 01.01.2014, the proceedings under the Old 1894 Act can well be said to have been initiated in view of Section 24(1)(a) of the New 2013 Act and in a case where no award under Section 11 of the Old 1894 Act had been made, then all provisions of the New 2013 Act relating to the determination of compensation are to apply. The payment of compensation is also subject to the proviso that where an award had been made and compensation in respect of majority of land holdings had not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the Old 1894 Act shall be entitled to compensation in accordance with the provisions of the New 2013 Act.

(Para 98)

Further held that, therefore, the notification issued under Section 4 of the Old 1894 Act before the appointed day would not continue to remain operative in view of Section 6 read with Section 24 of the 1897 GC Act as an entirely new beneficial legislation has come into effect which must be read in favour of those for whose benefit it is intended. This, however, would not take within its ambit a case where proceedings for Acquisition under the Old 1894 Act had been initiated,

as properly understood, before the appointed day, which proceedings, as already noticed would commence with the issuance of publication of a declaration under Section 6 of the Old 1894 Act for the purpose of acquisition.

(Para 105)

(3) *Notification published under Section 4 of the Old 1894 Act in the Official Gazette, but published in the newspapers later i.e. after the commencement of the New 2013 Act on 01.01.2014 is not sustainable in law – Further last date of notification on the basis of which the process of publication can be said to be complete is to be considered.*

Held that, a notification published under Section 4 of the Old 1894 Act in the official Gazette but in the newspaper later after the commencement of the New 2013 Act on 01.01.2014 would not be sustainable in law as the last dates of such publication and the giving of such public notice is to be taken as the date of the publication of the notification. It is only on the publication of the last of the notification that it can be said that there was notice to the affected parties so as to enable them to file objections.

(Para 112(g))

(4) *Hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act is not permissible after its repeal and after the commencement of the New 2013 Act from 01.01.2014.*

Held that, hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act would not be permissible after its repeal and after commencement of the New 2013 Act from 01.01.2014 as the proceedings cannot be said to have been 'initiated' under the Old 1894 Act in case the declaration under Section 6 thereof had not been issue and it is only when the declaration is issued that the land acquisition process can be said to have been 'initiated'. In other words, in case a declaration in terms of Section 6 of the Old 1894 Act is not notified before 01.01.2014, the land acquisition proceedings cannot be said to have been initiated and therefore, would lapse by virtue of Section 24(1) of the New 2013 Act.

(Para 112(h))

(5) ***General Clauses Act, 1897 – S.6 – Effect of repeal – Object of repeal is to obliterate the Act from the statute books, except for certain purposes provided under Section 6.***

Held that, Section 6 of the 1897 GC Act provides for effect of repeal. It is provided Act therein wherein the 1897 GC Act or any Central Act or Regulations made after the commencement of the 1897 GC Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears. The repeal shall not affect the circumstances as enumerated in clauses (a) to (e) therein. Clause (b) provides that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. A repeal of an enactment is generally to put an end to the law as if the law repealed had never existed. The object of repeal is to obliterate the Act from the statute books, except for certain purposes as provided for under Section 6 of the 1897 GC Act. The intention of the legislature is to be gathered as to what is the purpose and object of the repeal. Such an intention can be ascertained from the express provisions of the later legislation or by the necessary implications coming from therein. It is to be ascertained from the later statute as to whether the intention of the legislature was to put an end to the earlier enactment in its entirety or in part only.

(Para 95)

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for the petitioners in CWP No.8963 of 2015.

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for respondent No. 3 - HSIDC.

S.S. SARON, J.

(1) This judgment and order will dispose of the reference made to the Full Bench by a Division Bench of this Court on 18.08.2015 in the case of *Deepak Aggarwal and another v. State of Punjab and others*, CWP No. 4371 of 2015. The facts are taken from the said writ petition although counsel appearing in the connected petitions, have also made submissions which are being considered and adjudicated upon.

(2) The petitioners - Deepak Aggarwal and another by way of the petition under Articles 226/227 of the Constitution of India seek quashing of the notification dated 28.10.2013 issued by the Government of Haryana (Industries and Commerce Department) under Section 4 of the Land Acquisition Act, 1894 ('Old 1894 Act' - for short) and also the notification/ declaration dated 27.10.2014 issued by the Haryana Government under Section 6 of said the Old 1894 Act.

(3) The petitioners owned and possessed land measuring 5.03 acres in village Tepla, Tehsil Saha, District Ambala. Both the petitioners are 50% co-sharers of the acquired land along with their wives Mrs. Madhu Aggarwal and Mrs. Sunita Aggarwal who also are joint owners of land measuring 19 kanal 12 marlas. The respective holdings of the petitioners have been described in the petition along with a supporting map of the site.

(4) The Government of Haryana had earlier on 23.12.2005 issued a notification under Section 4 of the Old 1894 Act proposing to acquire land measuring 278 acres 1 kanal situated in villages Dhakola, Saha, Tepla and Jawahargarh for the purpose of setting up a Growth Centre at Saha. (The said acquisition proceedings are hereinafter are referred to as the 'previous acquisition proceedings' - for short). According to the petitioners, no publication of the substance of the notification dated 23.12.2005 issued under Section 4 of the Old 1894 Act was carried out in the locality as required by the mandatory provisions of the Old 1894 Act. No 'munadi' (proclamation) was

carried out in the locality in respect of the land which was to be acquired and neither was the notification issued under Section 4 of the Old 1894 Act, pasted at a convenient place.

(5) The petitioners, namely, Deepak Aggarwal and Kalyan Aggarwal, in any case, filed objections before the Sub Divisional Officer- cum-Land Acquisition Collector ('Collector' - for short) under Section 5-A of the Old 1894 Act against the said notification dated 23.12.2005. In the proceedings under Section 5-A of the Old 1894 Act, the Collector, it is submitted, without issuing any notice to either of the petitioners fixed a purported date of hearing of the objections as 01.04.2006. On the said purported and unannounced date of hearing of objections of which the petitioners even were unaware, they could not put in appearance before the Collector and neither could they lead any evidence to support and substantiate their objections. The Collector, however, prepared a report under Section 5-A of the Old 1894 Act and submitted it to the State Government. The Collector, in fact, received 901 objections and it was humanly impossible for such huge number of objections/objectors to be heard on a single day. There was no mention of any individual and/or personal notices having been issued to the land owners in the report that was filed.

(6) The Government of Haryana in the 'previous acquisition proceedings' issued a notification under Section 6 of the Old 1894 Act on 29.12.2006 in relation to the lands including the land owned by the petitioners. The petitioners along with others on 20.01.2008 filed a writ petition, i.e. CWP No. 1048 of 2008, in this Court assailing the notifications dated 23.12.2005 issued under Section 4 and dated 29.12.2006 issued under Section 6 of the Old 1894 Act. This Court in the said petition issued notices to the respondents and stayed the dispossession of the petitioners from their land. The Government of Haryana thereafter in exercise of powers under Section 48 of the Old 1894 Act decided to release a huge chunk of land which was similarly situated as the land in dispute.

(7) The Collector in the meanwhile in the 'previous acquisition proceedings' passed his Award in respect of the land in question on 15.11.2006. This Court, however, on 16.12.2010 allowed the writ petition, i.e. CWP No. 1048 of 2008, filed by the petitioners and others. It was *inter alia* held that no effective opportunity of hearing had been granted to the petitioners. Therefore, the acquisition proceedings were held to be unsustainable in law. The judgment of this Court passed on 16.12.2010, quashed the notifications under Sections 4 and 6 of the Old

1894 Act only in respect of the petitioners in the said writ petition.

(8) The petitioners along with their wives after the quashing of the notifications in the 'previous acquisition proceedings' on 31.03.2011 applied to the Director, Town and Country Planning, Haryana, Chandigarh for permission to change the existing use of land for the purpose of developing the same into "building for warehouse other than agriculture in industrial backward area of medium potential at Tepla village, Ambala Cantt.". Various documents along with the application including a draft of Rs.2,98,000/- was submitted. The Executive Engineer, Haryana, PWD (B&R), Ambala on 29.03.2011 granted a 'no objection certificate' for the construction of an approach road/path to the land of the petitioner. The Director, Town and Country Planning, Haryana, Chandigarh on 09.12.2011 wrote to the petitioners *inter alia* stating that their application for 'Change of Land Use' ('CLU' - for short) had been rejected, as the area applied for stood acquired by the Haryana Industries Department for which an Award had been announced on 15.11.2008. In fact, according to the petitioners, the 'previous acquisition proceedings' had been quashed by this Court vide judgment dated 16.12.2010. The petitioners, therefore, filed an application on 14.05.2012 for review of the order dated 09.04.2012 in terms of which the application for CLU had been rejected. The review application of the petitioners was rejected on 29.01.2013. The petitioner, aggrieved against the rejection of their review application, filed an appeal before the learned Principal Secretary, Government of Haryana which was remanded back to the Director, Town and Country Planning, Haryana on 01.10.2013 for a fresh decision within a period of three months.

(9) The Government of India during this period notified the date 01.01.2014 to be the 'appointed date' for coming into effect, 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' ('New 2013 Act' - for short). The Government of Haryana realizing that the financial implications for acquiring the land under the New 2013 Act would be very cumbersome and costly issued notifications under Section 4 of the Old 1894 Act. The said act of the Government of Haryana, according to the petitioners, was a mere ploy to wriggle out of the added responsibilities under the New 2013 Act.

(10) The Government of Haryana once again portraying its mala fide intentions to acquire the land at a lesser rate under the Old 1894 Act, it is alleged, issued a fresh notification under Section 4 of the Old

1894 Act on 28.10.2013 for acquiring a total of 43.09 acres of land including the 50% shares of the petitioners for public purpose viz. Development of Industrial Growth Centre, Saha and Integrated Industrial Complex, Saha.

(11) The petitioners filed their objections under Section 5-A of the Old 1894 Act against the impugned notification dated 28.10.2013 issued under Section 4 of the Old 1894 Act on 26.11.2013. A specific objection was raised to the effect that the impugned notification had been issued in a hurry with the sole motive to defeat the legal and valuable rights of the petitioners. Besides, other objections were also raised including that they had applied for CLU. It was also stated that the decision on their CLU application was still *sub judice* before the Director, Town and Country Planning Department, Haryana. The Director, Town and Country Planning Department, Haryana, however, on 31.01.2014 again rejected the application of the petitioners on the ground that their lands had been reacquired. It is submitted that the earlier application for CLU was rejected on the erroneous ground that their land stood acquired under the 'previous acquisition proceedings', when in fact the acquisition proceedings had been quashed by this Court.

(12) According to the petitioners, the New 2013 Act came into force on 01.01.2014 and till that time no 'Award' had been passed under the Old 1894 Act, which in any case stood repealed by virtue of Section 114 of the New 2013 Act. The petitioners and others were, however, issued notices on 29.01.2014 to appear before the Land Acquisition Collector so that their objections filed on 26.11.2013 could be considered. The Land Acquisition Collector on 18.03.2014 passed a single order/report deciding the objections filed by the petitioners as well as fifty-three others in relation to the acquisition of land in villages Saha, Dhakola, Tepla, Jawhargarh, Bitha and Shergarh. All the objections taken by the land owners were rejected. The Land Acquisition Collector dismissed the objections regarding the repeal of the Old 1894 Act. On a query made by the petitioners, the Land Acquisition Collector replied on 05.08.2014 that the 'previous acquisition proceedings' in respect of Mrs. Madhu Aggarwal and Mrs. Sunita Aggarwal would stand and the present acquisition proceedings would be applicable in the case of the petitioners. Therefore, according to the petitioners, without there being any partition proceedings with respect to the land in dispute, the respondents sought to acquire one piece of land in a haphazard manner from multiple

owners under separate acquisition proceedings.

(13) The Government of Haryana thereafter on 27.10.2014 issued a notification under Section 6 of the Old 1894 Act in respect of land measuring 39.27 acres including that of the petitioners. The wives of the petitioners, namely, Mrs. Madhu Aggarwal and Mrs. Sunita Aggarwal filed a writ petition i.e. CWP No.1796 of 2015 in this Court challenging the 'previous acquisition' notification dated 23.12.2005 under Section 4 and the declaration dated 29.12.2006 under Section 6 of the Old 1894 Act. The petition was filed by the wives of the petitioners on the ground that the notifications had lapsed qua the petitioners in view of Section 24 (2) of the New 2013 Act. In fact they were constrained to file the writ petition as the earlier writ petition i.e. CWP No.1048 of 2008 which was allowed on 16.12.2010 was only in respect of the petitioners in that particular writ petition. The respondents were, however, treating the earlier acquisition to be valid in respect of the wives of the petitioners. Notice of motion was issued by this Court in the said writ petition (CWP No.1796 of 2015) on 02.02.2015; besides, status quo was ordered to be maintained regarding the acquired land.

(14) The petitioners now assail the notification dated 28.10.2013 and the declaration dated 27.10.2014 issued under Sections 4 and 6 respectively of the Old 1894 Act. It is submitted that the notification dated 28.10.2013 issued under Section 4 of the Old 1894 Act was issued less than two months before the New 2013 Act came into force w.e.f. 01.01.2014. There was in fact no time left to publish the final declaration under Section 6 of the Old 1894 Act before 01.01.2014. The Section 4 notification under the Old 1894 Act according to the petitioners was a ploy to prevent them from taking the benefits under the new legislation i.e. New 2013 Act. The present acquisition proceedings, it is submitted, are nothing but a colourable exercise of power. An act is liable to be done in the manner provided by the statute and in no other manner. Therefore, since the land in question, could not in any manner have been acquired after the publication of the notification dated 28.10.2013 under Section 4 of the Old 1894 Act, the only lawful course was to acquire the lands under the New 2013 Act. It was, therefore, imperative upon the respondents to follow the said course. Besides, on the appointed day i.e. 01.01.2014 when the New 2013 had come into effect, no declaration under Section 6 of the Old 1894 Act had been issued. Therefore, there was no ground to further proceed with the present acquisition proceedings. A plain reading of

Section 24 (1) (a) of the New 2013 Act contemplates a situation where acquisition proceedings were near completion but no 'Award' under Section 11 of the Old 1894 Act had been made till the New 2013 Act came into force on 01.01.2014. The object behind the same, it is submitted, undoubtedly was to save the final declaration regarding acquisition made under the Old 1894 Act where no Award had been passed. A mention has also been to Section 114 of the New 2013 Act which repeals the Old 1894 Act. As such, after the appointed date i.e. 01.01.2014, it is submitted that the present acquisition proceedings could not have been sustained.

(15) Notice of motion was issued to the respondents on 26.03.2015 and in the meantime status quo, it was ordered, shall be maintained till the adjourned date of hearing, which was ordered to continue on 30.04.2015.

(16) A written statement on behalf of respondent No.1 has been filed by Shri Parvesh Kumar, Joint Secretary to Government of Haryana, Industries and Commerce Department in his official capacity being well conversant with the facts of the case and authorized by respondent No.1.

(17) A mention has been made to the objections filed by the petitioners and their wives to the acquisition proceedings under Section 5-A of the Old 1894 Act and their disposal by the Land Acquisition Collector. The Land Acquisition Collector, Ambala, it is submitted, considered the objections filed by the petitioners and made a recommendation for acquisition of the land as the land was lying vacant at the site. The Haryana State Industrial and Infrastructure Development Corporation Limited ('HSIIDC' - for short) agreed with the recommendations of the Land Acquisition Collector, Ambala. The State Government after considering the recommendations of the Land Acquisition Collector, Ambala and the comments of the HSIIDC decided to acquire the land of the petitioners and the same was included in the declaration dated 27.10.2014 issued under Section 6 of the Old 1894 Act.

(18) The notification dated 28.10.2013 under Section 4 of the Old 1894 Act, it is submitted, was not issued under any urgency or haste as the same was followed by a series of planning, process and procedure. The Government could in fact be well within its right to issue a notification invoking the urgency provisions, which was not the case. For every process of the land acquisition a lot of ground work and preparation is to precede the decision to initiate the proceedings for

acquisition of land or even before publishing a notification under Section 4 of the Old 1894 Act as it then existed. The validity or the sustainability of the notification dated 28.10.2013 issued under Section 4 of the Old 1894 Act, it is submitted, needs to be examined in a broader perspective.

(19) The notification dated 23.12.2005 issued under Section 4 of the Old 1894 Act by the State Government was for acquisition of land measuring 278 acres, 1 kanal, 1 marla of villages Dhakola, Saha, Tepla and Jawhargarh, Tehsil Saha District Ambala or setting up of Growth Centre, Saha Phase II, Tehsil Saha, District Ambala on the proposal of the HSIIDC. The declaration dated 29.12.2006 under Section 6 of the Old 1894 Act was issued by the State Government keeping in view the recommendations of the Land Acquisition Collector, Ambala and the comments of the HSIIDC.

(20) Aggrieved against the said acquisition proceedings, a number of landowners made representations before the State Government for release of their structures viz. residential houses, shops, religious buildings etc. Accordingly, it was observed that the total blocks of land having structures may be released from acquisition. The State Government issued a notification dated 25.07.2008 under Section 48 of the Old 1894 Act for release of land measuring 28 acres, 1 kanal, 10 marlas in villages Dhakola, Saha and Tepla, Tehsil Saha, District Ambala. The Award was announced by the Land Acquisition Collector, Ambala on 15.11.2008. Thus, the acquisition proceedings were completed and possession of the land was taken except where dispossession had been stayed by this Court.

(21) Various land owners aggrieved by the acquisition of their lands approached this Court by way of writ petitions. The petitioners also filed CWP No.1048 of 2008 titled '**Deepak Aggarwal and others v. State of Haryana and others**' seeking release of their lands. The said petition along with a bunch of other petitions pertaining to land acquisition was allowed by this Court vide order dated 16.12.2010 passed in Deepak Aggarwal's case CWP No.1048 of 2008. The operative part of the order dated 16.12.2010 reads as under:-

“Accordingly, we allow these writ petitions (except CWP No.108 of 2009) qua the petitioners in all the writ petitions excluding those petitioners who have not filed objections under Section 5-A of the Act and also those who have accepted compensation for the land under acquisition and quash the impugned notifications.

However, liberty shall remain with the State to acquire the land in question, if need be, as per law.”

(22) Some of the petitioners in *Deepak Aggarwal's* case CWP No.1048 of 2008 filed Special Leave Petitions to Appeal before the Supreme Court titled '*Davinder Singh v. State of Haryana and others*'. In SLP (C) No.27987-988 of 2011, *status quo* was ordered in terms of order dated 26.09.2011 which reads as follows:-

“In the meanwhile the parties are directed to maintain *status quo* as it is obtaining today. This would necessarily mean that neither party shall change the present character of the property or alienate the same to any one in any manner whatsoever.”

(23) The State Government filed its counter-affidavit dated 05.09.2012 in the said SLP which is pending adjudication before the Supreme Court.

(24) The Land Acquisition Collector, Ambala in the meantime in terms of letter dated 01.06.2012 submitted a proposal for acquisition of the land which formed part of the land already acquired vide Awards dated 15.11.2008. This was for the reason that this Court while disposing of *Deepak Aggarwal's* case CWP No. 1048 of 2008 had given liberty to remain with the State to acquire the land in question, if need be, as per law. It was also stated that the land proposed to be acquired had been released in view of the order of this Court in *Deepak Aggarwal's* case CWP No. 1048 of 2008 and other connected cases. Subsequently, the HSIIDC vide letter dated 12.07.2012 also submitted a proposal for acquisition of the said land stating that the land released by this Court was required to be acquired as most of the land was needed for roads circulation, green belts and internal planning proposals; besides, the left out pockets were affecting the planning proposals of the HSIIDC and blocking the road infrastructure. However, the office of Industries and Commerce Department vide letter dated 13.09.2012 requested the HSIIDC to re-examine the matter from the legal point of view as it had on the one hand filed review applications against the order dated 16.12.2010 in *Deepak Aggarwal's* case CWP No. 1048 of 2008, which were still pending in this Court, and on the other, it was sending proposal for acquisition of the land. In the meantime, the review applications were dismissed by this Court vide order dated 02.11.2012. The Industries and Commerce Department once again requested the HSIIDC vide letter dated 20.02.2013 to re-examine the matter in view of the order of this Court in the review

applications. The HSIIDC vide letter dated 09.09.2013 informed that it did not challenge the order dated 16.12.2010 in *Deepak Aggarwal's* case CWP No. 1048 of 2008 in respect of the writ petitions where notifications dated 23.12.2005 and 29.12.2006 stood quashed. It was, however, requested that the matter be expedited as the land released by this Court was required for roads circulation, green belts and internal planning proposal as per revised layout plan of Phase I and II of Growth Centre, Saha.

(25) It is submitted that in this background the present set of notifications, i.e. the notification dated 28.10.2013 under Section 4 and declaration dated 27.10.2014 under Section 6 of the Old 1894 Act, were issued so as to complete the infrastructure facilities in a government project for which the acquisition proceedings were initiated in the year 2005. Therefore, it was not an overnight decision to acquire the subject land.

(26) A reference has been made to Section 24 (1) and Section 114 of the New 2013 Act, which came into force w.e.f. 01.01.2014. Reference is also made to Section 6 of the General Clauses Act, 1897 ('1897 GC Act' - for short). A conjoint reading of the aforesaid provisions, it is submitted, would show that if the claim of the petitioners is examined in the light thereof, it would lead to an unmistakable conclusion that merely because the proceedings had been initiated under Section 4 of the Old 1894 Act by issuing a notification only on 28.10.2013, these would not be deemed to have lapsed on 01.01.2014 upon the applicability of the New 2013 Act. Therefore, there is no necessity to thereafter initiate fresh proceedings in accordance with the provisions of the New 2013 Act.

(27) The Parliament, it is stated, in its wisdom was well aware of a situation wherein while making the New 2013 Act applicable w.e.f. 01.01.2014 there might be a number of proceedings in the pipeline having already been initiated under the Old 1894 Act prior to the New 2013 Act and as to what would be the fate of such proceedings. Therefore, it is submitted that the Parliament clearly provided a safeguard by enacting Section 24 (1) of the New 2013 Act. The intention of the Parliament was declared in an unambiguous manner by stating that in all such cases where proceedings were 'initiated' under the Old 1894 Act prior to the applicability of the New 2013 Act, in such cases where the Awards had not been passed, in that event the land owner would have the benefit of the provisions of the New 2013 Act. The compensation in such cases shall be payable to them under the

provisions of the New 2013 Act and not under the Old 1894 Act. It is submitted that the petitioners cannot be allowed to substitute the word like 'completed' instead of 'initiated' in the provisions of Section 24 (1) of the New 2013 Act.

(28) The Parliament, it is stated, consciously used the expression 'initiated' in the New 2013 Act in Section 24 (1) and the said expression is not only deliberate but the same is also unambiguous and suffers from no inherent lack of clarification whatsoever. The Parliament, it is submitted, has suffused the appropriate provisions of the New 2013 Act with due and proper explanations wherever required. It is submitted that the issuance of the notification dated 28.10.2013 under Section 4 of the Old 1894 Act cannot be said to be in too close a proximity of the applicability of the New 2013 Act and, as such, the proceedings cannot be said to have lapsed on the applicability of the New 2013 Act. Had this been the intention of the Parliament while enacting Section 24 (1) or inserting the repealing provisions of Section 114 of the New 2013 Act, in that event such a provision would have been provided by the legislature. In fact, the legislature provided a cut-off date of 01.01.2014 only to ensure the benefit of payment of compensation under the New 2013 Act and there is no question of such proceedings to lapse which have been initiated under the Old 1894 Act. It is also submitted that the use of the expression 'Award' in both Section 24 (1) and Section 24 (2) of the New 2013 Act is for a definite event as other expressions would be vague and non-specific. The coming into force of the New 2013 Act does not imply that the office of the Land Acquisition Collector would cease to operate upon coming into force of the New 2013 Act, as even notices under Section 9 and passing of 'Awards' under Section 11 of the Old 1894 Act, besides, even making the reference would have to be done by the Land Acquisition Collector. Had the Parliament given any other expression other than 'Award' in Section 24 (1) of the New 2013 Act that would have been unspecific and uncertain as there could be several stages of a proceeding so 'initiated' under the Old 1894 Act.

(29) Written statement has also been filed by Shri Devender Pal Singh, Divisional Town Planner, HSIIDC, Panchkula (respondent No. 3). It is stated that the petitioners seek setting aside of the impugned notification acquiring their land measuring 5.03 acres in which their wives are 50% co- sharers in some land. Some land is joint ownership of the petitioners in village Tepla, Tehsil Saha, District Ambala. The petitioners, it is submitted, seek setting aside of the notification dated

28.10.2013 issued under Section 4 of the Old 1894 Act on various grounds. It is submitted that the notification was issued less than two months before the New 2013 Act came into force, besides, no notification under Section 6 of the Old 1894 Act had been issued on or before the notified date, i.e. 01.01.2014. It is submitted that the petitioners have contended that under Section 24 (1) (a) of the New 2013 Act, the impugned acquisition could not be sustained and it could only be sustained in such cases where the proceedings were near completion and 'Awards' only were to be passed when the New 2013 Act came into force, i.e. on 01.01.2014, then in such cases could the acquisition be saved. Moreover, it is stated that the petitioners have further taken the ground by contending that under Section 114 of the New 2013 Act, once the Old 1894 Act had been repealed there was no mechanism left to complete the various complex tasks as ordained in the Old 1894 Act due to which the acquisition proceedings could not be sustained.

(30) In this regard, it is submitted by respondent No.3 that provisions of Section 24 (1) and Section 114 of the New 2013 Act, which came into force from 01.01.2014 as well as the provisions of Section 6 of the 1897 GC Act when read conjointly it would lead to an unmistakable conclusion that merely because the proceedings had been initiated under Section 4 of the Old 1894 Act by issuing a notification on 28.10.2013, these would not be deemed to have any effect upon the applicability of the New 2013 Act. It is stated that the Parliament in its wisdom was well aware of the situation while enacting the New 2013 Act w.e.f. 01.01.2014 that there might be a number of proceedings in the pipeline having already been initiated under the Old 1894 Act before the New 2013 Act came into force; besides, what would be the fate of such proceedings, i.e. proceedings which were going on under the Old 1894 Act before the New 2013 Act came into effect.

(31) In short, it is sought to be contended by the respondents that the coming into force of the New 2013 Act w.e.f. 01.01.2014 does not in any manner affect the proceedings that have been initiated under Section 4 of the Old 1894 Act and these are to continue under the said Old 1894 Act notwithstanding the coming into force of the New 2013 Act w.e.f. 01.01.2014.

(32) The matter came up before a Division Bench of this Court on 18.08.2015 on which date the following order referring the case to the Full Bench was passed:-

“Large number of writ petitions are listed before this

Bench wherein, the declaration under Section 6 of the Land Acquisition Act, 1894 (for short 'the Act') was published after the repeal of the Act and after commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'). There are also some cases wherein the notification(s) under Section 4 of the Act has been published in the official Gazette prior to repeal of Land Acquisition Act, 1894 whereas the publication in the daily newspapers and/or in the locality is after the commencement of 2013 Act. Since the issue raised is important, purely legal and arising frequently in large number of cases, we deem it appropriate to refer the following questions for determination by a Larger Bench:-

1. Whether the notification published under Section 4 of the Land Acquisition Act, 1894 in the Official Gazette, but in the newspapers later after the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 on 1.1.2014 is sustainable in law?

2. Whether the hearing of objections under Section 5-A of the Act and the publication of notification under Section 6 of the Act is permissible after the repeal of Land Acquisition Act, 1894 and after the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 from 1.1.2014?

Let the papers be placed before Hon'ble the Acting Chief Justice for constitution of a Larger Bench at an early date.

Since large number of cases raising similar issues are pending, we give liberty to the counsels representing any of the parties to assist the Larger Bench."

(33) In terms of the above reference, it is to be considered whether notification published under Section 4 of the Old 1894 Act but published later in the newspaper after commencement of the New 2013 Act on 01.01.2014 is sustainable in law. Besides, whether hearing of the objections under Section 5-A and publication of the notification

under Section 6 of the Old 1894 Act is permissible after repeal of the Old 1894 Act and after commencement of the New 2013 Act from 01.01.2014.

(34) In the context of the contentions raised, it is also bound to be considered as to when or at what stage the acquisition proceedings under the Old 1894 Act can be said to be 'initiated' so as to carry on or not to carry on with the same after coming into force of the New 2013 Act.

(35) Shri M.L. Sarin, learned Senior Counsel appearing for the petitioners with Shri Nitin Sarin, Shri Ritesh Aggarwal, Ms. Ankita Sambyal and Shri Shakti Singh, Advocates, has vehemently contended that the proceedings under the Old 1894 Act with the coming into force of the New 2013 Act are to stand lapsed in view of the clear mandate of Section 24 (1) and Section 114 of the New 2013 Act. Besides, the repeal of the Old 1894 Act in view of Section 114 (2) of the New 2013 Act is not to prejudice or affect the general application of Section 6 of the 1897 GC Act. A specific reference has particularly been made to Clause (c) of Section 6 of the 1897 GC Act. It is submitted that the New 2013 Act is a piece of beneficial legislation containing several beneficial provisions which are liable to be applied and given effect to in favour of the landowners whose land is to be compulsorily acquired. The Old 1894 Act, it is submitted, was in two parts, i.e. Sections 4 to 17 which relate as to how acquisition is to be done and Sections 8 to 28 as to how compensation is to be made. In sharp departure from the past, the New 2013 Act, is enacted in four parts, i.e. Chapter II which relates to the 'determination of social impact and public purpose'; Chapter III relates to 'special provisions to safeguard food security', Chapter IV relates to notifications and acquisition and Chapters V to VIII relate to 'rehabilitation and resettlement award'; 'procedure and manner of rehabilitation and resettlement'; 'national monitoring committee for rehabilitation and resettlement' and 'establishment of land acquisition, rehabilitation and resettlement authority'. These beneficial provisions of the New 2013 Act are not open to be denied to the landowners whose lands are sought to be acquired. Considerable emphasis has been laid on the provisions of the New 2013 Act with respect to determination of 'social impact' and 'public purpose'. It is submitted that an appraisal of social impact assessment report by an expert group is required to be done, which, it is submitted cannot be done under the repealed Old 1894 Act. Besides, it is submitted that the New 2013 Act received the assent of the President of India on 26.09.2013. The

notification under Section 4 of Old 1894 Act was published soon thereafter on 28.10.2013. This, according to learned Senior Counsel for the petitioners was done in a hurried manner so as to deprive the benefit of the New 2013 Act to the landowners whose lands were proposed to be acquired. The appointed day of 01.01.2014 for the applicability of the New 2013 Act was published in the Gazette of India on 19.12.2013.

(36) Strong reliance has been placed by Shri Sarin on the Supreme Court judgment in *Babu Barkya Thakur* versus *State of Bombay*¹ to contend that the proceedings for the acquisition of land under the Old 1894 Act are to be taken to have been 'initiated' from the date of declaration under Section 6 of the Old 1894 Act. In the present case, the date of the declaration under Section 6 of the Old 1894 Act is 27.10.2014 and, on the said date the New 2013 Act had come into effect i.e. from 01.01.2014. Therefore, proceedings for the acquisition of land under the Old 1894 Act cannot be said to be 'initiated' before the coming into effect of the New 2013 Act so as to make the provisions of Section 24 (1) of the New 2013 Act applicable and continue with the acquisition proceedings. It is submitted that the issuance of notification under Section 4 of the Old 1894 Act i.e. on 28.10.2013 cannot be taken as the date for 'initiation' of proceedings under the Old 1894 Act, which is for preliminary purpose only. Reliance is also placed on *Bhajan Singh* versus *State of Punjab*². Therefore, according to Shri Sarin, learned Senior Counsel, the entire acquisition process stands lapsed.

(37) Shri Shailendra Jain, Senior Advocate with Ms. Mannu Chaudhary, Advocate, has placed strong reliance on Section 24 of the 1897 GC Act to contend that the said provision is general in nature and has universal applicability. It is to apply in every respect in the present case. In fact according to Shri Jain, it is only the said provision which is to determine the sustainability or continuation of the publication of the preliminary notification under Section 4 (1) of the Old 1894 Act and whether the said notification under Section 4 is deemed to be re-enacted under the New 2013 Act. The notification issued under Section 4 read with Section 3 (f) of the Old 1894 Act prior to the date of the repeal in respect of the acquisition of the land is to be pitted against the re-enacted provisions of Sections 2 (1), 3(z), 4 to 8 and 11 of the New 2013 Act for its continuation and be deemed to have been made or

¹ AIR 1960 SC 1203

² (2014-4) PLR 406 (P&H) (DB)

issued under the provisions so re-enacted in terms of the New 2013 Act. It is submitted that in case such an exercise is undertaken and publication of the preliminary notification under Section 4 (1) of the Old 1894 Act is pitted against the above provisions of the New 2013 Act, numerous inconsistencies would be noticed between the two owing to the modified and in fact new provisions that have been enacted in the New 2013 Act by way of several additions.

(38) It is submitted that in case a preliminary notification is issued under Section 4 (1) of the Old 1894 Act prior to its repeal which is not inconsistent with the provisions of the New 2013 Act it shall be deemed to have been made or issued under the provisions of Section 11 of the New 2013 Act. Therefore, by virtue of Section 24 of the 1897 GC Act, the same shall be carried on under the modified provisions of Sections 12 to 19 of the New 2013 Act, which lay down several additions including those in Section 2 (1) of the New 2013 Act. It is submitted that in furtherance to a notification issued under Section 4 (1) of the Old 1894 Act, these are not liable to be carried on under the provisions of Sections 12 to 19 of the New 2013 Act, which provide for a more enlarged modified procedure relating to preparation of rehabilitation and re-settlement scheme. Therefore, the continuation of the acquisition proceedings under the repealed Old 1894 Act would be impermissible after its repeal on 01.01.2014 when the New 2013 Act has commenced.

(39) Shri Puneet Bali, Senior Advocate appearing with Shri Prateek Gupta, Advocate in the case of '*Divyug Realty Pvt. Ltd. v. State of Haryana and others*' CWP No.8963 of 2015 submits that the petitioner is the owner in possession of land measuring 113 kanal 1 marla spread over two villages, i.e. Harsaru and Garhi Harsaru, in which he is owner of 84 kanal 18 marla and 28 kanal 3 marla, respectively. The revenue records of the same have been placed on record. The respondents sought to acquire 56 kanal 1 marla of the total land holding held by the petitioner. The first notification under Section 4 of the Old 1894 Act in his case was published in the gazette on 27.12.2013. The Old 1894 Act stood repealed with the coming into effect the New 2013 Act from 01.01.2014. The notification under Section 4 of the Old 1894 Act after its publication in the gazette was published in the newspaper on 01.01.2014. It is on the said date that the New 2013 Act came into force.

(40) The petitioner Divyug Realty Pvt. Ltd. filed objections under Section 5-A of the Old 1894 Act on 21.01.2014. The gazette

declaration under Section 6 of the Old 1894 Act was issued on 24.12.2014 and the declaration was published in the newspaper on 23.12.2014. Shri Bali, Senior Counsel places reliance on *State of Mysore versus Abdul Razak Sahib*³; *V.K.M. Kattha Industries Pvt. Ltd. versus State of Haryana and others*⁴ and *Eugenio Misquita and others versus State of Goa and others*⁵.

(41) Being an expropriation legislation under eminent domain the last date of the notification issued under Section 4 of the Old 1894 Act is to be the one in which it is published in the newspaper.

Mr. P.S. Khurana, Advocate, for the petitioners in CWP No. 12758 of 2015 has reiterated the submissions made by Shri M.L. Sarin, Senior Advocate appearing for the petitioners.

(42) Shri Amar Vivek, learned Additional Advocate General, Haryana appearing for the State has submitted that the contentions as raised on behalf of the petitioners, are without any basis. It is submitted that the proceedings under the Old 1894 Act with the coming into force of the New 2013 Act do not in any manner lapse in view of Section 24 (1) and Section 114 of the New 2013 Act. The acquisition proceedings having been initiated with the issuance of Section 4 notification under the Old 1894 Act on 28.10.2013, the same would continue under the said Old 1894 Act notwithstanding the enforcement of the New 2013 Act. This according to Shri Vivek, is evident from the provisions of Section 24 (1) of the New 2013 Act, which provides that notwithstanding anything contained in the said New 2013 Act, in any case of land acquisition proceedings initiated under the Old 1894 Act, where no Award under Section 11 of the Old 1894 Act had been made then all provisions of the New 2013 Act relating to the determination of compensation are to apply; besides, where an Award under Section 11 of the Old 1894 Act had been made then proceedings are to continue under the Old 1894 Act as if the said Act had not been repealed.

(43) Therefore, it is submitted that in case an Award is not made with respect to the acquisition proceedings initiated on 28.10.2013, then at the most compensation is to be paid in accordance with the provisions of the New 2013 Act. The fact that the New 2013 Act is a piece of beneficial legislation containing several beneficial provisions

³ (1973) 3 SCC 196

⁴ (2013) 9 SCC 338

⁵ (1997) 8 SCC 47

is not in doubt; however, the statutory provisions as provided for in the interregnum period are to apply and given effect to. It is submitted that after the issuance of the notification under Section 4 and the filing of objections under Section 5-A of the Old 1894 Act and the coming into effect of the New 2013 Act from 01.01.2014, the objections under Section 5-A were decided by the Land Acquisition Collector on 18.03.2014. This would mean that the acquisition proceedings which had been initiated under the Old 1894 Act continued even after coming into force of the New 2013 Act.

(44) The judgment of the Supreme Court in *Babu Barkya Thakur v. State of Bombay*, (*supra*) and of this Court in *Bhajan Singh v. State of Punjab* (*supra*) to contend that the proceedings for the acquisition of land under the Old 1894 Act are to be taken to have been initiated from the date of declaration under Section 6 of the Old 1894 Act, it is stated, are inapplicable. Even otherwise, he places strong reliance on *Collector (District Magistrate), Allahabad and another versus Raja Ram Jaiswal*⁶; *Raja Ram versus State of MP*⁷ and *Sakharbai Haribhau Shelke versus SDO*⁸.

(45) In short, Shri Vivek submits that the meaning of the word 'initiated' under Section 24 (1) (a) of the New 2013 Act is essentially to include within its purview the proceedings in respect of land acquisition in which Section 4 notifications had been issued under the Old 1894 Act which in essence is the commencement and initiation of the acquisition proceedings.

(46) A conjoint reading of Section 114 read with Section 24 (1) (a) of the New 2013 Act would show that the acquisition proceedings which had been initiated under the Old 1894 Act prior to the enforcement of the New 2013 Act are not, in any manner, inconsistent with the provisions of the New 2013 Act. It is only for the transitory period that compensation as per New 2013 Act as contemplated by Section 24 (1) (a) of the New 2013 Act is to apply so as to give more benefits to those whose lands have been acquired. In fact, it is submitted that the appointed day i.e. 01.01.2014 for the enforcement of the New 2013 Act has been consciously fixed so that all actions prior thereto are saved.

(47) Insofar as the contentions as raised by Shri Jain, Senior

⁶ (1985) 3 SCC 1

⁷ 2014 (1) MPLJ 354 (MP)

⁸ 2014 (6) AIR Bom. R. 257 (Bombay) (DB)

Advocate with respect to the applicability of Section 24 of the 1897 GC Act are concerned, Shri Vivek has submitted that the provisions of Section 24 of the 1897 GC Act are inapplicable to the acquisition proceedings as Section 6 of the 1897 GC Act has specifically been made applicable in terms of Section 114 (2) of the New 2013 Act with regard to effect of repeals. It is submitted that there may be some overlapping in the operation of Section 6 and Section 24 of the 1897 GC Act; however, Section 6 is not overridden or eclipsed by Section 24. According to Shri Vivek, Section 6 applies and Section 24 of the 1897 GC Act deals with continuation of orders, by-laws etc. issued under enactments repealed and re-enacted with or without modification. Section 6 of the 1897 GC Act, it is submitted is applicable to general rules of construction as to save previous operations/actions undertaken under any enactment so repealed while Section 24 of the 1897 GC Act applies to provisions as to orders, rules etc. made under enactments.

(48) Even otherwise, it is submitted that Section 6 covers the ground relating essentially to executive/administrative acts and functions undertaken under any enactment in relation to the principles enunciated under the enactment, whereas Section 24 of the 1897 GC Act primarily deals with the delegated/subordinate legislative follow up to complete laying down the purpose of the enactment. Section 24 of the 1897 GC Act, according to Shri Vivek, does not apply to executive and administrative decisions or quasi judicial actions.

(49) It is also submitted that though Section 24 of the 1897 GC Act is general in nature and has universal applicability, however, it is not to apply in the present case. The contention of Shri Jain that it is only the said provision which is to determine the sustainability or continuation of the publication of the preliminary notification under Section 4 (1) of the Old 1894 Act, it is submitted, is not the correct position. The issuance of notification under Section 4 and declaration under Section 6 of the Old 1894 Act are administrative or executive functions and not quasi-legislative functions. There is no requirement under the law that notifications issued under Section 4 and the declaration under Section 6 of the Old 1894 Act must be consistent with the provisions of the New 2013 Act so as to survive and failing which, these are liable to be treated as dead letters. If Section 24 of the 1897 GC Act is applied to pending proceedings under the Old 1894 Act to test their consistency then according to Shri Vivek the entire Section 24 of the New 2013 Act would be otiose and meaningless, besides, such an interpretation would be contrary to the salutary principles of

interpretation of statutes in which case the Court would be required to rewrite the provisions of Section 114 read with Section 24 of the New 2013 Act. According to Shri Vivek there was no intention on behalf of the Parliament to let the pending proceedings lapse.

(50) In the alternative it is submitted that a conjoint reading of Section 114 read with Section 24 (1) (a) of the New 2013 Act would clearly lead to a conclusion that the proceedings initiated under the Old 1894 Act prior to the applicability of the New 2013 Act are not inconsistent with the provisions of the New 2013 Act.

(51) Shri Chetan Mittal, Senior Advocate appearing with Mr. Udit Garg, Advocate, and Mr. Mayanak Aggarwal, Advocate, appearing for HSIIDC submits that the contentions as raised by learned counsel appearing for the petitioners are not tenable as there was no intention of the Parliament by enacting the New 2013 Act and bringing it into effect from 01.01.2014 to let proceedings already 'initiated' under Section 4 of the Old 1894 Act to lapse. It is submitted that in fact at the stage of Section 4 notification under the Old 1894 Act the Courts rarely interfere because whatever is to be said can well be examined by the Land Acquisition Collector and the objections filed under Section 5-A of the Old 1894 Act. The objections can be considered and an order passed. Therefore, according to learned Senior Counsel, the issuance of the notification under Section 4 initiates the proceedings of acquisition of land which is evident from the use of the word 'shall' in Section 4 of the Old 1894 Act. Reliance is placed on the decision of the Supreme Court in *Khub Chand versus State of Rajasthan*⁹ and *Raja Ram Jaiswal's case* (supra). It is also submitted that the transitory period where the notification under Section 4 (1) of the Old 1894 Act has already been issued, the proceedings are to continue and in case no Award has been passed, only the compensation is to be paid according to the provisions of the New 2013 Act which is the clear intent of Section 24 (1)(a) of the New 2013 Act.

(52) We have given our thoughtful consideration to the contentions raised by the learned counsel appearing for the respective parties. The reference made to the Full Bench vide order dated 18.08.2015 would require to be answered in the light of the above codifications. However, on the basis of the contentions that have been raised further questions would also require consideration. The questions that are required to be considered in terms of the reference order and the

⁹ AIR 1967 SC 1074

contentions raised are re-formulated as follows:

- (1) Whether the proceedings under the Old 1894 Act can be said to have been 'initiated' with the issuance of the notification under Section 4 thereof or whether this would only be a ministerial act and can be said to 'initiated' with the publication of the declaration under Section 6 of Old 1894 Act. This is in the context of Section 24 (1) of the New 2013 Act which provides for the lapse of the process under the Old 1894 Act in certain cases of land acquisition 'initiated' under the said Old 1894 Act.
- (2) Whether the notification issued under Section 4 of the Old 1894 Act before the appointed day of 01.01.2014 would continue to remain operative in view of Section 6 and in any case would it still remain operative by virtue of Section 24 of the 1897 GC Act.
- (3) Whether the notification published under Section 4 of the Old 1894 Act in the Official Gazette, but published in the newspapers later i.e. after the commencement of the New 2013 Act on 01.01.2014 is sustainable in law; besides, which of these would be the effective notifications on the basis of which the process of publication can be said to be complete, i.e. whether the notification initially published in the Gazette or the subsequent notification that is published in the newspapers.
- (4) Whether the hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act is permissible after its repeal and after the commencement of the New 2013 Act from 01.01.2014.

(53) As has already been noticed, the New 2013 Act received the assent of the President of India on 26.09.2013. The date 01.01.2014 for the New 2013 Act to come into operation was by way of notification dated 19.12.2013. However, according to the petitioners, the assent being given by the President of India on 26.09.2013 gave sufficient time to the authorities to contemplate and visualize that the New 2013 Act was to come into effect and the notification under Section 4 of the Old 1894 Act was published soon thereafter on 28.10.2013 in a hurried manner so as to deprive the benefit of the New 2013 Act to the land-owners.

The first Question

(54) Considering the first contention as to when the acquisition proceedings can be said to be ‘initiated’, a reference may be made to the provisions of Sections 4 and 6 of the Old 1894 Act and Section 24 (1) and 114 of the New 2013 Act. Sections 4 and 6 of the Old 1894 Act read as under:-

“4. Publication of preliminary notification and powers of officers thereupon: – (1) Whenever it appears to the ¹⁰[appropriate Government] that land in any locality ¹¹[is needed or] is likely to be needed for any public purpose ³[or for a company] a notification to that effect shall be published in the Official Gazette ¹²[and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality ³[(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen, –

to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without

¹⁰ Substituted by A.O. 1950 for ‘Provincial Government’

¹¹ Inserted by Act 38 of 1923, Section 2

¹² Inserted by Act 68 of 1984, Section 4 w.e.f. 24.09.1984

previously giving such occupier at least seven days' notice in writing of his intention to do so.

6. Declaration that land is required for a public purpose.—

(1) Subject to the provisions of Part VII of this Act,¹³[when the¹⁴[appropriate Government] is satisfied after considering the report, if any, made under section 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders³[and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)]:

¹⁵[¹⁶[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), —

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:]

¹⁷[Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

¹³ Substituted by Act 38 of 1923, Section 4, for “whenever it appears to the Local Government”.

¹⁴ Substituted by the A.O. 1950, for “Provincial Government”.

¹⁵ Substituted by Act 13 of 1967, Section 3, for the proviso (w.e.f. 12.04.1967)

¹⁶ Substituted by Act 68 of 1984, Section 6, for the first proviso (w.e.f. 24.09.1984)

¹⁷ Substituted by Act 13 of 1967, Section 3, for “Provided that” (w.e.f. 12.04.1967)

¹⁸[Explanation 1. – In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

⁹[Explanation 2.— Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues]

(2) ¹⁹[Every declaration] shall be published in the Official Gazette, ²⁰ [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the ¹²[appropriate Government] may acquire the land in manner hereinafter appearing.”

(55) Sections 11, 19, 24 and 114 of the New 2013 Act read as under:-

“11. Publication of preliminary notification and power of officers thereupon.— (1) Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas

¹⁸ Inserted by Act 68 of 1984, Section 6 (w.e.f. 24.09.1984)

¹⁹ Substituted by Act 13 of 1967, Section 3, for “The declaration” (w.e.f. 12.04.1967)

²⁰ Substituted by Act 68 of 1984, Section 6, for “, and shall state” (w.e.f. 24.09.1984)

shall be published in the following manner, namely: -

- (a) in the Official Gazette;
- (b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;
- (d) upload on the website of the appropriate Government;
- (e) in the affected areas, in such manner as may be prescribed.

(2) Immediately after issuance of the notification under sub-section (1), the concerned Gram Sabha or Sabhas at the village level, municipalities in case of municipal areas and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, shall be informed of the contents of the notification issued under the said sub-section in all cases of land acquisition at a meeting called especially for this purpose.

(3) The notification issued under sub-section (1) shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under Section 43.

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are contemplated:

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by any person due to his willful violation of this provision shall not be made up by the Collector.

(5) After issuance of notice under sub-section (1), the Collector shall, before the issue of a declaration under section 19, undertake and complete the exercise of updating of land records as prescribed within a period of two months.

19. Publication of declaration and summary of Rehabilitation and Resettlement. – (1) When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 15, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the “resettlement area” for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required).

(2) The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration referred to in sub-section (1):

Provided that no declaration under this sub-section shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with such declaration:

Provided further that no declaration under this sub-section shall be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the appropriate Government toward the cost of acquisition of the land:

Provided also that the Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification under section 11.

(3) In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified.

(4) Every declaration referred to in sub-section (1) shall be

published in the following manner, namely:-

- (a) in the Official Gazette;
- (b) in two daily newspapers being circulated in the locality, of such area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;
- (d) upload on the website of the appropriate Government;
- (e) in the affected areas, in such manner as may be prescribed.

(5) Every declaration referred to in sub-section (1) shall indicate, -

- (a) the district or other territorial division in which the land is situated;
- (b) the purpose for which it is needed, its approximate area; and
- (c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost.

(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded:

Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded:

Provided further that the appropriate Government shall

have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. –

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, —

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
- (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

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

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

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.”

(56) Section 6 of the 1897 GC Act reads as under:-

“6. Effect of repeal. – Where this Act, or any 1 [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 –

- (1) revive anything not in force or existing at the time at which the repeal takes effect; or
- (2) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (3) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (4) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (5) 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.”

(57) Section 4 of the Old 1894 Act, provides for publication of preliminary notification and confers certain powers on the officers thereupon. It is provided that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect is to be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one is to be in the regional language. The Collector is to cause a public notice of the

substance of such notification to be given at convenient places in the said locality, the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification. After such exercise is carried out, it is to be lawful for any officer, either, generally or specially authorized by such Government in this behalf, and for his servants and workmen, to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle. In terms of the proviso, no person is to enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of the intention to do so.

(58) The purpose of publication of a notification under Section 4 of the Old 1894 Act is in the nature of expressing an intention to ascertain whether the land is suitable for acquisition by conducting a survey of the land. In terms of sub Section (2) of Section 4 it is to be taken to be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; to do all other acts necessary to ascertain the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and the line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle. Therefore, the object and purpose of Section 4 notification or proceedings is for assessment of the suitability of the land proposed to be acquired and it is in the nature of a preliminary enquiry without any final decision of acquisition being taken so as to say that the process of acquisition had been initiated.

(59) In *Babu Barkya Thakur's* case (*supra*), the State of Bombay by a notification dated 03.04.1959 under Section 4 of the Old

1894 Act proclaimed that lands specified in the schedule attached to the said notification were likely to be needed for the purposes of the third respondent, Messrs. Mukund Iron and Steel Ltd., a Company registered under the Indian Companies Act, 1913, for its factory buildings etc. The notification further stated that under clause (c) of Section 3 of the Old 1894 Act, the Government was pleased to appoint the Special Land Acquisition Officer to perform the functions of the Collector under Section 5-A of the said Act. The petitioner in the said case after several adjournments lodged objections and also made oral submissions through his advocate. He made a request to the Land Acquisition Collector to quash the proceedings on the ground that the lands contained in the notification were not required for any public purpose and that the proceedings were vexatious and malicious. It was also stated that the third respondent had negotiated by a private treaty for the purchase of the notified area. The petitioner in the said case had also proposed to lead evidence of owners of several pieces of land included in the area notified for acquisition to prove that the lands included in the schedule to the notification were not as a matter of fact required by the third respondent for any public purpose and that the third respondent had even negotiated for the purchase of the said land by private treaty. The Land Acquisition Collector, however, refused permission to lead such evidence on behalf of the petitioner. The petitioner in the said case raised a number of questions of law attacking the constitutionality of the land acquisition proceedings and prayed for orders to the State Government not to give its consent to the aforesaid acquisition under Section 39 nor to enter into any agreement with the third respondent under Section 41 nor issue a notification under Section 6 of the Old 1894 Act declaring that the land in question was needed for a public purpose, because after such a declaration the petitioner may not be deprived of the opportunity of contending that the land was not needed for a public purpose. The third respondent contested the case primarily urging that the writ petition was pre-mature as objections under Section 5-A had been heard by the Land Acquisition Collector and that the State Government was yet to be satisfied whether the acquisition was for the purposes specified in Section 40 of the Old 1894 Act and so long as the previous consent of the appropriate government had not been given, the provisions of Sections 6 to 37 of the Old 1894 Act could not be put into operation. The Land Acquisition Collector supported the case of the third respondent.

(60) It was noticed by a five Judge Bench of the Supreme Court that Section 5-A of the Old 1894 Act provides for hearing of the

objections by any person interested in any land notified under Section 4, makes reference not only to the public purpose, but also to a Company. It was noticeable that Section 5-A predicates that the notification under Section 4 (1) may not only refer to land needed for a public purpose, but also to a land needed for a Company. After the inquiry as contemplated by Section 5-A had been made and objections, if any, heard by the Land Acquisition Collector, a report is to be submitted to the Government along with the record of the proceedings held by him and his recommendations on the objections. The Government thereupon has to make up its mind whether or not the objections were well founded and the decision of the appropriate Government of those objections was to be treated as final. If the Government decided to overrule the objections and was satisfied that the land, the subject matter of proceedings, was needed for a public purpose or for a Company, a declaration has to be made to that effect. Such a declaration has to be published in the Official Gazette and has to contain the particulars of the land including its approximate area and the purpose for which it is needed. Once the declaration under Section 6 had been made, it was to be conclusive evidence that the land was needed for a public purpose or for a Company. Then follow the other proceedings of claim to compensation in respect of any interest in the land in question; and the Award after making the necessary investigation as to claim to conflicting titles etc.

(61) It was argued that Section 4 (1) of the Old 1894 Act had deliberately omitted the words “for a Company” and insisted upon a public purpose. It was said that the absence from the notification under Section 4 aforesaid of those words, namely, for a public purpose, were fatal to the proceedings.

(62) It was held that the purpose of the notification under Section 4 of the Old 1894 Act was to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It was said that it was only under Section 6 that a firm declaration had to be made by the Government that the land with proper description and area so as to be identifiable was needed for a public purpose or for a Company. What was a mere proposal under Section 4 becomes the subject-matter of a definite proceeding for acquisition under the Old 1894 Act. Hence, it was not correct to say that any defect in the notification under Section 4 was fatal to the validity of the proceedings,

particularly when the acquisition was for a Company and the purpose had to be investigated under Section 5-A or Section 40 necessarily after the notification under Section 4 of the Old 1894 Act.

(63) The said decision of the five Judge Bench of the Supreme Court specifies that notification issued under Section 4 of the Old 1894 Act is to carry out a preliminary investigation with a view of finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired; besides, it was only under Section 6 that a firm declaration has to be made by the Government that the land with proper description and the area so as to be identifiable was needed for a public purpose or for a Company.

(64) Learned Counsel appearing for the respondents i.e. Sh. Chetan Mittal, Senior Advocate for the HSIIDC; Sh. Amar Vivek, learned counsel for the State of Haryana, Sh. Suvir Sehgal, Advocate and Sh. P.S. Khurana, Advocate have, however, controverted the said position and placed strong reliance on *Khub Chand's* case (supra) and *Raja Ram Jaiswal's* case (supra) and according to them a notification under Section 4 (1) of the Old 1894 Act 'initiates' the proceedings for acquisition of land.

(65) In *Khub Chand's* case (supra), the appellants therein purchased some land in village Sangaria in Tehsil Hanumangarh in Rajasthan on 10.12.1958. The Government of Rajasthan had on 14.02.1957 published a notification dated 19.10.1956 under Section 4 of the Rajasthan Land Acquisition Act, 1953 ('Rajasthan Act' - for short) to the effect that the said land, along with others, was needed or likely to be needed for a public purpose of laying township and orchards. The provisions of the Rajasthan Act are somewhat in *para materia* to the Old 1894 Act. Another notification dated 09.01.1958 was published in the Rajasthan Gazette under Section 5 (2) of the Rajasthan Act. A further notification under Section 6 of the Rajasthan Act was published in the Rajasthan Gazette on 03.02.1959 in respect of the said land. The Rajasthan Government in exercise of its powers under Section 3 (c) of the Rajasthan Act vide notification dated 10.09.1955 appointed the Deputy Director of Colonization, Suratgarh Division with Headquarters at Hanumangarh to perform the functions of a 'Collector' under the said Act within the local limits of his jurisdiction. The Government on 30.07.1959 published another notification dated 04.06.1959 in modification of the previous notification appointing the Deputy Director of Colonization, Rajasthan

Canal Project, then having headquarters at Bikaner to perform the said functions within the Districts of Ganganagar, Bikaner and Jaisalmer. The Deputy Director of Colonization Suratgarh notwithstanding the said notification exercising the functions under the Rajasthan Act continued with the acquisition proceedings. Objections were filed by the appellants questioning the jurisdiction of the said Deputy Director to proceed with the enquiry and thereafter they did not take part in the proceedings. The Deputy Director, however, passed an Award on 11.12.1959 in which the value of the land was assessed at Rs.614/- per bigha. Thereafter, the said Deputy Director made another Award and fixed the rate of compensation at Rs.442/- instead of Rs.614 per bigha. The appellants filed a writ petition in the Rajasthan High Court challenging the validity of the proceedings.

(66) In the said background the Supreme Court held that the provisions of a statute conferring power on the government to compulsorily acquire lands are to be strictly construed. Section 4 in clear term says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The provision was mandatory in terms. However, under certain circumstances, it was doubtless that the expression 'shall' is construed as 'may'. The object underlying the said direction in Section 4 of the Rajasthan Act was obvious. Under sub Section (2) of Section 4 after such a notice was given, the officer authorized by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. It was said that the legislation thought that it was absolutely necessary that before such officer could enter the land of another, the owner thereof should have a clear notice of the intended entry. It was held to be a necessary condition for the exercise of the power of entry. The non-compliance with the said condition it was held makes the entry of the officer or his servants' unlawful. On the express terms of sub Section (2), the officer or his servants could enter the land to be acquired only if that condition had been complied with. If it was not complied with, he or his servants could not exercise the power of entry under Section 4 (2), with the result that if the expression 'shall' is construed as 'may' the object of the sub Section itself would be defeated. The statutory intention was, therefore, clear that the giving of public notice was mandatory. If so, the notification issued under Section 4 without complying with the said mandatory direction, it was held, would be void and the land acquisition proceedings taken pursuant thereto would be equally void.

(67) Reliance was placed on the decision in *Babu Barkya Thakur* versus *State of Bombay* (supra). It was said that the notification therein under Section 4 did not say specifically that the land sought to be acquired was needed for a public purpose, but it gave the necessary details in regard to the purpose for which the land was sought to be acquired. In the said case it was observed that a formal defect was sought to be relied upon to invalidate the notice and Supreme Court did not accept the contention. However, it could not be an authority for the position that, if a public notice of the notification was not given as prescribed by Section 4, it could be ignored. That would be rewriting the Section.

(68) Therefore, *Khub Chand's* case did not deal with the question of 'initiation' of acquisition proceedings and was rendered in the context of the notification under Section 4 being valid or invalid in the circumstances of the said case. The decision in *Khub Chand's* case was followed in *Raja Ram Jaiswal's* case (supra); however, that also was not strictly in the sense of 'initiation' of the proceedings although it was said that as a notification under Section 4 (1) initiates the proceeding for acquisition of land. The concept of initiation of proceeding for acquisition of land was not an issue as is sought to be contended by the learned Counsel appearing for the respondents. It was said in *Raja Ram Jaiswal's* case (supra) that a publication of the notice in the locality as required by the second part of Section 4 (1) of the Old 1894 Act is mandatory and unless that notification is given in accordance with the provisions contained therein, the entire acquisition proceedings would be vitiated. The Court would interfere in such a situation as a notification under Section 4 (1) 'initiates' the proceedings for acquisition of land and uses the expression 'shall' the mandate of the legislature becomes clear and therefore, the infirmities therein could not be wholly overlooked on the specious plea that the Courts do not interdict at the stage of a mere proposal. In the said case the observations that were made were in the context of the issues involved in the said case which inter alia was as to whether the notification issued under Section 4 of the Old 1894 Act would be invalid inasmuch as it had not been issued without first complying with the provisions of Rule 4 of the Land Acquisition (Companies) Rules, 1963 and the land acquisition proceedings were invalid as the notification dated 13.03.1975 was neither published nor was its substance notified in the locality as also because no notice thereof had been served upon the petitioner.

(69) The concept of 'initiation' of the proceedings for acquisition of land for the applicability of Section 24 (1) of the New 2013 Act in fact is to consider not merely a ministerial act of some kind like issuance of a notice under Section 4 of the Old 1894 Act. In fact it would require due consideration thereafter with application of mind as to whether the land in question which was a mere proposal at the stage of Section 4 of the Old 1894 Act was really required for acquisition, besides, also whether it was suitable. This stage would normally come when declaration in terms of Section 6 of the Old 1894 Act is issued which is after due consideration of the objections filed under Section 5-A of the Old 1894 Act and decided by the application of mind. It is in fact where mind is applied to an issue under various statutory provisions can the process said to be initiated.

(70) In *Siraj Ahmad Siddiqui* versus *Prem Nath Kapoor*²¹, the Supreme Court considered a case under the UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('1972 Act' - for short) relating to deposit of arrears of rent by a tenant to relive him against his liability for eviction on the date of first hearing. It was held that the date of first hearing of a suit under the Code is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. The definition of the expression 'first hearing' for the purposes of Section 20 (4) of the 1972 Act does not mean something different. The steps or proceedings mentioned in the summons referred to in the definition should be construed to be a step or proceeding to be taken by the Court for it is, after all, a hearing that is subject matter of the definition. The first date of hearing is neither the date fixed for filing written statement hearing nor the date when the trial Court had passed order on an application of the tenant for time to file the written statement and permission to deposit full amount of arrears of rent. The first date of hearing was taken as the date of framing issues when the Court applies its mind to the case.

(71) To similar effect is the case of *Sudershan Devi* versus *Sushila Devi*²², wherein it was said that the date of first hearing of the suit, would not be the date fixed for filing written statement but rather would be the date proposed for the hearing, that is the date proposed for

²¹ AIR 1993 SC 2525

²² (1999) 8 SCC 31

applying the Court's mind to determine the points in controversy and to frame issues, if necessary. The arrears of rent liable to be deposited on the first date of hearing would mean the date Court applies its mind, which is normally when it frames issue.

(72) In *Rakesh Wadhawan* versus *Jagdamba Industrial Corpn.*²³, the Supreme Court considered the provisions of Section 13 (2) (i) of the East Punjab Urban Rent Restriction Act, 1949 ('1949 Rent Act' - for short) which requires a landlord who seeks to evict his tenant to apply to the Controller for a direction in that behalf and if the Controller after giving the tenant a reasonable opportunity of showing cause against the applicant is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last date of the month next falling for which the rent is payable, the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate. In terms of the proviso, if the tenant 'on the first hearing of the application for ejection' (emphasis added) after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the costs of the application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

(73) It was observed that the expression "the date of first hearing" came up for consideration of the Supreme Court in *Mam Chand Pal* versus *Shanti Aggarwal*²⁴ and it was held that "the date of first hearing" is the date on which the Court applies its mind to the facts and the controversies involved in the case. Any date prior to such date would not be the first date of hearing. For instance, the date of framing issue would be the date of first hearing when the Court has to apply its mind to the facts of the case.

(74) In criminal law also, the date when the Court is said to take cognizance is the date when the Court applies its mind to the facts of the case, which is normally when the charge is framed.

(75) In *Narayandas Bhagwandas Madhavdas* versus *The State*

²³ (2002) 5 SCC 440

²⁴ (2002) 3 SCC 49

*of West Bengal*²⁵, it was said as to when cognizance is taken of an offence would depend upon the facts and circumstances of each case and it would be impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by itself be regarded as acts by which cognizance is taken of an offence. It is only when a Magistrate applies its mind for the purpose of proceedings under Section 200 and subsequent Sections of Chapter XVI of the Code of Criminal Procedure or under Section 204 of Chapter XVII of the said Code that it can be positively said that he had applied his mind and, therefore, had taken cognizance.

(76) In *Mahadev Gobind Gharge and others versus Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka*²⁶ it is held that date of hearing of an appeal is the date on which the Court applies its mind to the merits of the case. It was held that the concept of “hearing by the Court”, in fact, has common application both under civil and criminal jurisprudence. Even in a criminal matter the hearing of the case is said to be commenced by the Court only when it applies its mind to frame a charge etc. Similarly, under the civil law also it is only when the Court actually applies its mind to the averments made by the party/parties, can it be considered as hearing of the case. The date of hearing is not to be confused with the expression “step in the proceedings”. These were two different concepts of procedural law and have different connotation and application. What may be a “step in the proceeding”, essentially, may not mean a “hearing” by the Court. The necessary ingredients of “hearing” it was said thus are application of mind by the Court and addressed by the party to the suit.

(77) In the circumstances, the proceedings in pursuance of notification under Section 4 of the Old 1894 Act are only for preliminary inquiry for carrying out the survey and suitability of the land proposed to be acquired. Besides, to also apprise the landowners of the intention of the appropriate Government to acquire the land so that they can file objections, if any, and also hear the objections in terms of Section 5-A of the Old 1894 Act. There is no application of mind at the said stage. The application of mind comes at a stage when declaration under Section 6 of the Old 1894 Act is issued after considering the

²⁵ AIR 1959 SC 1118

²⁶ (2011) 6 SCC 321

objections and hearing the parties. Therefore, on the principle of first date of hearing being the date when there is application of mind to the issue involved, it can be said that the acquisition proceedings are initiated on the said date and the earlier proceedings were only or merely steps in the proceedings.

(78) The legislature in Section 24 (1) of the New 2013 Act has provided for the land acquisition process deemed to have lapsed in certain cases under the Old 1894 Act. It is provided that notwithstanding anything contained in the New 2013 Act, in any case land acquisition proceedings 'initiated' under the Old 1894 Act where no award under Section 11 of the Old 1894 Act had been made, then all the provisions of the New 2013 Act relating to determination of compensation are to apply. The applicability of the new provisions of the New 2013 Act for the purpose of payment of compensation would only be if proceedings under the Old 1894 Act had been 'initiated' before 01.01.2014, which is the appointed day for the enforcement of the New 2013 Act.

(79) Learned counsel for the respondents has also relied upon the case of *Sakharbai Haribhau Shelke* versus *Sub Divisional Officer (Bombay)*²⁷. In the said case, it was observed that the matter was governed by the provisions of Section 24 (1) (a) of the New 2013 Act. The land of the petitioner in the said case was sought to be acquired for the Shirdi Sansthan for construction of a 'Dharamshala'. The notification under Section 4 of the Old 1894 Act was published in the newspaper on 27.09.2000. The petitioner in terms of Section 5-A of the Old 1894 Act raised objections to the said acquisition, which objections were rejected. Thereafter declaration under Section 6 of the Old 1894 Act was published on 21.09.2001. The petition in the said case was admitted on 29.04.2002 and the parties were directed to maintain status quo till further orders. At the time of hearing of the petition various questions were raised including that the New 2013 Act had come into operation from 01.01.2014 and by referring to Section 114 of the New 2013 Act, it was contended on behalf of the petitioner that there was no saving clause in the said Act. There was only a provision of repeal and the proceedings under the Old 1894 Act were not saved. It was submitted that when there was no such saving clause then, the proceedings under the Old 1894 Act cannot continue further. For the same purpose, new proceedings would have to be initiated under the

²⁷ 2014 (6) AIR Bombay 257

New 2013 Act. It was further submitted that as the Award had not been passed under the Old 1894 Act, the whole proceedings under the Old 1894 Act would lapse. Section 24 of the New 2013 Act would not come to the aid of the respondents and on the contrary would abort the proceedings under the Old 1894 Act. The question that was considered was as to what would be the effect of the New 2013 Act to the acquisition of which was initiated under the Old 1894 Act till the notification under Section 9 of the Old 1894 Act and further proceeding not being taken up due to the prohibitory orders of the Court. It was held that the matter would be governed by the provisions of Section 24 (1) (a) of the New 2013 Act. It was observed that in the said case, the Award under Section 11 of the Old 1894 Act had not been passed. In such a case, the provisions of the New 2013 Act would apply to the extent of determination of compensation. The proceedings which were initiated and continued under the Old 1894 Act till the stage of notice under Section 9 would not lapse. Section 24 (1) (a) of the New 2013 Act did not leave room for any ambiguity and the said provision would have to be construed strictly.

(80) In the said case, the question as to when the proceedings under the Old 1894 Act would be deemed to have been initiated was not in issue. In fact the declaration under Section 6 of the Old 1894 Act in the said case had been published on 21.09.2001, that is, much before the New 2013 Act came into force on 01.01.2014. Therefore, the ratio of the judgment in the said case is inapplicable to the facts of the present case.

(81) The other case referred to by the learned counsel appearing for the respondents is *Rajaram and others* versus *State of M.P* (supra). In the said case a learned Single Judge of the Madhya Pradesh High Court considered the case where the legality, validity and propriety of the notification dated 23.08.2013 issued under Section 4 of the Old 1894 Act was questioned. The petitioners therein also prayed that the respondents be restrained from encroaching upon the land over which they intended to construct a water pond. The State Government had issued an administrative order dated 12.03.2013 for sanction for disbursement of funds. The total agriculture land as per Government record in village Bodora was 243.90 hectares out of which by the impugned notification under Section 4 of the Old 1894 Act, the respondents intended to acquire land to the tune of 194.300 hectares. By way of objections in the 'Jan Sunwai' dated 18.06.2013 there was an objection about proposed construction of a tank in the land of their

village. The petitioners actually came to know about such construction when officers of the State Government equipped with a JCB Machine came to dig their valuable land. At the said stage on the basis of the documents available with them, they filed the petition. It was submitted on behalf of the petitioners that with the commencement of the New 2013 Act from 01.01.2014, the earlier proceedings initiated pursuant to Old 1894 Act were not saved and had lapsed. It was submitted that the Section 4 notification under the Old 1894 Act was issued prior to the commencement of the New 2013 Act. As per Section 114 of the New 2013 Act and as per Section 6 of the 1897 GC Act, the Section 4 notification and subsequent proceedings under the repealed Act did not survive. It was contended that the New 2013 Act required that the acquisition be initiated since the inception of the New 2013 Act.

(82) It was held that Section 6 (b) of the 1897 GC Act was wide enough to save the earlier notification issued under Section 4 of the Old 1894 Act. It was further held that in the light of the judgments referred to therein and language employed in Section 114 of the New 2013 Act, the pending proceedings of the Old 1894 Act were saved and could not be held to have lapsed on the commencement of the New 2013 Act. It was held that Section 24 (1) (a) of the New 2013 Act would be applicable and a bare reading of the said provision would make it clear that when no Award under Section 11 had been made then the provisions of the New 2013 Act relating to the determination of compensation would apply. The question as to when the proceedings were initiated was not considered in the said case; therefore, it would have no applicability to the issues involved in the present case.

(83) In *Thyssen Stahlunion GMBH versus Steel Authority of India Ltd.*²⁸, the enforcement of an award which had been made under the old Arbitration Act, 1940 ('Old Arbitration Act' – for short) though after coming into force the new Arbitration and Conciliation Act, 1996 ('New Arbitration Act' – for short) which repealed the old Arbitration Act was examined on the touchstone of proceedings held under the old Arbitration Act. Disputes and differences had arisen between the parties to the arbitration proceedings which were commenced under the old Arbitration Act on 14.09.1995. An Arbitrator was appointed on 15.09.1995 and terms of reference was finalized on 13.05.1996. Hearing before the sole arbitrator who had been appointed took place from 07.01.1997 to 28.01.1997. The Award was made on 24.09.1997.

²⁸ AIR 1999 SC 3923

By this time, the new Arbitration Act had come into force on 25.01.1996. Thyssen filed a petition in the Delhi High Court under Sections 14 and 17 of the old Arbitration Act for making the award a rule of the Court. While these proceedings were pending in the High Court, Thyssen on 12.02.1998 filed an application for stay of proceedings. On the following date, the company filed an application for execution of the award under the New Arbitration Act. The ground taken was that the Arbitration proceedings had been terminated with the making of the award on 24.09.1997 and, therefore, the new Arbitration Act was applicable for enforcement of the award. The respondent-Steel Authority of India Ltd. (SAIL) opposed the maintainability of the execution application. It also filed objections to the award on various grounds under the old Arbitration Act.

(84) The question that fell for consideration in that case was; whether the award would be governed by the new Arbitration Act for its enforcement or whether provisions of the old Arbitration Act would apply. A learned Single Judge of the Delhi High Court held that the proceedings would be governed by the old Arbitration Act. Thyssen aggrieved against the same approached the Supreme Court. The Supreme Court considered the case law with particular reference to the provisions of Section 85 of the new Arbitration Act, which provided for repeal and savings. Sub-Section (1) thereof provided for repeal of three enactments including the old Arbitration Act. Sub Section (2) (a) of Section 85 envisaged that notwithstanding such repeal, the provisions of the said enactments, i.e. the repeal enactments shall apply in relation to arbitral proceedings which commenced before the new Arbitration Act came into force unless otherwise agreed by the parties but the new Arbitration Act shall apply in relation to arbitral proceedings which commenced on or after the new Arbitration Act comes into force. It was held that the said saving clause exempted the old Arbitration Act from complete obliteration insofar as pending arbitration proceedings were concerned that would include saving of whole of the old Arbitration Act until the enforcement of the award. The said Section 85 (2) (a) prevented the accrued right under the old Arbitration Act from being affected. The saving provisions, it was said, preserved the existing rights accrued under the old Arbitration Act. It was further held that there is a presumption that the legislature does not intend to limit or take away vested rights unless the language clearly points to the contrary. The new Arbitration Act was a remedial statute and, therefore, Section 85 (2) (a) called for a strict construction, it being a repealing provision. But then it was further stated that as stated above where one

interpretation would produce an unjust or an inconvenient result and other would not have those effects, there is then also a presumption in favour of the latter. Enforcement of the award, it was stated, therefore, had to be examined on the touchstone of the proceedings held under the old Arbitration Act.

(85) The provisions of the Foreign Awards Act were noticed; however, it was held that under the Foreign Awards Act when the court is satisfied that the foreign award is enforceable under that old Arbitration Act, the court shall order the award to be filed and shall proceed to pronounce judgment accordingly and upon the judgment so pronounced a decree shall follow. It was held that if the provisions of the Foreign Awards Act and the new Arbitration Act relating to enforcement of the foreign award were juxtaposed there would appear to be hardly any difference. It was held that the award given on 24-9-1997 in the case of *Thyssen Stahlunion GMBH* versus *Steel Authority of India Ltd.* (Civil Appeal No. 6036 of 1998) when the arbitral proceedings commenced before the Arbitration and Conciliation Act, 1996 came into force on 22-8-1996, would be enforced under the provisions of the old Arbitration Act, 1940.

(86) The question as to what is right accrued or acquired was examined with reference to the provisions of Section 6 of the 1897 GC Act and as to when it could be said that the arbitral proceedings had commenced under the old Arbitration Act, a party had acquired a right to have the award given thereafter enforced under the old Arbitration Act. The Supreme Court examined the question with reference to the provisions of Section 6 of the 1897 GC Act, and whether it could be said that when the arbitral proceedings had commenced under the old Arbitration Act and the party had acquired a right to have the award given thereafter enforced under the old Arbitration Act. The question that arose for consideration was whether a right had accrued to the party or was it merely an inchoate right. A reference was made to the cases which showed that something more was required for vested right to accrue. The right it was held did exist but then nothing was done to show that any act was done or advantage taken of the enactment under which the right existed till it was repealed. An act gave the right and the new Arbitration Act which repealed the old Arbitration Act, took away the right. It was held that mere right to take advantage of the provision of an act cannot be taken to be a right accrued.

(87) The said case is confined in its own facts and circumstances and it does not basically touch the issue involved in the present case

although it takes into account the effect of Section 6 of the 1897 GC Act when an Act is repealed.

(88) What really comes out is that in terms of Section 6 of the 1897 GC Act when any Central Act is repealed, then unless a different intention appears, the repeal does not affect the circumstances enumerated in clauses (a) to (e) of Section 6. Clause (b) enjoins that the repeal does not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Besides, clause (c) enjoins that the repeal does not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

(89) It is to be noticed that though the Old 1894 Act has been repealed by the New 2013 Act from 01.01.2014 onwards; however, with the issuance of the notification under Section 4 of the Old 1894 Act before 01.01.2014 it did not in any manner affect any right, privilege, obligation or liability acquired, accrued or incurred under the Old 1894 Act, which was repealed. With the mere issuance of a notification under Section 4 of the Old 1894 Act none of any right, privilege, obligation or liability was acquired or had accrued or incurred in favour of either parties before the repeal of the enactment. This is more so for the reason that the proceedings for acquisition of the land are said to be initiated with the issuance of declaration under Section 6 of the Old 1894 Act which admittedly was done after the enforcement of the New 2013 Act from 01.01.2014. Therefore, on the said date, the provisions of Section 114 (1) of the New 2013 Act would apply and not Section 114 (2) thereof as the acquisition proceedings cannot be said to have been initiated.

(90) Some other case law has also been referred to by learned counsel for the respondents; however, the question as to when the proceedings under the Old 1894 Act can be said to be initiated has not been considered.

(91) As has already been noticed, the issuance of notification under Section 4 of the Old 1894 Act is for the purpose of conducting a preliminary inquiry and for carrying out a survey in respect of the suitability of the land proposed to be acquired. There is no application of mind at the said stage. The application of mind comes at a stage after considering the objections and hearing the parties, when declaration under Section 6 of the Old 1894 Act is issued. Therefore, it is on the application of mind as to whether the land is to be acquired or not to be acquired, and a decision is taken to acquire it that it can be said that the

acquisition proceedings had been initiated on the said date and the earlier proceedings were only or merely steps in the proceedings. In fact the legislature in Section 24 (1) (a) of the Old 1894 Act used the expression, 'of land acquisition proceedings initiated under the Land Acquisition Act, 1894.' The initiation of proceedings is to be seen in the facts and circumstances as to when the proceedings had really started or commenced. In other words, the stage is reached only after there is application of mind and a decision is taken for the acquisition of land, it can be said that the proceedings were initiated. This indeed is the stage when a declaration under Section 6 of the Old 1894 Act is issued. The earlier proceedings are mere steps in the proceedings.

(92) For purposes like payment of compensation, the date of notification under Section 4 of the Old 1894 Act is taken for the purpose of fixing the rate to be paid. However, this would be not of much consequence as the transactions in respect of the land that is proposed to be acquired more or less stop at that stage and the sales, if any, are mostly distressed sales. Therefore, the date of issuance of notification under Section 4 of the Old 1894 Act is not to be taken as the initiation of proceedings but is merely a step in the proceedings as the prices are pegged down on the said date. This would not be the position in the present case where a conscious decision is to be taken with due application of mind as to whether the land is needed for acquisition and also whether it is suitable for acquisition, which decision can be taken only after inputs have been given by the survey that is conducted, the objections filed by the landowners and the persons interested in the land. This exercise is to be carried out with due application of mind, which is the date of initiation of the proceedings.

(93) In the circumstances, it cannot be said that the acquisition proceedings had been 'initiated' as contemplated by Section 24 (1) of the New 2013 Act as the notification under Section 4 of the Old 1894 Act had been issued before the coming into effect of the New 2013 Act from 01.01.2014. Section 24 of the New 2013 Act relates to land acquisition process under the Old 1894 Act to be deemed to have lapsed in certain cases. The said heading of Section 24 is for providing of lapse of proceedings under the Old 1894 Act in certain cases. Sub-section (1) (a) thereof mentions that notwithstanding anything contained in the New 2013 Act, in any case of land acquisition proceedings initiated under the Old 1894 Act, where no award under Section 11 of the Old 1894 Act had been made, then all provisions of

the New 2013 Act relating to the determination of compensation are to apply. Therefore, for the applicability of the provisions of clause (a) of sub-section (1) of Section 24 of the New 2013 Act are that the proceedings under the Old 1894 Act must have been initiated. It is only then that where no award under Section 11 of the Old 1894 Act had been made, then, the provisions of the New 2013 Act for determining the payment of compensation are to apply. Initiation of proceedings under the Old 1894 Act is a *sine qua non* for the applicability of the New 2013 Act for the purpose of determining the payment of compensation. With the mere issuance of notification under Section 4 of the Old 1894 Act on 28.10.2013 before the New 2013 Act came into force from 01.01.2014, it cannot be said that the land acquisition proceedings had been initiated and consequently the Award having not been passed, the provisions relating to the determination of compensation in terms of the New 2013 Act were to apply. In fact, it is the declaration under Section 6 of the Old 1894 Act which has an element of firmness of the proposed acquisition being finalized that it can be said that the acquisition proceedings had been initiated. What was a mere proposal under Section 4, it was said, becomes the subject-matter of a definite proceeding for acquisition under the Old 1894 Act. The declaration under Section 6 having been issued on 27.10.2014 after the New 2013 Act had come into effect would clearly spell out that the land acquisition proceedings had not been initiated under the Old 1894 Act before the New 2013 Act came into force.

(94) In the circumstances, the provisions of Section 24 (1) of the New 2013 Act would not apply and the acquisition proceedings being conducted under the Old 1894 Act shall be deemed to have lapsed. The provisions of Section 114 of the New 2013 Act also envisage that the Old 1894 Act had been repealed. This would mean that it had been repealed with the coming into force of the New 2013 Act from 01.01.2014. Sub-section (2) of the Section 114 of the New 2013 Act envisages that the repeal of the Old 1894 Act by sub-section (1) of Section 114 of the New 2013 Act would not be held to prejudice or affect the general application of Section 6 of the 1897 GC Act with regard to the effect of repeals. Clause (c) of Section 6 of the 1897 GC Act, which is relevant for the present controversy, envisages that where any Central Act repeals any enactment hitherto made or hereafter to be made, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The applicability of Section 6 of the 1897 GC Act would not be relevant as the land acquisition proceedings

with the mere issuance of Section 4 notification before the New 2013 Act had come into operation, it has been held, would not amount to initiating the acquisition proceedings under the Old 1894 Act.

(95) In view of the aforesaid position, the applicability of Section 114 of the New 2013 Act, which deals with repeal and savings, may be considered and as to when the same would apply. Sub Section (1) of the said Section 114 is clear and envisages that the Old 1894 Act shall stand repealed hereby. Sub Section (2) enjoins that save as otherwise provided in the New 2013 Act, the repeal under sub Section (1) shall not be held to prejudice or affect the general application of Section 6 of the 1897 GC Act. Section 6 of the 1897 GC Act provides for effect of repeal. It is provided therein wherein the 1897 GC Act or any Central Act or Regulations made after the commencement of the 1897 GC Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears. The repeal shall not affect the circumstances as enumerated in clauses (a) to (e) therein. Clause (b) provides that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered there under. A repeal of an enactment is generally to put an end to the law as if the law repealed had never existed. The object of repeal is to obliterate the Act from **the statute** books, except for certain purposes as provided for under Section 6 of the 1897 GC Act. The intention of the legislature is to be gathered as to what is the purpose and object of the repeal. Such an intention can be ascertained from the express provisions of the later legislation or by the necessary implications coming from therein. It is to be ascertained from the later statute as to whether the intention of the legislature was to put an end to the earlier enactment in its entirety or in part only.

(96) In *Gajraj Singh* versus *STAT*²⁹, the Supreme Court said that whenever an Act is repealed, it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law. Repeal, it was said, is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment

²⁹ (1997) 1 SCC 650

wholly or in part, then it would be a case of total or *pro tanto* repeal.

The Second Question.

(97) The second question that requires consideration is whether a notification issued under Section 4 of the Old 1894 Act before the appointed day of 01.01.2014 would continue to remain operative in view of Section 6 read with Section 24 of the 1897 GC Act.

(98) In this regard, as has already been noticed and considered above, the notification issued under Section 4 of the Old 1894 Act before the appointed day i.e. 01.01.2014 would not continue to remain operative in view of Section 6 of the 1897 GC Act. This is for the reason that Section 6 of the 1897 GC Act is not to be read in isolation and it is to be considered in the context of Section 24 (1) of the New 2013 Act. The provisions of the Old 1894 Act that have been repealed would continue to be operative in case proceedings under the Old 1894 Act had been initiated before the nominated day of 01.01.2014 and not otherwise. Therefore, in a case where a declaration under Section 6 of the Old 1894 Act is published and notified before 01.01.2014, the proceedings under the Old 1894 Act can well be said to have been initiated in view of Section 24 (1) (a) of the New 2013 Act and in a case where no award under Section 11 of the Old 1894 Act had been made, then all provisions of the New 2013 Act relating to the determination of compensation are to apply. The payment of compensation is also subject to the proviso that where an award had been made and compensation in respect of majority of land holdings had not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the Old 1894 Act shall be entitled to compensation in accordance with the provisions of the New 2013 Act.

(99) In fact, what Shri M.L. Sarin, Senior Advocate and Shri Jain, Senior Advocate seek to contend is somewhat similar in shade though in a different manner. Shri Sarin has emphasized that it is not a case of mere repeal and enforcement of an new enactment but the new enactment confers various beneficial provisions without the fulfillment of which no landowner is liable to be deprived of and, therefore, the Court should lean in favour of the beneficial legislation and for the benefit of whom it has been designed.

(100) Shri Jain, Senior Advocate, however, contends that the publication of preliminary notification under Section 4 read with Section 3(f) i.e. relating to the expression 'public purpose' of the Old

1894 Act prior to the date of its repeal needs to be pitted against the provisions of Sections 2 (1), 3 (za), 4 to 8 and 11 of the New 2013 Act for its continuation in force and be deemed to have been made or issued under the provisions, so re-enacted of the New 2013 Act in view of Section 24 of the 1897 GC Act. If such an exercise is undertaken, it is submitted that there would be numerous inconsistencies between the two owing to the several modifications made in the New 2013 Act by way of several additions. Therefore, it is primarily the beneficial provisions of the new legislation i.e. the New 2013 Act which is sought to be pressed for the invalidation of the acquisition proceedings.

(101) There is no doubt that the New 2013 Act which has been enacted contains several beneficial objects and purposes. The new law brings in a slew of statutory measures and procedural safeguards against acquisition except as per procedure established by the transformed law. The New 2013 Act ushers in an age of a comprehensive new-deal legislation aimed at rehabilitation, resettlement, environmental and sociological control of ancient interests of an affected or likely to be affected people, which create space for the landowners and other affected parties against sudden displacement, loss of home and livelihood. In Section 3 (f) of the Old 1894 Act the expression "public purpose" includes - (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites; (ii) the provision of land for town or rural planning; (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; (iv) the provision of land for a corporation owned or controlled by the State; (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any

State; (vii) the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority; (viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.

(102) Public purpose in terms of Section 3 (za) of the New 2013 Act, however, means the activities specified under Sub Section (1) of Section 2. Section 2 (1) of the New 2013 Act provides that the provisions of the said Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:—

- (a) For strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
- (b) For infrastructure projects, which includes the following, namely:-
 - (i) All activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;
 - (ii) Projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;
 - (iii) Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;
 - (iv) Project for water harvesting and water conservation structures, sanitation;
 - (v) Project for Government administered, Government

- aided educational and research schemes or institutions;
- (vi) Project for sports, health care, tourism, transportation of space programme;
 - (vii) Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;
- (c) Project for project affected families;
 - (d) Project for housing, or such income groups, as may be specified from time to time by the appropriate Government;
 - (e) Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;
 - (f) Project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(103) Besides, Section 3 (z) of the New 2013 Act defines “project” to mean a project for which land is being acquired, irrespective of the number of persons affected; Section 3 (o) of the New 2013 Act relates to, “infrastructure project” shall include anyone or more of the items specified in clause (b) of sub Section (1) of Section 2 as reproduced above. Chapter II of the New 2013 Act provides for ‘Determination of Social Impact and Public Purpose’. A preliminary investigation for determination of social impact and public purpose is to be carried out. Section 4 relates to ‘Preparation of Social Impact Assessment Study’; Section 5 relates to ‘Public Hearing for Social Impact Assessment’ and Section 6 relates to ‘Publication of Social Impact Assessment Study’. Thereafter an appraisal of social impact assessment report by an expert group is to be carried out. Section 7 provides for ‘Appraisal of Social Impact Assessment Report by Expert Group’. Section 8 relates to ‘Examination of Proposal for land acquisition and Social Impact Assessment report by appropriate Government’ and Section 9 provides for ‘Exemption from Social Impact Assessment’ where the land is proposed to be acquired invoking

the urgency provisions under Section 40. Chapter III of the New 2013 Act relates to 'Special Provision to Safeguard Food Security'. Section 10 relates to 'Special provision to safeguard food security'. These beneficial provisions are not there under the repealed Act.

(104) Therefore, Shri Sarin is right in saying that the new legislation does not substitute the Old 1894 Act and in fact it brings out a new era and even Shri Jain is right in saying that there are many inconsistencies between the new enactment and the Old 1894 Act that has been repealed and that the provisions of the Old 1894 Act cannot be substituted by the provisions of Section 24 of the 1897 GC Act as the new fleshed out features in the New 2013 Act are irreconcilable to the skeleton of the repealed Act.

(105) The contention put forth by Shri Amar Vivek that Section 24 of the 1897 GC Act is completely inapplicable may, however, not be correct as said Section 24 applies to provision as to appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealed Old 1894 Act or regulation shall insofar as it is not inconsistent with the provisions of the re-enacted New 2013 Act. It is to be noticed that the issuance of notification under Section 4 of the Old 1894 Act though is covered by Section 24 of the 1897 GC Act but nevertheless it is not in issue as the case is to be considered in the context of Section 6 of the 1897 GC Act as regards the effect of the repeal which is engrained in Section 114 (2) of the New 2013 Act itself. In the circumstances, it can be said that in terms of Section 6 of the 1897 GC Act with the repeal of the Old 1894 Act a different intention does appear in the New 2013 Act and even otherwise the previous operation of the enactment so repealed or anything done or suffered there under was affected; besides, neither any right, privilege, obligation or liability had been affected or liability acquired, accrued or incurred under the repealed Old 1894 Act. Therefore, the notification issued under Section 4 of the Old 1894 Act before the appointed day would not continue to remain operative in view of Section 6 read with Section 24 of the 1897 GC Act as an entirely new beneficial legislation has come into effect which must be read in favour of those for whose benefit it is intended. This, however, would not take within its ambit a case where proceedings for acquisition under the Old 1894 Act had been initiated, as properly understood, before the appointed day, which proceedings, as already noticed would commence with the issuance or publication of a declaration under Section 6 of the Old 1894 Act for the purpose of acquisition.

The Third and Fourth Questions.

(106) The third question that requires consideration is whether notification published under Section 4 of the Old 1894 Act in the Official Gazette, but published in the newspapers later i.e. after the commencement of the New 2013 Act on 01.01.2014 is sustainable in law; besides, which of these would be the effective notifications on the basis of which the process of publication can be said to be complete, i.e. whether the notification initially published in the Gazette or the subsequent notification that is published in the newspapers. The fourth question is whether the hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act is permissible after its repeal and after the commencement of the New 2013 Act from 01.01.2014.

(107) Shri Puneet Bali, Senior Advocate, appearing in the case Divyug Realty Pvt. Ltd. v. State of Haryana and others, CWP No. 8963 of 2015, has mentioned that insofar as his case is concerned, that the notification under Section 4 of the Old 1894 Act was published in the gazette on 27.12.2013, i.e. before the New 2013 Act came into force. However, in the newspaper, it was published on 01.01.2014.

(108) Section 4 (1) of the Old 1894 Act requires that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect is to be published in the Official Gazette and in two daily newspapers circulated in that locality of which at least one should be in the regional language and the Collector is to cause public notice of the substance of such notification to be given at convenient places in the said locality. The last dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification. Therefore, it is evident that the last dates of such publication, i.e. the publication of the notification, and the giving of such public notice is to be taken as the date of publication of the notification. It is to be noticed that Section 11 of the New 2013 Act relates to publication of preliminary notification and power of officers thereupon and a perusal thereof shows that whenever it appears to the appropriate Government that land in any area is required or is likely to be required for any public purpose, a notification, i.e. a preliminary notification to that effect along with details of the land to be acquired in rural and urban areas is to be published in the following manner, namely, in the Official Gazette; in two daily newspapers circulating in the locality of such area of which

one shall be in the regional language. This is also so provided for in Section 4 of the Old 1894 Act. The additions made in the New 2013 Act are that the notification is to be published in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil. It is also to be uploaded on the website of the appropriate Government and in the affected areas, in such manner as may be prescribed. Section 4 of the Old 1894 Act is, therefore, quite clear that it is the last of the dates of such publication and the giving of such public notice is to be referred to as the date of publication of the notification.

(109) In *State of Mysore* versus *Abadul Razak Sahib*³⁰, it was held that publication of a notification under Section 4 of the Old 1894 Act is a mandatory requirement. Under certain circumstances publication in the Official Gazettes are presumed to be notice to all concerned. But in the case of notification under Section 4 of the Old 1894 Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. It was said that unless both these conditions were satisfied Section 4 of the Old 1894 Act could not be said to have been complied. It was further said that Section 4 has an important purpose behind it. In the absence of such publication, the interested persons may not be able to file their objections about the acquisition proceedings and they would be deprived of the right of representation provided under Section 5-A of the Old 1894 Act which is a very valuable right.

(110) In *V.K.M. Kattha Industries Private Limited* versus *State of Haryana and others*³¹, it was said that Section 4 of the Old 1894 Act enjoins that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, then a notification to that effect is required to be published in (i) the Official Gazette; (ii) two daily newspapers having circulation in that locality of which, one shall be in the regional language; and (iii) it is also incumbent on the part of the Collector to cause public notice of the substance of such notification to be given at convenient places in the locality. On behalf of the appellant-company in the said case, it was *inter alia* contended that in the light of the

³⁰ (1973) 3 SCC 196

³¹ (2013) 9 SCC 338

language used in Section 4 (1) of the Old 1894 Act, all three modes of publication mentioned therein were mandatory. It was asserted that since the notification was not published at conspicuous places in the locality concerned, neither the lessee of the appellant-company nor the appellant-company came to know about the same. It was also asserted that no individual notice was served. Therefore, according to the learned Senior Counsel, the appellant-company was deprived of its valuable rights to file objections under Section 5-A of the Old 1894 Act. To put it clearly, the purpose of publication of the notification is twofold, first, to ensure that adequate publicity is given so that the land owners and persons interested would have an opportunity to file their objections under Section 5-A of the Old 1894 Act and, second, to give land owners/occupants a notice that it shall be lawful for any officer authorized by the Government to enter upon their land to carry out the activities enumerated in sub-section (2) of Section 4 of the Old 1894 Act. In the said case, the notification was published in two newspapers but there was no whisper about the publication of the substance of the notification in the locality as provided under Section 4 (1) of the Old 1894 Act. No material such as counter-affidavit or reply had been projected before the High Court as well as before the Supreme Court in support of their stand. In such circumstances, the Court observed that it was clear that in spite of knowing the specific ground raised by the appellant in the said case about the non- publication of the substance of the notification as prescribed under the Old 1894 Act in the locality concerned, neither the State nor the Land Acquisition Collector availed the opportunity of filing reply refuting the same. Accordingly, it was held that there was no option except to hold that there was no publication of the substance of the notification under Section 4(1) of the Old 1894 Act in the locality which is held to be mandatory. It was also said that it was relevant to point out that by effecting such publication in the locality, it would be possible for the person in possession, namely, either the owner or lessee to make their representation/objection in the inquiry under Section 5-A. In addition to the same, such person "owner or occupier" is entitled to file their objections within thirty days from the date of publication in the locality and by non-publication of the same in the locality as provided under the Act, the owner or occupier loses his valuable right. For these reasons also, it was held that the acquisition proceedings were also liable to be quashed.

(111) The land acquisition proceedings are evidently an expropriation legislation under eminent domain. Therefore, the last date

of the notification issued under Section 4 of the Old 1894 Act is to be the one in which it is published in the newspaper. The answer to the third question would be that a notification published under Section 4 of the Old 1894 Act in the official Gazette but in the newspaper later after the commencement of the New 2013 Act on 01.01.2014 would not be sustainable in law as the last dates of such publication and the giving of such public notice is to be taken as the date of the publication of the notification. It is only on the publication of the last of the notification that it can be said that there was notice to the affected parties so as to enable them to file objections. Therefore, since the notification in the official gazette was published on 01.01.2014, it would be taken to be invalid as on the said date the New 2013 Act had come into effect. Besides, the answer to the fourth question is that the hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act would not be permissible after its repeal and after commencement of the New 2013 Act from 01.01.2014 as the proceedings cannot be said to have been 'initiated' under the Old 1894 Act in case the declaration under Section 6 thereof had not been issued and it is only when the declaration is issued that the land acquisition process can be said to have been 'initiated'. In other words, in case a declaration in terms of Section 6 of the Old 1894 Act is not notified before 01.01.2014, the land acquisition proceedings cannot be said to have been initiated and therefore, would lapse by virtue of Section 24 (1) of the New 2013 Act.

(112) In the light of the above discussions, it is concluded that:-

(a) The proceedings in pursuance of notification under Section 4 of the Old 1894 Act are limited only for purposes of conducting a preliminary inquiry for carrying out the survey and suitability of the land proposed to be acquired. Besides, apprise the landowners of the appropriate Government's intention to acquire the land so that they can file objections, if any and also hear the objections.

(b) For the purpose of payment of compensation, the date of notification under Section 4 of the Old 1894 Act is to be taken for the purpose of fixing the rate to be paid as after publication of a notification the land prices freeze and there are no further transactions, besides, if there are sales at the said stage, these are mostly distressed sales. Therefore, even though the date of

notification under Section 4 of the Old 1894 Act is taken as the date for the determination of the rate of compensation but nevertheless is not to be taken as the date of initiation of proceedings under the Old 1894 Act. The proceedings for acquisition of land can be said to be initiated only after due application of mind which is the stage of declaration under Section 6 of the Old 1894 Act.

(c) The Legislature by Section 24 (1) of the New 2013 Act has provided for the land acquisition process deemed to have lapsed in certain cases under the Old 1894 Act. It is provided that notwithstanding anything contained in the New 2013 Act in any case the land acquisition proceedings 'initiated' under the Old 1894 Act where no award under Section 11 thereof had been made, then all the provisions of the New 2013 Act relating to determination of compensation are to apply. The applicability of the provisions of the New 2013 Act for payment of compensation would only be if proceedings under the Old 1894 Act had been initiated before 01.01.2014 which is the appointed day for the enforcement of the New 2013 Act.

(d) The applicability of Section 114 of the New 2013 Act which deals with repeal and savings is clear to the extent it envisages that the Old 1894 Act shall stand repealed. The effect of Sub Section (2) is that save as otherwise provided in the New 2013 Act, the repeal under Sub Section (1) shall not be held to prejudice or effect the general application of Section 6 of the 1897 GC Act. Repeal is not a matter of mere form but is of substance depending on the intention of the Legislature. If the intention indicated either expressly or by necessary implication in the New 2013 Act was to abrogate or wipe off the Old 1894 Act wholly or in part then it would be a case of total or *pro tanto* repeal. The repeal in respect of the Old 1894 Act is total insofar as Sub Section (1) of Section 114 of the New 2013 Act provides; however, by Sub Section (2) it does not prejudice or affect the general application of Section 6 of the 1897 GC Act.

(e) The New 2013 Act provides for several contemporary, progressive and socially beneficial legislative measures breaking away from the confines of the past archaic law and provides mechanisms for determination of social impact and public purpose which is not there in the Old 1894 Act. The New 2013 Act is to be leaned towards providing for the beneficial provisions of legislation to the landowners whose land is sought to be acquired so that they get the benefits of the new legislative dispensation.

(f) The notification issued under Section 4 of the Old 1894 Act before the appointed day i.e. 01.01.2014 under the New 2013 Act would continue to remain operative in terms of Section 6 and Section 24 of the 1897 GC Act only if the proceedings under the Old 1894 Act have been 'initiated' before 01.01.2014 which would be that there has been due application of mind followed by declaration under Section 6 of the Old 1894 Act.

(g) A notification published under Section 4 of the Old 1894 Act in the official Gazette but in the newspaper later after the commencement of the New 2013 Act on 01.01.2014 would not be sustainable in law as the last dates of such publication and the giving of such public notice is to be taken as the date of the publication of the notification. It is only on the publication of the last of the notification that it can be said that there was notice to the affected parties so as to enable them to file objections.

(h) The hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act would not be permissible after its repeal and after commencement of the New 2013 Act from 01.01.2014 as the proceedings cannot be said to have been 'initiated' under the Old 1894 Act in case the declaration under Section 6 thereof had not been issued and it is only when the declaration is issued that the land acquisition process can be said to have been 'initiated'. In other words, in case a declaration in terms of

Section 6 of the Old 1894 Act is not notified before 01.01.2014, the land acquisition proceedings cannot be said to have been initiated and therefore, would lapse by virtue of Section 24 (1) of the New 2013 Act.

(113) With the above conclusions, the reference to the Full Bench is answered and disposed of and the cases would now be listed before the regular Benches as per roster for consideration and disposal.

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