



**Reserved On : 28/01/2026**  
**Pronounced On : 27/04/2026**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 15368 of 2010**

**With**  
**R/SPECIAL CIVIL APPLICATION NO. 5098 of 2010**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**

**and**  
**HONOURABLE MR.JUSTICE D.N.RAY**

Approved for Reporting	Yes	No
	✓	

**CHAMPAKLAL NARANJI PATEL**  
**Versus**  
**STATE OF GUJARAT & ORS.**

**SCA NO. 15368 OF 2010**

Appearance:

MS. TANMAYI POOJARI, ADVOCATE WITH MS. VARNIKA SINGH,  
 ADVOCATE FOR MR SAURABH M PATEL(5019) for the Petitioner(s) No. 1  
 MR.KAMAL BTRIVEDI, ADVOCATE GENERAL WITH MR. VINAY VISHEN,  
 AGP for the Respondent(s) No. 1,5  
 MR.MIHIR THAKORE, SR.ADVOCATE WITH MR ASPI M KAPADIA(1865)  
 for the Respondent(s) No. 2  
 MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 4  
 NOTICE SERVED BY DS for the Respondent(s) No. 3

**SCA NO. 5098 OF 2010**

MS. RADHIKA BHATT, ADVOCATE WITH MR. VEDANT SUMAN,  
 ADVOCATE FOR MR. S.P.MAJMUDAR, ADVOCATE AND MR.  
 P.P.MAJMUDAR, ADVOCATE FOR THE PETITIONER.  
 MR. KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR. VINAY VISHEN,  
 AGP FOR THE RESPONDENT NOS. 1 & 3  
 MR. MIHIR THAKORE, SR.ADVOCATE WITH MR. ASPI KAPADIA,  
 ADVOCATE FOR RESPONDENT NO.2

**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE**  
**SUNITA AGARWAL**  
**and**  
**HONOURABLE MR.JUSTICE D. N. RAY**

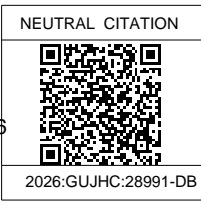


**CAV JUDGMENT  
(PER : HONOURABLE MR. JUSTICE D. N. RAY)**

**JUDGMENT**

**INDEX TO THE JUDGMENT**

<b>APPEARANCE DETAILS</b>	<b>PARA 1</b>
<b>OUTLINE OF THE CASE</b>	<b>PARA 2.</b>
<b>FACTUAL MATRIX</b>	<b>PARA 4.</b>
▪ Notification Dated 21.08.2008;	Para 4.2
▪ Notification Dated 02.04.2009.	Para 4.4
<b>PRAYERS AND RELIEFS SOUGHT</b>	<b>PARA 5.</b>
<b>SUBSTANTIAL QUESTIONS OF LAW</b>	<b>PARA 6.</b>
<b>ARGUMENTS OF THE PETITIONER(S)</b>	
▪ Void for Identity with the State Act, 2001;	Para 7.
▪ Impermissible Encroachment upon the field reserved for the Union;	Para 7.1
▪ State Enactment beyond Legislative Competence;	Para 7.2
▪ Non-Consideration of Repugnancy in Presidential Assent;	Para 7.3
▪ Inadequate Framework for Assessment of Compensation;	Para 7.4
▪ Pith and Substance attracted - Entry 53, List I;	Para 7.5
▪ Infringement of Articles 14, 19(1)(g) and 21.	Para 7.5
<b>ARGUMENTS OF THE RESPONDENTS</b>	
<b>Arguments of the Respondent Nos. 1 &amp; 5</b>	
▪ Chain of Litigation leading to Present Proceedings;	Para 8.1
▪ Both enactments traceable to Entry 42, List III ;	Para 8.3
▪ Doctrine of Parliamentary Legislations and Occupied Field;	Para 8.4
▪ Judgments referred and relied upon;	Para 8.4
▪ Referability of the Act, 1962 to Entry 42 vis-à-vis FPCE Judgment;	Para 8.5
▪ Section 18 vis-à-vis Karunanidhi Principle.	Para 8.7
<b>Arguments of the Respondent No. 2 (GSPL)</b>	
▪ No Invalidation Warranted - Glimpse of Essential Infrastructure;	Para 9
▪ GSPL's Infrastructure Projects and Activities;	Para 9.1
▪ Act of 2000 was enacted to confer unaddressed authority;	Para 9.3
▪ Harmonious Coexistence of Parallel Statutes	Para 9.4
▪ No repugnancy as Complimentary Legislative Fields.	Para 9.5
<b>FINDINGS AND ANALYSIS</b>	
▪ Progression of developments in the matter since enactment;	Para 10
▪ Legislative Competence over 'Natural Gas' - Entry 53, List I;	Para 13
▪ Examination of alleged overlap between 2000 and 2001 Acts.;	Para 14
▪ Judicial approval of the Competence (Anil @ Bipinchandra);	Para 15
▪ Core issue for adjudication as per the Order dated 19.07.2011;	Para 17
▪ R. C. Cooper - Stare Decisis on Entry 42, List III;	Para 19
▪ Plea of Per Incuriam in respect of earlier decisions;	Para 23
▪ Purpose and Referability of the Central Act of 1962;	Para 25
▪ SOR of the Central Act of 1962;	Para 27.1
▪ SOR of the impugned State Act, 2000;	Para 27.2
▪ Comparison of the Central Act & the State Act;	Para 29
▪ Section 18 of the Act of 1962 vis-à-vis Karunanidhi Judgment;	Para 33



- *Analysis of “in addition to and not in derogation of”;* Para 37
- *SOR of the Railways (Amendment) Act, 2008 [for acquisition];* Para 41
- *Dominant purpose for the enactment of the State Act, 2000.* Para 43

## CONCLUSIONS

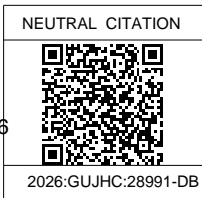
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### **Appearance Details**

1. Heard Ms. Tanmayi Poojari, learned advocate assisted by Mr. Saurabh Patel, learned advocate appearing for the petitioner in Special Civil Application No.15368 of 2010; Ms. Radhika Bhatt, learned advocate for Mr. S.P. Majmudar, learned advocate appearing for the petitioner in Special Civil Application No.5098 of 2010; Mr. Kamal B. Trivedi, learned Advocate General assisted by Mr. Vinay Vishen, learned Assistant Government Pleader appearing for the respondent Nos.1 and 5, Mr. Mihir J. Thakore, learned Senior Counsel assisted by Mr. Aspi M. Kapadia, learned advocate appearing for the respondent No.2.

### **Outline of the Case**

2. In the present petitions, the petitioner(s) have, *inter alia*, assailed the constitutional validity of the ***Gujarat Water & Gas Pipelines (Acquisition of Right of User in Land) Act, 2000***, an enactment of the State Legislature of Gujarat dated

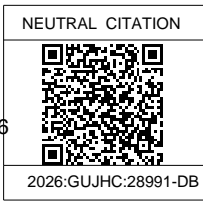


14.03.2000. The said State enactment has been legislated in the backdrop of, and in connection with, the ***Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962*** (hereinafter referred to as “the Central Act of 1962”), which is a Parliamentary enactment dated 07.12.1962, and the challenge is premised, *inter alia*, on issues relating to constitutional validity and legislative competence of the Act of 2000.

3. Issues raised in Special Civil Application No. 15368 of 2010 and Special Civil Application No. 5098 of 2010 are substantially identical and they were heard together. For the sake of convenience, Special Civil Application No. 5098 of 2010 is treated as the lead petition, and the decision rendered herein shall govern the outcome of the connected application as well.

### **Factual Matrix**

4. The facts, *in nuce*, giving rise to the filing of the present lead petition are as under:-



4.1 The petitioner is stated to be one of the co-owners of land bearing Revenue Survey No. 39, Block No. 10, classified as old tenure land, situated at village Bharthana, Taluka Choryasi, District Surat (hereinafter referred to as “the land in question”).

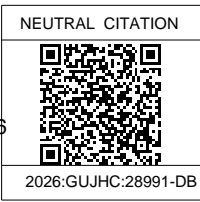
4.2 The respondent No. 2, namely Gujarat State Petronet Limited, issued a notification dated 21.08.2008 under Section 3 of the ***Gujarat Water & Gas Pipeline (Acquisition of Right of User in Land) Act, 2000*** (hereinafter referred to as “the Act, 2000”), expressing its intention to acquire the right of user in the lands specified in the schedule annexed thereto for the purpose of laying a pipeline for transportation of natural gas. The notification dated 21.08.2008 reads as under:-

***“ENERGY & PETROCHEMICALS DEPARTMENT***

***Notification***

***Sachivalaya, Gandhinagar, 21<sup>st</sup> August, 2008.***

*No. GU-2008-127-GPC-11-2008-2423-E, whereas it appears to the Government of Gujarat that it is necessary in the public interest that for the transportation of Natural Gas in the state of Gujarat from Village Kosam Taluka Olpad*



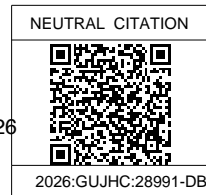
*District Surat to Village Utran, Taluka Surat City, District Surat for Gas Pipeline Project should be laid by the Gujarat State Petronet Limited (a Subsidiary Company of Gujarat State Petroleum Corporation Ltd. - a Government of Gujarat undertaking) Gandhinagar.*

*And whereas, for purpose of laying such pipeline, it is necessary to acquire the right of user in the lands described in the Schedule annexed to this notification.*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Gujarat Water and Gas Pipelines (Acquisition of Right of User in land) Act, 2000, the Government of Gujarat hereby declares its intention to acquire the right of user therein.*

*Any person interested in the lands described in the said Schedule may within thirty (30) days from the date of which the copies of the notification, as published in the Official Gazette of Government of Gujarat are made available to the general public object in writing with grounds to the acquisition of the right of user therein or laying of the pipelines under the land to The Competent Authority, Gujarat State Petronet Limited, Block 15, 3<sup>rd</sup> Floor, Udyog Bhavan, Sector 41 Gandhinagar 382 011."*

4.3 It is the case of the petitioner that the land in question came to be purchased by him from the erstwhile owners, namely Jayantigiri Premgiri and others, by way of a registered sale deed dated 24.07.2008, and since then, the petitioner claims to be in lawful possession and occupation of the said land.



4.4 Subsequently, respondent No. 1-State of Gujarat, issued a notification dated 02.04.2009 under Section 6 of the Act, 2000, declaring that the right of user in the lands specified in the schedule annexed to the said notification stood acquired for the aforesaid public purpose. The said notification, inter alia, included the land in question. The notification dated 02.04.2009 reads as under:-

***“ENERGY & PETROCHEMICALS DEPARTMENT***

***Notification***

***Sachivalaya, Gandhinagar, 2<sup>nd</sup> April, 2009.***

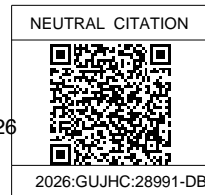
***No.GU-2009-53-GPC-11-2008-3235-E-Part-II.***

*whereas by notification of the Government of Gujarat, Ministry of Energy and Petrochemicals Department, Gandhinagar Notification No.GU-2008-56-GPC-11-2008-3235-E 30<sup>th</sup>May-2008, & No. GU-2008-127-GPC-11-2008-2423-E, dtd. 21<sup>st</sup> August-2008, issued under sub-section (1) of section 3 of the Gujarat Water and Gas Pipelines (Acquisition of Right of User in land) Act, 2000. The State Government declared it's intention to acquire the Right of User in land specified in the Schedule annexed to that notification for purpose of Laying the pipeline for transportation of natural gas.*

*And whereas, the copies of the said Gazette notification were made available to the public on 27/09/2008.*

*And whereas the Competent Authority has under sub-section (1) of Section 6 of the said Act submitted report to the Government.*

*And whereas, the State Government has after considering the said report decided to acquire the Right of User in the land specified in the Schedule annexed to this notification. Should be Issued.*

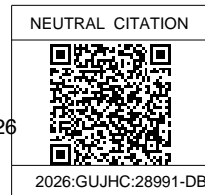


*Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the State Government hereby declares that the right of user in the said land specified in the Schedule annexed to this notification hereby acquired for laying the pipeline.*

*And further, in exercise of Powers conferred by sub-section (4) of section 6 of the said Act, the State Government directs that the right of user in the said land shall instead of vesting the State Government vests on this date of the publication of this declaration in the Gujarat State Petronet Ltd, (a Subsidiary Company of Gujarat State Petroleum Corporation Ltd. - a Government of Gujarat undertaking) Gandhinagar free from all encumbrances."*

4.5 The respondent No. 2, by notice dated 07.04.2009, called upon the erstwhile owner, namely Jayantigiri Premgiri, to submit his claim for compensation within a period of 60 days, in accordance with the provisions of the Act, 2000.

4.6 The petitioner asserts that he addressed a representation dated 11.05.2009 to respondent No. 2, informing the authority about the transfer of ownership in his favour and requesting that all future correspondence be addressed to him. Thereafter, respondent No. 2, vide communication dated 22.08.2009, proceeded to determine the compensation payable in respect of the land in question.



4.7 The petitioner, thereafter, submitted objections before the respondent No. 3, namely the District Collector, Surat, *inter alia*, with regard to the determination and receipt of compensation.

### **Prayers and Reliefs Sought**

5. Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, *inter alia*, challenging the constitutional validity of the ***Gujarat Water & Gas Pipeline (Acquisition of Right of User in Land) Act, 2000*** on the grounds of alleged violation of constitutional provisions and lack of legislative competence on the part of the State Legislature, and has accordingly preferred the present petition with the following prayers:-

*“(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction holding that the Gujarat Water & Gas Pipeline (Acquisition of Right of User in Land) Act, 2000 is illegal, unjustified and ultra vires the Constitution of India and that the State Government is incompetent to enact the said Act.*



*“(A)(a) YOUR LORDSHIPS may be pleased to issue appropriate writ, order or direction holding that the Gujarat Water & Gas Pipeline (Acquisition of Right to User in Land) Act, 2000 is repugnant to the Petroleum and Mineral Pipelines (Acquisition of Right to User in Land) Act, 1962 and is void and illegal in view of the provisions of Article 254 of the Constitution of India.*

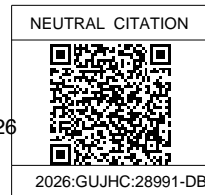
*(B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside notification dated 21.08.2008 issued by respondent No.2 under Section 3 of the Act (at ANNEXURE-B hereto) and notification dated 02.04.2009 issued by respondent No.1 under Section 6 of the Act (at ANNEXURE-D hereto);*

*(C) During the pendency and Final Disposal of the present petition, YOUR LORDSHIPS may be pleased to stay further operation, implementation and execution of notification dated 21.08.2008 issued by respondent No.2 under Section 3 of the Act (at ANNEXURE-B hereto) and notification dated 02.04.2009 issued by respondent No.1 under Section 6 of the Act (at ANNEXURE-D hereto) qua the land of the present petitioner;*

*(D) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.”*

### **Substantial Questions of Law**

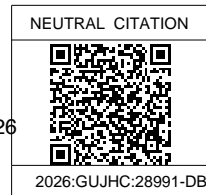
6. While adjudicating the petitions, this Court is called upon to consider the following substantial questions of law, which comprehensively encompass and govern the core issues arising in the case and are essential for the adjudication of the challenge involved herein:-



A. Whether the Gujarat Water & Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 falls within the legislative competence of the State Legislature of Gujarat, inasmuch as, the legislative competence can be traced to Entry 42 of List III (Concurrent List) of the Seventh Schedule to the Constitution of India OR whether the legislative competence is exclusively of the Union, the subject matter of the Legislation being traced to Entry 53 of List I (Union List), as claimed by the petitioners?

B. If the legislative competence of the State can be traced to Entry 42 of List III (Concurrent List), then whether the provisions of the State Act, 2000, are inconsistent with and repugnant to the Central Act, 1962?

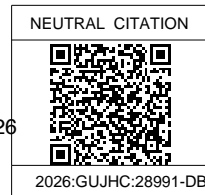
C. Whether the provisions of the impugned Act, as well as the consequential notification issued under Section 6(1) thereof, even otherwise, infringe the fundamental rights of the petitioner(s) guaranteed under Articles 14, 19(1)(g), and 21 of the Constitution of India?



### **Arguments of the Petitioner(s)**

7. Ms. Tanmayi Poojari, learned advocate appearing for the petitioner, at the very outset submitted that the subject matter of the impugned State Act of 2000 is identical with the subject matter of the *Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001*, (hereinafter referred to as “the State Act, 2001”). According to Ms. Poojari, both of these Acts are essentially to facilitate the transmission, supply and distribution of Gas which is a Union subject falling within Entry 53 of List I (Union List). According to Ms. Poojari, the Hon’ble Apex Court in its judgment dated 25.03.2004 reported in the case of ***Association of Natural Gas and Others Vs. Union of India & Others***, reported in **(2004) 4 SCC 489** has struck down the State Act, 2001 being *ultra vires* and beyond the competence of the State Legislature. Since the State Act, 2000, which is impugned before us is also for the purpose of transmission, supply and distribution of Gas, thus, the State Act, 2000 should also be declared to be beyond the competence of the State Legislature.

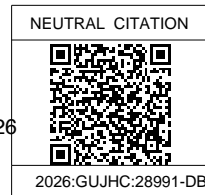
7.1 Ms. Radhika Bhatt, learned counsel appearing on behalf of the petitioner, has contended that in view of Entry 53 of



List I of the Seventh Schedule to the Constitution of India, the legislative domain in respect of natural gas, including liquefied natural gas, exclusively vests with Parliament. It is submitted that the impugned enactment, in pith and substance, enables the State Government to acquire rights in land for the purpose of laying pipelines for transportation of gas and water, which, according to her, amounts to an impermissible encroachment upon the legislative field reserved for the Union.

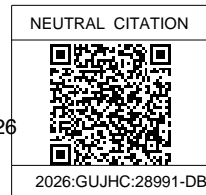
7.2 Elaborating further, it is urged that though the impugned Act is ostensibly framed as a legislation concerning acquisition of right of user in land, its true nature and effect pertain to regulation and transportation of natural gas and liquefied natural gas. On this premise, it is contended that the State Legislature lacked the requisite legislative competence to enact the said law.

7.3 It has been contended by Ms. Bhatt, learned counsel for the petitioner, that where a proposed legislation is placed



before the President for assent with a view to curing any inconsistency, it is incumbent that such inconsistency be expressly brought to the notice of the President so as to enable due application of mind. It is submitted that in the present case, no such inconsistency was ever pointed out to the President. Consequently, the issue of repugnancy was neither considered nor examined at the stage of granting Presidential assent, and therefore, the question of the President applying his mind to such aspect, either for according or withholding assent, does not arise.

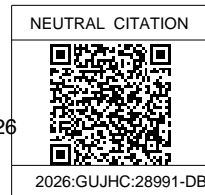
7.4 Ms. Bhatt has also assailed the provisions relating to determination of compensation under the Act, 2000, submitting that the statutory framework does not provide for an adequate or fair mechanism. It is argued that the laying of pipelines, in effect, substantially impairs the use and enjoyment of the land and is akin to acquisition, and therefore, the compensation contemplated under the Act, 2000 is neither just nor commensurate with the deprivation suffered. In furtherance of this contention, Ms. Bhatt also drawn the attention of this Court towards Section 108 of the



Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “**the RFCTLARR Act, 2013**”).

7.5 Ms. Bhatt has submitted that the impugned enactment contemplates only a limited right in the nature of “*right of user*” and does not amount to full-fledged acquisition of the land. It is argued that such limited acquisition is intrinsically linked to the activity of transmission of natural gas and, therefore, the legislation, in pith and substance, falls within the ambit of Entry 53 of List I of the Seventh Schedule to the Constitution of India. In support of the aforesaid proposition, Ms. Bhatt has placed reliance upon the judgment of the Hon’ble Apex Court in **Laljibhai Kadvabhai Savaliya v. State of Gujarat**, reported in **(2016) 9 SCC 791**, and has drawn the attention of this Court to the following relevant observations therein:-

*“17.1 As laid down by this Court in **Jilubhai Nanbhai Khachar and others v. State of Gujarat and another**, the right of user is a property right which can be acquired. Further, it is not necessary that the acquisition should be of “whole” of property rights or ownership rights. The acquisition could be “partial” and the principles land down in*

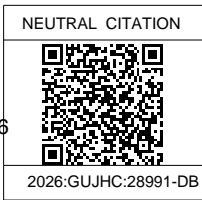


*the PMP Act are designed to give fair and just compensation for acquisition of such right of user.*

*17.2 Proviso to Section 7(1) of the PMP Act mandates that no pipeline shall be laid under any land which was used for residential purposes, or any land wherein any permanent structure was in existence before the date on which Notification under Section 3(1) was issued or any land which is appurtenant to a dwelling house. The pipeline would be laid under lands which are primarily fallow lands or those used for agricultural purposes. After the pipeline is so laid, the land could certainly be used for the purpose for which it was used before such Notification was issued. The agricultural operations could still be continued and the ownership in respect of land is left untouched. The vesting provisions of the PMP Act make it clear that it is an Act relating to acquisition of a limited right namely the right of passage under the sub-soil to enable the laying of pipelines. It would be incorrect to term the PMP Act to be acquiring proprietary interest of the landowners in the land or taking over their right to possess the lands in question."*

7.6 It is further contended that even if the impugned Act is assumed to be traceable to Entry 42 of List III of the Seventh Schedule, the same would be rendered void on account of repugnancy with the Central Act of 1962, a Central enactment which is stated to have already occupied the field governing the subject matter.

7.7 Lastly, it is submitted that the impugned Act as well as the notification issued thereunder under Section 6(1), is violative of the petitioner's fundamental rights guaranteed

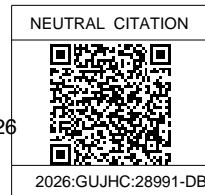


under Articles 14, 19(1)(g), and 21 of the Constitution of India. In particular, it is urged that the petitioner's right to carry on lawful activities and to deal with the property stands materially curtailed, and any restriction imposed in the absence of legislative competence would, *ex facie*, be unreasonable and liable to be struck down.

### **Arguments of the Respondents**

8. *Per contra*, Mr. Kamal B. Trivedi, learned Advocate General appearing for respondent No. 1, has, upon a conjoint reading of the provisions of the Act, 2000, the Central Act of 1962, as well as Entries 53 of List I and 42 of List III of the Seventh Schedule to the Constitution of India, advanced submissions opposing the contentions raised on behalf of the petitioner.

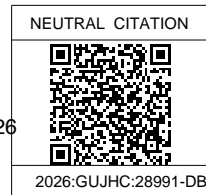
8.1 At the outset, Mr. Trivedi has delineated the sequence of litigation culminating in the present proceedings. In this regard, Mr. Trivedi has drawn the attention of this Court to the judgment dated 05.09.2005 rendered by this Court in **Anil**



@ **Bipinchandra Chotubhai Desai v. State of Gujarat and Others**, reported in **2005:GUJHC:20546-DB**, wherein it has been held that the State Legislature possesses the requisite legislative competence to enact the Act, 2000, the same being referable to **Entry 42 of List III (Concurrent List) of the Seventh Schedule** to the Constitution of India. It was held as under:-

*“For the reasons mentioned above, we hold that The Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 is within the legislative competence of the State and by enacting this piece of legislation the State cannot be said to have encroached on the Union's power of legislation in respect of the matters enumerated in List I of the Seventh Schedule.”*

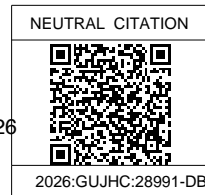
8.2 Mr. Trivedi has further submitted that subsequent to the judgment dated 05.09.2005, the petitioner approached the Hon'ble Apex Court by way of a writ petition under Article 32 of the Constitution of India on 12.08.2006, and sought liberty to pursue appropriate proceedings before this Court. Thereafter, a strong reliance is placed on the order dated 19.07.2011 passed by this Court in **Champaklal Naranji Patel v. State of Gujarat & 4**, rendered in **SCA No. 15368 of 2010 with SCA No. 5098 of 2010**, wherein, this Court, inter alia, observed that the principal issue arising for consideration is limited in scope, namely, whether the Act of



2000 is repugnant to the Central Act of 1962, enacted by Parliament, within the meaning of Article 254 of the Constitution of India. It was observed as under:-

*“Admit. The only question Involved in the case is weather Act 5 of 2000 enacted by the Legislature of the State is inconsistent with the Act 50 of 1962 elected by the Parliament and thereby is repugnant as per Article 254 of the Constitution of India.”*

8.3 Mr. Trivedi has further placed reliance upon the judgment of the Hon’ble Apex Court in the case of **Laljibhai Kadvabhai Savaliya v. State of Gujarat**, reported in **(2016) 9 SCC 791**, and has submitted that while examining the validity of the Act, 1962, the Hon’ble Apex Court has categorically held that the said enactment is a legislation pertaining to acquisition of right of user in land for the purpose of laying pipelines. On the strength of the aforesaid pronouncement, it is contended that both the Central Act of 1962 as well as the impugned State enactment is referable to Entry 42 of List III (Concurrent List) of the Seventh Schedule to the Constitution of India. It is further urged that the impugned Act, having been enacted in the year 2000, has been operating in the field concurrently with the Central legislation without any inconsistency or legal impediment for



a considerable period, which, according to the learned Advocate General, fortifies the presumption of its constitutional validity.

8.4 In order to fortify his submissions, Mr. Trivedi has placed reliance upon various pronouncements of the Hon'ble Apex Court wherein the doctrine of '**dominance of Parliamentary legislation**' and the concept of "**occupied field**" have been elaborately considered, particularly in the context of examining inconsistency and repugnancy between Central and State enactments. It is submitted that the aforesaid judgments lay down the governing principles for determining whether a State legislation can coexist with a Central enactment operating in the same field. The decisions relied upon by Mr. Trivedi are enumerated hereinbelow:-

**1) Fatehchand Himmatlal and Others v. State of Maharashtra**, reported in **(1977) 2 SCC 670**, wherein, it was observed as under:-

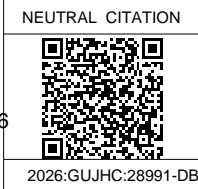
*"62. In the Canadian Constitution, the question of conflict and coincidence in the domain in which provincial and dominion legislation overlap has been considered. If both*



*may overlap and co-exist without conflict, neither legislation is ultra vires. But if there is confrontation and conflict the question of paramountcy and occupied field may crop up. It has been held that the rule as to predominance of dominion legislation can only be invoked in case of absolutely conflicting legislation in pari materia when it will be an impossibility to give effect to both the dominion and provincial enactments. There must be a real conflict between the two Acts i.e. the two enactments must come into collision. The doctrine of Dominion paramountcy does not operate merely because the Dominion has legislated on the same subject matter. The doctrine of 'occupied field' applies only where there is a clash between Dominion Legislation and Provincial Legislation within an area common to both. Where both can co-exist peacefully, both reap their respective harvests (Please see; Canadian Constitutional Law by Laskin--pp. 52-54-, 1951 Edn).*

*63. We may sum up the legal position to the extent necessary for our case. Where Parliament has made a law under Entry 52 of List I and in the course of it framed incidental provisions affecting gold loans and money-lending business involving gold ornaments, the State, making a law on a different topic but covering in part the same area of gold loans', must not go into irreconcilable conflicts. Of course, if Art. 254(2) can be invoked--We will presently examine it--then the State law may stir prevail since the assent of the President has been obtained for the Debt Act. Thirdly, the doctrine of 'occupied field' does not totally deprive the State Legislature from making any law incidentally referable to gold. In the event of a plain conflict, the State law must step down unless, as. pointed out earlier in the previous passage, Art. 254(2) comes to the rescue."*

- 1) M. Karunanidhi v. Union of India and Another,**  
reported in **(1979) 3 SCC 431**, wherein, it was observed  
as under:-



*“35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-*

- 1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.*
- 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.*
- 3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.*
- 4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.*

*37. Last but not the least there is a very important circumstance which completely and conclusively clinches the issue and takes the force out of the argument of Mr. Venu Gopal on the question of repugnancy. It would be seen that in the original State Act, section 29 ran thus:-*

*“Act to overrule other laws, etc.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court or other authority”.*

*This section underwent an amendment which was brought about by Tamil Nadu Act 16 of 1974 which substituted a new section 29 for the old one. The new section which was substituted may be extracted thus:-*

*“Saving - The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public man from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him”.*

*This amendment received the assent of the President on 10th April, 1974 and was published in the Tamil Nadu Government*



*Gazette Extraordinary dated 16th April, 1974. We have already shown that although the State Act was passed as far back as 30th December, 1973 it received the assent of the President on the 10th April, 1974 that is to say, on the same date as Act 16 of 1974. The Act was however brought into force on the 8th May, 1974 when the new section 29 which had already replaced the old section and had become a part of the statute. Therefore, for all intents and purposes the State Act cannot be read in isolation, but has to be interpreted in conjunction with the express language contained in section 29 of the State Act. This section has in unequivocal terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition to and not in derogation with any other law for the time being in force" which manifestly includes the Central Acts, namely, the Indian Penal Code, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts referred to above. The second part of section 29 also provides that nothing contained in the State Act shall exempt any public man from being proceeded with by way of investigation or otherwise under a proceeding instituted against him under the Central Acts. It is, therefore, clear that in view of this clear intention of the legislature there can be no room for any argument that the State Act was in any way repugnant to the Central Acts. We have already pointed out from the decisions of the Federal Court and this Court that one of the important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the legislature regarding the fact that the dominant legislature allowed the subordinate legislature to operate in the same field *pari passu* the State Act."*

- 1) Hoechst Pharmaceuticals Ltd. and Others v. State of Bihar and Others**, reported in **(1983) 4 SCC 45**, wherein, it was observed as under:-



*“54. In Laskin's Canadian Constitutional Law, 4th edn., it is observed at p. 24 that the doctrine of paramountcy is tied up with the “trenching” doctrine in the first of the four propositions formulated by Lord Tomlin in Attorney-General for Canada v. Attorney General for British Columbia & Ors. (1) case, and then he goes into the question,: “What is the basis of the paramountcy doctrine ?” Laskin quotes from Lefroy's Canada's Federal System at p. 126:*

*“But the rule as to predominance of Dominion legislation it may be confidently said, can only be invoked in cases of absolutely conflicting legislations in pari materia, when it would be an impossibility to give effect to both the Dominion and the provincial enactments.”*

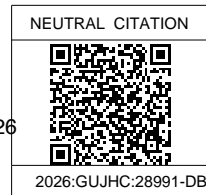
*The learned author refers to the two decisions of the Privy Council in Attorney-General of Ontario v. Attorney-General of Canada(2) and City of Montreal v. Montreal Street Railway(3) laying down that:*

*“There must be a real conflict between the two Acts, that is, the two enactments 'must come into collision'..... or 'comes into conflict .... over a field of jurisdiction common to both'.”*

*Laskin observes that the “conflict” test espoused by these authorities seems clear enough in principle even if it raises problems in application. He then at p. 26 notices that there is a recent trend in the decisions of the Supreme Court of Canada to the strict view of paramountcy reflected in the conflict or collision test, which he describes as the test of operating incompatibility and observes at p. 27 : .*

*“It is necessary to be reminded at all times that no issue of paramountcy can arise unless there is in existence federal and provincial legislation which, independently considered, is in each case valid. If either piece of legislation, standing alone, is invalid there is no occasion to consider whether the field has been occupied. The issue that will have been resolved in such case would be the anterior one of the “matter embraced by the legislation, whether of Parliament or of the provincial legislature, as the case may be.”*

*At p. 28, he states:*



*“The doctrine of occupied field applies only where there is a clash between Dominion legislation and provincial legislation within an area common to both.”*

*Here there is no such conflict. The Union and the State laws operate on two different and distinct fields and both the laws are capable of being obeyed.”*

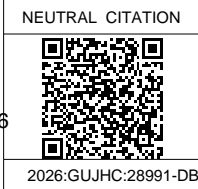
**1) National Engineering Industries Ltd. v. Shri Kishan Bhageria and Others**, reported in **AIR 1988 SC 329**, wherein, it was observed as under:-

*“12. It has to be borne in mind that section 2A of the Act was amended to permit individual workman to ask for a reference in the case of individual dispute. This amendment was assented to by the President on 1st of December, 1965. The Rajasthan Act received the assent of the President on 14th of July, 1958. On 8th March, 1972 Chapter 6A including section 28A was inserted in the Rajasthan Act. Therefore the material provision of the Rajasthan Act is the subsequent law. Under Article 254(2) of the Constitution if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the Concurrent List. It appears that both of these Acts tread the same field and if there was any conflict with each other, then section 28A of Rajasthan Act would apply being a later law. We find, however, that there is no conflict. The learned Single Judge of the Rajasthan High Court in Poonam Talkies, Dausa v. The Presiding Officer, Labour Court, Jaipur, (S.B. Civil Writ Petition No. 1206/85 decided on 9.6.1986) so. That decision has been upheld by the Division Bench of the Rajasthan High Court in Writ Appeal No. 231/86. The Division Bench of the High Court in the instant appeal relying on the said decision held that there was no scope for any repugnancy. It appears to us that it cannot be said that these two Acts do not tread the same field. Both these Acts deal with the rights of the*



*workman or employee to get redressal and damages in case of dismissal or discharge, but there is no repugnancy because there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two acts. These two Acts, in our opinion, are supplemental to each other.*

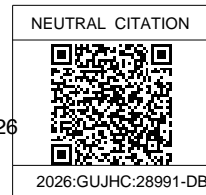
14. Quoting the aforesaid observations, this Court in *M/s. Hoechst Pharmaceuticals Ltd. and others v. State of Bihar and others*, [1983] 4 S.C.C. 45 at page 87 where A.P. Sen, J. exhaustively dealt with the principles of repugnancy and observed that one of the occasions where inconsistency or repugnancy arose was when on the same subject matter, one law would be repugnant to the other. Therefore, in order to raise a question of repugnancy two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other. These are two conditions which are required to be fulfilled. These are cumulative conditions. Therefore, these laws must tread on the same field and these must be repugnant or inconsistent with each other. In our opinion, in this case there is a good deal of justification to hold that these laws, the Industrial Disputes Act and the Rajasthan Act tread on the same field and both laws deal with the rights of dismissed workman or employee. But these two laws are not inconsistent or repugnant to each other. The basic test of repugnancy is that if one prevails the other cannot prevail. That is not the position in this case. Learned counsel on behalf of the appellant, however, contended that in this case, there had been an application as indicated above under section 28A of the Rajasthan Act and which was dismissed on ground of limitation. Sree Shankar Ghosh tried to submit that there would be inconsistency or repugnancy between the two decisions, one given on limitation and the other if any relief is given under the Act. We are unable to accept this position, because the application under Section 28A of the Rajasthan Act was dismissed not on merit but on limitation. There is a period of limitation provided under the Rajasthan Act of six months and it may be extended for reasonable cause. But there is no period of limitation provided under the Industrial Disputes Act. Therefore, that will be curtailment of the rights of the workmen or employees under the Industrial Disputes Act. In the situation section 37 declares that law should not be construed to curtail any of the rights of the workmen. As Poet Tennyson observed- "freedom broadens from precedent to precedent" so also it is correct to state that social welfare



*and labour welfare broadens from legislation to legislation in India. It will be a well-settled principle of interpretation to proceed on that assumption and section 37 of the Rajasthan Act must be so construed. Therefore, in no way the Rajasthan Act could be construed to curtail the rights of the workman to seek any relief or to go in for an adjudication in case of the termination of the employment. If that is the position in view of the provisions 6 months' time in section 28A of the Rajasthan Act has to be ignored and that cannot have any binding effect inasmuch as it curtails the rights of the workman under the Industrial Disputes Act and that Act must prevail. In the premises, there is no conflict between the two Acts and there is no question of repugnancy."*

**1) Innoventive Industries Ltd. v. ICICI Bank and Another**, reported in **(2018) 1 SCC 407**, wherein, it was observed as under:-

*"60. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section*

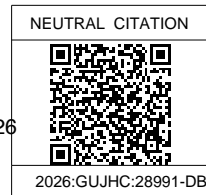


*4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:*

***“Sec. 238. Provisions of this Code to override other laws.-*** *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

*It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.”*

8.5 In order to demonstrate that the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 is traceable to Entry 42 of List III of the Seventh Schedule to the Constitution of India, Mr. Trivedi has placed reliance upon the decision of the Hon'ble Supreme Court in **Forum for People's Collective Efforts (FPCE) & Another v. State of**



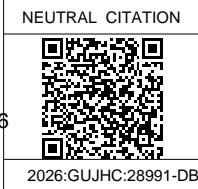
**West Bengal & Another**, reported in **(2021) 8 SCC 599**.

Drawing support from the said judgment, it is submitted that the Hon'ble Apex Court has, inter alia, made the following observations:-

*“10. Following the report of the Select Committee, the Real Estate (Regulation and Development) Bill, 2016 (the “RERA Bill 2016”) was introduced. The Statement of Objects and Reasons accompanying the RERA Bill 2016 emphasizes the basic rationale for the enactment of the legislation:*

**“STATEMENT OF OBJECTS AND REASONS**

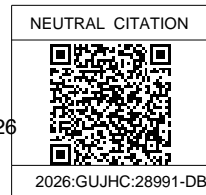
- 1. The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.*
- 2. In view of the above, it becomes necessary to have a Central legislation, namely the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal*



*to hear appeals from the decisions, directions or orders of the Authority.*

3. *The proposed Bill will ensure greater accountability towards consumers and significantly reduce frauds and delays as also the current high transactions costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run.” (emphasis supplied)*

11. *The legislative background antecedent to and ultimately culminating in the enactment of the RERA indicates: firstly, the circumstances which gave rise to the need for comprehensive Parliamentary legislation on the subject; secondly, the specific inadequacies in the development of the real estate sector which were a source of exploitation of purchasers; thirdly, the legislative policy underlying the enactment of the law; and fourthly, the context in which specific statutory provisions have been adopted as the instrument for bringing about orderly development and growth of the real estate sector. The legislative background demonstrates the concern of the policy makers that the unregulated growth of the real estate sector, accompanied by a lack of professionalism and standardization, had resulted in serious hardship to consumers. The real estate sector is of crucial significance to meet the demand for housing in the country. While remedies were provided to consumers by the Consumer Protection Act, 1986, this recourse was “curative” and did not assuage all the concerns of buyers on the one hand and promoters on the other hand in the sector. There existed an asymmetry of information between promoters and buyers of real estate. Buyers lacked adequate information about the title to the land, the nature of the development, pricing of projects and the progress of construction. A lack of standardization and uniformity was a key factor restraining the balanced growth and development of the real estate sector. The Central enactment sought to remedy the drawbacks of the existing regulatory framework in the country by establishing a real*



*estate regulatory authority to ensure that transactions between promoters and buyers are governed by the twin norms of efficiency and transparency. It sought to bring about accountability towards consumers and to significantly reduce frauds, delays and high transaction costs.*

14. *As such, the legislative background underlying the enactment of the RERA demonstrates a clear emphasis on:*

- i. Standardization;*
- i. Uniformity; and*
- i. Symmetry of information.*

*These elements provide the justification for enacting a comprehensive legislation which is uniformly applicable to all parts of the country.*

131. *Our journey of tracing the precedents of this Court, commencing from Zaverbhai (supra) up until Innoventive Industries (supra) indicates a thread of thought dwelling on when, within the meaning of Article 254(1), a law made by the legislature of a State can be considered to be repugnant to a provision of a law made by Parliament with respect to one of the matters in the Concurrent List which Parliament is competent to enact. The doctrine of repugnancy under Article 254(1) operates within the fold of the Concurrent List. Clause (1) of Article 254 envisages that the law enacted by Parliament will prevail and the law made by the legislature of the State shall be void "to the extent of repugnancy". Clause (1) does not define what is meant by repugnancy. The initial words of Clause (1) indicate that the provision deals with a repugnancy between a law enacted by the State legislature with:*

- i. A provision of a law made by Parliament which it is competent to enact; or*
- i. To any provision of an existing law; and*
- i. with respect to one of the matters enumerated in the Concurrent List.*

132. *The initial part of Clause (1) alludes to a law enacted by a state legislature being "repugnant" to a law enacted by Parliament or to an existing law. The concluding part of clause 1 provides for a consequence, namely that the State law would be void "to the extent of the repugnancy" and the*

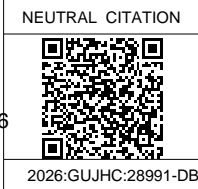


*Parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court which have elaborated on the context of clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression “repugnant” while providing that a law enacted by the legislature of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:*

*132.1 The **first** envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a Parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behavior or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other;*

*132.2 The **second** situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a Parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a Parliamentary enactment not because of an actual conflict with the absolute terms of a Parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject; and*

*132.3 The **third** test of repugnancy is where the law enacted by Parliament and by the State legislature regulate the same subject. In such a case the repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject.*



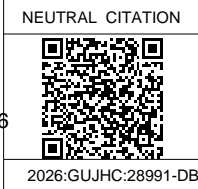
133. *The distinction between the first test on the one hand with the second and third tests on the other lies in the fact that the first is grounded in an irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List. The conflict between the two statutes gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression 'to the extent of the repugnancy' postulates that those elements or portions of the state law which run into conflict with the central legislation shall be excised on the ground that they are void. The second and third tests, on the other hand, are not grounded in a conflict borne out of a comparative evaluation of the text of the two provisions. Where a law enacted by Parliament is an exhaustive Code, the second test may come into being. The intent of Parliament in enacting an exhaustive Code on a subject in the Concurrent List may well be to promote uniformity and standardization of its legislative scheme as a matter of public interest. Parliament in a given case may intend to secure the protection of vital interests which require a uniformity of law and a consistency of its application all over the country. A uniform national legislation is considered necessary by Parliament in many cases to prevent vulnerabilities of a segment of society being exploited by an asymmetry of information and unequal power in a societal context. The exhaustive nature of the Parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject. The third test of repugnancy may arise where both the Parliament and the State legislation cover the same subject matter. Allowing the exercise of power over the same subject matter would trigger the application of the concept of repugnancy. This may implicate the doctrine of implied repeal in that the State legislation cannot co-exist with a legislation enacted by Parliament. But even here if the legislation by the State covers distinct subject matters, no repugnancy would exist. In deciding whether a case of repugnancy arises on the application of the second and third tests, both the text and the context of the Parliamentary legislation have to be borne in mind. The nature of the subject matter which is legislated upon, the purpose of the legislation, the rights which are sought to be protected, the legislative history and the nature and ambit of the statutory provisions are among the factors that provide guidance in the exercise of judicial review. The text of the statute would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the*



*Concurrent List. Often times, a legislative draftsman may utilize either of both of two legislative techniques. The draftsman may provide that the Parliamentary law shall have overriding force and effect notwithstanding anything to the contrary contained in any other law for the time being in force. Such a provision is indicative of a Parliamentary intent to override anything inconsistent or in conflict with its provisions. The Parliamentary legislation may also stipulate that its provisions are in addition to and not in derogation of other laws. Those other laws may be specifically referred to by name, in which event this is an indication that the operation of those specifically named laws is not to be affected. Such a legislative device is often adopted by Parliament by saving the operation of other Parliamentary legislation which is specifically named. When such a provision is utilized, it is an indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law. Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically elucidating specifically any other legislation. In such cases where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can co-exist. Where, however, the competing statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament. The primary effort in the exercise of judicial review must be an endeavour to harmonise. Repugnancy in other words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises for determination.*

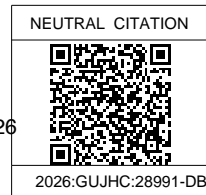
8.6 Mr. Trivedi has further invited the attention of this Court to Section 18 of the Central Act of 1962, and has proceeded to read and rely upon the said provision, which reads as under:-

**“Section 18. Application of other laws not barred.**



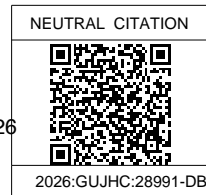
*The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to the acquisition of land.”*

8.7 Placing reliance on Section 18 of the Central Act of 1962, Mr. Trivedi has further drawn support from the decision of the Hon'ble Apex Court in the case of **M. Karunanidhi v. Union of India**, reported in **(1979) 3 SCC 431** to support his submission on the issue of repugnancy. It is submitted that in the said decision, the Apex Court was confronted with a situation involving an alleged inconsistency between a Central enactment and a State legislation, wherein the true test is whether compliance with one statute would necessarily entail disobedience of the other. According to Mr. Trivedi, if both enactments can be obeyed simultaneously without conflict, the question of repugnancy does not arise. Applying the aforesaid principle, it is contended that the provisions of the impugned State Act and the Central Act operate in their respective spheres without any irreconcilable inconsistency, and therefore, the plea of repugnancy advanced on behalf of the petitioner is misconceived.



8.8 In response to the pointed query posed by this Court as to whether the provisions of the Act of 2000 impose any restrictions upon the landholder whose land is subjected to acquisition of a limited right of user which are more onerous in nature as compared to those under the Central Act of 1962, Mr. Trivedi has submitted that no such onerous conditions are envisaged under the State enactment. According to Mr. Trivedi, both enactments operate harmoniously, without causing any impediment to their respective objects or resulting in any adverse or conflicting consequences.

9. Mr. Mihir Thakore, learned Senior Advocate appearing on behalf of respondent No. 2 - Gujarat State Petronet Limited (GSPL), has submitted that GSPL is the second largest natural gas transmission infrastructure company in India and, over the past approximately 25 years, has established an extensive network of pipelines under the aegis of the Act of 2000. It is contended that the said infrastructure caters to a substantial portion of the State of Gujarat and constitutes a critical component of the gas transmission sector. On this premise, it is urged that the impugned Act ought not to be invalidated,

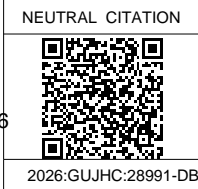


having regard to its significant role in sustaining essential infrastructure.

9.1 It is further submitted that respondent No. 2 has placed on record an additional affidavit delineating the details of the various works and projects undertaken by GSPL, important paragraphs of which read as under:-

*“6.1 GSPL is a government company and is the subsidiary of Gujarat State Petroleum Corporation Limited, a Government of Gujarat undertaking, a nodal agency of the State Government for Gas Grid Project in State of Gujarat. GSPL is entrusted with the responsibility of creating Gas Grid for transportation of Gas in the State of Gujarat. The project of laying pipelines and creating gas grid is a part of the infrastructure project as envisaged in the "Infrastructure Agenda Vision 2010" of Gujarat Infrastructure Development Board and Government of Gujarat. The Industrial Policy of the State of Gujarat focus on development of "Gas Based Economy" and the pipeline infrastructure of GSPL is the backbone for development of Gas Based Economy.*

*6.6 GSPL pipeline connects all major gas supply sources located in the State of Gujarat including natural gas fields of Cairn Energy (India) Private Ltd., GSPC-NIKO, all located in Hazira, ONGC Gas field located at Olpad, re-gasified LNG from the LNG terminal promoted by Shell and Total located in Hazira (which is known as Hazira LNG terminal), the Petronet LNG Terminal located in Dahej and the land fall point of gas from Panna Mukta Tapti field located in Hazira. When LNG from Petronet LNG (PLL) landed in India, GSPL network was ready to receive gas and a significant portion of LNG from PLL today is transported through GSPL network. Presently, there are only two LNG Terminals located in India and GSPL has pipeline network connected to both the LNG*



*Terminals. Further GSPL pipeline network is also connected to M/s Reliance Gas Transportation Infrastructure Limited (RGTIL) pipeline network at Atakpardi and Bhadbhut to provide last mile connectivity for transportation of M/s Reliance Industries Ltd (RIL) D6 gas from KG Basin to various power plants fertilizer plants, steel and local distribution companies with State of Gujarat.*

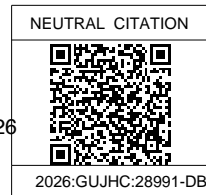
*6.8 GSPL has Operational Pipeline Projects of 1874 kms as on 31<sup>st</sup> March 2011 located in the State of Gujarat covering major industrial areas like Hazira, Mora, Utran, Bharuch, Dahej, Baroda, Ahmedabad, Kalol, Mehsana, Himmatnagar, Anand, Rajkot etc. Out of the said 1874 kms pipelines, approx. 1690 kms of pipelines are laid by acquiring rights of user in land under the Gujarat ROU Act and 184 kms of pipeline are laid by acquiring rights of user in land under Central Act of 1962. GSPL has incurred capital expenditure of approx. Rs.4194 crore up to 31st March 2011 for completing operational pipeline network.*

*6.9 Further GSPL is transporting approx over 35 MMSCMD of gas through the said pipeline network*

*6.10 Further GSPL has already initiated taking necessary actions for construction of 1102 kms of additional pipeline in the state of Gujarat. Upon completion of various pipeline segments that are construction, GSPL's natural gas transmission network will reach more areas of the districts like Amreli, Bhavnagar, Kutchh, Jamnagar and Sabarkantha where there are concentrations of businesses like Power, Fertilizers, Automobile and Ceramics, among others.*

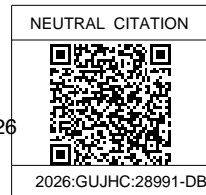
*6.11 Equity shares of GSPL are listed on Mumbai Stock Exchange and National Stock Exchange limited w.e.f. 16<sup>th</sup> February 2006 and presently the no. of shareholders of the company are approx 2 Lacs.*

*6.12 The Company has financed the operational and expansions projects with a mix of debt and equity. The Company has outstanding borrowing of approx Rs.1478 Crores from various banks and financial institutions as on 31st May, 2011."*



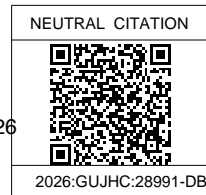
9.2 Mr. Thakore has further submitted that Entry 42 of List III (Concurrent List) empowers the legislature to enact laws pertaining to acquisition and requisition of property. It is contended that, under the scheme of the Central Act of 1962, the power to acquire right of user in land is vested in the Central Government, and to that extent, the field stood occupied insofar as acquisition by the Union is concerned.

9.3 It is, however, submitted that the aspect relating to acquisition by the State Government was not expressly addressed under the said framework. In that view of the matter, the State Legislature enacted the Act of 2000 so as to confer upon itself the requisite authority to acquire right of user in land for the purpose of laying pipelines within the State. On this premise, it is urged that in order to facilitate the development of an extensive pipeline network and to effectively exercise such power at the State level, the enactment of the Act of 2000 was both necessary and justified.



9.4 It has been further submitted that both the Central enactment and the State legislation contain an express provision under Section 18 stipulating that the said enactments are *“in addition to and not in derogation of any other law for the time being in force relating to acquisition of land.”* Placing reliance on the aforesaid provision, it is contended that such a clause has been judicially interpreted by the Hon’ble Apex Court as indicative of a legislative intent not to occupy the entire field, but rather to permit the coexistence of parallel legislations operating in the same domain. In this regard, reliance is placed upon the decisions in **ITC Ltd. v. Agricultural Produce Market Committee**, reported in **(2002) 9 SCC 232** and **M. Karunanidhi v. Union of India**, reported in **(1979) 3 SCC 431**. The Hon’ble Apex Court in the case of **ITC (Supra)** records as under:-

*“144. Assuming that Chapter III of the Tobacco Act is covered by Entry 52 of List I, nevertheless, Parliament did not intend to invalidate any portion of the Markets Act. It has consciously clarified by Section 31 that it does not intend to occupy the entire field and has “made space” for the State legislation and made it clear that the provisions of the Central Act shall be in addition to and not in derogation of any other law. The section assumes greater significance since most of the Markets Acts were in place when the Tobacco Act was enacted. There are two ways in which such a saving clause as is contained in Section 31 of the Tobacco Act may be understood. There is the way which found favour with this*

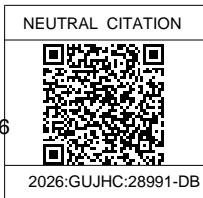


*Court in **M. Karunanidhi v. Union of India** which held that such a section clearly evinced the intention of the dominant legislature leaving "no room for any argument that the State Act was in any way repugnant to the Central Acts". (SCC p. 450, para 37) There is the other way of reading such a section in the dominant legislation as incorporating or taking under its legislative umbrella the allegedly conflicting provisions of the subservient statute. Either way, the express words in Section 31 coupled with the duty of courts to reconcile and uphold legislation, if possible, can only result in upholding the constitutional validity of the market fee imposed by the State."*

9.5 On the strength of the aforesaid submissions, it is argued that, in view of the express saving clause contained in both enactments, no inconsistency or conflict arises between the Central Act of 1962 and the Act of 2000. It is, therefore, contended that the question of repugnancy does not arise, and both legislations are capable of operating harmoniously in their respective spheres. Consequently, the Act of 2000 is asserted to be valid and constitutionally sustainable.

### **Findings and Analysis**

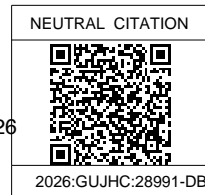
10. To examine the precise points for determination and the exact context of our inquiry, we need to outline the developments in the matter since its pendency alongwith the history of the enactment under challenge.



11. On 07.12.1962, Parliament enacted the ***Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962***, traceable to Entry 42 of List III (Concurrent List) of the Seventh Schedule to the Constitution of India, which pertains to acquisition and requisitioning of property.

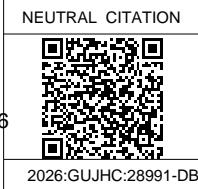
12. Subsequently, on 14.03.2000, the State Legislature of Gujarat enacted the ***Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000***. The said enactment was stated to be relatable both to Entry 17 of List II (State List), dealing with water and allied subjects, and Entry 42 of List III (Concurrent List), concerning acquisition and requisition of property.

13. Thereafter, on 28.04.2001, the State Legislature enacted the ***Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001***, which the State sought to justify under Entry 25 of List II (State List), pertaining to gas and gas works. However, the constitutional validity of such legislative



competence came to be examined by the Hon'ble Apex Court in a Presidential Reference under Article 143(1) of the Constitution, being Special Reference No. 1 of 2001, decided on 25.03.2004 and reported in **(2004) 4 SCC 489**. The Hon'ble Apex Court held that the subject of "**natural gas**" falls within the ambit of Entry 53 of List I (Union List), relating to petroleum and mineral oil resources. Consequently, it was authoritatively declared that the State Legislature lacked competence to legislate on the said subject under Entry 25 of List II, rendering the State Act of 2001 unconstitutional.

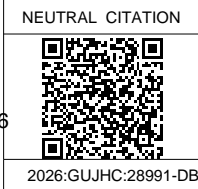
14. The submission of Ms. Poojari that the subject matter of the impugned State Act of 2000 is identical with the subject matter of the *Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001*, deserves to be rejected at the very outset, inasmuch as, a comparison of the provisions of the State Act, 2000 and State Act, 2001 would demonstrate that while the Act of 2001 was for regulation of transmission, supply and distribution of Gas, the same cannot be said for the State Act, 2000. The Hon'ble Apex Court in **Association of Natural Gas** (Supra) has categorically held as under :-



*“41. Under Entry 53 of List I, Parliament has got power to make legislation for regulation and development of oil fields, mineral oil resources; petroleum, petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable. Natural gas product extracted from oil wells is predominantly comprising of methane. Production of natural gas is not independent of the production of other petroleum products; though from some wells the natural gas alone would emanate, other products may emanate from subterranean chambers of earth. But all oil fields are explored for their potential hydrocarbon. Therefore, the regulation of oil fields and mineral oil resources necessarily encompasses the regulation as well as development of natural gas. For free and smooth flow of trade, commerce and industry throughout the length and breadth of the country, natural gas and other petroleum products play a vital role.*

*42. In Re: Cauvery Water Dispute Tribunal 1993, the right to flowing water of rivers was described as a right ‘publici juris’, i.e. a right of public. So also the people of the entire country has a stake in the natural gas and its benefit has to be shared by the whole country. There should be just and reasonable use of natural gas for national development. If one State alone is allowed to extract and use natural gas, then other States will be deprived of its equitable share. This position goes on to fortify the stand adopted by the Union and will be a pointer to the conclusion that “natural gas’ is included in Entry 53 of List I. Thus, the legislative history and the definition of ‘petroleum’, ‘petroleum products’ and ‘mineral oil resources’ contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States - all these factors lead to the inescapable conclusion that “natural gas” in raw and liquefied form is petroleum product and part of mineral oil resource, which needs to be regulated by the Union.*

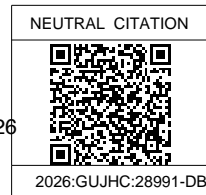
*43. Natural gas being a petroleum product, we are of the view that under Entry 53 List I, Union Govt. alone has got legislative competence. Going by the definition of gas as given in Section 2(g) of the Gujarat Act wherein “gas” has been defined as “a matter of gaseous state which predominantly consists of methane”, it would certainly include natural gas also. We are of the view that under Entry 25 List II of the Seventh Schedule, the State would be competent to pass a legislation only in respect of gas and gas-*



*works and having regard to collocation of words 'gas and gas works', this Entry would mean any work or industry relating to manufactured gas which is often used for industrial, medical or other similar purposes. Entry 25 of List II, as suggested for the States, will have to be read as a whole. The expressions therein cannot be compartmentally interpreted. The word 'gas' in the Entry will take colour from other words 'gasworks'. In Ballantine's Law Dictionary, 3rd edition, 1969 'Gas Works' is defined as "a plant for the manufacture of artificial gas". Similarly in Webster's New 20th Century dictionary, it is defined as "an establishment in which gas for heating and lighting is manufactured". In the www.freedictionary.com 'gas works' is explained as "a manufactory of gas, with all the machinery and appurtenances; a place where gas is generated." The meaning of the term 'gas works' is well understood in the sense that the place where the gas is manufactured. So it is difficult to accept the proposition that 'gas' in Entry 25 of List II includes Natural Gas, which is fundamentally different from manufactured gas in gas works. Therefore, Entry 25 of List II could only cover manufactured gas and does not cover Natural Gas within its ambit. This will negative the argument of States that only they have exclusive powers to make laws dealing with Natural Gas and Liquefied Natural Gas. Entry 25 of List II only covers manufactured gas. This is the clear intention of framers of the Constitution. This reading will no way make that entry a 'useless lumber' as feared by the States, because Natural Gas was never intended to be covered by that entry. It is also difficult to accept the argument of States that all 'gas' could be categorized as dangerously inflammable and thus arriving at the conclusion that Natural Gas is also covered in State List because this differentiation is based not on the characteristics of gas, but on the manner of its origin. Entry 25 of List II covers the gas manufactured and used in gas works. In view of this specific Entry 53, for any petroleum and petroleum products, the State Legislature has no legislative competence to pass any legislation in respect of natural gas. To that extent, the provisions-contained in the Gujarat Act are lacking legislative competence.*

*44. In the result, the Reference is answered in the following terms :*

*Q.1. Whether Natural Gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union*



*subject covered by Entry 53 of the List I and the Union has exclusive legislative competence to enact.*

*A .1. Natural Gas including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I and the Union has exclusive legislative competence to enact laws on natural gas.*

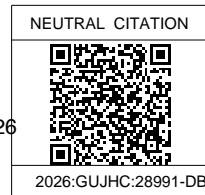
*Q. 2. Whether States have legislative competence to make laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution.*

*A. 2. The States have no legislative competence to make Laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution.*

*Q. 3. Whether the State of Gujarat had legislative competence to enact the Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001.*

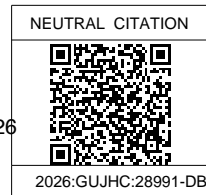
*A.3. The Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001, so far as the provisions contained therein relating to the natural gas or liquefied natural gas (LNG) are concerned, is without any legislative competence and the Act is to that extent ultra vires of the Constitution.”*

15. In the interregnum, on 05.09.2005, this Court, in the case of **Anil @ Bipinchandra Chotubhai Desai v. State of Gujarat** (rendered in **SCA No. 18013 of 2005** and allied matters), upheld the legislative competence of the State Legislature to enact the State Act of 2000, holding that the said legislation is referable to Entry 42 of List III of the Seventh Schedule.



16. Thereafter, the petitioner herein invoked the jurisdiction of the Hon'ble Apex Court under Article 32 of the Constitution by filing Writ Petition (Civil) No. 400 of 2006 on 12.08.2006, *inter alia* challenging the vires of the State Act of 2000. The respondent-State filed its affidavit-in-reply on 07.03.2007 opposing the said challenge. Subsequently, by order dated 16.09.2010, the Hon'ble Apex Court disposed of the said writ petition by granting liberty to the petitioner to approach this Court for appropriate relief.

17. Pursuant thereto, the petitioner instituted the present writ proceedings before this Court on 15.10.2010, once again assailing the constitutional validity of the State Act of 2000, primarily on the ground of lack of legislative competence. Upon consideration, this Court, by order dated 19.07.2011, admitted the petition and, *inter alia*, delineated the core issue for adjudication, observing that "*the only question involved in this case is whether Act 5 of 2000 enacted by the Legislature of the State is inconsistent with the Act 50 of 1962 enacted by the*

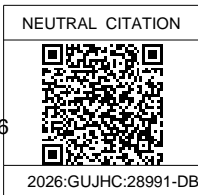


*Parliament and thereby is repugnant as per Article 254 of the Constitution of India.”*

18. In the aforesaid context, it is clear that the petitioners are not permitted to raise the issue of Entry under which the impugned enactment came to be passed. In other words, whether the impugned enactment is relatable to Entry 42 of the Concurrent List (List-III) or Entry 53 of the Union List (List-I) is not a matter which is open for the petitioners to press after the decision of this Court in the case of **Anil @ Bipinchandra (Supra)** dated 05.09.2005. By order dated 19.07.2011, a Coordinate Bench has categorically held as under:-

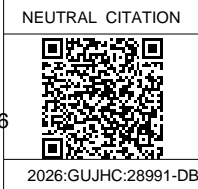
*“Admit. The only question Involved in the case is weather Act 5 of 2000 enacted by the Legislature of the State is inconsistent with the Act 50 of 1962 elected by the Parliament and thereby is repugnant as per Article 254 of the Constitution of India.”*

19. From the decision of the Hon’ble Apex Court in the case of **Rustom Cavasjee Cooper v. Union of India**, reported in **(1970) 1 SCC 248**, it is an accepted and unchallenged position that all enactments pertaining to



acquisition/requisition of land or exercise of *eminent domain* have been enacted with the power being traced back to Entry 42 of the Concurrent List (List-III). **R. C. Cooper (Supra)** is now *stare decisis*, therefore, no submission of the learned Counsel for the petitioners to the contrary can be accepted by us. Relevant paragraphs of the said judgment are extracted hereinbelow:-

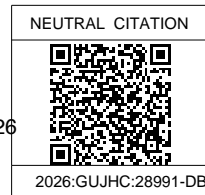
*“38. Before the Constitution (Seventh Amendment) Act, Entry 33 List I invested the Parliament with power to enact laws with respect to acquisition or requisitioning for the purpose of the Union, and Entry 36 List II conferred upon the State Legislature the power to legislate with respect to acquisition or requisitioning for the remaining purposes. Those entries are now deleted, and a single Entry 42 List III invests the Parliament and the State Legislatures with power to legislate with respect to "acquisition and requisitioning" of property. By Entry 42 in the Concurrent List power was conferred upon the Parliament and the State Legislatures to legislate with respect to "Principles on which compensation for property acquired or requisitioned for the purpose of the Union or for any other public purpose is to be determined, and the form in which such compensation is to be given". Power to legislate for acquisition of property is exercisable only under Entry 42 of List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists : Rajahmundry Electric Supply Corporation Ltd. v. The State of Andhra. Under that entry "property" can be compulsorily acquired. In its normal connotation "property" means the "highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy : it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, I especially with reference to transfer or succession, and to their capacity of being injured". The*



*expression "undertaking" in s. 4 of Act 22 of 1969 clearly means a going concern with all its rights, liabilities and assets-as distinct from the various rights and assets which compose it. In Halsbury's Laws of England, 3rd Edn., Vol. 6, Art. 75 at p. 43, it is stated that "Although various ingredients go to make up an undertaking, the term describes not the ingredients but the completed work from which the earnings arise."*

39. *Transfer of and vesting in the State Corporations of the entire undertaking of a going concern is contemplated in many Indian Statutes: e.g., Indian Electricity Act, 1910, ss. 6, 7 & 7A; Air Corporation Act, 1953, ss. 16 & 17; Imperial Bank of India: Act, 1920, ss. 3 & 4; State Bank of India Act, 1955, S. 6(2), (3) & (4); State Bank of India (Subsidiary Banks) Act, 1959; Banking Regulation Act, 1949, S. 36 AE; and Cotton Textile Companies Act, 1967, ss. 4-(1) & 5(1). Power to legislate for acquisition of "property" in Entry 42 List III therefore includes the power to legislate for acquisition of an undertaking. But, says Mr. Palkhivala, liabilities of the banks which are included in the connotation of the expression "undertaking", cannot be treated as "property". It is however the assets, rights and obligations of a going concern which constitute the undertaking: the obligations and liabilities of the business form an integral part of the undertaking, and for compulsory acquisition cannot be divorced from the assets, rights and privileges. The expression "property" in Entry 42 List III has a wide connotation, and it includes not only assets, but the organisation, liabilities and obligations of a going concern as a unit. A law may, therefore, be enacted for compulsory acquisition of an undertaking as defined in s. 5 of Act 22 of 1969."*

20. Further, the Entry of an enactment is relatable to the power of the enacting body. Therefore, an Act may be challenged on the ground that the enacting body did not have the power/competence to legislate because the subject matter

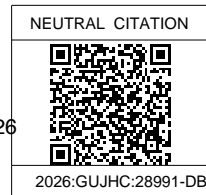


of the enactment falls outside its power/competence. Once the said hurdle is overcome, it is accepted that Parliament/ the State Legislature had power/competence to enact it. The vires of the Act could still be examined by the Constitutional Court on the ground of it being inconsistent and consequently repugnant to an enactment of Parliament within the meaning of Article 254 of the Constitution of India.

21. In the present case, we are no longer concerned as to whether the subject matter of the impugned Act falls within the competence of the State legislature and therefore, we need not examine whether the subject matter is relatable to Entry 42 of the Concurrent List (List-III) or Entry 53 of the Union list (List-I), inasmuch as, the same has already been answered by a Coordinate Bench of this Court in **Anil @ Bipinchandra (Supra)**.

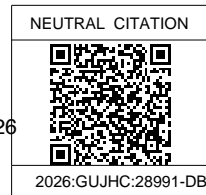
22. We may only note the following paragraph in **Anil @ Bipinchandra (Supra)** as under:-

*“Before concluding we deem it proper to mention that it is neither the pleaded case of the petitioners nor it has been*



*argued before us that the 2000 Act is in conflict with any other law enacted by the Parliament in respect of the subject enumerated in Entry 42 of List III of the Seventh Schedule of the Constitution and, therefore, we have not delved on that question.”*

23. After the aforesaid decision of this Court was placed by the learned Advocate General, this Court had put a pointed query to the learned Counsel for the petitioners as to whether it is the petitioners' case the aforesaid decision could be said to be *per incurium*, inasmuch as, according to us that could have been the only window to broaden the challenge beyond what was permissible after the aforesaid decisions of this Court dated 05.09.2005, reported as **2005:GUJHC:20546-DB**, and dated 19.07.2011, rendered in this very matter (SCA No. 15368 of 2010 with SCA No. 5098 of 2010), which have become final. Learned Counsel for the petitioners, except making an attempt to re-argue the issue, namely that the impugned State Act, 2000 was in effect, beyond the competence of the State Legislature due to the subject matter being covered under Entry 53 of the Union List (List-I), failed to point out how the aforesaid decision dated 05.09.2005 and 19.07.2011 could be held by us to be *per incurium*. Therefore, we hold that the scope of challenge before us would be limited



only to the window left open by the decision dated 05.09.2005 and 19.07.2011. The relevant portion of the decision dated 05.09.2005 is extracted hereinbelow:-

*“Before concluding we deem it proper to mention that it is neither the pleaded case of the petitioners nor it has been argued before us that the 2000 Act is in conflict with any other law enacted by the Parliament in respect of the subject enumerated in Entry 42 of List III of the Seventh Schedule of the Constitution and, therefore, we have not delved on that question.*

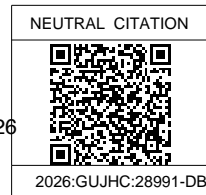
*For the reasons mentioned above, we hold that The Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 is within the legislative competence of the State and by enacting this piece of legislation the State cannot be said to have encroached on the Union's power of legislation in respect of the matters enumerated in List I of the Seventh Schedule.”*

23.1 The relevant portion of the decision dated 19.07.2011 is extracted hereinbelow:-

*“4. It is stated that the aforesaid question has not been considered nor decided by the Division bench in the case of Anil @ Bipinchandra Chotubhai Desai vs. State of Gujarat and others (supra).*

*5. In view of such submission made by the counsel for the petitioner, at his request we allow the petitioner to make necessary amendment to the pleadings and prayer clause of the writ petition.*

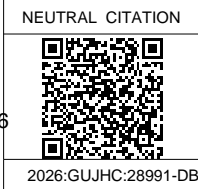
*6. Admit. The only question involved in this case is whether Act 5 of 2000 enacted by the Legislature of the State is inconsistent with the Act 50 of 1962 enacted by the Parliament and thereby is repugnant as per Article 254 of the Constitution of India.”*



24. Both the Counsel for the petitioners and the learned Advocate General have relied upon the decision of the Hon'ble Apex Court in **Laljibhai Savalia (Supra)**. Therefore, it is necessary to extract the relevant paragraphs of the said decision for ready reference:

*"18. Under the provisions of the PMP Act, what is taken over or acquired is the right of user to lay and maintain pipelines in the sub-soil of the land in question. The provisions of the PMP Act get attracted upon the requisite Notification having been made under Section 3. If it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any minerals any pipeline be made and for the purposes of laying such pipelines it is necessary to acquire the right of user in any land, it may by Notification issued in exercise of power under Section 3 declare its intention to acquire such right of user. The Act then provides for making of objections by those interested in land, which objections are thereafter to be dealt with by the Competent Authority. The report made by the Competent Authority is then placed before the Central Government for appropriate decision and after considering such report and the relevant material on record, if the Central Government is satisfied that such land is required for laying any pipeline for the transport of petroleum or any other mineral, it may declare by Notification in the official gazette that the right of user in the land for laying the pipeline be acquired. Upon the publication of such declaration under Section 6 the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the Corporation free from all encumbrances. Thus what stands acquired is the right of user in the land in question for laying pipeline for the transport of petroleum or any mineral and not the land itself.*

*19. The Statement of Objects and Reasons throws light on this facet of the matter and shows that although the land could be acquired outright for laying such pipelines under the Land Acquisition Act, 1894 such procedure for acquisition would be costly. For instance, as the facts of the*



*present case disclose the pipeline from Kakinada to Jamnagar would be over 1470 kilometers in length. If the lands were to be acquired outright, it would lead to tremendous increase in costs finally reflecting in escalation of the costs of petroleum or minerals. At the same time, if at every stage outright acquisition is to be insisted upon, many agriculturists would stand deprived of their holdings causing great prejudice. The Act is thus designed to achieve the purpose of laying of the pipelines for petroleum and minerals as “efficient and cheap means of transportation and distribution of petroleum and petroleum products”.*

20. *At the same time Section 18 specifically lays down that the provisions of the PMP Act shall be in addition and not in derogation to any other law for the time being in force relating to acquisition of land. Thus in a given case where the circumstances and the occasions so demand, a resort could still be taken to acquire the lands by relying upon the general law of acquisition under the provisions of the Land Acquisition Act, 1894. For instance, for monitoring the pressure gauges or in cases where pipelines are branching in different directions, implementations to regulate the flow may require permanent establishments necessitating acquisition of the land itself rather than acquisition of a mere right of user. The PMP Act is thus a special enactment designed to achieve the purpose of laying pipelines as efficient means of transportation and with this idea it is only the right of user in the land to lay such pipelines is acquired.*

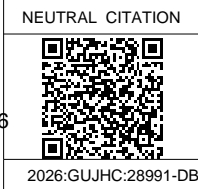
21. *Section 7 stipulates that no pipeline be laid under any land which, immediately before the date of Notification under Section 3(1) was used for residential purposes, or any land on which there is permanent structure in existence or any land which is appurtenant to a dwelling house. It is clear that only such lands are to be considered for acquisition of right of user therein which are either lying fallow or are being put to agricultural use. It is obvious that care is taken to cause least possible damage to the holdings of the concerned land-owners. According to Section 9, after the pipelines are laid, the owner/occupier could use the land for the purpose for which it was being used before the Notification under Section 3(1) was issued. Section 9 certainly, imposes some restrictions in the sense that such owner/occupier cannot thereafter construct any building or*



*any other structure or construct or excavate any lake, reservoir or dam or plant any tree on such land. Barring such restrictions, the owner/occupier is within his rights to use the land for the same purpose for which the land was earlier being used. The point is clear that neither the ownership in respect of the land itself nor the right to occupy or possess that land is taken over permanently and those rights continue to remain with the owner/occupier. What is taken over is only the right of user namely to lay pipelines in the sub-soil of the land in question and the restrictions imposed by Section 9 are designed to safeguard and secure the pipelines underneath.*

22. *As laid down by this Court in Jilubhai Nanbhai Khachar and others (Supra), the term property in legal sense means an aggregate of rights which are guaranteed and protected by law and would extend to entirety or group of rights inhering in a person. It was observed by this Court as under:*

*“42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word ‘property’ connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen’s relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar’s The Law Lexicon, Reprint Edn., 1987, at p.1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most*



*extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land.”*

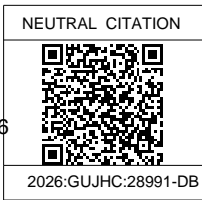
23. We therefore proceed on the premise that the right of user sought to be taken over under the provisions of the PMP Act amounts to acquisition of one of the facets of property rights which inhere in the owner/occupier. For the acquisition of such right of user, the compensation is prescribed in terms of Section 10 of the PMP Act. There are two elements of compensation under Section 10. The first part deals with any damage, loss or injury sustained by any owner/occupier as a result of exercise of powers conferred by Sections 4, 7 and 8 of the PMP Act that is to say the actual damage, loss or injury sustained because of entry upon and/or digging or marking levels and survey of land under Section 4 or while actual laying of the pipeline including digging of trenches and carrying of requisite material for such operations under Section 7 or at any stage of maintenance, examinations, repairing and altering or removing of pipeline in terms of Section 8 of the PMP Act. The measure for determining such compensation is given with sufficient clarity in sub-section (3) of Section (10). The idea is to compensate the owner/occupier for actual damage, loss or injury sustained by him as a result of the operations carried out in terms of Section 4, Section 7 or Section 8 of the Act. One of the indicia under sub-Section 3 could be “any injury to any other property whether movable or immovable, or the earnings of such persons in any other manner”. All possible acts as a result of which the damage, loss or injury could be so occasioned are taken care of and stipulated in said sub-section. Over and above such compensation for actual damage, loss or injury, additional compensation @ 10% of the market value of the land is given to the owner/occupier under sub-Section 4 of Section 10 for taking over the right of user to lay the pipelines. This element of additional compensation is independent of any actual loss or damage and is purely linked to the value of the land for the purposes of computation. This element of compensation is purely for acquisition of right of user simpliciter. The damage/loss or injury to the property is separately dealt with under first part of Section 10 and has to be compensated in toto. Theoretically, it is possible that in a barren piece of land as a result of exercise of powers under Sections 4, 6 and 7



*there may not be any damage/loss or injury. However compensation under sub-section (4) for acquisition of right of user would still be independently payable. The expression “in addition to the compensation, if any, payable under sub-section (1)” clearly shows the intent that the compensation for acquisition of right of user shall be in addition to the actual damage/loss or injury under first part of Section 10. This part will also be clear from para (iii) of Statement of Objects and Reasons extracted above (in para 2).*

*24. The provisions of PMP Act do specify the principles and the manner in which the compensation is to be determined. Not only the actual damage, loss or injury suffered as a result of exercise of various activities in terms of Sections 4, 6 and 7 are compensated in toto but additionally compensation linked to the market value of land is also to be given for acquisition of right of user in respect of such land. What is taken over is mere right of user to lay the pipeline in the sub-soil of land in question, leaving the title to the land as well as the right to possess that land intact in the hands of the land owner/occupier. It is no doubt that the enjoyment thereof after the pipelines are laid is impaired to a certain extent, in that the owner/occupier cannot raise any permanent construction or cause any excavation or plant any trees. Barring such restrictions, the enjoyment and the right of possession remains unaltered. The lands under which the pipeline would be laid are primarily, going by the mandate of Section 7, agricultural or fallow and there would normally be no occasion for any rendering of the holding completely unfit for any operations. Even in such cases where the holding is rendered unfit, sub-section 3(iii) of Section 10 could be relied upon and any diminution in market value as permanent impairment could sustain a claim for compensation. The principles of compensation as detailed in the PMP Act are thus reasonable and cannot in any way be termed as illusory. The principle laid down in H.D. Vora v. State of Maharashtra (Supra) has no application at all.”*

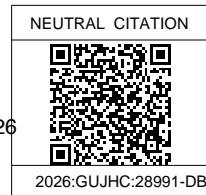
25. Thus, it is clear to us that **Laljibhai Savalia (Supra)** has clearly held that the Central Act of 1962 is essentially for the purpose of acquisition of right of user in land for laying of



pipelines. The Central Act of 1962 is not an act for laying of pipelines and therefore, it is relatable to “*acquisition of right of user in land*” and therefore relatable to Entry 42 of the Concurrent List (List-III) of Seventh Schedule to the Constitution of India.

26. In view of the aforesaid, we now proceed to examine whether the Central Act of 1962 occupies the field, leaving no scope for the State to legislate on the subject. If the answer of the above is in the affirmative, then the impugned Act of 2000 must be struck down as beyond the competence of the State Legislature. Further, if the answer to the above question is in the negative, then the further examination of this Court would be only to the effect as to whether any portion of the State Act collides with and hence become repugnant to the Central Act of 1962.

27. For the purpose of a close scrutiny and an endeavour to ascertain the correct legal position, this Court considers it

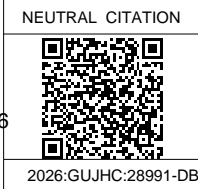


apposite to examine the Statement of Objects and Reasons underlying both the Central as well as the State enactments.

27.1 In that context, the **Statement of Objects and Reasons** of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 reads as under:-

### **“STATEMENT OF OBJECTS AND REASONS**

1. *As a result of the implementation of plans for the development of petroleum resources in the country, it is anticipated that in the next few years there will be a substantial increase in the production of crude oil, natural gas and petroleum products by the public sector oilfields and refineries in India. It has therefore become necessary to lay petroleum pipelines in the country to serve as an efficient and cheap means of transportation and distribution of petroleum and petroleum products.*
2. *Although land can be acquired outright for laying such pipelines under the Land Acquisition Act, 1894 the procedure for such acquisition is long-drawn and costly. Since the petroleum pipelines will be laid underground, outright acquisition of land is not necessary. Therefore, in the case of these pipelines, it is considered sufficient to acquire the mere right of user in the land for laying and maintaining the pipelines. The Bill seeks to achieve the above purpose.*
3. *The main features of the Bill are--*
  - (i) *No right of user of land can be acquired for the purpose of laying pipelines unless the Central Government declares its intention by notification in the Official Gazette, and unless objections, if any, filed within twenty-one days of that notification are disposed of by the competent authority.*



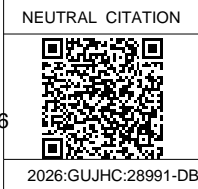
*(ii) When final declaration about acquisition is made, the right to use land for the purpose of laying pipelines will vest in the Central Government, State Government or the corporation, as the case may be but notwithstanding such acquisition, the owner or occupier of the land shall be entitled to use the land for the purpose for which such land was put to use immediately before the declaration by the Central Government. But after the date of acquisition, he shall not construct any building or any other structure or construct or excavate any tank, well, reservoir or dam or plant any tree, on that land.*

*(iii) Compensation for the damage, loss or injury sustained by any person interested in the land shall be payable to such person. Besides this, compensation calculated at ten per cent of the market value of the land on the date of the preliminary notification is also payable to the owner and to any other person whose right of enjoyment in the land has been affected by reason of the acquisition. The compensation in both cases is to be determined by the competent authority in the first instance, and an appeal lies from its decision to the District Judge.”*

27.2 Similarly, the **Statement of Objects and Reasons** of the Gujarat Water & Gas Pipelines (Acquisition of Right of User in Land) Act, 2000 reads as under:-

**“STATEMENT OF OBJECTS AND REASONS**

*The state government has undertaken the implementation of water supply projects in the state, the major one of which is sardar sarovar canal based drinking water supply project which itself will require laying of about 2700 kms. of pipelines for transport of water from one place to another.*



*Gujarat infrastructure development board has given locational clearance to some LNG import terminals in the state and the proposed gas grid shall link these LNG terminals and other gas supply sources to various demand centres in the state. The gas project linking various supply points including LNG terminals with various gas demand centres in and around Gujarat has been planned. The proposed gas grid is high pressure trunk pipeline system requiring laying of about 1500 kms of pipelines.*

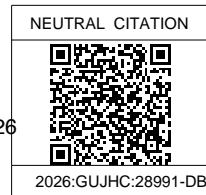
*Although land can be acquired outright for laying such pipelines under the Land Acquisition Act, 1894, the procedure for such acquisition is long drawn and costly. Since the water and gas pipeline will be laid underground, outright acquisition of land is not necessary. Therefore, in the case of water and gas pipelines, it is considered sufficient to acquire the mere right of user in the land for laying and maintaining the pipelines. This Bill seeks to achieve the aforesaid objects.*

*The main features of the Bill are-*

*(i) No right of user in land can be acquired for the purpose of laying pipelines unless the State Government declares its intention by notification in the Official Gazette, and unless objections, if any, filed within thirty days of that notification are disposed of by the competent authority.*

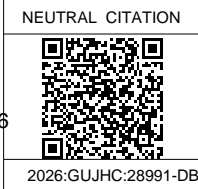
*(ii) When final declaration about the acquisition is made, the right to use the land for the purpose of laying pipelines will vest in the State Government or, as the case may be, the Corporation but notwithstanding such acquisition, the owner or occupier of the land shall be entitled to use the land for the purpose for which such land was put to use immediately before the declaration by the State Government. But after the date of acquisition, he shall not construct any building or any other structure or construct or excavate any tank, well, reservoir or dam or plant any tree on that land.*

*(iii) Compensation for the damage, loss or injury sustained by any person interested in the land shall be payable to such person. Besides this,*



*compensation calculated at ten percent, of the market value of the land on the date of the preliminary notification is also payable to the owner and to any other person whose right of enjoyment in the land has been affected by reason of the acquisition. The compensation in both the case is to be determined by the competent authority in the first instance, and an appeal lies from the decision to the Collector.”*

28. From a comparison of the Statement of Object and Reasons (SOR) of the Central Act of 1962 and the impugned State Act respectively, we immediately noticed the commonality of the intention of Parliament and the State Legislature respectively in enacting the respective statutes. It will be seen that the first paragraph of the SOR of the Central Act of 1962 deals with the necessity of laying petroleum pipelines in the country, whereas the first two paragraphs of the SOR of the impugned State Act deals with the necessity of laying pipelines for the transport of water and the Liquefied Natural Gas (LNG). The second paragraph of the SOR of the Central Act of 1962 corresponds to the third paragraph of the SOR of the impugned State Act namely that it is necessary to *“acquire the mere right of user in the land for laying and maintaining the pipelines.”* To us, this is the object of both the enactments which we are comparing. The rest of the SOR relate to the procedural aspects of the aforementioned central



object i.e., “*acquire the mere right of user in the land for laying and maintaining the pipelines.*”

29. It is thus clear that both the aforesaid enactments have the same objective. It is only that the pipelines for which the right of user is sought to be acquired are likely to carry different products. Therefore, we need to examine whether after the enactment of the Central Act of 1962, was there any further scope to legislate on the subject by the State Legislature? For the aforesaid purpose, we have compared the Central Act of 1962 and the State Act, 2000, as under:

<b>Comparison of the Central Act, 1962 &amp; the State Act, 2000</b>		
	<b><i>The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962</i></b>	<b><i>The Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000</i></b>
<b><i>Preamble</i></b>	<i>An Act to provide for the acquisition of in right of user in land [for laying of pipelines for the transport of petroleum and minerals] and for matters connected therewith. Be it enacted by Parliament in the Thirteenth Year of the Republic of India as follows :-</i>	<i>An Act to provide for the acquisition of right of user in land for laying water pipelines and gas pipelines in the State of Gujarat and for the matters connected therewith. It is hereby enacted in the fifth-first Year of the Republic of India as follows:-</i>
<b><i>1.</i></b>	<b><i>Short title, extent and</i></b>	<b><i>Short title, extent and</i></b>



	<p><b>application :-</b></p> <p>(1) This Act may be called the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It applies in the first instance to the whole of the State of West Bengal, Bihar, Uttar Pradesh and Gujarat and the Union territory of Delhi; and the Central Government may, by notification in the Official Gazette, declare that this Act shall also apply to such other State or Union territory and with effect from such date as may be specified in that notification and thereupon provisions of this Act shall apply to that State or Union territory accordingly.</p>	<p><b>commencement :-</b></p> <p>(1) This Act may be called the Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000.</p> <p>(2) It extends to the whole of the State of Gujarat.</p> <p>(3) It shall come into force on such date as the State Government may by notification in the Official Gazette, appoint.</p>
<p><b>2.</b></p>	<p><b>Definitions :-</b></p> <p>In this Act, unless the context otherwise requires,-</p> <p>(a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent, authority under this Act and different persons or authorities may be authorised to perform all or any of the functions of the competent authority under this Act in the same area or different areas specified in the notification;</p> <p>(b) "corporation" means any</p>	<p><b>Definitions :-</b></p> <p>In this Act, unless the context otherwise requires,-</p> <p>(a) "competent authority" means any person or authority authorised by the State Government by notification in the Official Gazette, to perform the functions of the competent authority under this Act;</p> <p>(b)"Corporation" means any body corporate established under any Gujarat Act and includes</p> <p>(i) a Company formed and registered under the Companies Act, 1956 (I of 1956); and</p>



	<p>body corporate established under any Central, Provincial or State Act, and includes -</p> <p>(i) a company formed and registered under the Companies Act, 1956; and</p> <p>(ii) a company formed and registered under any law relating to companies formerly in force in any part of India;</p> <p>[(ba)“minerals” have the meanings assigned to them in the Mines Act, 1952 (35 of 1952), and include mineral oils and stowing sand but do not include petroleum;]</p> <p>(c) “petroleum” has the same meaning as in the Petroleum Act, 1934, and includes natural gas and refinery gas;</p> <p>(d) “prescribed” means prescribed by rules made under this Act.</p>	<p>(ii) a Company formed and registered under any law relating to companies formerly in force in any part of India</p> <p>(c) "gas" means a matter in gaseous state which predominantly consists of methane;</p> <p>(d) "prescribed" means prescribed by rules made under this Act.</p>
<p><b>3.</b></p>	<p><b>Publication of notification for acquisition.</b></p> <p><b>(1)</b> Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any mineral from one locality to another locality, pipelines may be laid by that Government or by any State Government or a corporation and that for the purpose of laying such pipelines, it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein.</p>	<p><b>Publication of notification for acquisition.</b></p> <p><b>(1)</b> Whenever it appears to the State Government that it is necessary in the public interest that for the transport of water or, as the case may be, gas from one area to another area, pipelines may be laid by the State Government, or, the Corporation and that for the purpose of laying down such pipelines, it is necessary to acquire the right of user in any land under which such pipelines may be laid. It may, by notification in the Official Gazette, declare its intention to acquire the right of use therein.</p>



	<p>(2) Every notification under sub-section (1) shall give a brief description of the land.</p> <p>(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.</p>	<p><b>(2)</b> Every notification under sub-section (1) shall give a brief description of the land.</p> <p><b>(3)</b> The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.</p>
<p><b>4.</b></p>	<p><b>Power to enter, survey, etc.</b></p> <p>On the issue of a notification under sub-section (1) of section 3, it shall be lawful for any person authorised by the Central Government or by the State Government or the corporation which proposes to lay pipelines for transporting petroleum or any mineral and his servants and workmen-</p> <p><b>(a)</b> to enter upon and survey and take levels of any land specified in the notification;</p> <p><b>(b)</b> to dig or bore into the sub-soil;</p> <p>(c) to set out the intended line or work;</p> <p>(d) to mark such levels, boundaries and line by placing marks and cutting trenches;</p> <p>(e) where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle; and</p> <p>(f) to do all other acts necessary to ascertain whether pipelines can be laid under the land: Provided that while exercising any power under this section, such person or any servant or workman of such person shall</p>	<p><b>Hearing of objections.</b></p> <p>(1) Any person interested in the land may, within thirty days from the date of publication of the notification under sub-section (1) of section 3, object to the laying of the pipelines under the land.</p> <p>(2) Every objection shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.</p> <p>(3) Any order made by the competent authority under sub-section (2) shall be final.</p>



	<i>cause as little damage or injury as possible to such land.</i>	
<b>5.</b>	<p><b>Hearing of objections.</b></p> <p><b>(1)</b> Any person interested in the land may, within twenty-one days from the date of the notification under sub-section (1) of section 3, object to the laying of the pipelines under the land.</p> <p><b>(2)</b> Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector and opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.</p> <p><b>(3)</b> Any order made by the competent authority under sub-section (2) shall be final.</p>	<p><b>Power to enter, survey, etc.</b></p> <p>On the issue of the notification under sub-section (1) of section 3, it shall be lawful for any person authorised by the State Government or, as the case may be, the Corporation which proposes to lay pipelines for transporting water or, as the case may be, gas, and its servants and workmen-</p> <p><b>(a)</b> to enter upon and survey and take levels of any land specified in the notification;</p> <p><b>(b)</b> to dig or bore into the sub-soil;</p> <p><b>(c)</b> to set out the intended line of work;</p> <p><b>(d)</b> to mark such levels, boundaries and line by placing marks and cutting trenches;</p> <p><b>(e)</b> where otherwise survey cannot be completed and levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle; and</p> <p><b>(f)</b> to do all other acts necessary to ascertain whether pipelines can be laid under the land:</p> <p>Provided that while exercising any power under this section, such person or any servant or workman of such person shall cause a little damage or injury as possible to such land.</p>



<p><b>6.</b></p>	<p><b><i>Declaration of acquisition of right of user.</i></b></p> <p><b><i>(1)</i></b> Where no objections under sub-section (1) of section 5 have been made to the competent authority with the period specified therein or where the competent authority has disallowed the objection under sub-section (2) that section, the authority shall, as soon as may be either make a report in respect of the land described in the notification under such-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall, if satisfied that such land is required for laying any pipelines for the transport of petroleum or any mineral declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this section.</p> <p><b><i>(2)</i></b> On the publication of the declaration under, sub-section</p>	<p><b><i>Declaration of acquisition of right of user.</i></b></p> <p><b><i>(1)</i></b> Where no objection under subsection (1) of section 4 has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, submit a report accordingly to the State Government and upon receipt of such report, the State Government shall declare, by notification in the Official Gazette, that the right of user of land for laying the pipelines shall be acquired.</p> <p><b><i>(2)</i></b> On the publication of the declaration under sub-section (1), the right of user in the land shall vest absolutely in the State Government free from all encumbrances.</p> <p><b><i>(3)</i></b> Where in respect of any land, a notification has been issued under sub-section (1) of section 3, but no declaration under this section has been published within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of the said period.</p> <p><b><i>(4)</i></b> Notwithstanding anything contained in sub-section (2), the State Government may, on such terms and conditions as it may think fit, to impose, direct by order in writing that the right of user in the land for laying the pipelines shall,</p>
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<p>(1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances.</p> <p><b>(3)</b> Where in respect of any land, a notification has been issued under sub-section (1) of section 3 but no declaration in respect of any portion of land covered by that notification has been published under this section within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of that period.</p> <p><b>(3A)</b> No declaration in respect of any land covered by a notification issued under sub-section (1) of section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977 shall be made after the expiry of three years from the date of such publication.</p> <p><b>(4)</b> Notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying the pipelines shall instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction in the State Government or the corporation proposing to lay the pipelines and thereunder the right of such</p>	<p>instead of vesting in the State Government, vest either on the date of publication of the declaration or, on such other date as may be specified in the order, in the Corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that Corporation free from all encumbrances.</p>
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	<p><i>user in the land shall, subject to the terms and conditions so imposed; vest in that State Government or corporation, as the case may be, free from all encumbrances.</i></p>	
<p><b>7.</b></p>	<p><b>Central Government or State Government or Corporation to lay pipelines.</b></p> <p><b>(1)</b> <i>Where the right of user in any land has vested in the Central Government or in any State Government or Corporation under section 6 -</i></p> <p><b>(i)</b> <i>it shall be lawful for any person authorised by the Central Government or such State Government or Corporation, as the case may be, and his servant and workmen to enter upon the land and lay pipelines or to do any other act necessary for laying of pipelines:Provided that no pipeline shall be laid under-</i></p> <p><b>(a)</b> <i>any land which, immediately before the date of the notification under sub-section (1) of section 3, was used for residential purposes;</i></p> <p><b>(b)</b> <i>any land on which there stands any permanent structure which was in existence immediately before the said date;</i></p> <p><b>(c)</b> <i>any land which is appurtenant to a dwelling-house; or</i></p> <p><b>(d)</b> <i>any land at a depth which is less than one metre from the surface; ***</i></p> <p><i>[(ia) for laying pipelines for the transport of petroleum, it shall</i></p>	<p><b>Laying of pipelines.</b></p> <p><i>(1) Where the right of user in any land has vested in the State Government or, as the case may be, the Corporation under section 6 -</i></p> <p><b>(i)</b> <i>shall be lawful for any person authorised by the State Government or, as the case may be, the Corporation, and its servants and workmen to enter upon the land and lay pipelines or to do any other thing necessary for the laying of pipelines.Provided that no pipeline shall be laid under-</i></p> <p><b>(a)</b> <i>any land which, immediately before the date of the publication of notification under sub-section (1) of section 3, was used for residential purposes; or</i></p> <p><b>(b)</b> <i>any land on which there stands any permanent structure which was in existence immediately before the said date; or</i></p> <p><b>(c)</b> <i>any land which is appurtenant to a dwelling house; or</i></p> <p><b>(d)</b> <i>any land at a depth which is less than one metre from the surface;and</i></p> <p><b>(ii)</b> <i>such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering</i></p>



	<p><i>be lawful for any person authorised by the Central Government or such State Government or corporation to use such land for laying pipelines for transporting any mineral and where the right of user in any land has so vested for laying pipelines for transporting any mineral, it shall be lawful for such person to use such land for laying pipelines for transporting petroleum or any other mineral; and]</i></p> <p><i>(ii) such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act necessary for any of the aforesaid purposes or for the utilisation of such pipelines.</i></p> <p><i>(2) If any dispute arises with regard to any matter referred to in paragraph (b) or paragraph (c) of the proviso to clause (i) of sub-section (1), the dispute shall be referred to the competent authority whose decision thereon shall be final.</i></p>	<p><i>or removing any such pipeline or for doing any other thing necessary for any of the aforesaid purpose or for the utilisation of such pipelines.</i></p> <p><i>(2) If any dispute arises with regard to any matter referred to in paragraph (b) or (c) of the proviso to clause (i) of sub-section (1), the dispute shall be referred to the competent authority whose decision thereon shall be final.</i></p>
<p><b>8.</b></p>	<p><b><i>Power to enter land for inspection etc.</i></b></p> <p><i>For maintaining, examining, repairing, altering or removing any pipeline, or for doing any other act necessary for the utilisation of the pipelines or for the making of any inspection or measurement for any of the aforesaid purposes, any person authorised in this behalf by the Central Government, the State</i></p>	<p><b><i>Power to enter land for inspection, etc.</i></b></p> <p><i>For maintaining, examining, repairing, altering or removing any pipeline, or for doing any other thing necessary for the utilisation of the pipelines or for the making of any inspection or measurement for any of the aforesaid purposes, any person authorised in this behalf, by the State</i></p>



	<p><i>Government or the corporation, as the case may be, may, after giving reasonable notice to the occupier of the land under which pipeline has been laid, enter therein with such workmen and assistants as may be necessary:</i></p> <p><i>Provided that, where such person is satisfied that an emergency exists, no such notice shall be necessary:</i></p> <p><i>Provided further that, while exercising any powers under this section, such person or any workman or assistant of such person, shall cause as little damage or injury as possible to such land.</i></p>	<p><i>Government or, as the case may be, the Corporation may, after giving reasonable notice to the occupier of the land under which the pipeline has been laid, enter therein with such workmen and assistants as may be necessary.</i></p> <p><i>Provided that, where such person is satisfied that an emergency exists, no such notice shall be necessary:</i></p> <p><i>Provided further that, while exercising any powers under this section, such person or any workmen or assistants of such person, shall cause as little damage or injury as possible to such land.</i></p>
<p><b>9.</b></p>	<p><b><i>Restrictions regarding the use of land.</i></b></p> <p><b><i>(1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3:</i></b></p> <p><b><i>Provided that, such owner or occupier shall not after the declaration under sub-section (1) of section 6</i></b></p> <p><b><i>(i) construct any building or any other structure;</i></b></p> <p><b><i>(ii) construct or excavate any tank, well, reservoir or dam; or</i></b></p> <p><b><i>(iii) plant any tree, on the land.</i></b></p> <p><b><i>(2) The owner or occupier of the land under which any pipeline has been laid shall not do any</i></b></p>	<p><b><i>Restrictions regarding the use of land.</i></b></p> <p><b><i>(1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3:</i></b></p> <p><b><i>Provided that such owner or occupier shall not after the declaration under subsection (1) of section 6</i></b></p> <p><b><i>(i) construct any building or any other structure;</i></b></p> <p><b><i>(ii) construct or excavate any tank, well, reservoir or dam; or</i></b></p> <p><b><i>(iii) plant any tree on that land.</i></b></p> <p><b><i>(2) The owner or occupier of the land under which a pipeline has been laid shall not do any</i></b></p>



	<p><i>act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to the pipeline.</i></p> <p><i>(3) Where the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6,-</i></p> <p><i>(a) constructs any building or any other structure, or</i></p> <p><i>(b) constructs or excavates any well, tank, reservoir or dam, or</i></p> <p><i>(c) plants any tree, on that land, the court of the District Judge within the local limits of whose jurisdiction such land is situate may, on an application made to it by, the competent authority and after holding such inquiry as it may deem fit, cause the building, structure, reservoir, dam or tree to be removed or the well or tank to be filled up, and the costs of such removal or filling up shall be recoverable from such owner or occupier in the same manner as if the order for the recovery of such costs were a decree made by the court.</i></p>	<p><i>thing or permit any thing to be done which will or is likely to cause any damage in any manner whatsoever, to the pipeline.</i></p> <p><i>(3) Where the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6 -</i></p> <p><i>(a) constructs any building or any other structure, or</i></p> <p><i>(b) constructs or excavates any well, tank, reservoir or dam; or</i></p> <p><i>(c) plants any tree on that land, the Collector within the local limits of whose jurisdiction such lands is situate may, on an application made to it by the competent authority and after holding such inquiry, as it may deem fit, cause the building, structure, reservoir, dam or tree to be removed or the well or tank to be filled up, and the costs of such removal or filling up shall be recoverable from such owner or occupier.</i></p>
<p><b>10.</b></p>	<p><b>Compensation.</b></p> <p><i>(1) Where in the exercise of the powers conferred by section 4, section 7, or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being or has been laid the Central Government, the State Government or the Corporations</i></p>	<p><b>Compensation.</b></p> <p><i>(1) Where in the exercise of the powers conferred by section 5, 7 or 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the State Government or, as the case may be, the Corporation shall be liable to</i></p>



<p><i>as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.</i></p> <p><i>(2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.</i></p> <p><i>(3) The competent authority, or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of-</i></p> <p><i>(i) the removal of tress or standing crops, if any, on the land while exercising the powers under section 4, section 7 or section 8;</i></p> <p><i>(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or</i></p> <p><i>(iii) any injury to any other property, whether movable or immovable or the earnings of such persons caused in any other manner:</i></p> <p><i>Provided that in determining the</i></p>	<p><i>pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.</i></p> <p><i>(2) If the amount of compensation, determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the Collector within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that Collector.</i></p> <p><i>(3) The competent authority or, as the case may be, the Collector while determining the compensation under sub-section (1) or, as the case may be, sub-section (2), shall have due regard to the damage or loss sustained by any person interested in the land by reason of-</i></p> <p><i>(i) the removal of trees or standing crops, if any, on the land while exercising the powers under section 5, 7 or, as the case may be, section 8;</i></p> <p><i>(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of such person, or</i></p> <p><i>(iii) any injury to any other property whether movable or immovable, or the earnings of such persons caused in any other manner:</i></p> <p><i>Provided that in determining</i></p>
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	<p><i>compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.</i></p> <p><i>(4) Where the right of user of any land has vested in the Central Government, the State Government or the Corporation, as the case may be, shall, in addition to the compensation; if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market-value of that land on the date of the notification under sub-section (1) of section 3.</i></p> <p><i>(5) The market-value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to District Judge referred to in sub-section (2), be determined by that District Judge.</i></p> <p><i>(6) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.</i></p>	<p><i>the compensation no account shall be taken of any structure or other improvement made in the land after the date of the publication of the notification under sub-section (1) of section 3.</i></p> <p><i>(4) Where the right of user of any land has vested in the State Government or, as the case may be, the Corporation it shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market value of that land on the date of publication of the notification under sub-section (1) of section 3.</i></p> <p><i>(5) The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the Collector referred to in sub-section (2), be determined by that Collector.</i></p> <p><i>(6) The decision of the Collector under sub-section (2) or (5) shall be final.</i></p>
<p><b>11.</b></p>	<p><b><i>Deposit and payment of compensation.</i></b></p> <p><i>(1) The amount of compensation determined under section 10 shall deposited by the Central Government, the State</i></p>	<p><b><i>Deposit and payment of compensation.</i></b></p> <p><i>(1) The amount of compensation determined under section 10 shall be deposited by the State</i></p>



<p><i>Government or the Corporation, as the case may be, with the competent authority within such time and in such manner as may be prescribed.</i></p> <p><i>(2) If the amount of compensation is not deposited within the time prescribed under sub-section (1), the Central Government, the State Government or the Corporation, as the case may be, shall be liable to pay interest thereon at the rate of six per cent per annum from the date on which the compensation had to be deposited till the date of actual deposit.</i></p> <p><i>(3) As soon as may be after the compensation has been deposited under sub-section (1), the competent authority shall, on behalf of the Central Government, the State Government or the Corporation, as the case may be, pay the compensation to the persons entitled thereto.</i></p> <p><i>(4) Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.</i></p> <p><i>(5) If any dispute arises as to the appointment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of</i></p>	<p><i>Government or, as the case may be, the Corporation, with the competent authority within such time and in such manner as may be prescribed.</i></p> <p><i>(2) If the amount of compensation is not deposited within the time prescribed under sub-section (1), the State Government or, as the case may be, the Corporation, shall be liable to pay interest thereon at the rate of nine per cent, if the amount of compensation is deposited within one year after the period prescribed under sub-section (1) and the rate of fifteen per cent, if the amount of compensation is deposited after the expiry of the said one year.</i></p> <p><i>(3) As soon as may be after the compensation has been deposited under sub-section (1), the competent authority shall, on behalf of the State Government or, as the case may be, the Corporation, pay the compensation to the persons entitled thereto.</i></p> <p><i>(4) Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.</i></p> <p><i>(5) If any dispute arises as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part</i></p>
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	<p><i>the District Judge within the limits of whose jurisdiction the land or any part thereof is situated and the decision of the District Judge thereon shall be final.</i></p>	<p><i>thereof is payable, the competent authority shall refer the dispute to the Collector within the limits of whose jurisdiction the land or any part thereof is situated and the decision of the Collector thereon shall be final.</i></p>
<p><b>12.</b></p>	<p><b>Competent authority to have certain powers of civil court.</b></p> <p><i>The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-</i></p> <p><i>(a) summoning and enforcing the attendance of any person and examining him on oath;</i></p> <p><i>(b) requiring the discovery and production of any document;</i></p> <p><i>(c) reception of evidence on affidavits;</i></p> <p><i>(d) requisitioning any public record from any court or office;</i></p> <p><i>(e) issuing commission for examination of witnesses.</i></p>	<p><b>Collector and competent authority to have certain powers of civil court.</b></p> <p><i>The Collector and the competent authority shall have, for the purpose of this Act, all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-</i></p> <p><i>(a) summoning and enforcing the attendance of any person and examining him on oath;</i></p> <p><i>(b) requiring the discovery and production of any document;</i></p> <p><i>(c) reception of evidence on affidavits;</i></p> <p><i>(d) requisitioning any public record from any court of offence;</i></p> <p><i>(e) issuing commission for examination of witness.</i></p>
<p><b>13.</b></p>	<p><b>Protection of action taken in good faith.</b></p> <p><i>(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification made or issued thereunder.</i></p> <p><i>(2) No suit or other legal proceeding shall lie against the</i></p>	<p><b>Protection of action taken in good faith.</b></p> <p><i>(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or notification made or issued thereunder.</i></p> <p><i>(2) No suit or other legal proceeding shall lie against the</i></p>



	<p><i>Central Government, the competent authority or any State Government, or Corporation for any damage, loss or injury caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification made or issued thereunder.</i></p>	<p><i>State Government, Corporation or, as the case may be, the competent authority for any damage, loss or injury caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rules or notification made or issued thereunder.</i></p>
<p><b>14.</b></p>	<p><b><i>Bar of jurisdiction of civil court.</i></b></p> <p><i>Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Act.</i></p>	<p><b><i>Bar of jurisdiction of Civil Court.</i></b></p> <p><i>No civil court shall have jurisdiction in respect of any matter which the Collector or, as the case may be, the competent authority is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Act.</i></p>
<p><b>15.</b></p>	<p><b><i>Penalty.</i></b></p> <p><i>(1) Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 7 or section 8 or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4 or wilfully does any act prohibited under section 9, shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.</i></p> <p><i>(2) Whoever wilfully makes or</i></p>	<p><b><i>Penalty.</i></b></p> <p><i>(1) Whoever wilfully obstructs any person in doing any of the acts authorised under section 5, 7 or as the case may be, section 8 or wilfully fills up, destroys damages or displaces any trench or mark made under section 5 or wilfully does anything prohibited under the proviso to sub-section (1) of section 9, shall be punishable with imprisonment which may extend to six months or fine or both.</i></p>



<p><i>causes to make any unauthorised connection with or removes, destroys, damages or displaces any pipeline laid under section 7, or willfully inserts any device to extract petroleum product or minerals from such pipeline, or willfully disrupts supplies being made through the pipeline, shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.</i></p> <p><i>(3) If any person convicted of an offence under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with rigorous imprisonment for the second and for every subsequent offence for a term which shall not be less than three years but which may extend to ten years: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years.</i></p> <p><i>(4) Whoever, with the intent to cause or knowing that he is likely to cause damage to or destruction of any pipeline laid under section 7, causes by fire, explosive substance or otherwise damage to the pipeline being used for transportation of petroleum products, crude oil or gas with the intent to commit sabotage or with the knowledge that such act is so imminently dangerous that it may in all probability</i></p>	<p><i>(2) Whoever wilfully removes, displaces, damages or destroys any pipeline laid under section 7, shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years and shall also be liable to fine.</i></p>
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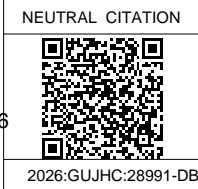


	<p><i>cause death of any person or such bodily injury likely to cause death of any person, shall be punishable with rigorous imprisonment which shall not be less than ten years but may extend to imprisonment for life or death.</i></p>	
<b>16.</b>	<p><b>Certain offence to be cognizable.</b></p> <p><i>Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence falling under sub-sections (2), (5) and (4) of section 15 shall be deemed to be cognizable and non-bailable within the meaning of that Code.</i></p>	<p><b>Certain offence to be cognizable.</b></p> <p><i>Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence falling under sub-section (2) of section 15 shall be deemed to be cognizable within the meaning of the Code.</i></p>
<b>17.</b>	<p><b>Power to make rules.</b></p> <p><i>(1) The Central Government may by notification in the Official Gazette, make rules for carrying out the provisions of this Act.</i></p> <p><i>(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:</i></p> <p><i>(a) the places at which and the manner in which the substance of the notification may be published under sub-section (3) of section 3;</i></p> <p><i>(b) the time within which and the manner in which the amount of compensation may be deposited under sub-section (1)</i></p>	<p><b>Power to make rules.</b></p> <p><i>(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.</i></p> <p><i>(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:</i></p> <p><i>(a) the places at which and the manner in which the substance of the notification may be published under sub-section (3) of section 3;</i></p> <p><i>(b) the time within which and the manner in which the amount of compensation shall be deposited under sub-section</i></p>



	<p><i>of section 11.</i></p> <p><i>(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have affect only in such modified form or be of no effect, as the case may be, so, however, that any such modification of annulment shall be without prejudice to the validity of anything previously done under that rule.</i></p>	<p><i>(1) of section 11;</i></p> <p><i>(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.</i></p> <p><i>(4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.</i></p>
<b>18.</b>	<p><b><i>Application of other laws not barred.</i></b></p> <p><i>The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to acquisition of land.</i></p>	<p><b><i>Application of other laws not barred.</i></b></p> <p><i>The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to the acquisition of land.</i></p>

30. The following seminal provisions of the Central Act of 1962 need to be taken note of for the purpose of the discussion that will follow:-



**“Section 1: Short title, extent and application.**

*(1) This Act may be called the [Petroleum and Minerals Pipelines] (Acquisition of Right of User in Land) Act, 1962.*

**Section 3: Publication of notification for acquisition.**

*(1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum [or any mineral] from one locality to another locality pipelines may be laid by that Government or by any State Government or a corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein.*

*(2) Every notification under sub-section (1) shall give a brief description of the land.*

*(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.*

**Section 4: Power to enter, survey, etc.**

*On the issue of a notification under sub-section (1) of section 3, it shall be lawful for any person authorised by the Central Government or by the State Government or the corporation which proposes to lay pipelines or any mineral, and his servants and workmen.*

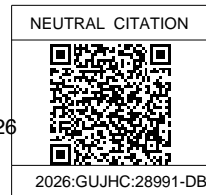
*(a) to enter upon and survey and take levels of any land specified in the notification;*

*(b) to dig or bore into the sub-soil;*

*(c) to set out the intended line of work;*

*(d) to mark such levels, boundaries and line by placing marks and cutting trenches;*

*(e) where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut*



*down and clear away any part of any standing crop, fence or jungle; and*

*(f) to do all other acts necessary to ascertain whether pipelines can be laid under the land:*

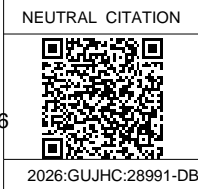
*Provided that where exercising any power under this section, such person or any servant or workmen of such person shall cause as little damage or injury as possible to such land.*

**Section 6: Declaration of acquisition of right to user.**

*(1) Where no objections under sub-section (1) of section 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be [either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government] and upon receipt of such report the Central Government shall [, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral,] declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired. [and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this section].*

*(2) On the publication of the declaration under sub-section (1), the right of user [in the land specified therein] shall vest absolutely in the Central Government free from all encumbrances.*

*(3) Where in respect of any land, a notification has been issued under sub-section (1) of section 3 but [no declaration in respect of any parcel of land covered by that notification*



*has been published under this section] within a period of one year from the date of that notification, that notification shall cases to have effect on the expiration of that period.*

*[(3A) No declaration in respect of any land covered by a notification issued under sub-section (1) of section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977, shall be made after the expiry of three years from the date of such publication.]*

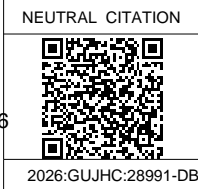
*(4) Notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that State Government or corporation, as the case may be, free from all encumbrances.*

***Section 8: Power to enter land for inspection, etc.***

*For maintaining, examining, repairing, altering or removing any pipelines, or for doing any other act necessary for the utilisation of the pipelines or for the making of any inspection or measurement for any of the aforesaid purposes, any person authorised in this behalf by the Central Government, the State Government or the corporation, as the case may be, may, after giving reasonable notice to the occupier of the land under which the pipelines has been laid, enter therein with such workmen and assistants as may be necessary:*

*Provided that, where such person is satisfied that an emergency exists no such notice shall be necessary:*

*Provided further that, while exercising any powers under this section, such person or any workmen or assistant of such person, shall cause as little damage or injury as possible to such land.*

**Section 9: Restriction regarding the use of land.**

(1) *The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3:*

*Provided that, such owner or occupier shall not after the declaration under sub-section (1) of section 6--*

- (i) construct any building or any other structure;*
- (ii) construct or excavate any tank, well, reservoir or dam; or*
- (iii) plant any tree,*  
*on that land.*

(2) *The owner or occupier of the land under which any pipelines has been laid shall not do any act or permit any act to be done which will or is likely to cause any damage in any manner whatsoever to the pipeline.*

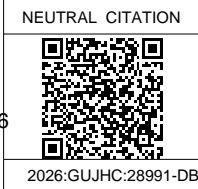
*[(3) Where the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6,--*

- (a) constructs any building or any other structure, or*
- (b) constructs or excavates any well, tank, reservoir or dam, or*
- (c) plants any tree,*

*on that land, the Court of the District Judge within the local limits of whose jurisdiction such land is situate may, on an application made to it by the competent authority and after holding such inquiry as it may deem fit, cause the building, structure, reservoir, dam or tree to be removed or the well or tank to be filled up, and the costs of such removal or filling up shall be recoverable from such owner or occupier in the same manner as if the order for the recovery of such costs were a decree made by that Court.]*

**Section 10: Compensation**

(1) *Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land*



*under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.*

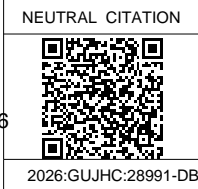
*(2) If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.*

*(3) The competent authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of--*

- (i) the removal of trees of standing crops, if any, on the land while exercising the power under section 4, section 7 or section 8;*
- (ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or*
- (iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner:*

*Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.*

*(4) Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent. of the market value of that land on the date of the notification under sub-section (1) of section 3.*



(5) *The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.*

(6) *The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.*

**Section 11: Deposit and Payment of Compensation.**

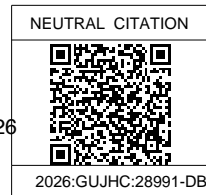
(1) *The amount of compensation determined under section 10 shall be deposited by the Central Government, the State Government or the corporation, as the case may be, with the competent authority within such time and in such manner as may be prescribed.*

(2) *If the amount of compensation is not deposited within the time prescribed under sub-section (1), the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay interest thereon at the rate of six per cent. per annum from the date on which the compensation had to be deposited till the date of the actual deposit.*

(3) *As soon as may be after the compensation has been deposited under sub-section (1) the competent authority shall, on behalf of the Central Government the State Government or the corporation, as the case may be, pay the compensation to the persons entitled thereto.*

(4) *Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the competent authority shall determined the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.*

(5) *If any dispute arises as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereon is payable, the competent authority shall refer the dispute to the decision of the District Judge within the limits of whose jurisdiction the land or any part thereof is situated and the decision of the District Judge*



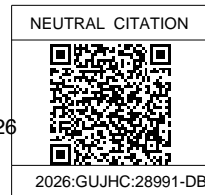
*thereon shall be final.*

***Section 18: Application of other laws not barred.***

*The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to acquisition of land.”*

31. An examination of the aforesaid provisions makes it clear that the Act is to empower the Central Government to acquire such right of user in the land for laying of pipelines. Section 4 of the same empowers any person authorized by the Central Government, State Government or Corporation which proposes to lay pipelines, to enter upon the land, survey the same, dig, mark boundaries, clear away the land, and to do all other acts necessary to ascertain whether the pipelines can be laid under the land.

32. Section 6 lays down the procedure by which the Central Government may direct vesting of the user of the land either in the Central Government or State Government or in the Corporation. Section 8 empowers any person authorized by the authority in which the right of user vests to enter the land for inspection, maintenance, repairing, removal etc., of the pipelines. Section 9 imposes restrictions on the owner or the



occupier of the land in respect of the activities which may be carried on the land. Section 18 categorically mandates that the provisions of the Central Act of 1962 shall be in addition to and not in derogation of any other law for the time being in force “relating to acquisition of land”.

33. In the context of Section 18 of the Central Act of 1962, it is necessary to examine the decision of the Hon’ble Apex Court in **Karunanidhi (Supra)**. The following paragraphs from the said judgment are required to be quoted to get the context in which the aforesaid judgment came to be passed:-

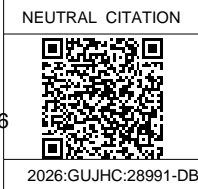
*“3. The appellant, M. Karunanidhi, was a former Chief Minister of Tamil Nadu and was the petitioner before the High Court in the applications filed by him before the High Court. On 15-6-1976, a D.O. letter was written by the Chief Secretary to the Government of Tamil Nadu to the Deputy Inspector General of Police, CBI requesting him to make a detailed investigation into certain allegations against the appellant and others who were alleged to have abused their official position in the matter of purchase of wheat from Punjab. A first information report was accordingly recorded on 16-6-1976 and four months later sanction under section 197 of the Code was granted by the Governor of Tamil Nadu for the prosecution of the appellant under sections 161, 468 and 471 of the Indian Penal Code and section 5(2) read with section 5 (1)(d) of the Prevention of Corruption Act (hereinafter referred to as the Corruption Act). Thereafter, the police submitted a charge sheet against the appellant for the offences mentioned above and alleged that the appellant had derived for himself pecuniary advantage to the extent of Rs. 4 to Rs. 5 lakhs from Madanlal Gupta for passing favourable orders in respect of some firms. The case was registered before the Special Judge and the necessary copies of the records were furnished to the appellant. The appellant*



*on appearing before the Special Judge filed an application for discharging him under section 239 of the Code on the ground that the prosecution against him suffered from various legal and constitutional infirmities. The Special Judge, however, after hearing counsel for the parties rejected the application of the appellant as a result of which the appellant filed two applications in the High Court for quashing the proceedings and for setting aside the order of the Special Judge refusing to discharge the appellant. As indicated above, the High Court rejected the applications of the appellant but granted a certificate for leave to appeal to this Court and hence these appeals before us.*

4. *As far back as 30th December, 1973 the Madras Legislature had passed an Act known as The Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 hereinafter referred to as the State Act. The State Act was passed after obtaining the assent of the President of India. This State Act was, however, amended by Act 16 of 1974 and the President's assent was received on 10th April, 1974. According to the provisions of the State Act the statute was brought into force by virtue of a notification with effect from 8-5-1974. According to the allegations made against the appellant, the acts said to have been committed by him fell within the period November 1974 to March, 1975. On 31-1-1976 by virtue of the provisions of Article 356 President's rule was imposed in the State of Tamil Nadu and the Ministry headed by the appellant was dismissed and a Proclamation to his effect was issued on the same date. The High Court decided the petitions of the appellant on 10-5-1977 and granted a certificate for leave to appeal to this Court on 27-7-1977. Subsequently, however, the State Act was repealed and the President's assent to the repealing of the State Act was given on 6-9-1977. Thus, it is manifest that by the time the appeal has reached this Court and was taken up for hearing the State Act no longer exists. Consequently, some of the constitutional points raised by the learned counsel for the appellant before the Court do not survive for consideration before us.*

5. *Faced with this situation, Mr. Venu Gopal, learned counsel for the appellant has raised only two points before us. In the first place, he submitted that even though the State Act was repealed on 6-9-1977 during the time that it was in force,*



*it was wholly repugnant to the provisions of the Code, the Corruption Act and the Criminal Law Amendment Act and by virtue of Article 254(2) of the Constitution of India the provisions of the aforesaid Central Acts stood repealed and could not revive after the State Act was repealed. The constitutional position, it is submitted, was that even though the State Act was repealed the provisions of the Central Acts having themselves been repealed by the State Act when it was passed could not be pressed into service for the purpose of prosecuting the appellant unless those provisions were re-enacted by the appropriate legislature. A number of grounds were raised by counsel for the appellant in support of the first plank of his argument that the State Act was repugnant to the provisions of the Central Acts as a result of which the former was rendered void.*

7. *We propose to deal with the two arguments separately. We would first deal with the question of repugnancy as raised by learned counsel for the appellant. It is true that the State Act was passed by the Legislature of Tamil Nadu and the assent of the President was obtained on 30th December, 1973. By virtue of the provisions of Article 254 (2) of the Constitution since the assent of the President had been given the State Act was to prevail over the Central Acts so far as the State of Tamil Nadu was concerned, but the serious question to be considered is as to whether or not there was a real repugnancy resulting from an irreconcilable inconsistency between the State Act and the Central Acts. Article 254 of the Constitution runs thus:-*

**"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States:**

*(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State*

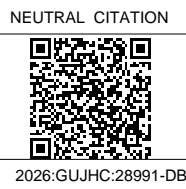


*shall, to the extent of the repugnancy, be void.*

*(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

*Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of State".*

*8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances :-*



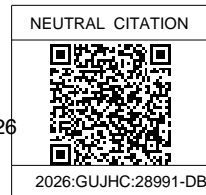
1. *Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.*

2. *Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.*

3. *Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential.*

4. *Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.*

*So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.”*



33.1 In the aforesaid context, the Hon'ble Apex Court eventually went on to hold in paragraph No. '36' as under:-

*"36. In the light of the propositions enunciated above, there can be no doubt that the State Act creates distinct and separate offences with different ingredients and different punishments, and it does not in any way collide with the Central Acts. On the other hand, the State Act itself permits the Central Act, namely, the Criminal Law (Amendment) Act to come into its aid after an investigation is completed and a report is submitted by the Commissioner or the Additional Commissioner. It was contended however by Mr. Venu Gopal that by virtue of the fact that the State Act has obtained the assent of the President, it will be deemed to be a dominant legislation, and, therefore, it would overrule the Central Acts. Doubtless, the State Act is the dominant legislation, but we are unable to agree with Mr. Venu Gopal that there are any provisions in the State Act which are irreconcilably or directly inconsistent with the Central Acts so as to overrule them."*

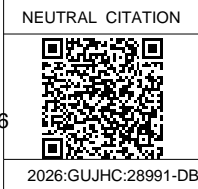
34. Thus, the test is to examine whether the impugned State Act collides with the Central Act of 1962. In this context, it is necessary to examine certain provisions of the impugned State Act which are as under :-

***"Section 1: Short title, extent and commencement.***

*(1) This Act may be called the Gujarat Water and Gas Pipelines (Acquisition of Right of User in Land) Act, 2000.*

***Section 3: Publication of notification for acquisition.***

*(1) Whenever it appears to the State Government that it is necessary in the public interest that for the transport of water or, as the case may be, gas from one area to another area, pipelines may be laid by the State Government, or, the Corporation and that for the purpose of laying down such*



*pipelines, it is necessary to acquire the right of user in any land under which such pipelines may be laid. It may, by notification in the Official Gazette, declare its intention to acquire the right of use therein.*

*(2) Every notification under sub-section (1) shall give a brief description of the land.*

*(3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.*

**Section 5: Power to enter, survey, etc.**

*On the issue of the notification under sub-section (1) of section 3, it shall be lawful for any person authorised by the State Government or, as the case may be, the Corporation which proposes to lay pipelines for transporting water or, as the case may be, gas, and its servants and workmen-*

*(a) to enter upon and survey and take levels of any land specified in the notification;*

*[\(b\) to dig or bore into the sub-soil;](#)*

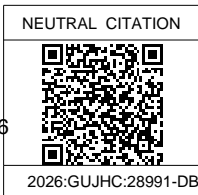
*(c) to set out the intended line of work;*

*(d) to mark such levels, boundaries and line by placing marks and cutting trenches;*

*(e) where otherwise survey cannot be completed and levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle; and*

*(f) to do all other acts necessary to ascertain whether pipelines can be laid under the land:*

*Provided that while exercising any power under this section, such person or any servant or workman of such person shall cause a little damage or injury as possible to such land.*



**Section 6: Declaration of acquisition of right of user.**

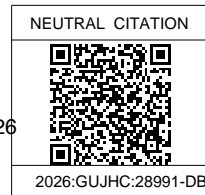
*(1) Where no objection under subsection (1) of section 4 has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, submit a report accordingly to the State Government and upon receipt of such report, the State Government shall declare, by notification in the Official Gazette, that the right of user of land for laying the pipelines shall be acquired.*

*(2) On the publication of the declaration under sub-section (1), the right of user in the land shall vest absolutely in the State Government free from all encumbrances.*

*(3) Where in respect of any land, a notification has been issued under sub-section (1) of section 3, but no declaration under this section has been published within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of the said period.*

*(4) Notwithstanding anything contained in sub-section (2), the State Government may, on such terms and conditions as it may think fit, to impose, direct by order in writing that the right of user in the land for laying the pipelines shall, instead of vesting in the State Government, vest either on the date of publication of the declaration or, on such other date as may be specified in the order, in the Corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that Corporation free from all encumbrances.*

**Section 8: Power to enter land for inspection, etc.**



*For maintaining, examining, repairing, altering or removing any pipeline, or for doing any other thing necessary for the utilisation of the pipelines or for the making of any inspection or measurement for any of the aforesaid purposes, any person authorised in this behalf, by the State Government or, as the case may be, the Corporation may, after giving reasonable notice to the occupier of the land under which the pipeline has been laid, enter therein with such workmen and assistants as may be necessary.*

*Provided that, where such person is satisfied that an emergency exists, no such notice shall be necessary:*

*Provided further that, while exercising any powers under this section, such person or any workmen or assistants of such person, shall cause as little damage or injury as possible to such land.*

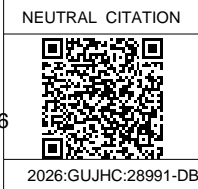
### **Section 9: Restrictions regarding the use of land.**

*(1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3: Provided that such owner or occupier shall not after the declaration under subsection (1) of section 6-*

- (i) construct any building or any other structure;*
- (ii) construct or excavate any tank, well, reservoir or dam; or*
- (iii) plant any tree on that land.*

*(2) The owner or occupier of the land under which a pipeline has been laid shall not do any thing or permit any thing to be done which will or is likely to cause any damage in any manner whatsoever, to the pipeline.*

*(3) Where the owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 6-*



*(a) constructs any building or any other structure, or*  
*(b) constructs or excavates any well, tank, reservoir or dam;*  
*or*

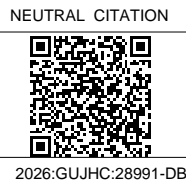
*(c) plants any tree.on that land, the Collector within the local limits of whose jurisdiction such lands is situate may, on an application made to it by the competent authority and after holding such inquiry, as it may deem fit, cause the building, structure, reservoir, dam or tree to be removed or the well or tank to be filled up, and the costs of such removal or filling up shall be recoverable from such owner or occupier.*

### **Section 10: Compensation.**

*(1) Where in the exercise of the powers conferred by section 5, 7 or 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the State Government or, as the case may be, the Corporation shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.*

*(2) If the amount of compensation, determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the Collector within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that Collector.*

*(3) The competent authority or, as the case may be, the Collector while determining the compensation under sub-section (1) or, as the case may be, sub-section (2), shall have due regard to the damage or loss sustained by any person interested in the land by reason of-*



*(i) the removal of trees or standing crops, if any, on the land while exercising the powers under section 5, 7 or, as the case may be, section 8;*

*(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of such person, or*

*(iii) any injury to any other property whether movable or immovable, or the earnings of such persons caused in any other manner:*

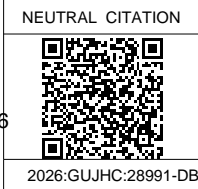
*Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the publication of the notification under sub-section (1) of section 3.*

*(4) Where the right of user of any land has vested in the State Government or, as the case may be, the Corporation it shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market value of that land on the date of publication of the notification under sub-section (1) of section 3.*

*(5) The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the Collector referred to in sub-section (2), be determined by that Collector.*

*(6) The decision of the Collector under sub-section (2) or (5) shall be final.*

**Section 11: Deposit and payment of compensation.**



*(1) The amount of compensation determined under section 10 shall be deposited by the State Government or, as the case may be, the Corporation, with the competent authority within such time and in such manner as may be prescribed.*

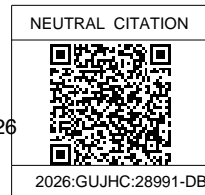
*(2) If the amount of compensation is not deposited within the time prescribed under sub-section (1), the State Government or, as the case may be, the Corporation, shall be liable to pay interest thereon at the rate of nine per cent, if the amount of compensation is deposited within one year after the period prescribed under sub-section (1) and the rate of fifteen per cent, if the amount of compensation is deposited after the expiry of the said one year.*

*(3) As soon as may be after the compensation has been deposited under sub-section (1), the competent authority shall, on behalf of the State Government or, as the case may be, the Corporation, pay the compensation to the persons entitled thereto.*

*(4) Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.*

*(5) If any dispute arises as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the Collector within the limits of whose jurisdiction the land or any part thereof is situated and the decision of the Collector thereon shall be final.*

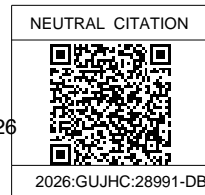
**Section 18: Application of other laws not barred.**



*The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force relating to the acquisition of land."*

35. Thus, it will be seen that even the State enactment contains provision similar to Section 18 of the Central Act of 1962 to the effect that the provisions of the State Act "*shall be in addition to and not in derogation of any other law for the time being in force relating to the acquisition of land.*"

36. In **Karunanidhi (Supra)**, the Hon'ble Apex Court has held in a similar provision in the enactment in examination before it that "*in addition to and not in derogation of*" contained a mechanism to avoid a collision with another Act ostensibly operating in the same field. In other words, it records the clear intention of the State Legislature to allow the Central Act of 1962 being "*a law for the time being in force*" to independently operate and not be drawn into any collision whatsoever. Further, the similar provision under Section 18 of the Central Act of 1962 also leaves room for further enactment regarding "*land acquisition*" and that Section 18 of the Central Act of 1962 clearly evinces the intention of the Parliament not to occupy the field.



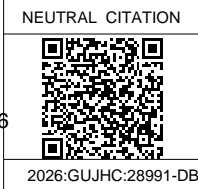
37. The phrase “*in addition to and to in derogation of*” is to be found in several statutes. The Hon’ble Apex Court has interpreted and authoritatively pronounced in several decisions the scope and amplitude of the aforesaid phrase. For example, in the context of Section 3 of the Consumer Protection Act, 1986, which is *pari materia* with Section 100 of the Consumer Protection Act, 2019.

38. The Hon’ble Apex Court in the case of **M. Haridasudhan v. R. Karmegam and Others**, reported in **(2019) 10 SCC 94**, has observed as under:-

*“14. In this regard, it would be useful to refer to Section 3 of the 1986 Act, similar to Section 14 of the Act, which provides that the 1986 Act is in addition to and not in derogation of other laws in force:*

*“3. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”*

*14.1 This provision has been considered on a multitude of occasions by this Court to affirm that the remedy available before consumer fora may only be one of several concurrent remedies available to an aggrieved person. For instance, even recently, this Court in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India** (W.P. (C) No. 43/2019, decided on 09.08.2019) observed that remedies to flat allottees under various statutes such as the 1986 Act, the Real Estate (Regulation and Development) Act, 2016, and the Insolvency and Bankruptcy Code, 2016 are concurrent. However, for our purposes, we may limit ourselves to*



examine the effect of Section 3 of the 1986 Act on the jurisdiction of the civil court. The following discussion in **State of Karnataka v. Vishwabharathi House Building Coop. Society**, (2003) 2 SCC 412, serves us adequately, where this Court explained that the 1986 Act does not supplant the jurisdiction of the civil court:

“46. By reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities.

X X X

53. ... Furthermore, primarily the jurisdiction of the forums/Commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes.”

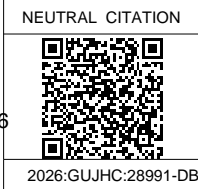
(emphasis added)

14.2 We may also refer to the following observations made by this Court in its earlier decision in **Indian Medical Association v. V.P. Shantha**, (1995) 6 SCC 651, where, while concluding that consumer fora were competent to deal with complaints regarding deficiency in service by way of medical negligence, it was observed as follows:

“37. ... In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the civil court for appropriate relief. Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the civil court for necessary relief...”

(emphasis added)

14.3. There is no doubt in our minds that a similar proposition holds the field even with respect to the Act at hand. Section 14 of the Act, being in addition to and not in



*derogation of the provisions of other laws in force, permits an aggrieved person to approach the civil court for relief if he so desires, instead of availing of the remedy envisaged under Section 10 of the Act. Clearly, a claim for compensation under the Act is only in the nature of an additional remedy which may be pursued in place of filing a civil suit for the same relief.”*

39. In the recent decision of **Deputy Commissioner and Special Land Acquisition Officer v. S.V. Global Mill Limited**, reported in **2026 SCC OnLine SC 171**, interpreting Section 103 of the RFCTLARR Act, 2013, the Hon’ble Apex Court has held as under :-

**“Section 103 of the 2013 Act.**

**“103. Provisions to be in addition to existing laws.**  
—The provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force.”

37. *Section 103 actually throws more light on the peculiar structure of the legislation. There is no difficulty in holding that the 2013 Act is a special Act. It may also be called a complete code to an extent, especially when an award passed by the Authority becomes a decree, and the jurisdiction of the Civil Court is barred. However, Section 103 also facilitates adequate borrowing from other enactments. In fact, the completeness of the 2013 Act comes from such borrowing. We have absolute clarity in our understanding of Section 103, as it explicitly states that the provisions of the 2013 Act shall be in addition to and not in derogation of any other law in force. Thus, this provision is self-explanatory.*

38. *The language of the provision is both positive and negative as it states that the provisions of the 2013 Act are in addition to the existing laws, while further clarifying that it is*



not in derogation of the same. Once we understand Section 103 as it is, it defines the nature of the entire enactment. The following decisions of this Court clarify the meaning of the expression, “in addition to and not in derogation of”:

***KSL and Industries Ltd v Arihant Threads Ltd & Ors - (2015) 1 SCC 166;***

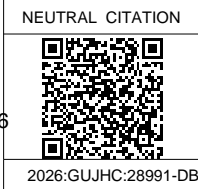
“36 [Ed. : Para 36 corrected vide Official Corrigendum No. F.3/Ed.B.J./61/2014 dated 25-11-2014.] . Sub-section (2) was added to Section 34 of the RDDB Act w.e.f. 17-1-2000 by Act 1 of 2000. **There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the legislature intends that such an enactment shall coexist along with the other Acts. It is clearly not the intention of the legislature, in such a case, to annul or detract from the provisions of other laws. The term “in derogation of” means “in abrogation or repeal of”. The Black's Law Dictionary sets forth the following meaning for “derogation”:**

**“derogation.—The partial repeal or abrogation of a law by a later Act that limits its scope or impairs its utility and force.”**

It is clear that sub-section (1) contains a non obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. SICA is undoubtedly one such law.

37. The effect of sub-section (2) must necessarily be to preserve the powers of the authorities under SICA and save the proceedings from being overridden by the later Act i.e. the RDDB Act.

38. We, thus, find a harmonious scheme in relation to the proceedings for reconstruction of the company under SICA, which includes the reconstruction of debts and even the sale or lease of



*the sick company's properties for the purpose, which may or may not be a part of the security executed by the sick company in favour of a bank or a financial institution on the one hand, and the provisions of the RDDB Act, which deal with recovery of debts due to banks or financial institutions, if necessary by enforcing the security charged with the bank or financial institution, on the other.*

XXX XXX XXX

49. *The term “not in derogation” clearly expresses the intention of Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go on and for that purpose further intended that all the other proceedings against the company and its properties should be stayed pending the process of reconstruction. While the term “proceedings” under Section 22 of SICA did not originally include the RDDB Act, which was not there in existence. Section 22 covers proceedings under the RDDB Act.”*

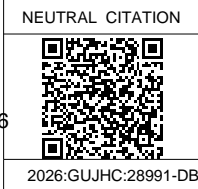
*(emphasis supplied)*

40. In the context of Section 88 of the Real Estate (Regulation and Development) Act, 2016 the Hon’ble Apex Court in the case of ***Pioneer Urban Land and Infrastructure Ltd. & Anr. v Union of India & Ors.***, reported in ***(2019) 8 SCC 416***, has observed as under:-

***“The Insolvency and Bankruptcy Code, 2016 vis-à-vis the Real Estate (Regulation and Development) Act, 2016***

24. *Section 238 of the Code reads as follows:*

***"238. Provisions of this Code to override other laws.- The provisions of this Code shall have***

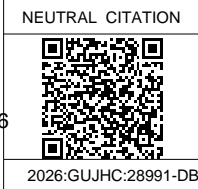


*effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

*25. It is significant to note that there is no provision similar to that of Section 88 of RERA in the Code, which is meant to be a complete and exhaustive statement of the law insofar as its subject-matter is concerned. Also, the non obstante clause of RERA came into force on 1-5-2016, as opposed to the non obstante clause of the Code which came into force on 1-12-2016. Further, the amendment with which we are concerned has come into force only on 6-6-2018. Given these circumstances, it is a little difficult to accede to arguments made on behalf of the learned Senior Counsel for the petitioners, that RERA is a special enactment which deals with real estate development projects and must, therefore, be given precedence over the Code, which is only a general enactment dealing with insolvency generally. From the introduction of the Explanation to Section 5(8)(f) of the Code, it is clear that Parliament was aware of RERA, and applied some of its definition provisions so that they could apply when the Code is to be interpreted. The fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies. Also, it is important to remember that as the authorities under RERA were to be set up within one year from 1-5-2016, remedies before those authorities would come into effect only on and from 1-5-2017 making it clear that the provisions of the Code, which came into force on 1-12-2016, would apply in addition to RERA."*

*(emphasis supplied)*

41. In the context of the various Acts for acquisition of land, apart from the RFCTLARR Act, 2013, Parliament has enacted the National Highways Act, 1956, Chapter IV A of the Railways Act, 1989, etc., all of which provide for acquisition of land, which in any case, could have been acquired under the RFCTLARR Act, 2013. Chapter IV A was inserted in the



Railways Act, 1989, by the Railways (Amendment) Act, 2008 (11 of 2008). The SOR for introducing Chapter IV A in the Railways Act, 1989, is as under :-

### **“STATEMENT OF OBJECTS AND REASONS**

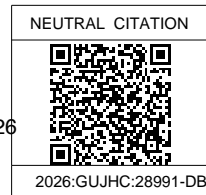
*Provision of critical basic infrastructure is essential in order to have sustainable economic growth and development of our country. Important projects relating to basic infrastructure require acquisition of land. The only instrument available for acquisition of land for public purpose is the Land Acquisition Act, 1894. The existing provisions under the Land Acquisition Act, 1894 are insufficient for completion of such projects on expeditious basis in a time schedule manner due to excessive time taken under the Land Acquisition Act, 1894.*

*2. There is a need to provide for land acquisition provisions in the Railways Act, 1989 to empower the Central Government in the Ministry of Railways for land acquisition on fast track basis for the special railway projects on the lines of the land acquisition provisions available in the National Highways Act, 1956.*

*3. It has been the experience that a large number of disputes relating to compensation amount for land acquisition are brought before the courts of law. Often, these cases are pending for a long period of time in the courts and add to the work-load of the courts. Therefore, an expeditious mechanism of arbitration process is provided to resolve the dispute relating to amount of compensation.*

*4. In order to safeguard the interests of person affected by land acquisition for special railway projects, it is provided in proposed section 20-O of the Bill that the provisions of the Rehabilitation and Resettlement Policy, 2007 shall apply.*

*5. The amendments in the Railways Act, 1989 shall empower the Central Government in the Ministry of Railways (Railway Administration) for land acquisition for the public purpose by striking a balance between creation of basic critical infrastructure in the country and protecting the interest of the persons whose land is acquired.*



*6. As Parliament was not in session, and to give impetus to the critical infrastructure projects, it was considered necessary to take immediate action for making suitable provisions in the Railways Act, 1989 by promulgation of the Railways (Amendment) Ordinance, 2008 on the 31<sup>st</sup> January, 2008.*

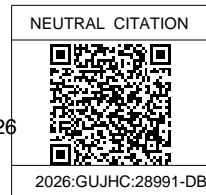
*7. The Railways (Amendment) Bill, 2008 seeks to replace the Railways (Amendment) Ordinance, 2008 to achieve the above objectives.”*

41.1 Likewise, the objects and reasons for introduction of the Sections pertaining to acquisition and connected provisions (Section 3 - Section 3J) under the National Highways Act, 1956, are as under :-

*“1. In order to create an environment to promote private investment in national highways, to speed up construction of highways and to remove bottlenecks in their proper management, it was considered necessary to amend the National Highways Act, 1956 and the National Highways Authority of India Act, 1988.*

*2. One of the impediments in the speedy implementation of highways projects has been inordinate delay in the acquisition of land. In order to expedite the process of land acquisition, it is proposed that once the Central Government declares that the land is required for public purposes for development of a highway, that land will vest in the Government and only the amount by way of compensation is to be paid and any dispute relating to compensation will be subject to adjudication through the process of arbitration.*

*3. It was also felt necessary to ensure continuity of the status of bypasses built through private investment. To achieve this, it is proposed to amend the National Highways Act, 1956 so as to include the highway stretches situated within any municipal area as a part of National Highway.*



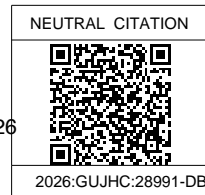
*Further, as the National Highways Act, 1956 permits participation of the private sector in the development of the National Highways, it became imperative to amend the National Highways Authority of India Act, 1988 so as to provide that the National Highway Authority of India may seek the participation of the private sector in respect of the highways vested in the Authority.*

4. *With a view to provide adequate capital and loans to the National Highways Authority of India by the Central Government, it is proposed to make amendment in the National Highways Authority of India Act, 1988.*

5. *With a view to achieve the above objectives and also as both Houses of Parliament were not in session and the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action, the National Highways Laws (Amendment) Ordinance, 1997 was promulgated by the President on the 24th day of January, 1997.*

6. *The Bill seeks to replace the aforesaid Ordinance."*

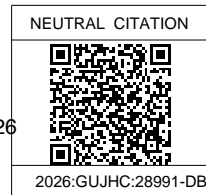
42. It will therefore be seen that in spite of the acquisition of land for whatever purpose and for whichever Government or Company being provided for under the Land Acquisition Act, 1894 (subsequently 'the Act, 2013'), Parliament still thought it fit to provide for provisions for acquisition of lands by which different ministries/departments/projects, solely ensure the expeditious completion of projects. Therefore, the purpose for the enactment of the aforesaid provisions is valid and not superfluous and it cannot be said that there was no necessity



for the enactment of the said provisions for the acquisition of lands for the purpose of construction of National Highways or Special Railway Projects.

43. We are in full agreement with the submissions of Mr. Thakore, learned Senior Counsel appearing for the respondent No.2 - GSPL that given the extensive gas and water pipelines which are necessary to be laid within the State of Gujarat, the dominant purpose for enactment of the State Act of 2000 is to ensure that there are no procedural delays and red-tape which may find its place in the course of triggering the Central Act of 1962 for the emergent necessities of the State.

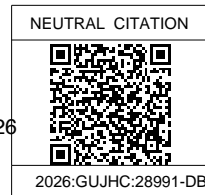
44. Therefore, it will be seen following **Karunanidhi (Supra)** and several other decisions of the Hon'ble Apex Court, as discussed hereinabove, the phrase "*in addition to and in derogation of*" contains an inevitable anti-collision mechanism which is inbuilt in the Act which records the intendment of Parliament /the State Legislature that the Act does not seek to occupy the entire field and leaves room for other Acts which were there for the time being in force. In the



context of the Central Act of 1962, it clearly evinces the intendment of Parliament to allow Parliament / the State Legislature to operate in the same field. A similar provision in the impugned State Act, 2000 (also, section 18) further clarifies that the State Act does not intent to collide with the Central Act, 1962. While interpreting a statute, full play has been accorded to the intendment of Parliament. If by Section 18 of the Central Act, 1962, Parliament intended that the Central Act will be *“in addition to and not in derogation of other laws for the time being in force”*, it clearly intended the Central Act of 1962 not to occupy the field.

45. Likewise, by Section 18 of the State Act, 2000, the State Legislature has clarified that the State Act, 2000 shall be *“in addition to and not in derogation of”* other laws which would include the Central Act of 1962. For us, to hold to the contrary, would render both the aforesaid sections of the Central Act of 1962 and the impugned State Act, 2000 to be otiose.

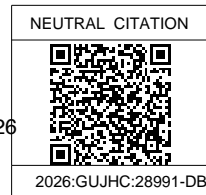
46. Lastly, we have combed through the provisions of the Central Act, 1962 and the impugned State Act, 2000 to check



for inconsistencies. From the comparative chart of the provisions of the aforesaid two Acts above, and a close examination of the provisions thereof, it would be clear that the same are *pari materia*. This would necessarily imply that the provisions of the impugned State Act, 2000 are not inconsistent with the provisions of the Central Act, 1962. Once we arrive at this conclusion, it is inescapable that there is no repugnancy within the meaning of Article 254 of the Constitution of India.

### **Conclusions**

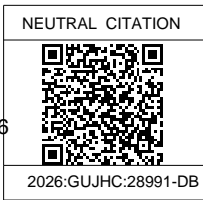
(I) The power to enact all land acquisition laws can be traced back to Entry 42 of List III (Concurrent List). In the present case, thus, we hold that the impugned State Act, 2000 has been enacted under the aforesaid Entry. The contention that the Act is ostensibly framed as legislation concerning the right of user in land, but in reality, it pertains to regulation and transportation of natural gas and liquefied natural gas, is rejected not only because this exact contention has already been rejected in the decision of this Court in **Anil @ Bipinchandra** (Supra) but no circumstances could be pointed



out by the petitioners that the aforesaid decision is *per incuriam*.

(II) Parliament has enacted multiple laws concerning land acquisition and acquisition of right of users in land. From the myriad legislations, the source of power to which can be traced back solely to Entry 42 of List III, we are of the opinion that Parliament has expressed no intention whatsoever to occupy the field through any particular legislation. It further implies that at any point there can be room for one more law on the subject matter. Since the source of power is traced back to List III, such law could well be a State law like the instant State Act, 2000.

(III) Comparing the provisions of the Central Act, 1962 and the State Act, 2000 (impugned herein), we find no inconsistency in any provision between the two. Therefore, there can be no repugnancy in the sense that the State Act or any provision thereof can be held to be repugnant to the Central Act, 1962 within the meaning of Article 254 of the Constitution of India.



(IV) Since the impugned State Act, 2000 is *pari materia* with the Central Act, 1962, the provisions of which have been examined and upheld by the Hon'ble Apex Court in the case of **Laljibhai Savaliya** (Supra), the provisions of the State Act, in no manner, infringe the fundamental rights of the petitioners guaranteed under Article 14, 19(1)(g), 21 of the Constitution of India.

In view of the above findings and our eventual conclusion, the challenge in the present petitions fails. Consequently, the present petitions are dismissed without any order as to costs.

**(SUNITA AGARWAL, CJ)**

BINA SHAH

**(D.N.RAY,J)**