2026:AHC-LKO:54186-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

A.F.R.

PUBLIC INTEREST LITIGATION (PIL) No. - 637 of 2025

Shri Saryu Nagar Vikas Samiti Thru. President Sri Awadhesh Kumar Singh

.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Deptt. of Housing and Urban Planning Lko. and 5 others

.....Respondent(s)

Along with :

1. **Writ - C No. 6304 of 2024:**
Gagan Jaiswal
Versus
State of U.P. Thru. Prin. Secy. Housing and Urban Planning Deptt. Lko and others

2. **Writ - C No. 6894 of 2024:**
Vivekanand Pandey and 5 others
Versus
State of U.P. Thru Addl. Chief Secy. /Prin.Secy. Housing and Urban Planning Lko and 4 others

3. **Writ - C No. 7689 of 2024:**
Rajeev Kumar Tiwari and another
Versus
The State of U.P. Thru. Addl. Chief Secy. Deptt. of Housing and Urban Planning and 4 others

4. **Writ - C No. 1329 of 2025:**
Smt. Basanti Sharma and 2 others
Versus
State of U.P. Thru. Prin. Secy. Deptt. of Housing and Urban Planning U.P. Lko. and 5 others

5. **Writ - C No. 6423 of 2025:**
Ram Autar @ Ram Avtar Yadav and 40 others
Versus
State of U.P. Thru. Addl. Chief Secy. Deptt. of Housing and Urban Planning Lko. and 5 others

6. **Writ - C No. 7231 of 2025:**
Rajeev Narayan Pandey
Versus
The State of U.P. Thru. Prin. Secy. Deptt. of Housing and Urban Planning Lko. and 5 others

7. **Writ - C No. 7945 of 2025:**
Lahvar Prashad and 7 others
Versus
State of U.P. Thru. Addl. Chief Secy. Deptt. of Housing and Urban Planing Lko. and 4 others

8. **Writ - C No. 8614 of 2025:**
Raj Narayan Pandey and 14 others
Versus
The State of U.P. Thru. Prin. Secy. Deptt. of Housing and Urban Planning Lko. and 5 others

9. **Writ - C No. 1923 of 2026:**
Smt.Puja Verma and 36 others
Versus
State of U.P. Thru. Addl. Chief Secy. Deptt. of Housing and Urban Planning Lko and 5 others

10. **Writ - C No. 2666 of 2026:**
Knishka Pandey and another
Versus
State of U.P. Thru. Prin. Secy. Housing and Urban U.P. Lko. and 3 others

---

Counsel for Petitioner(s): Abhishek Mishra, Amrendra Nath Tripathi, Anil Kumar Pandey, Apoorva Tewari (amicus), Ashish Kumar Pathak, Atma Ram Mishra, Avinash Singh Vishen, Bhanu Pratap Mishra, Chandra Bhushan Pandey, Nikhil Mishra, Nishant Pandey, Niteesh Kumar, Rajeev Narayan Pandey, Rama Pati Shukla, Samanvya Dhar Dwivedi, Sharad Pathak, Shrey Shukla

Counsel for Respondent(s): Akhilesh Kumar Srivastava, Anagh Shukla, C.S.C., Ratnesh Chandra

Judgment Reserved on: 22.05.2026
Judgment Delivered on : 06.08.2026

Court No. - 1

HON'BLE RAJAN ROY, J.
HON'BLE MANJIVE SHUKLA, J.

(Per: Rajan Roy, J.)

*(1)*Heard Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Shrey Shukla, Shri Sharad Pathak, learned Senior Counsel assisted by Shri Niteesh Kumar, Shri C.B. Pandey, Shri Rajeev Narayan Pandey, learned counsel appearing for the petitioners, Shri Asit Chaturvedi, learned Senior Advocate assisted by Shri Ratnesh Chandra, Shri

Manav Rathore, Shri Chandan Mishra and Shri Aadi Nigam, learned counsels appearing for the Avas Evam Vikas Parishad (hereinafter referred as the ‘Board’), Shri Sudeep Kumar, learned Additional Advocate General assisted by Shri Nishant Shukla, learned Additional Chief Standing Counsel appearing for the State and Shri Apoorva Tewari, learned Advocate as Amicus Curiae.

*(2)*This is a bunch of petitions wherein, essentially, vires of certain provisions of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred as ‘**Adhiniyam, 1965’**) have been challenged on the ground of repugnancy with the new Land Acquisition Act i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as “**Act, 2013**”) and also on the ground that the provisions of the Adhiniyam, 1965, if implemented as they are, with the aid of the old Land Acquisition Act, 1894 (hereinafter referred as “**Act, 1894**”) which in fact has been repealed by the Act, 2013, then, it would be violative of Article 14, 19 and 300A of the Constitution of India. The schemes for which land has been acquired and the acquisition proceedings and awards are also under challenge on the ground of being illegal, unconstitutional and without authority of law. In some of the petitions without challenging the vires, relief has been sought for acquiring the land or for grant of compensation, rehabilitation, etc. in terms of the Act, 2013. Other ancillary reliefs have also been sought.

*(3)*For convenience, the relief clause of all the writ petitions which we are considering are quoted herein below:-

*"**<u>Relief Clause of PIL No. 637 of 2025</u>***

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

i. ISSUE, a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the Notification dated 19/08/2023 issued under Section- 28 of Uttar Pradesh Avas Evam Vikas Parishad Act, 1965 contained in Annexure No.09 and the entire proceedings and the notifications issued by the opp. parties in respect thereto for acquisition of approximately 450 acres land at Ayodhya under the "भूमि विकास गृह स्थान एवं बाजार पूरक प्रथम योजना, अयोध्या 2023" (3rd Scheme /1st Supplementary Scheme) as arbitrary, illegal and unconstitutional.

ii. ISSUE, writ, order or direction in the nature MANDAMUS commanding the opp. parties to not create hindrance in using the land peacefully by the farmers and not to create any hindrance in their peaceful possession.

(ii-a) ISSUE, writ, order or direction in the nature MANDAMUS declaring the provisions of Section- 28, 31(1) 32 and 55 of the Act, 1965 declaring to be ultra-vires to the provisions of Act No.30 of Act, 2013 as the same being repugnant under Article-254 of the Constitution of India.

iii. ISSUE, other order or direction as is deemed fit and proper under the circumstances of the case.

iv. Allow the writ petition with cost."

*"**<u>Relief Clause of Writ C No. 1923 of 2026</u>***

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

i. ISSUE, writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the Notification dated 19/08/2023 issued under Section- 28 of Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1965 contained in Annexure No.04 and the entire proceedings and the notifications issued by the opp. parties in respect thereto for acquisition of approximately 450 acres land at Ayodhya under the "भूमि विकास गृह स्थान एवं बाजार पूरक प्रथम योजना, अयोध्या 2023" (3rd Scheme / 1st Supplementary Scheme) as arbitrary, illegal, without authority of law and unconstitutional declaring the provisions of Adhiniyam, 1965 repugnant to the provisions of Act, 2013 upto which they are not in conformity with later.

ii. ISSUE, writ, order or direction in the nature MANDAMUS restraining the opp. parties from enforcing the provisions of Section- 28, 31(1), 32 and 55 of the Adhiniyam, 1965 declaring to be ultra-vires to the provisions of Article 14 and 19 of the Constitution of India, 1950 and to the provisions of Act No.30 of Act, 2013.

iii. ISSUE, writ order or direction in the nature of MANDAMUS commanding the opp parties to free the land of the petitioners removing their control from the land of the petitioners declaring the entire acquisition process without authority of law.

iv. ISSUE, writ, order or direction in the nature of MANDAMUS commanding the opp. parties to not create hindrance in using the land peacefully by the petitioners and not to create any hindrance in their peaceful possession.

v. ISSUE, other order or direction as is deemed fit and proper under the circumstances of the case,

vi. Allow the writ petition with cost."

*"**Relief Clause of Writ C No. 1329 of 2025***

In the facts mentioned hereinabove, the Petitioners most humbly prays that this Hon'ble Court may graciously be pleased to:-

(i-a) ISSUE, writ, order or direction in the nature of MANDAMUS declaring the provisions of Section- 28, 31(1), 32 and 55 of the Uttar Pradesh AwasEvamVikas Parishad Act, 1965 declaring to be ultra-vires to the provisions of Act No.30 of 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013) as the same being repugnant as per Article-254 of the Constitution of India.

(i-b) ISSUE, a writ in the nature of Certiorari or any other appropriate writ. order or direction quashing the process of issuing Notification issued under Section-28 (dt.09-10-2020&17.10.2020) (Annexure 1-A & 1-B), Section-29 (dt-14-06-2021) (Annexure 1-C) and Section-32 (dt. 17.01.2023) (Annexure 1-D) of first phase acquisition & Notification issued under Section-28 (dt.15-04-2022807.05.2022))(Annexure 1-E& 1-F), Section-29 (dt. 24-11-2022) (Annexure 1-G) and Section-32 (dt. 06-09-2023) (Annexure 1-H) of Second phase acquisition of Uttar Pradesh Avas Evam Vikas Parishad Act, 1965, by implementing the provisions of Land Acquisition Act 1894 may also be quashed. furthermore notices dated 18-11-2024& 16-11-2023 issued under section 9 (1)(2) land Acquisition Act 1894 (inviting objections against pronouncement of awards) contained in Annexure No. 1-1& 1-J and the entire proceedings, including award and the notifications issued by the opp. parties in respect thereto for acquisition of land of Khata no 203-Gata no 1299 (kha)-(0 bigha 3 biswa-0 dhur)Gata no 1301-biswa 3 dhur), 1302 (ka)-(0 bigha-6 (0 bigha 0 biswa - 18 dhur), 1302 (kha) (0 bigha 9 biswa 6 dhur), 1306 (ka) -(1 bigha-2 biswa-16 dhur), 1309 (kha) - (0 bigha-4 biswa - 4 dhur), total area 2 bigha - 6 biswa - 7 dhurat Ayodhya under the "भूमिविकासगृहस्थानएर्वबाजारयोजना, अयोध्या" (1st Scheme) &land of Khata no 203 Gata no 1307 (ka) (0 bigha - 6 biswa 0 dhur), 1308 (0 bigha 8 biswa - 2 dhur); Khata no150, Gata no - 1275 -(1 bigha 2 biswa - 10 dhur), 1276 -(0 bigha- 18 biswa - 3 dhur), 1277 (ka) -(0 bigha - 13

biswa - 11 dhur), 1278 (ka) -(0 bigha - 14 biswa - 3 dhur), 1279 (ka) 0 bigha 12 biswa 10 dhur, total area 4bigha 14biswa 19 dhurat ayodhyaunder the "भूमिविकासगृहस्थानएवंबाजारपूरकयोजना, अयोध्या" (2nd Scheme) as arbitrary, illegal and unconstitutional."

Any other suitable order or direction as the Hon'ble Court may deem just and proper in the circumstances of the case also be passed in favour of the deponent.

(ii) Issue writ, order, or direction in the nature of Mandamus commanding the District Collector/ District Magistrate Ayodhya to revise the circle rate of the area as per the current market rate as per mandate of the Rule 4(1) of the U.P. Stamp (Valuation of Property) Rules, 1997, before determining the market rate of the Land in question of the Petitioners for proposed acquisition;

(iii) Issue writ, order, or direction in the nature of Mandamus commanding the respondents that they should implement the acquisition proceedings over the land of petitioners situated in Village Manjha Barhata, Pargana - Haveli Awadh, Tehsil Sadar, District Ayodhya, Uttar Pradesh only the prescribed provisions in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(iv) Issue any other suitable order or direction which this Hon'ble Court may deem fit, just and proper under the circumstances of the case;

(v) Cost of the writ petition be awarded to the petitioners."

*"**Relief Clause of Writ C No. 7231 of 2025***

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to: -

i. ISSUE, a writ in the nature of Certiorari or any other appropriate writ. order or direction quashing the process of issuing Notification issued under Section-28 (dt.02-08-

2023), 29 (dt.21-09-2023) and 32 (dt. 21-09-2024) of Uttar Pradesh Avas Evam Vikas Parishad Act, 1965, by implementing the provisions of Land Acquisition Act 1894 and notice dated 28-05-2025 (published on 02 June 2025) under section 9 (1)(2) land Acquisition Act 1894 (inviting objections against pronouncement of awards) contained in Annexure No.1, 2, 3 and 4 and the entire proceedings and the notifications issued by the opp. parties in respect thereto for acquisition of approximately 450 acres land at Ayodhya under the "भूमि विकास गृह स्थान एवं बाजार पूरक प्रथम योजना, अयोध्या 2023" (3 Scheme/1st Supplementary Scheme) as arbitrary, illegal arid unconstitutional.

(i-a) ISSUE, writ, order or direction in the nature of MANDAMUS declaring the provisions of Section-28, 31(1), 32 and 55 of the Uttar Pradesh Awas Evam Vikas Parishad Act, 1965 declaring to be ultra-vires to the provisions of Act No.30 of 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013) as the same being repugnant as per Article-254 of the Constitution of India.

ii. ISSUE, writ, order or direction in the nature of MANDAMUS commanding the opp. parties to not create hindrance in peaceful possession and utilization of the petitioner over the land Gata No. 324 M and 294 M situated at Village- Kurha Keshavpur Uparahar, Tehsil-Sadar, District- Ayodhya, in the interest of justice.

iii. ISSUE, other order or direction as is deemed fit and proper under the circumstances of the case.

iv. Allow the writ petition with cost.”

*“**Relief Clause of Writ C No. 7945 of 2025***

Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to grant the following reliefs:

(i) To issue a writ, order or direction in the nature of Certiorari be issued quashing the notification dated

19.04.2021 published in daily newspaper as well as order dated 13/10/2023 passed by Opposite Party No. 1 for acquisition of land for the 'Bhoomi Vikash Grih- Sthan avam Bazaar Poorak- Yojna, Ayodhya' herein as contained in Annexure Nos. 2 & 1 respectively with the instant writ petition.

ii) To issue a writ, order or direction in the nature of Mandamus be issued directing the opposite parties that they should implement the acquisition proceedings over the land of petitioners situated in village Majha Barhata Tehsil Sadar District Ayodhya only the prescribed provisions in The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) To issue a writ, order or direction in the nature of Mandamus directing the respondents to award fair compensation and extend rehabilitation and resettlement benefits to the Petitioners under the Land Acquisition, Rehabilitation and Resettlement, Act, 2013 ("LARR Act") in respect of the lands of the petitioners bearing Khata No. 174 with gata No. 1404, 1406, 1407, 1521, 1522, 1523, 1525-ka and 1524-ba; Khata No. 173 with Gata No. 1409; Khata No. 81 with Gata No. 1525, 1526-ka; Khata No. 182 with Gata No. 1406-ga, 1408-kha, 1409-ka, 1410-ka, 1412-a, 1413-ka, 1414-ka, 1412-a 1413-ka, 1414-ka, 1415-ka, 1416-ka, 1424-ka; and Khata No. 97 with Gata No. 1354 which is acquired from them.

(iii) Any other appropriate writ, order or direction be issued which this Hon'ble Court may deem just, proper and necessary in the circumstances of the case; and

(iv) Cost of the writ petition be awarded to the petitioner.”

*“**<u>Relief Clause of Writ C No. 8614 of 2025</u>***

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

i ISSUE, a writ in the nature of Certiorari or any other appropriate writ. order or direction quashing the process *of issuing Notification/ Notice issued under Section-28 of the Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1965 and subsequent Notifications/sanctioning of the scheme issued by Housing Commissioner Uttar Pradesh Housing and Development Board / Respondents implementing a scheme named "भूमि विकास गृह स्थान एवं बाजार पूरक प्रथम योजना, अयोध्या 2023 contained in Annexure No.1 and the entire proceedings and the notifications issued by the opp. parties in respect thereto for acquisition of approximately 450 acres land at Ayodhya under the "भूमि विकास गृह स्थान एवं बाजार पूरक प्रथम योजना, अयोध्या 2023" (3 Scheme /1st Supplementary Scheme) as arbitrary, illegal and unconstitutional.*

(i-a) ISSUE, writ, order or direction in the nature of MANDAMUS declaring the provisions of Section- 28, 31(1), 32 and 55 of the Uttar Pradesh Awas Evam Vikas Parishad Act, 1965 declaring to be ultra-vires to the provisions of Act No.30 of 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013) as the same being repugnant as per Article- 254 of the Constitution of India.

ii. ISSUE, writ, order or direction in the nature of MANDAMUS commanding the opp. parties to not create hindrance in peaceful possession and utilization of land by the petitioner over the land Gata No. 324 M, 294 M situated at Village- Kurha Keshavpur Uparahar, Tehsil-Sadar, District- Ayodhya, gata no. 531, 791ga M, 791gha M, 798, 799, 800, 821, 822, 910ga M, 910Ja M, 932ga M, 933M, 940ka M, 956, 957, 960 M, 961 M, 963 Ka M, 963kha M, 963ga M, 975 M, 980 M, 984 M, 985 M, 988, 989, 999 M, 1000M, and 1001 situated at Village-Shahnewajpur Manjha, Tehsil Sadar, District- Ayodhya, and Gata no. 226 situated at Village-Shahnewajpur Uparhar, Tehsil-Sadar, District- Ayodhya, in the interest of justice.

iii. ISSUE, other order or direction as is deemed fit and proper under the circumstances of the case.

iv. Allow the writ petition with cost.”

*"**Relief Clause of Writ C No. 2666 of 2026***

WHEREFORE, it is humbly prayed that this Hon'ble Court may kindly be pleased to :-

i. Issue a writ, order or direction in the nature of CERTIORARI to quash the Ex- parte Award dated 23.06.2023 passed by respondent no. 4 i.e. Additional District Magistrate (Land Acquisition) Ayodhya so far related to determination of compensation of Petitioners Agriculture Land bearing Khasra No.591, Area 0.0600 hectares, Khasra No.592 Area 0.04000 hectares and Khasra No.593 Ka Area 0.1700 hectares, situated in village Shahnawazpur Manjha, Tahsil Sadar, District Ayodhya after summoning in original.

ii. Issue a writ, order or direction in the nature of CERTIORARI to quash the acquisition process started by opp.parties after issuing notice under section 29 U.P. Awas evam Vikas Parishad (Act) Adhiniyam, 1965 so far related to Petitioners Agriculture Land Khasra No.591. Area 0.0600 hectares, Khasra No.592 Ares 0.04000 hectares and Khasra No.593 Ka Aren 0.1700 hectares. situated in village Shahnawazpur Manjha, Tahsil Sadar, District Ayodhya after summoning in original from respondents.

iii. issue, a writ in the nature of Certiorari quashing the Notification dated 09.10.2020 issued under Section-28 of Uttar Pradesh Avas Evam Vikas Parishad Act, 1965 (contained as Annexure No. 2 to the Writ Petition) and the entire proceedings and the notifications issued by the respondents for acquisition of land under the "भूमि विकास गृह स्थान एवं बाजार योजना, अयोध्या" (1" Scheme).

iv. Issue a writ, order or direction in the nature of Mandamus directing respondents not to interfere in the possession of the petitioners over their agricultural land bearing Khasra No.591, Area 0.0600 hectares, Khasra No.592 Area 0.04000 hectares and Khasra No.593 Ka Area 0.1700 hectares situated at village Shahnawazpur Manjha, Tahsil Sadar, District Ayodhya.

v. Issue of any other writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case.

vi. Allow the writ petition with cost.”

*“**Relief Clause of Writ C No. 6894 of 2024***

WHEREFORE, in light of the facts and circumstance stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to. issue a writ, order or direction in the nature of:

(i) CERTIORARI quashing the Notice issued by the Opposite Party No. 3, under section 28 and under section 29 of UP Awas Evam Vikas Parishad Act, 1965 dated 19.08.2023 and 21.09.2023, qua the petitioners and any subsequent proceedings emanating therefrom as contained in ANNEXURE NO. P1 & P2 to this Writ Petition.

or

MANDAMUS directing the Opposite Parties No. 1 to 3 to consider the objection preferred by the petitioners and rehabilitate the petitioners on the land of equal value as per the provisions of RFCTLAAR ACT, 2013

(ii) MANDAMUS commanding the Opposite Parties No. 1 to 3, to furnish the copy of order of rejection of the objections/representations preferred by the Petitioners dated 04.09.2023, 29.09.2023 and 04.11.2023; under Section 30 of the Uttar Pradesh Avas Evam Vikas Parishad Act, 1965.

or

MANDAMUS commanding the Opposite Parties No. 1 to 3 to decide the Objections/ Representations submitted by the Petitioners as per law, where applicable, as contained in ANNEXURE NO. P3 COLLY to this Writ Petition.

(iii) MANDAMUS commanding the Opposite Parties No. 4 & 5 to revise the circle rate as per latest prevalent rates as per RFCTLAAR ACT, 2013.

(iv) Any other order or direction which this Hon'ble Court may deem fit and proper in the interest of justice."

*"**<u>Relief Clause of Writ C No. 6304 of 2024</u>***

Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to grant the following reliefs:

(i) A writ, order or direction in the nature of Certiorari be issued quashing the entire acquisition process relating to the land of the petitioner having Khasra No. 467 'Ka' & 551 pertaining the area 0.0100 & 0.8590 hectare respectively situated in village Shahnewazpur Manjha, Pargana Haveli Awadh, Tehsil Sadar, District Ayodhya, adopted by the respondents

(ii) A writ, order or direction in the nature of Mandamus be issued directing the Opp. Party No. 4 & 5 not to take forceful possession over the lands in question without duly obtaining the consent of the petitioner/land owner.

(iii) A writ, order or direction in the nature of Mandamus be issued directing the Opp. Party No. 4 & 5 commanding the Opp. Party No. 4 & 5 to immediately provide copy of the decision taken over the objections of the petitioner and all other documents over which the respondents relied upon while deciding the objections of the petitioner.

(iv) Any other appropriate writ, order or direction be issued which this Hon'ble Court may deem just, proper and necessary in the circumstances of the case; and

(v) Cost of the writ petition be awarded to the petitioner."

*“**Relief Clause of Writ C No. 6423 of 2025***

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to :-

i. ISSUE, writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the Notification dated 19/08/2023 issued under Section 28 of Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 contained in Annexure No.04 and the entire proceedings and the notifications issued by the opp. parties in respect thereto for acquisition of approximately 450 acres land at Ayodhya under the "भूमि विकास गृह स्थान एवं बाजार पूरक प्रथम योजना, अयोध्या = 2023 deg (3rd Scheme / 1 Supplementary Scheme) as arbitrary, illegal, without authority of law and unconstitutional declaring the provisions of Adhiniyam, 1965 repugnant to the provisions of Act, 2013 upto which they are not in conformity with later.

ii. ISSUE, writ order or direction in the nature of MANDAMUS commanding the opp. parties to free the land of the petitioners removing their control from the land of the petitioners declaring the entire acquisition process without authority of law.

iii. ISSUE, writ, order or direction in the nature of MANDAMUS commanding the opp. parties to not create hindrance in using the land peacefully by the petitioners and not to create any hindrance in their peaceful possession.

iv. ISSUE, other order or direction as is deemed fit and proper under the circumstances of the case.

v. Allow the writ petition with cost.”

*“**Relief Clause of Writ C No. 7689 of 2024***

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

i. ISSUE, writ, order or direction in the nature of CERTIORARI quashing the order dated 01/08/2024 passed by the Opp. Party No.02 contained in Annexure No.02 to the writ petition declaring the said order illegal.

ii. ISSSUE, writ, order or direction in the nature of MANDAMUS commanding the Opp. Parties to exclude /abandon the land of the petitioners Khasra Nos. 378, 379 and 380 situated in Village Shahnewajpur Manjha, Pargana Haveli Awadh, Tahsil- Sadar, District- Ayodhya from the Supplementary Scheme launched by them invoking the provisions of Section 31 of The Uttar Pradesh Avas Evam Vikas Parishad Act, 1965.

ii-a) ISSUE, writ, order or direction in the nature of CERTIORARI quashing the impugned and government order dated 31/07/2024 consequential order dated 04/09/2024 and 05/09/2024 contained in Annexure No(s). 27 to 29 to the writ petition so far as it relates to the petitioners.

iii. ISSUE, other order or direction as is deemed fit and proper under the circumstances of the case.

iv. Allow the Writ Petition with cost."

*(4)*Much emphasis was laid by Shri Asit Chaturvedi, learned Senior Counsel for the Board, that challenge to the vires of certain provisions of Adhiniyam, 1965 was confined in all the writ petitions only on the ground of repugnancy, and also that adequate pleadings for such challenge on the grounds such as violation of Article 14, etc. were missing. As would be evident from the relief clause in some of the writ petitions, vires of the Adhiniyam, 1965 has been challenged ostensibly on the ground of it being repugnant to the Act, 2013, however, on a closer reading of the pleadings in the body of the writ petition, we find that the challenge is also on the ground of violation of Article 14,

19, 21 and 300A of the Constitution of India. Besides, in Writ C No. 1923 of 2026, as is evident from the relief clause also, the vires has been specifically challenged on the ground of violation of Article 14 and 19 of the Constitution of India and the Act, 2013. We have also gone through the pleadings in the writ petitions and find that adequate pleadings are there in this regard. This apart, mostly legal issues arose for our consideration, which were argued and discussed at length on various dates on which hearing took place, therefore, it is not a case where the opposite parties have been taken by surprise, as, all along they have been aware of all the issues which have been argued and discussed and which are to be discussed in this judgment and to respond to the same, therefore, this contention of Shri Chaturvedi needs to be rejected at the very outset.

*(5)*The legislature of U.P. promulgated an enactment, namely, the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 to provide for the establishment, incorporation and functioning of a housing and development board in Uttar Pradesh. The said enactment received the assent of the President on 20th January 1966. The assent of the President was not with reference to Article 254(2) of the Constitution of India, but in view of the requirement as contained in the then existing Article 31 of the Constitution, which has since been omitted by the Constitution (44th Amendment) Act, 1978.

*(6)*The U.P. Awas Evam Vikas Parishad, hereinafter referred as "the Board", as constituted under Section 3 of the

Adhiniyam, 1965, having the power to frame and execute housing and improvement schemes and other projects under Section 15(1)(a), etc., framed three schemes which are in question, namely, "Bhumi Vikas, Grahsthan Evam Bazar Yojna", hereinafter referred as **Scheme No. 1**; "Bhumi Vikas, Grahsthan Evam Bazar Purak Yojna", Ayodhya, hereinafter referred as **Scheme No. 2**; and "Bhumi Vikas, Grahsthan Evam Bazar Yojna Purak Pratham Yojna", Ayodhya”, hereinafter referred as the **Scheme No.3**.

*(7)***Scheme No.1** covers the villages of Shahnawazpur Manjha, Baraita Manjha and Tihura Manjha. Publication in respect of this scheme under section 28 of the Adhiniyam, 1965 was done on 17.10.2020. Publication for the scheme under section 32, in respect of village Shahnawazpur Manjha and Baraita Manjha, was done on 04.02.2023 and 30th September 2023 respectively, whereas for Tihura Manjha, it was done on 13.01.2024. Award in respect of village Shahnawazpur Manjha was declared by the Special Land Acquisition Officer on 23.06.2023, whereas for village Baraita Manjha, it was declared in two parts on 20th February 2025 and 2nd September 2025. As regards village Tihura Manjha, the award has not been declared and is under process.

*(8)*So far as the **Scheme No.2** is concerned, it covers only one village, that is village Baraita Manjha. Publication for this scheme under section 28 of the Adhiniyam, 1965 was done on 23.04.2022 and the publication under section 32

was done on 16.09.2023. The award was declared on 23.12.2024.

*(9)*As regards **Scheme No.3,** it covers four villages, namely, Shahnawazpur Manjha, Shahnawazpur Uparhar, Kudakeshavpur Manjha and Kudakeshavpur Uparhar. Publication for the scheme under section 28 was made on 19.08.2023, whereas publication under section 32 was done on 21.09.2024. Award in respect of village Shahnawazpur Manjha has not been declared, whereas award in respect of the remaining three villages has been declared on 23.01.2026, 06.01.2026, and 06.01.2026 respectively.

(10) All the abovementioned schemes were sanctioned by the State Government under Section 31 (2) of the Adhiniyam, 1965 and order under Section 7 of the Act, 1894 were also passed by it on different dates and only thereafter the schemes/acquisition were taken forward.

(11) It needs to be further mentioned that the acquisition of land for the aforesaid three schemes is by three modes, that is, by compulsory acquisition, under the land pooling policy and by purchase based on mutual negotiation. We, in these petitions, are only concerned with compulsory acquisition, and not with other modes of acquisition.

(12) It may further be mentioned that out of the total land measuring 194.1546 acres, which was notified under section 32 under the first scheme pertaining to village Shahnawazpur Manjha, only 36.1067 acres was to be

compulsorily acquired. Likewise, out of the total land included in the section 32 notification i.e., 219.66968 acres in Village Baraita Manjha, only 114.83179 acres is under compulsory acquisition. Similarly, out of total land measuring 747.62403 acres notified under section 32 for village Tihura Manjha, 126.70127 acres is under compulsory acquisition. Rest are by other modes.

(13) As regards the second scheme, which pertains to only one village, that is, Baraita Manjha, out of total land measuring 192.9408 acres notified under section 32, 103.2241 acres is under compulsory acquisition and rest have been acquired by other modes.

(14) So far as the third scheme is concerned, out of the total land measuring 7.76 acres notified under section 32 in respect of village Kudakeshavpur Manjha, 7.22 acres is under compulsory acquisition and rest by other modes. Regarding other villages under the third scheme, out of total land measuring 37.67 acres in respect of village Kudakeshavpur Uparhar notified under section 32, only 33.79 acres of land is under compulsory acquisition. Likewise, out of 5.17 acres of land notified under section 32 in respect of village Shahnawazpur Uparhar, 3.9177 acres of land is under compulsory acquisition. So far as village Shahnawazpur Manjha in the third scheme is concerned, out of total land measuring 385.8 acres notified under section 32, 366.8375 acres is under compulsory acquisition.

(15) The compulsorily acquisition of aforesaid land has been done under the Adhiniyam, 1965 and provisions of the Land Acquisition Act, 1894 as applicable to it, therefore, we may advert to relevant provisions of these statutes.

(16) Functions of the Board enumerated under section 15 of the Adhiniyam, 1965 include framing and executing housing and improvement schemes and other projects. Section 16 thereof provides that a housing or improvement scheme could be framed by the Board on its own motion or at the instance of a local authority and shall be framed when so directed by the State Government. Section 17 of the Adhiniyam, 1965 deals with matters to be provided for in housing or improvement schemes and according to it, *inter alia*, notwithstanding anything contained in any other law for the time being in force and without prejudice to other provisions of the said chapter, a housing or improvement scheme may provide for all or any of the matters as enumerated therein under clause (a) to (r) including the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme.

(17) Thus, acquisition of property which may be necessary for or affected by the execution of the schemes to be framed by the Board is also a function of the Board.

(18) Section 18 deals with different types of housing and improvement schemes. The schemes referred in the cases at hand are referable to clause (a) and (h) of section 18(1).

(19) Section 19 to 27 deal with specific type of schemes and their requirements while framing it. Sections 19 and 26 are relevant to the schemes in question.

(20) We may at this point emphasize the fact that under the Adhiniyam, 1965 there is provision in Section 21 for 'punarvas yojana' (Rehabilitation Scheme) which is to be framed whenever the Board is of the opinion that it is necessary to provide accommodation for persons, (a) who are displaced or likely to be displaced by the execution of any housing or improvement scheme under the Act, or (b) whose removal from any area is necessary for relieving congestion in that area.

(21) Section 28 to 34 deal with the modalities for framing and implementing the housing and improvement scheme.

(22) Section 28 sub-Section (1) provides that when any housing or improvement scheme has been framed, the Board shall prepare a notice to that effect, *inter alia*, specifying the boundaries of the area comprised in the scheme. A notice of proposed acquisition or levy of betterment fee is to be given under section 29. Objections can be filed under section 30. After considering the objections, a decision is to be taken as to abandonment, modification or sanction of the scheme. If the cost of the scheme exceeds 20 lakhs, then the sanction is to be granted by the State Government, otherwise it is the Board which is competent to grant such sanction. Whenever the Board or the State Government sanctions a housing or improvement scheme under section 31, it shall be notified

under sub-Section (1) of section 32. Such notification in respect of any scheme is conclusive evidence that the scheme has been duly framed and sanctioned. However, there is a remedy of appeal against such decision/sanction by the Board available to any person who or a local authority which had filed objections under section 30 to appeal before the State Government whose decision thereon is to be final.

(23) In the case at hand, the sanction under Section 31 is by the State Government; therefore, there is no question of any appeal by any landowner. Even otherwise, considering the legal issues involved, that is, the vires of the very enactment (Adhiniyam, 1965) being under challenge, the remedy of appeal is hardly of any relevance to the landowners, as, such issues can only be decided by a constitutional court.

(24) Sub-Section (4) of Section 32 provides that if the State Government cancels or alters the scheme as a result of an appeal filed under sub-Section (3), the cancellation or alteration shall be notified in the Gazette.

(25) Sub-Section (5) deals with the coming into force of the scheme in the eventualities mentioned earlier i.e., if sanctioned by the State Government, on the date of notification under subsection 1, or if sanctioned by the board, in terms of Clauses (i) and (ii) thereof.

(26) Section 33 deals with alteration of scheme after its commencement, and Section 34 deals with execution of the scheme.

(27) Section 55 which is of relevance as it deals with the power to acquire land and it reads as under:

> *"**55. Power to acquire land.** - (1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1984 (Act No. 1 of 1984), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to this Act.*
>
> *(2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of land under the Land Acquisition Act, 1894 (Act No. 1 of 1894)."*

(28) The schedule referred in Section 55 reads as under:

"[The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965]

SCHEDULE

(See SECTION 55)

Modifications in the Land Acquisition Act, 1894 as amended in its application to Uttar Pradesh (hereinafter called "the said Act") :–

1. Amendment of section 3 of the said Act.

After clause (h) of section 3 of the said Act, the following new clauses shall be deemed to be added, namely

"(i) 'local authority' includes the Board ;

(j) 'Board' means the Uttar Pradesh Avas Evam Vikas Parishad established under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. "

2. Effect of notices under this Act.

(1) The first publication, in the official Gazette, of a notice of any housing or improvement scheme under section 28 or under clause (a) of sub-section (3) of section 31 of this Act shall be substituted for and have, in relation to any land proposed to be acquired under the scheme, the same effect as publication in the official Gazette, and in the locality, of a notification under sub-section (1) of section 4 of the said Act, except where a notification under section 4 or a declaration under section 6 of the said Act has previously been made and is still in force, and the provisions of section 5-A of the said Act shall be in applicable in the case of such land.

(2) The issue of a notice under clause (c) of sub-section (3) of section 23 of this Act in the case of land acquired under a Bhavi Sarak Yojana and the publication of a notification under sub-section (1) or, as the case may be, under sub-section (4) of section 32 of this Act in the case of land acquired under any other housing or improvement scheme under this Act shall be substituted for and have the same effect as a declaration by the State Government under section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

(3) In a case to which sub-paragraph (1) or sub-paragraph (2) applies, a notification under sub-section (2) of section 33 or under sub-section (3) of section 49 of this Act involving alteration of the extent of the land proposed to be acquired shall have the effect of correspondingly modifying the notification under sub-section (1) of section 4 and the declaration under section 6 of the said Act, so,

however that any such modification shall be without prejudice to the validity of anything previously done under the original notification or declaration.

3. Amendment of section 17 of the said Act.

In section 17 of the said Act—

(i) for the existing sub-section (1) and (1-A), the following sub-section shall be deemed to be substituted, namely—

"(1) Whenever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, the Collector, though no such award has been made, may on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of section 9 to take possession of any land needed for the purposes of the said Adhiniyam. Such land shall thereupon vest absolutely in the Government free from all encumbrances" ;

(ii) sub-section (4) shall be deemed to be omitted.

[The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965]

4. Addition of new section 17-A in the said Act. Transfer of land to Board.

After section 17 of the said Act, the following shall be deemed to be added as a new section, namely :

"17-A. In every case referred to in section 16 or section 17, the Collector shall upon payment of the cost of acquisition make over charge of the land to the Housing Commissioner, or an officer authorized in this behalf under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, and the land shall thereupon vest in the Board subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition. "

5. Amendment of section 23 of the said Act.

In section 23 of the said Act—

(i) for the existing explanation to the clause "firstly ", the following shall be deemed to be substituted :

"Explanation— In judging the market value aforesaid in any case where a land is acquired under a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, if any building has been erected, re-erected, added to or altered in contravention of the provisions of clause (a) of sub-section (3) of section 23, sub-section (3) of section 24 or section 35 of the said Adhiniyam, any increase in the market value resulting from the such erection, re-erection, addition or, alteration shall be disregarded";

(ii) after the existing sub-section (1) the following shall be added as sub-section (2), namely.

"(2) In additional to the market value of the land as above provided, the court shall in every case award a sum of fifteen per centum of such market value in consideration of the compulsory nature of the acquisition."

6. Amendment of section 49 of the said Act.

After sub-section (1) of section 49 of the said Act, the following new sub-section shall be deemed to be added, namely—

"(1-a) For the purposes of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

(29) As would be evident from a reading of section 55 conjointly with the schedule of the Adhiniyam, 1965, the provisions of the Land Acquisition Act, 1894 are

applicable to acquisition proceedings in the context of any scheme framed under the Adhiniyam, 1965 subject to the modifications specified in the schedule quoted herein above.

(30) The Land Acquisition Act, 1894 was a pre-constitution statute. It held the field in the matter of land acquisition even after coming into force of the Constitution of India by virtue of Article 372 and it was referable to entry 42 of the concurrent list under the Seventh Schedule of the Constitution of India.

(31) With passage of time, the provisions of the Land Acquisition Act 1894 were found to be inadequate in addressing certain issues related to the exercise of statutory powers of the State for involuntary acquisition of private land and property. Further, as per the statement of objects and reasons contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, the Act 1894 did not address the issues of rehabilitation and resettlement to the affected persons and their families. The definition of public purpose was also found to be very wide, which necessitated a redefinition of the said term so as to restrict its scope for acquisition of land for strategic purposes vital to the State and for infrastructure projects where the benefits accrue to the general public.

(32) In order to streamline the provisions of the Act, 1894 causing less hardships to the owners of the land and other persons dependent upon such land, it was proposed

to repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

(33) A unified legislation dealing with acquisition of land providing for just and fair compensation and containing adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families was proposed. The bill, eventually became the Act, 2013 and provided for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project-affected persons and their families.

(34) The Act, 2013, which repeals the Land Acquisition Act, 1894 vide Section 114 provides for an entirely new mechanism of land acquisition, compensation, rehabilitation and resettlement, and extends to the whole of India and after receiving the assent of the President of India on 26 September, 2013, it has come into force with effect from 01.01.2014, vide notification dated 19 December, 2013 referable to sub-Section (3) of Section 1.

(35) Section 114 of the Act, 2013, reads as under—

"114. Repeal and saving. (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

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

(36) Thus, repeal of Land Acquisition Act, 1894, is without prejudice and without affecting the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

(37) Acquisition proceedings for the schemes framed by the Board under the Adhiniyam, 1965 are being held in terms of the Act, 1894 in view of Section 55 read with the Schedule of the Adhiniyam, 1965 and not the Act, 2013. Though as per Board monetary compensation is being determined in respect of acquisition of land under Adhiniyam, 1965 as per the Act, 2013, but rehabilitation and resettlement is not being provided in terms of the Act, 2013.

(38) In this very context, we may also refer to section 24 of the Act, 2013, which reads as under:

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

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

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

(39) As per sub-Section 1 of Section 24, notwithstanding anything contained in the Act, 2013, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (a) as would be evident from the said provision, if land acquisition proceedings had been initiated under the Act, 1894, where no award under Section 11 of the said Act had been made, then, all provisions of the Act, 2013, relating to determination of compensation would apply, (b) where an award under Section 11 had been made, then such proceedings shall continue under the provisions of the Land Acquisition Act, 1894, as if the said Act had not been repealed. Sub-Section 2 of Section 24 provides that notwithstanding anything contained in sub-Section 1, in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of the Act, 2013, but the physical possession of the land has not been taken, or the compensation has not been paid, the

said proceeding shall be deemed to have lapsed and the appropriate government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act, 2013. This provision is not applicable to the facts of the case before us.

(40) Several arguments have been advanced by learned counsel for the parties which shall be dealt with while discussing the questions/issues which arise for our consideration.

(41) The following questions arise for our consideration in these bunch of petitions:

1. Whether PIL No. 637 of 2025 (Shri Saryu Nagar Vikas Samiti Thru. President Sri Awadhesh Kumar Singh vs. State of U.P. Thru. Prin. Secy. Deptt. of Housing and Urban Planning Lko. And 5 others) is maintainable for the reliefs claimed?

2. Whether section **28, 31 (1), 32 and 55** of the Adhiniyam, 1965, read with provisions of the Land Acquisition Act, 1894 as applicable to land acquisition proceedings, are repugnant to the Act, 2013?

3. What is the effect of repeal of Act, 1894 by section 114 of the Act, 2013, on land acquisition proceedings under the Adhiniyam, 1965?; Whether application of provisions of Act, 1894 to compulsory acquisition under Adhiniyam, 1965 in spite of its repeal would be bad in law?

4. Whether the Adhiniyam, 1965, insofar as it incorporates the provisions of the Act, 1894, with respect to land acquisition vide Section 55 read with its schedule, stands impliedly repealed upon enactment of the Act, 2013?

5. Whether application of provisions of the Act, 1894 to compulsory acquisition proceedings under the Adhiniyam, 1965 for purposes of grant of compensation, etc. and not the Act, 2013, amounts to arbitrary and hostile discrimination of property owners and their differential treatment in the matter of compensation, rehabilitation and resettlement, rendering the impugned provisions of the Adhiniyam, 1965, especially Section 55 and its Schedule, unconstitutional and hit by Article 14, 19 and 300A of the Constitution of India?; Whether compensation in this context includes non-monetary compensation?

6. Whether provisions or at least the principles for rehabilitation, resettlement and compensation as contained in the Act, 2013 are required to be applied to land acquisition proceedings under the Adhiniyam, 1965 so as to save the impugned provisions from being declared unconstitutional on the ground of being hit by Article 14, 19 and 300A of the Constitution of India and to ensure equal treatment of land/property owners?

7. Whether the issues involved in this case are required to be referred for consideration by a Larger Bench in view of a Coordinate Bench decision in '***Writ Petition (Land Acquisition) No. 159 of 2014, Atul Sharma and another versus State of UP and others***'?

8. Whether the Board ceased to be a local authority under the Act, 1894 on its amendment by Section 55 of the Adhiniyam, 1965 for its application to the latter Statute?

9. What relief, if any, are the petitioners entitled to?

<u>Question No. 1:</u>

(42) A preliminary objection was raised by learned Senior Counsel for the Board, Shri Chaturvedi with regard to maintainability of Writ PIL No. 637 of 2025 on the ground that by means of the said PIL, the petitioner therein was espousing individual grievances of land

owners, which was impermissible. In fact, in the counter affidavit, it has also been stated that as per the averments made in para 2 of the writ petition it is evident that personal interest of certain persons is being espoused by the petitioner. Learned counsel for the Board relied upon the decisions reported in ***Ramsharan Autyanuprasi & Anr. v. Union of India and others; (1989) Supplement 1 SCC 251*** and ***Ashok Kumar Pandey v. State of West Bengal; (2004) 3 SCC 349*** in support of his contention regarding non-maintainability of such PIL and lack of *locus standi* of the petitioner in this regard. We are, however, not convinced with this argument.

(43) Petitioner of this PIL is a society duly registered under the Societies Registration Act, 1860, and its registration certificate has been renewed for a period of five years with effect from 16.09.2024, that is, it is still in subsistence. The petitioner, as per averments made in para 5 of the writ petition, earlier filed a Public Interest Litigation before the Supreme Court of India, that is, ***Writ Petition (Civil) No. 504 of 2025 (Shri Saryu Nagar Vikas Samiti vs. The State of UP and Others)*** challenging the acquisition proceedings as have been challenged herein and the said petition was disposed of on 19.05.2025 with certain observations. The said order reads as under:-

"1. The petitioner-Samiti has approached this Court through a Writ Petition under Article 32 of the Constitution seeking quashing of the land acquisition process to acquire land measuring 450 acres for a project in Ayodhya. The acquisition has been challenged primarily on the ground that taking undue advantage of provisions of the Uttar Pradesh Avas Evam Vikas

Parishad Adhiniyam, 1965 (for short, the "1965 Act"), the acquisition process has been initiated under the Land Acquisition Act, 1894 (for short, the "1894 Act") which already stands repealed by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the "2013 Act").

2. Learned senior counsel for the petitioner seems to be right in relying upon the decision of this Court dated January 24, 2025 rendered in Civil Appeal Nos. 990-991/2025 (Aasha Verma & Ors. v. Commissioner Awas Evam Vikas Parishad Uttar Pradesh & Ors.) wherein it has been categorically held that after the repeal of the 1894 Act, compensation has to be assessed in accordance with the provisions of the 2013 Act.

3. It may be clarified that in the cited case of Aasha Verma & Ors., acquisition process had been initiated before the 2013 Act came into force. It is for this reason that this Court directed to follow procedure as per Section 24(1) of the 2013 Act. In a case like this, where the acquisition process has commenced in 2023, there seems to be some merit in the petitioner's contention that the acquisition has to be completely in accordance with the scheme of 2013 Act.

4. Since several such cases from the State of Uttar Pradesh are likely to arise, we do not deem it appropriate to entertain this writ petition. The petitioner-Samiti is accordingly relegated to approach the Allahabad High Court.

5. Having regard to the nature of urgency, coupled with the fact that the issue has been substantially settled by this Court in the cited decision, we request the High Court to decide the matter expeditiously and the application for interim directions may be listed without any delay once the writ petition along with such prayer is filed.

6. The writ petition stands disposed of, in the above terms with pending application(s), if any."

(44) Before initiating the proceedings in public interest, the matter was considered by the governing body of the petitioner society in its meeting dated 25.04.2025 and it was decided to initiate such proceedings at the behest of the land owners challenging the acquisition proceedings and authorizing its president Awadesh Kumar Singh to do the needful in this regard. The said resolution is annexed as Annexure 3 to the writ petition.

(45) It is only after passing of the order dated 19.05.2025 by the Supreme Court of India that the petitioner filed the instant writ petition, and during its pendency, amended it, so as to challenge the provisions of section 28, 31(1), 32, and 55 of the Adhiniyam, 1965, on various grounds.

(46) In response to our order dated 05.06.2025, petitioners filed a copy of its Memorandum of association/by-laws which contain the objects for which the society has been registered and, from a bare reading of the said objects, we find that it has been registered to pursue public causes pertaining to residents of the State of UP and its members. We may in this regard specifically refer to object no. 32 of point no. 4 of the memorandum/by-laws. The said provision in the memorandum/by-laws is itself evidence of the fact that the petitioner society has been registered, *inter alia*, to raise grievances of the general public of the state and for enforcement of their constitutional rights on a demand being raised in this regard by such persons, or *suo motu*.

(47) In this regard, we may refer to Annexure 1, which is a letter written to the chairman of the petitioner society by several persons whose names and village is mentioned therein requesting the chairman of the petitioner society to take up their cause against the arbitrary and illegal acquisition proceedings initiated by the Board as they are unable to raise their grievance and meet the expenses of litigation. Requisite averments in this regard have been made in the writ petition.

(48) It is not the case of the opposite parties on affidavit that the persons who have given such representation to the petitioner society, their land has not been acquired under the schemes in question. In fact, the villages mentioned in the said application are those where the land has been acquired. Further, in pursuance to the said representation, it has been pleaded that inquiries were made from the concerned engineer of the Board who informed that the land acquisition proceedings were being undertaken under the Adhiniyam, 1965, and on examination, the petitioner society found that this was clearly illegal and *dehors* the provisions of the new Land Acquisition Act, 2013, as also the constitutional provisions, therefore, the petitioner society gave a representation on behalf of the land owners who had approached it, to the Principal Secretary, Urban Housing and Urban Planning Department, which is the administrative department of the Board in the Government, raising grievance of land owners on their behalf on the grounds mentioned in the writ petition including the ground of its repugnancy and also that the acquisition proceedings were violative of Article 14 and

19 of the Constitution of India, etc. and only thereafter, the petitioner society is said to have filed a writ petition before the Supreme Court as referred hereinabove, wherein, vide order dated 19.05.2025, they were relegated to the remedy before this High Court. This is how instant writ petition came to be filed.

(49) In view of the aforesaid, we are of the opinion that the two decisions relied by the counsel for the Board, as referred hereinabove, do not help its cause. The case of ***Ramsharan Autyanuprasi*** (supra) was one where a private dispute relating to mismanagement of a public trust was involved, as is evident from a bare reading of the said judgment, whereas, the petition (PIL) at hand is not essentially an adversarial litigation for the reasons already mentioned hereinabove. The other decision of the Supreme Court of India in the case of **Ashok Kumar Pandey** (supra) was a matter where a writ petition under Article 32 was filed seeking conversion of the death sentence imposed on a convict by the Sessions Court and affirmed by the Calcutta High Court and the Supreme Court to life sentence because there had been no execution of the death sentence for a long time. The facts of the said case were very different from the facts and issues involved herein. In the petition at hand, there is clearly a general public interest involved in the issues raised. We may in this regard refer to the decision of Honorable Supreme Court in the case of ***S.P. Gupta vs. Union of India; (1981) Supplement 1 SCC 87***, wherein it was held that when a legal or constitutional right of a person or a determinate class of persons is violated and they are unable to

approach the court due to poverty, helplessness, disability, or social and economic disadvantage, any *bona fide* public-spirited individual may file a petition on their behalf under Article 32 or 226 of the Constitution of India. In the case at hand, the petitioners' bylaws itself permit the filing of such petitions and raising of grievances of the general public pertaining to violation of their constitutional rights and their enforcement. We may also refer to the decision of Hon'ble the Supreme Court in the case of ***Janta Dal vs. H.S. Chowdhary and others; (1992) 4 SCC 305*** wherein it was held that if the person has sufficient interest in the proceedings of PIL, and initiates such proceedings bonafide, then, such person can advance the cause on behalf of disadvantaged groups to enforce their own rights.

(50) On a consideration of the entire conspectus of facts and circumstances and law on the subject, we are of the opinion that the petitioner society is entitled to maintain the Public Interest Litigation on behalf of land owners who have approached it and who claim that they are not in a position to bear the burden of litigation for asserting their constitutional rights. This is also for the reason, the PIL raises several questions of seminal public importance and interest, such as, permissibility of compulsory acquisition of land by the Board under the Adhiniyam, 1965, with the aid of a repealed enactment, that is, the Land Acquisition Act, 1894 *dehors*, and ignoring the more beneficial provisions regarding compensation, etc. under the Land Acquisition Act, 2013. The relief claimed in the writ petition, especially the challenge raised to the vires of

certain provisions of the Adhiniyam, 1965, have an element of public interest involved. Nothing has been stated in the counter affidavit that the action by the petitioner is *malafide*, actuated by political intentions, or for any personal gain, in fact, specific averments to the contrary have been made in the writ petition by the petitioner. In the facts of this case we are convinced that petition by the society is maintainable. The contention of learned Senior Counsel for the Board to the contrary is accordingly rejected. Further, there are other petitions also by ‘aggrieved persons’ which are part of this bunch of petitions. Question No. 1 is answered in the affirmative.

Question No. 2:

(51) Next is the question of repugnancy between the impugned provisions of the Adhiniyam 1965 and the Land Acquisition Act 2013.

(52) Article 254 of the Constitution deals with inconsistency between laws made by Parliament and laws made by the legislatures of States. The legal position is settled that for attracting the provisions of Article 254, the first and foremost condition is that both the enactments, that is the State and the Central enactment, should be referable to entries in the Concurrent List. Secondly, there should be repugnancy between the two enactments. Repugnancy, of course, could mean a situation of irreconcilable conflict where the two Acts cannot co-exist at all directly in view of the provisions contained therein,

as also other situations as mentioned in ***Deep Chand and others vs. State of UP, AIR 1959 SC 648***.

(53) We may in this very context fruitfully refer to certain paragraphs of a Constitution Bench decision reported in the case of ***Offshore Holding Private Ltd. vs. Bangalore Development Authority and others (2011) 3 SCC 139***, wherein with reference to an earlier Constitution Bench decision rendered in the case of ***A.S. Krishna vs. State of Madras State; AIR 1957 SC 297***, and other decisions on the subject, the law of repugnancy has been succinctly explained. Relevant paragraph 91 is as under:

"91. A Constitution Bench of this Court in A.S. Krishna [AIR 1957 SC 297] clearly stated that for application of Section 107 of the Government of India Act, which is in pari materia with Article 254 of the Constitution, two conditions are necessary; one, that the provisions of provincial law and those of the Central legislation, both must be in respect of the matter which is enumerated in the Concurrent List and second, that they must be repugnant to each other. Once these conditions are satisfied, then alone the repugnancy would arise and the provincial law, to the extent of repugnancy, may become void. The same view was taken by another Constitution Bench of this Court in Kerala SEB v. Indian Aluminum Co. Ltd. [(1976) 1 SCC 466]"

(54) Similar view has been expressed by another Constitution Bench judgment reported in ***K.T. Plantation Private Limited and Another vs. State of Karnataka; (2011) 9 SCC 1,*** paragraphs 107 of which is as under:

"107. The plea of repugnancy can be urged only if both the legislations fall under the Concurrent List. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III would be

invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only if both the laws cannot exist together.”

(55) Thus, the first question to be seen is as to whether both the enactments i.e. Adhiniyam, 1965 and the Act, 2013 are relatable to any entry in the Concurrent List or not.

(56) In this context i.e. to determine the list or the entry of the list to which they are relatable, the doctrine of pith and substance is to be applied.

(57) As is evident from the long title, statement of objects and reasons and the provisions contained in the Act, 2013, it was promulgated to put in place a humane, participative, informed, and transparent process for land acquisition, for industrialization, development of essential infrastructural facilities, etc., and for providing a just and fair compensation to the landholders and affected families in lieu of acquisition of their land, which is also evident from a reading of the said Statute as a whole, therefore, essentially and primarily, it is an enactment referable to Entry 42 of the Concurrent List. There is no dispute in this regard, therefore, we are straightaway required to consider whether, in pith and substance, the Adhiniyam, 1965 is also relatable to Entry 42 or not?

(58) According to Shri Sandeep Dixit the impugned provision of the Adhiniyam, 1965 i.e. Sections 28, 31(1), 32 and 55 are relatable to Entry 42 of the Concurrent List, even if the entire Adhiniyam, 1965 is not. In this context

heavy reliance was placed by Shri Sandeep Dixit, learned senior counsel for the petitioner in the PIL, upon the eleven-judge bench decision in ***R.C. Cooper vs. Union of India; AIR 1970 SC 564*** (Para 38) and the Constitution Bench decision in ***Ishwari Khetan Sugar Mills (P) Ltd vs. State of Uttar Pradesh; (1980) 4 SCC 136*** (Para 18, 19 and 25) wherein according to him, it had been specifically held that the power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42 of List III and not as an incidental power to legislate in respect of specified head of legislation in any of the three lists.

(59) The submission was that the argument of the other side, as also of the learned *Amicus*, that the Adhiniyam, 1965 was referable to Entry 5 and 18 of the State List and not Entry 42 of Concurrent List, as it is not an enactment for land acquisition *per se*, but one for development, and in that context incidentally the power to acquire land had been vested in the Board constituted under the Adhiniyam, 1965, was not acceptable in view of the above mentioned decisions.

(60) He also emphasized upon the fact that when the Constitution Bench of the Supreme Court of India rendered its decision in ***Offshore Holding Private Ltd.*** **(***supra***)**, upon which reliance was placed by learned Amicus as also the counsel for the Board and the State, the Land Acquisition Act 2013 was not in existence, hence, according to him, questions involved in the context of repugnancy of the Adhiniyam 1965 should not be

considered on the anvil of the law declared by the Supreme Court in ***Offshore Holding Private Ltd.*** **(***supra***)**, which in any case, according to him, was contrary to the Eleven Judge Bench decision in ***R.C. Cooper*** (supra).

(61) In this context, he also referred to Section 105 of the Act 2013 to contend that the said enactment being relatable to Entry 42 of the Concurrent List, some of the States have amended the said provision so as to include State enactments in the Fourth Schedule referred therein, with the object of taking the same out of the purview of the Act 2013, but the State of UP has not done so, which is indicative of the fact that the Act, 2013 is applicable to land acquisition proceedings wherever resorted to in the State of UP under any State enactment, therefore, the provisions of the Adhiniyam 1965 read with the Land Acquisition Act 1894, being repugnant to the Act 2013, they are liable to be so declared. Similar argument was advanced by the other counsel for the petitioners.

(62) On the other hand, learned counsel for the Board and the State, as also the learned Amicus, submitted that the Adhiniyam 1965, in pith and substance, being relatable to Entry 5 and 18 of the State List, mere incidental encroachment by the said enactment on the subject matter relatable to Entry 42 of the Concurrent List and the overlapping, if any, in this regard, by itself will not attract Article 254 and heavy reliance was placed by them upon the decision of Honorable Supreme Court in the case of ***Offshore Holding Private Ltd.*** (supra).

(63) We may, thus, consider the issue of incidental encroachment or overlapping and its significance in application of the principle of pith and substance.

(64) As regards reliance placed by Shri Sandeep Dixit, learned senior counsel, upon para 38 of the decision in ***R.C. Cooper (****supra****)***, the same was considered by a subsequent Constitution Bench in the case of ***Ishwari Khetan Sugar Mills Private Limited (****supra****)***, and both these decisions were taken into consideration by another Constitution Bench in case of ***Offshore Holding Private Ltd. (****supra****)***. Not only were these decisions considered in ***Offshore Holding Private Ltd. (****supra****)***, they were also explained and clarified, and the law with regard to incidental encroachment or overlapping, apart from other relevant issues in the context of repugnancy, was also explained. Paragraph nos. 81 to 86 of ***Offshore Holding Private Ltd. (****supra****)*** reads as under:

*"**81. In support of the argument raised by the appellant, heavy reliance was placed upon Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P. [(1980) 4 SCC 136] to emphasise the submission that an independent entry, like the entry for acquisition and requisitioning of property, cannot be made the subject-matter of an ancillary law. The Court, in SCC para 25 of this judgment, while referring to Rustom Cavasjee Cooper v. Union of India [(1970) 1 SCC 248] held as under: (Ishwari Khetan Sugar Mills case [(1980) 4 SCC 136] , SCC p. 154)***

*"25. … **that power to legislate for acquisition of property is an independent and separate power and 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.**"*

82. In order to examine the impact of these observations we must refer to the facts of Ishwari Khetan Sugar Mills case [(1980) 4 SCC 136]. *As a result of serious problems created by the owners of certain sugar mills in the State of Uttar Pradesh for cane growers and the labourers employed in those mills, having an adverse impact on the general economy of the areas where these sugar mills were situated, and with a view to ameliorate the situation posing a threat to the economy, the Governor of Uttar Pradesh promulgated an Ordinance titled as the U.P. Sugar Undertaking (Acquisition) Ordinance, 1971. With a view to transferring and vesting of sugar undertakings set out in the Schedule to the Ordinance, a government company, within the meaning Section 617 of the Companies Act, 1956, being U.P. State Sugar Corporation Ltd. was constituted. Subsequently, the U.P. Sugar Undertaking (Acquisition) Ordinance, 1971, was repealed and replaced by the U.P. Sugar Undertaking (Acquisition) Act, 1971. The Act came to be challenged before the High Court on the grounds that the State Legislature has no legislative competence to enact the same and that it was violative of Articles 19(1)(f), 19(1)(g) and 31 and it also impugned the guarantee of equality enshrined under Article 14 of the Constitution.*

83. *The appellant had contended in Ishwari Khetan Sugar Mills case [(1980) 4 SCC 136] that in exercise of legislative power with reference to Entry 52 of List I, Parliament made the requisite declaration under Section 2 of the Industries (Development and Regulation) Act, 1951 (for short "the IDR Act"), in respect of the industries specified in the First Schedule of that Act. Sugar, being a declared industry, falls outside the purview of Entry 24 of List II and hence the U.P. State Legislature was denuded of legislative powers in respect of sugar industries. This contention was countered by the Attorney General by saying that power to acquire property derived from Entry 42 in List III of Schedule VII, is an independent power. The impugned Act, in pith and substance, being an Act to acquire scheduled undertakings, meaning thereby the properties of the scheduled undertakings, the power of the State Legislature to legislate in that behalf is referable to Entry 42 of List III which remained intact irrespective of the fact that "sugar" has been declared as an industry under the control of the Union Government. The purpose of the State Act in that case was, primarily, to acquire the* *property i.e. the land and the sugar factories. The taking over of management of such factory was merely an ancillary or incidental cause. Thus, the Court accepted the argument that it was a matter covered under Entry 42 of List III.*

84. *Another aspect of that case was that it was a law enacted for acquisition of property and not intended to achieve any other object. Even in that case the Court had taken the view that both these legislations could coexist without conflict and in SCC para 30 of the judgment held as under: (Ishwari Khetan Sugar Mills case [(1980) 4 SCC 136] , SCC pp. 155-56)*

"30. The impugned legislation was not enacted for taking over management or control of any industrial undertaking by the State Government. In pith and substance it was enacted to acquire the scheduled undertakings. If an attempt was made to take over management or control of any industrial undertaking in a declared industry indisputably the bar of Section 20 would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking the management stands transferred to the acquiring body it cannot be said that this would be in violation of Section 20. Section 20 forbids executive action of taking over management or control of any industrial undertaking under any law in force which authorises the State Government or a local authority so to do. The inhibition of Section 20 is on exercise of executive power but if as a sequel to an acquisition of an industrial undertaking the management or control of the industrial undertaking stands transferred to the acquiring authority Section 20 is not attracted at all. Section 20 does not preclude or forbid a State Legislature from exercising legislative power under an entry other than Entry 24 of List II, and if in exercise of that legislative power, to wit, acquisition of an industrial undertaking in a declared industry the consequential transfer of management or control over the industry or undertaking follows as an incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20. Therefore, the contention that the impugned legislation violates Section 20 has no merit."

85. Reliance by the learned counsel appearing for the appellant on this judgment of the Constitution Bench is misplaced on the facts and in law. The dictum stated in every judgment should be applied with reference to the facts of the case as well as its cumulative impact. Similarly, a statute should be construed with reference to the context and its provisions to make a consistent enactment i.e. ex visceribus actus.

86. The submission, as advanced, is also not supported by the judgment relied upon. In Ishwari Khetan Sugar Mills case [(1980) 4 SCC 136] , the Court itself declared the State legislation as not offending or ultra vires the Central Act as the State had the legislative competence to enact the same. The Court also held that the provisions of the IDR Act and the U.P. Sugar Undertaking (Acquisition) Act, 1971 can coexist without any conflict. It was for the reason that the IDR Act was related to organisation and management of a declared industry placed in the Schedule to the IDR Act by Parliament, while acquisition of property was entirely a different constitutional subject. Another aspect of the case is that the observations in para 25 of the judgment were not made after discussing the law on that issue in detail, but were made with regard to the peculiar facts of the case and for the reasons aforerecorded."

(65) In para 25 of the decision in the case of ***Ishwari Khetan Sugar Mills (****supra)*, a reference was made to the observations in Para 38 of the case of ***R.C. Cooper*** **(**supra**)** and the same was considered, explained and clarified by the Supreme Court in the case of ***Offshore Holding Private Ltd. (****supra)* which is evident from the above quotation of the Report.

(66) In fact, we have also gone through the decision in ***R.C. Cooper*** (supra). The observations in Para 38 thereof are in the context of 'The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969'.

We have perused Para 24A to 40 in this regard. The Act 22 of 1969 was essentially and primarily for acquisition of Banking Companies, therefore, relatable to Entry 42 of Concurrent List and not to Entry 42 and 45 of the Union List as was argued. The observations in Para 38 have to be understood accordingly in the context they have been made. Few words and sentences cannot be read out of context and applied as a general proposition of law.

(67) We may further refer to the law enunciated in ***Offshore Holding Private Ltd.*** (supra) on the issue of incidental encroachment and overlapping and pith and substance. We may quote para 88 of the decision in ***Offshore Holding Private Ltd.*** in this regard:

"***88.*** *The Court relied upon previous judgments, including the judgment of the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. [AIR 1947 PC 60] and held as under: (A.S. Krishna case [AIR 1957 SC 297], pp. 302-03, paras 10-11)*

"10. … After quoting with approval the observations of Sir Maurice Gwyer, C.J. in Subrahmanyan Chettiar v. Muttuswami Goundan [AIR 1941 FC 47 : 1940 FCR 188] , abovequoted, Lord Porter observed: (Prafulla Kumar Mukherjee case [AIR 1947 PC 60] , AIR p. 65, paras 36-37)

'36. Their Lordships agree that this passage correctly describes the grounds upon which the rule is founded, and that it applies to Indian as well as to Dominion legislation. <u>No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental.</u> But the overlapping of subject-matter is

not avoided by substituting three Lists for two or even by arranging for a hierarchy of jurisdictions.

37. <u>Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with.</u>'

<u>Then, dealing with the question of the extent of the invasion by the Provincial legislation into the federal fields</u>, Lord Porter observed: (Prafulla Kumar Mukherjee case [AIR 1947 PC 60] , AIR p. 65, para 38)

'38. … ***No doubt it is an important matter, not, as Their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into federal territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not moneylending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content.'"***

(68) The Constitution Bench in ***Offshore Holding Private Ltd. (****supra****)*** then considered the law enunciated on the subject by an earlier Constitution Bench in the ***State of West Bengal vs. Kesoram Industries Limited and others; (2004) 10 SCC 201***, in the context of repugnancy, and observed in para 95 and 96 as under:

*"**95.** Having stated the principle that the court may apply the doctrine of pith and substance in terms of ascertaining*

the true character of the legislation, it was further held in Kesoram Industries case [(2004) 10 SCC 201] that the entries in two lists (Lists I and II in that case) must be construed in a manner so as to avoid conflict. While facing an alleged conflict between the entries in these Lists, what has to be decided first is whether there is actually any conflict. If there is none, the question of application of the non-obstante clause does not arise. In case of a prima facie conflict, the correct approach to the question is to see whether it is possible to effect reconciliation between the two entries so as to avoid such conflict. Still further, the Court held that in the event of a conflict it should be determined by applying the doctrine of pith and substance to find out, whether, between entries assigned to two different legislatures, the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict between the Union and a Provincial Legislature it is the law of the Union that must prevail. ***In that event the court can proceed to examine whether an incidental encroachment upon another field of legislation can be ignored, reference can be made to paras 31, 75 and 129 of that judgment****.*

96. *The judgment of Kesoram Industries [(2004) 10 SCC 201] was followed by another Bench of this Court in Central Bank of India v. State of Kerala [(2009) 4 SCC 94] where, in para 32,* ***the Court reiterated the dictum that an incidental encroachment upon the field assigned to another legislature is to be ignored.****"*

(69) The observations of the Constitution Bench in para 100 and 102 are quite categorical on the subject of incidental encroachment in the context of repugnancy. They are as under:

*"****100.*** *One who questions the constitutional validity of a law as being ultra vires, takes the onus of proving the same before the court. Doctrines of pith and substance, overlapping and incidental encroachment are, in fact, species of the same law. It is quite possible to apply these doctrines together to examine the repugnancy or otherwise of an encroachment.* ***In a case of overlapping,***

<u>the courts have taken the view that it is advisable to ignore an encroachment which is merely incidental in order to reconcile the provisions and harmoniously implement them</u>*. If ultimately, the provisions of both the Acts can coexist without conflict, then it is not expected of the courts to invalidate the law in question.*

----

102. *The repugnancy would arise in the cases where both the pieces of legislation deal with the same matter but not where they deal with separate and distinct matters, though of a cognate and allied character. Where the State Legislature has enacted a law with reference to a particular entry with respect to which, Parliament has also enacted a law and there is an irreconcilable conflict between the two laws so enacted, the State law will be a stillborn law and it must yield in favour of the Central law.* ***To the doctrine of occupied/overlapping field, resulting in repugnancy, the principle of incidental encroachment would be an exception****."*

(70) In Para 120 of ***Offshore Holding Private Ltd.*** (supra) the Constitution Bench held as under:

"*120. Having examined the pith and substance of the impugned legislation and holding that it is relatable to Entries 5 and 18 of List II of Schedule VII of the Constitution, the question of repugnancy can hardly arise. Furthermore, the constitutionality of the impugned Act is not determined by the degree of invasion into the domain assigned to the other legislature but by its pith and substance. The true nature and character of the legislation is to be analysed to find out whether the matter falls within the domain of the enacting legislature.* ***The incidental or ancillary encroachment on a forbidden field does not affect the competence of the legislature to make the impugned law.***"

(71) Based on the discussion of law, the Supreme Court in ***Offshore Holding Private Ltd. (****supra****)*** opined that the Bangalore Development Authority Act is not a law

relatable exclusively to Entry 42 of List III of Schedule VII nor is it beyond the legislative competence of the State Legislature, meaning thereby, in pith and substance, it found that it was a law relatable to Entry 5 and 18 of the State List, and only incidentally encroaching upon Entry 42 of List III.

(72) It is not out of place to mention that the provision and scheme of the BDA Act, 1976 which was considered in ***Offshore Holding Private Ltd. (****supra****)*** is similar to the Adhiniyam, 1965.

(73) Extracts of para 38 of the judgment in **R.C. Cooper (**supra**),** on which heavy reliance has been placed by Shri Sandeep Dixit, learned senior counsel, were specifically considered in para 25 of the Constitution Bench judgment in ***Ishwari Khetan Sugar Mills Private Limited (****supra****)***, and it is those very lines which have been considered by the subsequent Constitution Bench in ***Offshore Holding Private Ltd. (****supra****)*** which have been explained, and law on the subject has been clarified in the paragraphs, as already quoted, therefore, we are bound by the later Constitution Bench wherein the earlier judgments have been considered, especially as, facts and issues involved and the statute in question in the said case was similar to the case at hand and to the Adhiniyam, 1965. It has categorically been held that an incidental encroachment upon the field assigned to another legislature is to be ignored.

(74) We may also refer to Para 109 to 112 of the judgment in the case of ***K.T. Plantation Private Ltd*** *(supra)* in this regard which are as under:

"109. ***When the repugnancy between the Central and State legislations is pleaded we have to first examine whether the two legislations cover or relate to the same subject-matter. The test for determining the same is to find out the dominant intention of the two legislations and if the dominant intention of the two legislations is different and they cover different subject-matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field.***

110. ***A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial coverage of the same area in a different context and to achieve a different purpose does not bring about repugnancy which is intended to be covered by Article 254(2). In other words, both the legislations must be substantially on the same subject to attract Article 254.*** *In this connection, reference may be made to the decisions of this Court in Municipal Council, Palai v. T.J. Joseph [AIR 1963 SC 1561 : (1964) 2 SCR 87] , Tika Ramji v. State of U.P. [AIR 1956 SC 676 : 1956 SCR 393] , State of Karnataka v. Ranganatha Reddy [(1977) 4 SCC 471] , M. Karunanidhi v. Union of India [(1979) 3 SCC 431 : 1979 SCC (Cri) 691] and Vijay Kumar Sharma v. State of Karnataka [(1990) 2 SCC 562] .*

111. We are of the considered view that the Acquisition Act, in this case, as rightly contended by the State, primarily falls under List II Entry 18, since the dominant intention of the legislature was to preserve and protect Roerichs Estate covered by the provisions of the Land Reforms Act, on the State Government withdrawing the exemption in respect of the land used for linaloe cultivation. The Acquisition Act, though primarily falls under List II Entry 18 incidentally also deals with the acquisition of paintings, artefacts and other valuable belongings of the Roerichs and, hence, the Act partly falls under List III Entry 42 as well. Since the dominant purpose of the Act was to preserve and protect Roerichs Estate as part of agrar-

ian reforms, the inclusion of ancillary measures would not throw the law out of the protection of Article 31-A(1)(a).

112. On the other hand, the Land Acquisition Act, 1894 is an Act which fell exclusively under List III Entry 42 and enacted for the purpose of acquisition of land needed for public purposes for companies and for determining the amount of compensation to be made on account of such acquisition, which is substantially and materially different from the impugned Act whose dominant purpose is to preserve and protect "estate" governed by Article 31-A(1)(a) read with Article 31-A(2)(a)(iii) of the Constitution."

(75) Thus, consistently, opinion has been expressed that incidental encroachment or overlapping whether it be in the context of applying the principle of pith and substance to determine the entry or the list to which the enactments may be relatable, or thereafter in the context of repugnancy, is not material and it is to be ignored. It is the dominant purpose, and the essential and substantial nature of the Act, not what it touches upon incidentally, which is relevant to determine the List or the Entry to which it relates. This opinion has been expressed in ***Offshore Holding Private Ltd.*** (supra) after considering ***R.C. Cooper*** (supra) and ***Ishwari Khetan Sugar Mills Private Limited (****supra)* and other Constitution Bench decisions**.** We are, therefore, bound by these later dictums.

(76) Before proceeding further, we may point out that Shri Sandeep Dixit also invited our attention to another decision of Hon'ble the Supreme Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank and another; (2018) 1 SCC 407***, specifically paragraph 51 and its subclauses to contend that some of the provisions of the enactment, and not necessarily the entire enactment, could

also be considered for deciding the List and the Entry to which they were relatable and in determining repugnancy. However, having gone through the said decision, we do not find any such proposition of law having been laid down therein. In fact, para 51.2 very categorically states - *"**The doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.**"* Of course, in the context of repugnancy, it is permissible, in view of the language of Article 254, to declare, if it is so, the entire enactment or any provision thereof as repugnant. This is evident from the language used in Article 254 itself, and has also been categorically held in the very decision relied upon by Shri Sandeep Dixit, that is, ***Innoventive Industries Ltd.*** (supra). We rely on para 51.3 of the said report in support of our contention. But to determine as to in which List the enactment falls, it has to be read as a whole and not in part.

(77) The question as to whether an enactment can be disintegrated into various provisions for the purposes of determining its legislative competence was also considered by the Constitution Bench in ***Offshore Private Holding Private Limited*** (supra) in paragraphs 105 and 106, and it was categorically held that the statute had to be considered as a whole and not in fragments.

(78) Thus, while applying the principle of pith and substance, the provisions of the statute as a whole are to be taken. We cannot severe some of the provisions and undertake such a determination only with respect to them, that is, in piecemeal.

(79) To summarize, while applying the principles of pith and substance to determine the Entry or List to which an enactment relates, it has to be read as a whole and not in fragment or piecemeal. Incidental enactment or overlapping upon a field assigned to another legislature is to be ignored. On a reading of the Statute as a whole it is to be seen whether it is essentially, primarily, substantially, predominantly relatable to one List or Entry or another and then the second question of repugnancy is to be considered.

(80) The question now to be considered is as to whether, in pith and substance, the Adhiniyam 1965 is referable to Entry 5 and 18 of the State List or Entry 42 of the Concurrent List. Based on our answer to the aforesaid, consequences will follow as regards the claim of repugnancy of the said enactment or part of it vis-à-vis the Land Acquisition Act 2013.

(81) The Adhiniyam, 1965 as is mentioned in the Statement of Objects and Reasons was enacted by the State Legislature in 1965 considering migration of people from rural to urban areas, influx of displaced persons, increasing impact of development activity generated by the Five Year Plans and several other factors resulting in

rapid increase of population in towns of the State of UP, which made construction of new houses and planned development of towns an imperative, as the same had not kept pace with the rapid increase of urban population.

(82) Efforts in this direction made by the State Government, Nagar Mahapalikas, Nagar Palikas, Improvement Trusts, Development Board and other smaller local bodies had, for want of effective coordination and control, not met with the desired success. And, as there were areas in the State of UP with immense potentialities of development which remained as they were decades ago, it was felt absolutely essential for tackling the housing and development problems of all the fast-growing urban areas and areas with potentialities of development, that an autonomous central body to be known as Housing and Development Board be created for the whole State. Accordingly, the aforesaid Adhiniyam, 1965 was passed by the State Legislature.

(83) As per the long title of the Adhiniyam, 1965, it is an Act to provide for the establishment, incorporation and functioning of a Housing and Development Board in Uttar Pradesh. The functions of the Board so constituted under Section 3 are mentioned in Section 15.

(84) From a reading of Section 15, it is evident that the functions of the Board are primarily to (a) frame, execute and implement housing and improvement schemes; (b) to plan and coordinate various housing activities in the State and to ensure expeditious and efficient implementation of

housing and improvement schemes in the State; (c) to provide technical advice for and scrutinise various projects under Housing and Improvement Schemes sponsored or assisted by the Central Government or the State Government; (d) to assume management of such immovable properties belonging to the State Government as may be transferred or on trusted to it for this purpose; (e) to maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties of the Board or of the State Government places under the control and management of the Board; (f) to organise and run workshops and stores for the manufacture and stock-piling of building materials; (g) on such terms and conditions as may be agreed upon houses constructed by it in execution of any scheme to be houses subject to the U.P. Industrial Housing Act, 1955; (h) to regulate building operations; (i) to improve and clear slums; (j) to provided roads, electricity, sanitation, water-supply and other civic amenities and essential services in areas developed by it; (k) to acquire movable and immovable properties for any of the purposed before mentioned; (l) to raise loans from the market, to obtain grants and loans from the State Government, the Central Government, local authorities and other public corporations, and to give grants and loans to local authorities, other public corporation , housing co-operative societies and other persons for any of the purposes before mentioned; (m) to make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or by he State Government; (n) to levy betterment fees; (o) to fulfill any other obligation imposed by or under this Act or any other law for the time being in force; and (p) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

(85) Under sub-Section (2) of Section 15, the Board, where it deems necessary, may undertake (a) to promote research for the purpose of expediting the construction of and reducing the cost of buildings; (b) to execute works in the State on behalf of public institutions, local authorities and other public corporations, and departments of the Central Government and the State Government; (c) to supply and sell building materials; (d) to coordinate, simplify and standardize the productions of building materials and to encourage and organise the prefabrication and mass production of structural components; (e) with a view to facilitating the movement of the population in and around any city, municipality, town area or notified area, to establish maintain and operate any transport service, to construct, widen, strengthen or otherwise improve roads and bridges and to give financial help to others for such purposes; and (f) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

(86) Sections 16 to 49 deal with the schemes which are to be framed and executed by the Board.

(87) Section 17 deals with matters to be provided for in housing or improvement schemes, and in this context it provides that notwithstanding anything contained in any other law for the time being in force, and without

prejudice to the other provisions of this Chapter, a housing or improvement scheme may provide, *inter alia*, for the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme. Compulsory acquisition is one of the three modes for such acquisition, and this is incidental to the framing and execution of housing or improvement schemes, which is the primary task of the Board. The dominant purpose or Scheme of the Adhiniyam, 1965 is development and not land acquisition nor compulsorily acquisition of land. Acquisition is only to facilitate the Schemes of development. Section 55 read with the Schedule has been inserted in the Adhiniyam, 1965 only in this context to facilitate the main object, meaning thereby, in pith and substance, when the Adhiniyam, 1965 is read as a whole, then, what comes out is that it is not an enactment referable to Entry 42 of the Concurrent List; rather, it is an enactment referable to Entry 5 and 18 and State List.

(88) We have already referred to the Constitution Bench judgment in ***Offshore Holding Private Ltd.*** (supra), wherein a similar issue of repugnancy of the Bangalore Development Authority Act vis-à-vis the Land Acquisition Act, 1894 came up for consideration and after considering the law on the subject the scheme of the BDA Act and the Act, 1894, the Constitution Bench opined that the BDA Act is not in pith and substance relatable to Entry 42 of the Concurrent List; rather, it is referable to Entry 5 and Entry 18 of the State List. In this context, as already referred to earlier, it held that incidental encroachment or overlapping of the field of another legislature is liable to be ignored.

(89) We have compared the provisions of the Adhiniyam, 1965 with the provisions of the Bangalore Development Authority Act, 1976 (hereinafter referred as 'BDA Act, 1976') and find the provisions to be very similar. The entire scheme of the Act is very similar. In taking the aforesaid view, we are supported by the decision of the Supreme Court of India in ***Offshore Holding Private Ltd.*** (supra).

(90) There are other decisions also where similar issue pertaining to the BDA Act, 1976 and its repugnancy with the Land Acquisition Act, 1894 and the List to which they were referable came up for consideration such as in the judgment of ***Bangalore Development Authority & Anr. v. State of Karnataka & Ors., (2022) 14 SCC 173***; ***Munithimmaiah v. State of Karnataka & Ors., (2002) 4 SCC 326***. These decisions also support our view as expressed above. The said decisions are relevant only on the question of repugnancy, and with regard to the finding that the BDA Act, 1976 was referable to Entry 5 and Entry 18 of the State List and not Entry 42 of the Concurrent List. To that extent, we place reliance on the said decisions, but not more, as the other issues with which we are concerned did not fall for consideration therein.

(91) In view of the scheme of the Adhiniyam, 1965 taken as a whole, we have no doubt at all that the said Act was promulgated by the State Legislature primarily and essentially i.e., in pith and substance, for the purposes of development and constitution of a housing and development board in Uttar Pradesh, and, not for the

purposes of land acquisition, which is merely incidental to facilitating the framing, implementation, and execution of various schemes envisioned under the said Adhiniyam 1965, therefore, it is referable to Entry 5 and 18 of the State List and and not Entry 42 of the Concurrent List. The encroachment in this regard on the subject matter of Entry 42 of the Concurrent List is merely incidental and not decisive of the nature of the enactment.

(92) In view of the above, in the case at hand, the first condition, that is, the Adhiniyam 1965 and the Act 2013, both, should, in pith and substance, be relatable to an Entry of the Concurrent List, itself is not satisfied and as they are relatable to entries in separate lists, there is no question of repugnancy as mentioned in Article 254 of the Constitution of India. For the foregoing reasons, reliance placed by the learned Senior Advocate, Shri Sandeep Dixit, for the petitioner in the PIL, upon the decision in ***Forum for People's Collective Efforts v. State of W.B., (2021) 8 SCC 599***, is also of no assistance.

(93) In this context, we may also refer to Section 103 of the Act 2013, which reads as under:

"103. The provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force."

(94) The language used in Section 103 and the intent disclosed therein rules out Repugnancy of any statute vis-a-vis Act, 2013 under Article 254 of the Constitution, as, such words, "in addition to and not in derogation of" used

therein have been explained by a catena of decision viz. ***KSL and Industries Limited v. Arihant Threads Limited and Others; (2015) 1 SCC 166*** and ***M/S Emaar MGF Land Limited vs Aftab Singh; (2019) 12 SCC 751*** to mean that the law is ‘in addition to and not in conflict with any other law’ and the two enactments in question can co-exist which implies that the enactment in question is supplemental to other enactments and it was not intended to override or substitute other enactments, therefore, there is no question of repugnancy between the two enactments because of Section 103 *per se*. How far the Act, 2013 can be applied to acquisition proceedings under the Adhiniyam, 1965 is a different issue.

(95) As regards contention of Shri Dixit, Shri Sharad Pathak, learned Senior Counsel and Niteesh Kumar appearing for petitioners that the State U.P. not having exercised its powers to amend the provisions of Section 105, as has been done by the State of Tamil Nadu and some other States, therefore, the Adhiniyam 1965 not being included in the Fourth Schedule, the same is not only repugnant to the Act 2013, but stands overridden by it, it is a misplaced argument, as, provisions contained in Section 103 to 105, 107, 108 of the Act 2013 have to be understood in the context of and keeping in mind Entry 42 of the Concurrent List, as, Act 2013 is relatable to the said entry, and these provisions will apply in respect of State enactments referable to Entry 42, List III. To put it differently, Section 103 to 108 of the Act 2013, in fact, will apply when both the enactments in question are, in pith and substance, referable to Entry 42 of the Concurrent

List in the Seventh Schedule, and not otherwise. Therefore, this argument does not pass muster.

(96) Question No. 2 is answered accordingly, in the negative.

<u>Question No. 3:</u>

(97) With regard to repeal of the Act, 1894 by Section 114 of the Act, 2013 and its effect on acquisition proceedings under the Adhiniyam, 1965, Section 55 of the Adhiniyam and the Schedule referred therein are relevant. This provision was considered by a three-judges bench decision of the Supreme Court of India in the case of ***U.P. Awas Evam Vikas Parishad vs. Jainul Islam and another; (1998) 2 SCC 467,*** in the context of application of provisions of the Act, 1894 as amended in 1984 to compulsory acquisition proceedings under the Adhiniyam, 1965. It considered the question whether by Section 55 of the Adhiniyam, 1965 read with the schedule thereto, provisions of the Land Acquisition Act, 1894 had been incorporated by legislation or it was a case of reference by legislation, if so, its effect.

(98) In this context it considered the concepts of legislation by reference and legislation by incorporation and effect of repeal or amendment on such legislation, in para 17 of the report as under:

*"**17.** A subsequent legislation often makes a reference to an earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the*

later legislation. Such a legislation may either be (i), a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation where under the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. <u>But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statue which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statue which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation.</u> In the words of Lord Esher, M.R., the legal effect of such incorporation by reference "is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all." [See: Wood's Estate, Re, 1886) 31 Ch D 607. As to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances.

The legal position has been thus summed up by this Court in State of Madhya Pradesh v. M.V. Narasimhan, MANU/SC/0226/1975 : 1975CriLJ1639 :-"

*"where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act <u>and are totally unaffected by any **repeal** or **amendment** in the</u>*

previous Act. This principle, however, will not apply in the following cases:

(a) Where the subsequent Act and the previous Act are supplemental to each other,

(b) where the two Acts are in pari materia;

(c) ***where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and***

(d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."”

(99) It went on to consider the decision of the Supreme Court of India in the case of ***State of MP versus MV Narasimhan; (1975) 2 SCC 377***, which as referred above dealt with the concept of legislation by incorporation and exceptions to application of the said principle, and also noticed provisions similar to Section 55 of the Adhiniyam 1965 in Calcutta Improvement Act 1911 which fell for consideration before the Privy Council in the case of ***Secretary of State for India in Council vs. Hindustan Co-operative Insurance Society Limited; AIR 1931 PC 149*** and opined in para 21 as under:

“21. *The provisions of Section 55 read with the Schedule to the Adhiniyam are on the same lines as those contained in the Calcutta Improvement Act, 1911 and the principles laid down in Secretary of State v. Hindustan Co-operative Insurance Society Ltd., (supra) are equally applicable to the present case.* ***The amendments introduced in the L.A. Act by the 1984 Act were not part of the L.A. Act, as applicable in the State of Uttar Pradesh, at the time of passing of the Adhiniyam. The provisions of the L.A. Act, as amended in its application to U.P., with the***

modifications specified in the Schedule to the Adhiniyam, have, therefore, to be treated to have been incorporated by reference into the Adhiniyam and became an integral part of the Adhiniyam and the said provisions would remain unaffected by any subsequent repeal or amendment in the L.A. Act unless any of the exceptional situations indicated in State of Madhya Pradesh v. M.V. Narasimhan (supra) can be attracted.”

(100) It then proceeded to consider the four exceptions to the application of the principle of legislation by incorporation as referred in the case of ***MV Narasimhan*** (supra) which have already been quoted earlier.

(101) The Supreme Court held with reference to the aforesaid four exceptions that the Adhiniyam and the Act, 1894 cannot be regarded supplemental to each other. The Adhiniyam contained provisions regarding acquisition of land which are complete and self-contained. Nor can the provisions in the Adhiniyam be said to be in *pari materia* with the Land Acquisition Act 1894 because the Adhiniyam 1965 also deals with matters which do not fall within the ambit of the Land Acquisition Act 1894. It further opined that it cannot also be said that the 1984 Act, by which the Land Acquisition Act 1894 was amended, expressly or by necessary intendment, applied to the amendments to the Adhiniyam 1965, i.e., the amendments in the schedule regarding application of Section 23A of the Act 1894 as amended in 1984. Thus, the Supreme Court in **Jainul Islam (supra)** opined that three [Clauses (a), (b) and (c)] of the four exceptions did not apply.

(102) It then considered the fourth exception, that is Clause (c), quoted earlier, as to whether it can be said that

if the amendments made in the LA Act 1894 by the 1984 Act are not incorporated in the Adhiniyam, it would be rendered unworkable? In this context it noticed the opinion of Sahai J. in the case of ***Gauri Shankar vs. State of U.P. and others; (1994) 1 SCC 92***, out of which the proceedings before it arose, in view of difference of opinion between two Hon'ble Judge of the Bench. According to Sahai, J. the exceptional situations referred to in ***MV Narasimhan*** **(**supra**)**, could be extended further in our constitutional setup and that the court should lean against a construction which may result in discrimination.

(103) The Supreme Court of India in ***Jainul Islam*** (supra) also considered the issue of violation of Article 14 of the Constitution of India in this context if differential treatment was meted out to landowners under different enactments and question of constitutionality of relevant provision of the Adhiniyam, 1965 in this regard and observed as under:

*"**25.** It is no doubt true that in an appeal arising from a reference under Section 18 of the L.A. Act it is not open to the claimants to challenge the validity of the provisions of the law under which the reference has been made. But, at the same time, <u>while construing the provisions of the Adhiniyam providing for acquisition of land for the purposes of the Adhiniyam, we cannot lose sight of the settled principle of statutory construction that "if certain provisions of law, construed in one way, would make them consistent with the Constitution and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.</u>" See: Kedar Nath Singh v. State of Bihar, AIR1962SC955. <u>We would, therefore, examine whether the provisions of the Adhiniyam if they are so construed as to incorporate the provisions of the L.A. Act as it stood on the date of</u>*

enactment of the Adhiniyam without the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation would be violative of the provisions of Article 14 of the Constitution. In this context, it may be stated that if the provisions are construed as indicated above an owner whose land is acquired for the purpose of the Adhiniyam would be entitled to payment of solatium under Section 23(2) of the L.A. Act @ 15% and interest under Section 28 of the L.A. Act @ 6% but an owner whose lands are acquired under the provisions of the L.A. Act as amended by the 1984 Act would be entitled to payment of solatium @ 30% and interest @ 9% and 15% and would also be entitled to payment of additional amount as per the provisions of Section 23(1-A) of the L.A. Act, as amended. In other words, the compensation payable to the owner whose land is acquired for the purposes of the Adhiniyam would be less than the compensation payable to the owner whose land is acquired under the L.A. Act as amended by the 1984 Act. Is there any rational basis for treating the two land owners differently in the matter of payment of compensation for the acquisition of their lands?"

(104) To answer the question posed as above, the Supreme Court of India considered the seven judges decision of Honorable Supreme Court in the case of ***Nagpur Improvement Trust and another vs. Vithal Rao and others; 1973 1 SCC 500***, wherein it was, *inter alia*, held that landowners could not be classified into two classes for the purposes of receipt of benefits of an improvement scheme in fixing compensation. Different principles of compensation could not be laid if the land is acquired for or by an improvement trust or the municipal corporation or the government. It observed that as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other. It is equally immaterial whether it is one acquisition Act or another acquisition Act under which the land is acquired. If the

existence of two Acts enables the state to give one owner different treatment from another, equally situated, the owner who is discriminated against, can claim the protection of Article 14.

(105) In this context the Supreme Court in **Jainul Islam (supra)** negatived the reliance placed by the contesting party upon the decision of Honorable the Supreme Court in the case of ***State of MP versus GC Mandawar, AIR 1954 SC 493****;* ***Prakash Amichand Shah versus State of Gujarat and others, (1986) 1 SCC 581****;* ***Union of India versus Hari Krishan Khosla (Dead) by LRS, (1993) supplement (2) SCC 149***, and ultimately summarized its conclusions in para 31 of the report as under:

*"**31.** Since the present case involves acquisition of land under the provisions of the L.A. Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this Court in Nagpur Improvement Trust & Anr. (supra). Keeping in view the principles laid down in the said decision of this Court, it has to be held that if the provisions of the Adhiniyam are so construed as to mean that the provisions of the L.A. Act, as they stood on the date of enactment of the Adhiniyam, would be applicable to acquisition or land for the purpose of the Adhiniyam and that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation are not applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the L.A. Act as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of the Adhiniyam. There is nothing in the Adhiniyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhiniyam show that the intention of the Legislature, while enacting the Adhiniyam, was to confer the benefit of solatium @ 15% by modifying Section 23(2) in the Schedule, which benefit was not*

available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. It cannot, therefore, be said that the intention of the Legislature, in enacting the Adhiniyam, was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the L.A. Act after the enactment of the Adhiniyam. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the L.A. Act in the Adhiniyam the intention of the Legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation, viz, Section 23(1-A) and Section 23(2) and 28 as amendment by the 1984 Act would be applicable to acquisitions for the purposes of the Adhiniyam under Section 55 of the Adhiniyam."

(106) Ultimately, the Supreme Court in ***Jainul Islam*** (supra) opined that if the amendment in the Land Acquisition Act, 1894 by the 1984 Act is not applied in toto to the acquisition proceedings under the Adhiniyam 1965, then, the provisions of the Land Acquisition Act 1894, (without the amendment by the 1984 Act), as applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination, hence unconstitutional and will thereby become unworkable and ineffectual. It further opined that such a consequence would be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the Land Acquisition Act, 1894 as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purpose of Adhiniyam.

(107) It did not find anything in the Adhiniyam, 1965 which precluded adopting the latter construction. It also opined that, on the other hand, the provisions of the Adhiniyam 1965 show that the intention of the legislature, while enacting the Adhiniyam, was to confer the benefit of solatium at the rate of 15% by modifying Section 23(2) in the schedule, which benefit was not available under the provisions of the LA Act 1894 as it was applicable in the State of UP at the time of enactment of the Adhiniyam. It thus opined that it cannot, therefore, be said that the intention of the legislature in enacting the Adhiniyam was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the LA Act after the enactment of the Adhiniyam.

(108) It, therefore, opined that on a proper construction of Section 55 of the Adhiniyam, it must be held that while incorporating the provisions of the Land Acquisition Act in the Adhiniyam, the intention of the legislature was that the amendments in the Act 1894 relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam 1965. Thus, according to the Supreme Court in **Jainul Islam (supra)**, the amendments introduced in the Act 1894 by the 1984 Act relating to determination and payment of compensation, which is, Section 23 (1-A) and Section 23(2) and 28 as amended by the 1984 Act, would be applicable to acquisitions for the purposes of the Adhiniyam 1965 under Section 55 of the Adhiniyam, so as

to avoid the vice of arbitrariness, otherwise the provisions would be rendered unconstitutional.

(109) It is not out of place to mention that though the main matter before the Supreme Court was an appeal, but, in one of the writ petitions being W.P. No. 339 of 1997 which was also decided by the judgment in ***Jainul Islam*** (supra) constitutionality of provision of Adhiniyam, 1965 was also under challenge. Para 40 and 41 of ***Jainul Islam*** (supra) are relevant on this subject and are as under:

"40. These writ petitions have been filed under Article 32 of the Constitution by the petitioners wherein they have assailed the constitutional validity of the provisions contained in the Adhiniyam as modified whereby the provisions of the earlier Act as applicable to acquisition under Section 55 of the Adhiniyam have been modified insofar as it results in reduction of amount of compensation payable to the petitioners-landowners.

41. *The ground on which the validity of the said provisions is challenged is that under the provisions of the earlier Act as amended by the 1984 Act solatium is payable at the rate of 30% under Section 23(2) as amended and interest at the rate of 9% and 15% under Section 28 as amended, while under the earlier Act as modified by the Adhiniyam solatium is payable at a lower rate of 15% and interest at a lower rate of 6% and this amounts to denial of right to equality and is violative of the provisions of Article 14 of the Constitution. In view of the construction placed by us on the provisions of the Adhiniyam relating to acquisition of land for the purposes of the Adhiniyam, these writ petitions do not survive and they are, therefore, dismissed. No costs."*

(110) In para 46 it was observed as under:

> "***46.*** *Since in view of the construction placed by us on the provisions of Section 55 of the Adhiniyam there is no difference in the amount of compensation payable under the provisions of the LA Act as applicable to acquisition of land for the purposes of the Adhiniyam and the compensation payable for acquisition of land under the LA Act, the special leave petitions are dismissed.*"

(111) Thus, all writ petition, appeals and SLPs were decided accordingly.

(112) Thus, it held that though it was a case of legislation by incorporation, but in view of exception clause (c), as not applying the amendment of 1894 to the the Act, 1894 to acquisition proceedings under the Adhiniyam will render Section 55 of the Adhiniyam, 1965 and acquisition proceedings ultra vires Article 14, thus, ineffectual and unworkable, it saved the provisions of the Adhiniyam 1965 from being ultra vires Article 14 of the Constitution of India on the ground of arbitrary and hostile discrimination by interpreting Section 55 so as to apply a more beneficial amendment in the Act, 1894, subsequent to its incorporation in the Adhiniyam, to acquisition proceedings under the Adhiniyam, 1965 based on the exception clause (c) as discussed in ***MV Narasimhan*** (supra).

(113) Our understanding of the ratio in **Jainul Islam** (supra) is reinforced and affirmed by the subsequent three Bench decision in the case of **Vasant Rao (**supra**)** (Para 48) which considered ***Jainul Islam*** (supra).

(114) Thus, in view of ***Jainul Islam*** (supra), as the Act, 1894 has been incorporated by legislation into the Adhiniyam, 1965, any repeal of the said enactment of 1894 by the Act, 2013, *per se*, would have no adverse bearing on its application to the Adhiniyam, 1965, except where, in the event of non application of amendment to the Act, 1894 it would result in the vice of arbitrary and hostile discrimination of land/property owners in the matter of compensation, thus, rendering the entire provisions for land acquisition in the Adhiniyam, 1965 unconstitutional being hit by Article 14 thereby necessitating application of the provisions of amending Act, 1984 to save the provision of Adhiniyam, 1965 from being unconstitutional, which it did with reference to Exception (c) to the application of principle of legislation by incorporation.

(115) No doubt, when we read the four exception clauses (a) to (c) to application of the principle of legislation by incorporation, we find that all the exceptions are carved out in the context of amendment of an existing statute as was the case in ***Jainul Islam*** (supra), but when we consider Para 17 of ***Jainul Islam*** (supra) and the decision in ***MV Narasimhan*** (supra), we find that in both the cases the legal issue which was considered was the affect of repeal or amendment of an earlier Statute which is incorporated, on operation of the subsequent Statute. In both the decisions it was held that in a case of legislation by incorporation subsequent amendment or repeal of the earlier statute will not affect operation of the incorporated provisions in the subsequent statute, subject however, to

four exceptions as mentioned in ***MV Narasimhan*** (supra), therefore, merely because in the exceptions word 'amendment' is referred does not mean that these exceptions will not apply to a case of repeal of an earlier statute which had been incorporated. The principle enunciated in these decisions, including the exceptions, apply to case of repeal also. A pedantic view in this regard would itself be unfair and discriminatory. It is the principle behind the exceptions which is to be considered and applied.

(116) Therefore, *stricto sensu*, in view of the effect of legislation by incorporation as mentioned in Para 17 of ***Jainul Islam*** (supra), the Act of 1894, as incorporated in the Adhiniyam, 1965 vide Section 55 thereof and the Schedule referred therein, remain unaffected by the repeal of the Act of 1894 by the Act, 2013 *per se*, subject of course to the exceptions mentioned earlier, meaning thereby, if, in the event, the impugned provisions of the Adhiniyam, 1965 read with the Act, 1894 as incorporated are applied to acquisition proceedings, as it is, without incorporating the provisions of the Act, 2013, they would suffer from the vice of arbitrary and hostile discrimination of land owners in the matter of compensation making them ineffectual and unworkable then the exception (c) to legislation by incorporation would become applicable as in ***Jainul Islam*** (supra) and provisions of the Act, 2013 would have to be applied to save the impugned provisions from being declared unconstitutional. The exception referable to Clause (C) in ***MV Narasimhan*** (supra) will be considered by us while answering Questions No. 5 and 6.

(117) Even otherwise, assuming that the exception (c) referred above, does not apply in a case of repeal and it is confined only to a case of amendment of existing Statute, meaning thereby, the Adhiniyam, 1965 is held to remain unaffected by the repeal of Act, 1894 by the Act, 2013, still, questions no. 5 and 6 framed by us earlier can be considered and answered independently and will remain unaffected. More of it while considering question no. 5 and 6.

Question No. 4:

(118) **S**hri Sandeep Dixit, learned senior counsel also contended that impliedly the Act 1894 in its application to the acquisition proceedings under the Adhiniyam 1965 stood repealed, but this aspect has already been considered in a Division Bench judgment in '***Atul Sharma***' (supra) and repelled. We are also of the opinion that the principle of implied repeal does not apply in the facts and circumstances of this case. We may in this context refer to the decision of the Supreme Court of India in the case of ***Municipal Council, Palai versus T.J. Joseph and others; AIR 1963 Supreme Court 1561***. The tests laid down therein are not satisfied in the case at hand. The two enactments are referable to separate entries of separate lists of the Seventh Schedule, as already discussed. Read as a whole they do not occupy the same field and their subject matter is not the same. While the Adhiniyam 1965 is referable to Entry 5 of List II of Schedule VII of the Constitution of India, the Land Acquisition Act 2013 is referable to Entry 42 of List III of Schedule VII. The

Adhiniyam 1965 is an enactment of the state legislature whereas the Land Acquisition Act 2013 is an enactment of the Parliament. From the scheme of the two Acts also, it is difficult to arrive at the conclusion, as was suggested by Shri Sandeep Dixit, that its provisions read with the provisions of 1894, as applicable to it, stood impliedly repealed. This is especially in view of the provisions contained in Sections 103 and 105 to 108 of the Land Acquisition Act 2013. We have already discussed the purport of Section 103 of the Act, 2013. Question No. 4 is answered accordingly in the negative.

Question No. 5:

(119) Now, the next question to be considered is as to whether application of the impugned provisions of the Adhniniyam, 1965 read with the provisions of the Act, 1894 as incorporated in it vide Section 55, amounts to arbitrary and hostile discrimination in the matter of compensation to land/property owners whose lands are acquired under the Adhiniyam, 1965, vis-à-vis other land/property owners whose land/property are acquired under the Act of 2013; whether compensation includes non-monetary compensation?

(120) The legal position is very well settled that land/property owners whose land is acquired under any enactment belong to one class for the purposes of compensation and there can be no differential treatment in this regard on the ground that the acquisition is under different enactments or the acquiring authority is different,

unless the acquisition is for the benefit of such persons. Even in ***Jainul Islam*** (supra), this was the proposition of law laid down based on the earlier 7-Judges Bench decision of the Supreme Court of India in the case of ***Vithal Rao*** (supra), as already discussed. There can be no differential treatment in this regard without an intelligible differentia and in the absence of any rational nexus with the object sought to be achieved.

(121) We may in the context of vice of arbitrary and hostile discrimination in compulsory acquisition of land and compensation payable in respect thereof, once again refer to the Seven Judges Bench decision in **Vithal Rao (**supra**)**. In the said case, before the High Court, provisions of the Nagpur Improvement Trust Act, 1936 were challenged on various grounds, one of them being that the Improvement Act was in violation of Article 14 of the Constitution, inasmuch as, it empowered the acquisition of land at prices lower than those which would have been payable if they had been acquired under the Land Acquisition Act, 1894, meaning thereby, the compensation under the impugned enactment was lower than what would be payable under the Land Acquisition Act, 1894. The High Court quashed the impugned provisions on the ground that they violated Article 14 of the Constitution of India. The Supreme Court upheld the decision of the High court and observed as under:

"26. ***It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests (i) the classification***

must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to he achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

27. ***What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes ?***

28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is a politician or an advocate. Why is this sort of classification not sustainable ? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type or another type.

29. ***Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired ? In other words can the legislature lay down different principles of, compensation for lands acquired say for a hospital or a school or a Government building ? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value ? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the***

recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land ? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government ? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. ***It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts enables the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.***

31. ***It was said that if this is the true position the state would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for clearing slums, another for acquiring lands for Government buildings; one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. This neighbour could sell his land reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece-meal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owner are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners***

of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.

32. It will not be denied that a statute cannot tax some owners of land leaving untaxed others equally situated. If the owners of the land cannot be taxed differently how can some owners be indirectly taxed by way of compulsory acquisition ? It is urged that if this were the law it will tie the hands of the State in undertaking social reforms. We do not agree. There is nothing in the Constitution which debars the State from bettering the lot of millions of our citizens. For instance there is nothing to bar the State from taxing unearned increment if the object is to deny owners the full benefit of increase of value ***due to development of a town. It seems to us, as we have already said, that to accede to the contentions of the appellant and the States would be destructive of the protection afforded by Article 14 of the Constitution. The States would only have to constitute separate acquiring bodies for each city, or Division or indeed to achieve one special public purpose and lay down different principles of compensation.****"*

(122) The Seven Judges Bench in ***Vithal Rao*** **(**Supra**)** cited and followed the earlier Constitution Bench decisions in **P. Vajravelu Mudaliar vs. Special Deputy Collector, Madras; (1965) 1 SCR 614** and **Balammal and Others vs. State of Madras; (1969) 1 SCR 90**.

(123) We may, in this context, mention that in **P. Vajravelu Mudaliar (**supra**)**, the principal Act was amended and the amending Act empowered the State to acquire land for housing scheme at a price lower than that the State would have had to pay if the same was acquired under the principal Act. Vires of the amending Act was put to challenge on the ground of discrimination and Article 14. The Court, after examining the justifications offered for such classification by the State, disapproved it and held discrimination to be writ large on the amending Act,

which could not be sustained on the principle of reasonable classification. It declared the amending Act *ultra vires*.

(124) Thus, in ***Vithal Rao*** (supra) and ***P. Vajravelu Mudaliar*** (supra) the impugned enactments were struck down as violative of Article 14, whereas, in ***Jainul Islam*** (supra) they were saved by construing Section 55 of the Adhiniyam, 1965 in a manner so as to make the provisions compatible with Article 14 by applying an exception to the effect of repeal or amendment in a case of legislation by incorporation, as already discussed.

(125) Article 31A as rightly pointed out by Shri Niteesh Kumar, Advocate, has no application to these cases before us as they do not pertain to any enactment relating to agrarian reform and development. Reference may be made in this regard to the decision reported in ***Ambika Prasad Mishra vs. State of U.P., (1980) 3 SCC 719; Waman Rao vs. Union of India, (1981) 2 SCC 362 and K.K. Kochuni v. States of Madras and Kerala, 1960 SCC OnLine SC 346***.

(126) Thus, the law is well settled by the Supreme Court of India right from the decision in the case of **Vithal Rao (**supra**)**, **P. Vajravelu Mudaliar (s**upra**), Jainul Islam (**supra**)**, etc. that *there cannot be two different standards/criteria for providing compensation to land owners whose land is acquired, one more beneficial and the other less beneficial, as that would be discriminatory,*

as the land/property owners fall in one class for the purposes of compensation in lieu of acquisition.

(127) We now have to consider as to whether different parameters are provided in the two enactments i.e., Adhiniyam, 1965 read with Act, 1894 and the Act, 2013, if so; whether the Act, 2013 contains more beneficial provision of compensation and in this very context the question as to whether compensation is confined to monetary compensation alone or it includes non-monetary compensation such as rehabilitation, resettlement, etc. and if it is found that the Act, 2013 is more beneficial then we will have to consider; whether allowing application of the Land Acquisition Act 1894 to compulsory acquisition proceedings under the Adhiniyam 1965, instead of the new enactment 2013, would amount to arbitrary and hostile discrimination of landowners in the matter of compensation, rehabilitation, etc. rendering the impugned provisions being hit by Article 14?

(128) We may mention at the very outset that it is not the case of opposite parties that acquisition is for the benefit of petitioners.

(129) We now proceed to consider the aforesaid issues.

<u>Provisions of compensation under the Adhiniyam, 1965 read with Act, 1894 vis-a-vis the Act, 2013</u>

(130) Shri Asit Chaturvedi submitted that compensation in lieu of compulsory acquisition is being given in terms of the Act, 2013, therefore, there is no question of violation

of Article 14 nor is the plea of arbitrary and hostile discrimination available. The answer to this question is not as simple as was suggested by Shri Chaturvedi which would be evident from what follows. There has to be an authoritative pronouncement on the issue of applicability of Act, 2013, etc.

(131) Section 55 of the Adhiniyam, 1965 vests the power to acquire land with the Board under the provisions of the Land Acquisition Act, 1894, as amended in its application to Uttar Pradesh, which for this purpose, is subject to the modifications specified in the Schedule of this Act. Thus, acquisition proceedings, to facilitate the functions of the Board and execution of housing and improvement schemes and other projects, takes place as per the provisions of the Land Acquisition Act, 1894, as applicable to the Adhiniyam, 1965 vide Section 55 and Schedule thereof. We have already quoted these provisions earlier. There is no independent and separate provision in the Adhiniyam, 1965 for determination or grant of monetary compensation. The provisions of the Land Acquisition Act, 1894, get attracted for determination and grant of monetary compensation. The Act, 1894 does not contain any provision for restitution or fair compensation in the form of rehabilitation or resettlement, though Section 21 of the Adhiniyam, 1965 contains a provision in this regard.

(132) As, we are not considering application of the Act, 2013 in its entirety, *per se*, but are considering the question of discrimination in the matter of compensation under the two enactments, therefore, we are confining ourselves to the provisions of the Act, 1894 relating to the

determination and grant of compensation. Relevant provisions in this regard are contained in Sections 11, 18, and 23. In fact, Section 23 deals with the factors to be considered in determining compensation, and it is this provision which is relevant for our purpose. Section 23, in its application to the Board, reads as under:

"23. Matters to be considered in determining compensation

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration

firstly , the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)] [Substituted by Act 38 of 1923, Section 7, for " declaration relating thereto under section 6" .];

secondly , the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collectors taking possession thereof;

thirdly , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of severing such land from his other land;

fourthly , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly , if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

and

sixthly , the damage (if any) bona fide resulting from diminution of the profits of the land between the time of *the publication of the declaration under section 6 and the time of the Collectors taking possession of the land.*

[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.] [Inserted by Act 68 of 1984, Section 15 (w.e.f. 24.9.1984).]

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] [Substituted by Act 68 of 1984, Section 15, for " fifteen per centum" (w.e.f. 24.9.1984).] on such market value, in consideration of compulsory nature of the acquisition.

Uttar Pradesh Amendment

Land Acquisition (U.P. Amendment) Act, XXII of 1954, Section 3 and 8 (19-11-1954)

In its application to Uttar Pradesh—

***(1)** In Section 23, clause first add the following as an Explanation at the end, namely,—*
"Explanation.—In judging the market-value aforesaid in any case where land is acquired for or in connection with sanitary improvements of any kind or planned development due regard shall be had to the insanitary and unhygienic conditions of the land on the date aforesaid."
***(2)** Sub-section (2) shall be omitted.*

***Note.—** The direction in item (b) above to omit sub-section (2) does not apply in respect of a notification under Section 4 issued prior to the commencement of the Land Acquisition (U.P. Amendment) Act, 1954.*

Land Acquisition (U.P. Amendment) Act XXVIII of 1972, Section 3

In Section 23 of the Act,—

(a) in sub-section (1), the explanation to the first clause shall be omitted;
(b) after sub-section (1), the following sub-section shall be inserted, namely,—
"(2) In addition to the market-value of the land as above provided, the court shall in every case award a sum of fifteen per centum on such market-value in consideration of the compulsory nature of the acquisition."

****Amendment of section 23 of the THE UTTAR PRADESH AVAS EVAM VIKAS PARISHAD ADHINIYAM, 1965***

In Section 23 of the said Act-

(i) for existing explanation to the clause "firstly", the following shall be deemed to be substituted:

Explanation- In judging the market value aforesaid in any case where a land is acquired under a housing or improvement scheme under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965, if any building has been erected, re-erected, added or altered in contravention of the provisions of Clause (a) of Sub-section (3) of Section 23, Sub-section (3) of Section 24 or Section 35 of the said Adhiniyam, any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded;

(ii) after the existing Sub-section (1) the following shall be added as Sub-section (2), namely-
(2) In addition to the market value of the land as above provided, the court shall in every case award a sum of fifteen percentum of such market value in consideration of the compulsory nature of the acquisition."

(133) The said Section 23 of the Act, 1894 has been amended in its application to Uttar Pradesh under various enactments. We are concerned with Section 23 only

insofar as it has been modified in its application to acquisition proceedings by the Development Board under the Adhiniyam, 1965 vide Schedule referred in Section 55 and as has been applied (amendment of 1984) by ***Jainul Islam*** (supra). It should be read accordingly with Schedule referred in Section 55 and the decision in ***Jainul Islam*** (supra).

(134) Section 24 of the Act, 1894 deals with matters to be neglected in determining compensation, Section 28 deals with interest on excess compensation ordered by the Court. Section 34 deals with payment of interest when such compensation is not paid or deposited on or before taking possession of the land as referred in Section 23 etc. and as the term has been defined under Section 23 (b).

(135) As against the aforesaid, the Statement of Objects and Reasons pertaining to the Act, 2013 itself makes it clear that the earlier enactment, that is, the Act, 1894, was found to be inadequate to certain issues relating to compulsory acquisition, including the issue of rehabilitation and resettlement to the affected persons and their families. There was a heightened public concern on land acquisition, specially multi-cropped irrigated land, and there was no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement needed to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement was felt to be necessary. Hence, the Act 2013 was proposed to address concerns of farmers and those whose livelihoods

are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure, and urbanization projects in a timely and transparent manner.

(136) A reading of the statement of objects and reasons for proposing the bill which eventually became the Act, 2013, itself throws light on the intent behind such unified legislation. The intent was to have an enactment which is land-owner friendly and provides just and fair compensation along with rehabilitation and resettlement, apart from other things. We may, in this context, quote paragraphs 6 to 24 of the statement of objects and reasons, which are as under—

"6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. <u>Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement.</u> The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not *only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.*

8. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February, 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. <u>A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place</u>.

9. The National Rehabilitation and Resettlement Policy-2007 has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to *be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.*

11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent. of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed, if multi-crop land is acquired. In districts where net sown area is less than 50 per cent. of total geographical area, no more than 10 per cent. of the net sown area of the district will be acquired.

13. <u>To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent. of the total compensation. Where land is acquired for urbanization, 20 per cent. of the developed land will be offered to the affected land owners</u>.

14. <u>Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance and resettlement allowance is proposed</u>.

15. <u>Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed</u>.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance of Rs. 50,000/-; twenty-five per cent. additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.

17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.

19. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer of land without development, twenty per cent of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayats (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action and contravention of the provisions of the propose legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of the Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons."

(137) Extracts of the Statement of Objects and Reasons quoted above are indicative of the intent to have a more beneficial legislation for acquisition of land which provides for a fair and just compensation including rehabilitation and resettlement, which the earlier Act, 1894 did not.

(138) By the Act, 2013, a new mechanism has been put in place for land acquisition and for just and fair compensation. The Act, 2013 not only covers land/property owners but also affected families and displaced persons for grant of restitution by compensation, including non-monetary compensation such as rehabilitation and resettlement. In this context, we may

refer to Sections 3(c), 3(k), 3(m), 3(n), 3(p), 3(q), 3(r), 3(t), Section 3(za), Section 3(zc) and 3 (ze). On a bare perusal of the aforesaid definition clauses pertaining to the term ‘affected family’, ‘displaced family’, ‘family’, ‘holding of land’, ‘land’, ‘landless’, ‘landowner’, ‘marginal farmer’, ‘public purpose’, ‘resettlement area’ itself indicates a complete overhaul of the earlier enactment by the new Act of 2013 so as to make it landowner/property-owner-friendly so as to to ensure just and fair compensation, which was not the case earlier.

(139) Then there is Chapter II, pertaining to the determination of social impact and public purpose under which a very important study and exercise is conducted to facilitate a just and fair compensation and acquisition of land, which is not the case under the Act, 1894, nor under the Adhiniyam, 1965. Section 4(4) refers to matters which are to be included in the Social Impact Assessment study referred to in sub-Section (1), and they are as under:

“(a) assessment as to whether the proposed acquisition serves public purpose;

(b) ***estimation of affected families and the number of families among them likely to be displaced****;*

(c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;

(d) whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project;

(e) whether land acquisition at an alternate place has been considered and found not feasible;

(f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project:

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study."

(140) Sub-sections (5) and (6) of Section 4 are also relevant in this regard, which read as under:

"(5) While undertaking a Social Impact Assessment study under sub-section (1), the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

(6) The appropriate Government shall require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (5), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area."

(141) The importance of aforesaid Social Impact Assessment study for ensuring a fair, just and equitable

compensation and acquisition proceeding is self-evident on a bare reading of the aforesaid provisions. No such provisions exist under the Act, 1894, or under the Adhiniyam, 1965.

(142) Section 6 deals with publication of the Social Impact Assessment study and being made available in local language to the Panchayat, Municipality, or Municipal Corporation, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsildar. The said study is then appraised by an Expert Group under Section 7. Thereafter, examination of proposals for land acquisition and Social Impact Assessment report by the appropriate Government is undertaken under Section 8.

(143) We are not referring to the procedural provisions contained in the Act, 2013 regarding publication of notifications, etc., and straightaway, we may refer to Section 16, which deals with preparation of the Rehabilitation and Resettlement scheme by the Administrator. Now, this has to be read conjointly with the provisions contained in Chapter II, i.e., Sections 6 to 9 contained therein, as, the exercise under Chapter II is relevant and facilitates preparation of Rehabilitation and Resettlement scheme by the Administrator. Sections 16 and 17 of the Act, 2013 read as under:

"16. Preparation of Rehabilitation and Resettlement Scheme by the Administrator.–(1) Upon the publication of the preliminary notification under sub-section (1) of section 11 by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such

manner and within such time as may be prescribed, which shall include—

(a) particulars of lands and immovable properties being acquired of each affected family;

(b) livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired;

(c) a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved;

(d) details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved; and

(e) details of any common property resources being acquired.

(2) The Administrator shall, based on the survey and census under sub-section (1), prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved—

(i) a list of Government buildings to be provided in the Resettlement Area;

(ii) details of the public amenities and infrastructural facilities which are to be provided in the Resettlement Area.

(3) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall include time limit for implementing Rehabilitation and Resettlement Scheme.

(4) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities.

(5) A public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area:

Provided that in case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha and Municipality where more than twenty-five per cent. of land belonging to that Gram Sabha or Municipality is being acquired:

Provided further that the consultation with the Gram Sabha in Scheduled Areas shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).

(6) The Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector.

17. Review of the Rehabilitation and Resettlement Scheme.–(1) The Collector shall review the draft Scheme submitted under sub-section (6) of section 16 by the Administrator with the Rehabilitation and Resettlement Committee at the project level constituted under section 45.

(2) The Collector shall submit the draft Rehabilitation and Resettlement Scheme with his suggestions to the Commissioner Rehabilitation and Resettlement for approval of the Scheme."

(144) Once the Rehabilitation and Resettlement scheme is approved, it is to be made public under Section 18. A summary of the Rehabilitation and Resettlement scheme is to be declared by publication under Section 19.

(145) Section 26 then deals with the determination of the market value of land by Collector. This provision relates to monetary compensation under the Act, 2013. It reads as under:

"26. Determination of market value of land by Collector.– (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

(2) ***The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.***

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

The first schedule referred in Section 26 (2) reads as under:

"THE FIRST SCHEDULE
[See section 30(2)]
COMPENSATION FOR LAND OWNERS

The following components shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants referred to in clause (c) of section 3 in a proportion to be decided by the appropriate Government.

Serial No.	***Component of compensation package in respect of land acquired under the Act***	***Manner of determination of value***	***Date of determination of value***
(1)	*(2)*	*(3)*	*(4)*
1.	*Market value of land*	*To be determined as provided under section 26.*	
2.	*Factor by which the market value is to be multiplied in the case of rural areas*	*1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.*	
3.	*Factor by which the market value is to be multiplied in the case of urban areas*	*1 (One).*	
4.	*Value of assets attached to land or building*	*To be determined as provided under section 29.*	
5.	*Solatium*	*Equivalent to one hundred per cent. of the market value of land mentioned against serial number 1 multiplied by the factor specified against serial*	

		number 2 for rural areas or serial number 3 for urban areas plus value of assets attached to land or building against serial number 4 under column (2).
6.	*Final award in rural areas*	*Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 2 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium mentioned against serial number 5 under column (2).*
7.	*Final award in urban areas*	*Market value of land mentioned against serial number 1 multiplied by the factor specified against serial number 3 plus value of assets attached to land or building mentioned against serial number 4 under column (2) plus solatium mentioned against serial number 5 under column (2).*
8.	*Other component, if*	

any, to be included

NOTE.–The date on which values mentioned under column (2) are determined should be indicated under column (4) against each serial number."

(146) Section 27 deals with determination of the amount of compensation, i.e., the total monetary compensation, and Section 28 deals with the parameters to be considered by the Collector in determination of awards. Section 29 deals with the determination of the value of things attached to the land or building, and Section 30 deals with the award of solatium.

(147) On a conjoint reading of the provisions for monetary compensation under the Act, 1894 as applicable to the Adhiniyam, 1965 and the Act, 2013 as referred and quoted hereinabove, apparently demonstrate that even the monetary compensation under the Act, 2013 is higher and more beneficial than what is available under the Act, 1894 and the Adhiniyam, 1965, meaning thereby, a land/property owner etc. whose land is acquired under the Act, 2013 will get higher monetary compensation vis-a-vis a land owner under the Adhiniyam, 1965. The term persons interest is also defined in Section 3 (x) and has been referred in the Act, 2013 such as Section 21 etc. but it has a larger and wider connotation vis-a-vis the definition under the Act, 1894, in the context of compensation, rehabilitation and resettlement.

(148) For convenience a table briefly mentioning relevant provisions under the Land Acquisition Act, 1894 and the Act, 2013 pertaining to monetary compensation is being given below:

Particular	Land Acquisition Act, 1894	Act, 2013
Market value	Section 23(1): Market value on date of Section 4 notification.	Section 26: Highest of stamp value, average sale price, or consented amount (PPP/private projects), with multiplier under First Schedule on date of Section 11 notification.
Multiplier	No multiplier.	Section 26(2) Market value multiplied by factor prescribed in First Schedule (particularly benefits rural landowners).
Value of buildings, trees and attached assets	Damage for standing crops and trees considered under Section 23.	Section 27 expressly includes all assets attached to the land; Section 29 provides expert valuation of buildings, trees, crops and other assets.
Other damages	Compensation for severance, injurious affection, shifting expenses,	Same heads retained under Section 28, with an additional equity and justice clause.

	loss of profits.	
Additional amount (12%)	Section 23(1A): 12% per annum from Section 4 notification till award or possession, whichever is earlier.	Section 30(3): 12% per annum from Social Impact Assessment notification till award or possession, whichever is earlier.
Solatium	Section 23(2): 30% of market value, in terms of ***Jainul Islam*** (supra)	Section 30(1): 100% of compensation amount.
Rehabilitation & Resettlement	No monetary compensation in lieu of displacement.	Monetary compensation under section 47 for displacement in addition to rehabilitation and resettlement.

(149) On a bare reading of the aforesaid table it is apparent that under the Act, 1894 the amount of compensation is determined on the basis of the market value as on the date of notification under Section 4, but, there is no multiplier provided, whereas, such compensation is determined under the Act, 2013 based on the market value, if any, specified in the Indian Stamp Act, 1899 for registration of sale-deeds or agreements to sell, as the case may be, in the area, where the land is situated or; the market value as

indicated in clause (a) of sub-Section (2) of Section 26 or the average sale price of similar type of land as mentioned in clause (b) or consented amount of compensation as agreed under sub-Section (ii) of Section (2) Clause (c), whichever is higher, as on the date of notification under Section 11. Most important, market value calculated as per sub-Section (1) of Section 26 shall be multiplied by a factor specified in the First Schedule.

(150) On a bare reading of the First Schedule shows that a much more rational criteria has been prescribed for determination of just and fair compensation which apparently has to be higher than what is determined under the Act, 1894. Section 27 of the Act, 2013 is also more beneficial vis-a-vis Section 23 of the Act, 1894, as, while calculating the total amount of compensation based on the market value, etc. aforesaid, all assets attached to the land and not merely standing crops and trees have to be included. Similarly provisions Section 28 of the Act, 2013 for determination of compensation factors mentioned therein are far more rational and beneficial vis-a-vis the factors mentioned in Section 23, especially as, one of the factors mentioned therein is with regard to any other grant (not mentioned in the preceding clauses) which may be in the interest of equity, justice and beneficial to the affected family which are words having wide scope and far more beneficial to the land/property owners.

(151) Likewise, when we consider the solatium payable under the two enactments, while under the Act, 1894 vide Section 23(2), as applicable to the Board in terms of ***Jainul Islam*** (supra) it is payable at the rate of 30% of the

market value, whereas, under Section 30 (1) of the Act, 2013, it is 100% of the compensation amount.

(152) As for the additional amount, under Section 23(1A) it is to be paid at the rate of 12% per annum from the date of notification under Section 4 till award or possession, whichever is earlier, is prescribed, whereas, under Section 30 (3) of the Act, 2013 the same benefit of 12% per annum is prescribed, but, from the date of Social Impact Assessment notification under Section 4 (2) till award or possession, whichever is earlier, that is, from an earlier date.

(153) Even with regard to additional benefit of rehabilitation and resettlement under the Act, 2013, there is a component of monetary compensation in addition to the said benefit, as is evident from Section 47, whereas, there is no such component under the Act of 1894.

(154) Section 31 (Chapter V) deals with Rehabilitation and Resettlement award. Thus, apart from an award relating to monetary compensation, another, distinct award pertaining to rehabilitation and resettlement for affected families is to be given by the Collector. Section 31 in this regard reads as under:

"31. Rehabilitation and Resettlement Award for affected families by Collector.–(1) The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

(2) The Rehabilitation and Resettlement Award shall include all of the following, namely:—

(a) rehabilitation and resettlement amount payable to the family;

(b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;

(c) particulars of house site and house to be allotted, in case of displaced families;

(d) particulars of land allotted to the displaced families;

(e) particulars of one time subsistence allowance and transportation allowance in case of displaced families;

(f) particulars of payment for cattle shed and petty shops;
(g) particulars of one-time amount to artisans and small traders;

(h) details of mandatory employment to be provided to the members of the affected families;

(i) particulars of any fishing rights that may be involved;

(j) particulars of annuity and other entitlements to be provided;

(k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided:

Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as "not applicable":

Provided further that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.*"*

(155) The second Schedule referred in Section 31 is as under:

"THE SECOND SCHEDULE
[See sections 31(1), 38(1) and 105(3)]

ELEMENTS OF REHABILITATION AND RESETTLEMENT ENTITLEMENTS FOR ALL THE AFFECTED FAMILIES (BOTH LAND OWNERS AND THE FAMILIES WHOSE LIVELIHOOD IS PRIMARILY

DEPENDENT ON LAND ACQUIRED) IN ADDITION TO THOSE PROVIDED IN THE FIRST SCHEDULE.

Serial No.	**Elements of Rehabilitation and Resettlement Entitlements**	**Entitlement/ provision**	**Whether provided or not (if provided, details to be given)**
1	Provision of housing units in case of displacement	(1) If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sq mts in plinth area. (2) The benefits listed above shall also be extended to any affected family which is without homestead land and which has been residing in the area continuously for a period of not less than three years preceding the date of notification of the affected area and which has been involuntarily displaced from such area: Provided that	

		any such family in urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, which shall not be less than one lakh fifty thousand rupees: Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house: Provided also that no family affected by acquisition shall be given more than one house under the provisions of this Act. Explanation.– The houses in urban area may, if necessary, be provided in multi-storied building complexes.
2	Land for Land	In the case of irrigation project, as far as possible and in

lieu of compensation to be paid for land acquired, each affected family owning agricultural land in the affected area and whose land has been acquired or lost, or who has, as a consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer or landless, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, a minimum of one acre of land in the command area of the project for which the land is acquired:

Provided that in every project those persons losing land and belonging to the Scheduled Castes or the Scheduled Tribes will be provided land equivalent to land acquired or two and a one-half acres, whichever is

		lower.
3	Offer for Developed Land	In case the land is acquired for urbanisation purposes, twenty per cent. of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development: Provided that in case the land owning project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.
4	Choice of Annuity or Employment	The appropriate Government shall ensure that the affected families are provided with the following options: (a) where jobs are created through the project, after providing

		suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or (b) one time payment of five lakhs rupees per affected family; or (c) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.
5	Subsistence grant for displaced families for a period of one year	Each affected family which is displaced from the land acquired shall be given a monthly

		subsistence allowance equivalent to three thousand rupees per month for a period of one year from the date of award. In addition to this amount, the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to fifty thousand rupees. In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities.
6	Transportation cost for displaced families	Each affected family which is displaced shall get a one-time financial assistance of fifty thousand

		rupees as transportation cost for shifting of the family, building materials, belongings and cattle.
7	Cattle shed/Petty shops cost	Each affected family having cattle or having a petty shop shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees for construction of cattle shed or petty shop as the case may be.
8	One-time grant to artisan, small traders and certain others	Each affected family of an artisan, small trader or self-employed person or an affected family which owned non-agricultural land or commercial, industrial or institutional structure in the affected area, and which has been involuntarily displaced from the affected area due to land acquisition,

		shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees.
9	Fishing rights	In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government.
10	One-time Resettlement Allowance	Each affected family shall be given a one-time "Resettlement Allowance" of fifty thousand rupees only.
11	Stamp duty and registration fee	(1) The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body. (2) The land for house allotted to the affected families shall be free from all encumbrances.

(3) The land or house allotted may be in the joint names of wife and husband of the affected family.

(156) We may in this context also refer to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015 especially Rule 7 thereof regarding preparation of rehabilitation and resettlement scheme, etc.

(157) Section 32 deals with the provision of infrastructural amenities in the resettlement area, and it reads as under:

"32. Provision of infrastructural amenities in resettlement area.–In every resettlement area as defined under this Act, the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule."

(158) The fact that two separate awards have to be rendered—one for monetary compensation and the other for rehabilitation and resettlement which is a form of non-monetary compensation, is evident from Section 33 of the Act, 2013.

(159) A special provision is contained in Section 39 regarding additional compensation in case of multiple displacements,regarding which there is no provision under the Adhiniyam, 1965 or the Act, 1894. Section 42 deals with the reservation and other benefits available to Scheduled Tribes and Scheduled Castes in the affected areas, to be continued in the resettlement area.

(160) Chapter VI deals with procedure and manner of rehabilitation and resettlement. Sections 43 to 47 are relevant. Section 47 deals with quantification and deposit of the rehabilitation and resettlement amount by the requiring body where, in the opinion of the Collector, it can be quantified into monetary amount. In such cases, he shall allow payment of such amount into an account in complete satisfaction of such obligations which shall be administered by the Administrator appointed under Section 43, under the supervision of the Collector. Section 47 reads as under:

"47. Quantification and deposit of rehabilitation and resettlement amount.-Where the Collector is of the view that the obligations of the Requiring Board with regard to rehabilitation and resettlement can be quantified into monetary amount, he shall allow the payment of such amount into an account in complete satisfaction of such obligations, which shall be administered by the Administrator appointed under Section 43, under the supervision of the Collector."

(161) This provision is very important as it permits the obligation of the requiring body with regard to rehabilitation and resettlement to be quantified into monetary amount and payment into an account in complete satisfaction of such obligations.

(162) Section 93 deals with payment of compensation when acquisition proceedings are not completed and they are withdrawn. Section 94 deals with acquisition of part of house or building. Section 101 deals with the return of any unutilized land.

(163) When we peruse Sections 3, 4 to 9, 16, 31, and 32 of the Act, 2013 what comes out is that the award for

rehabilitation and resettlement Award is for the affected family which have been displaced . This is evident from a reading of definition of 'affected family'; 'displaced family'; 'family' and 'resettlement area', etc. as contained in Section 3, conjointly with the aforesaid provisions i.e. Sections 16, 17, 31, etc. In fact, interestingly the rehabilitation and resettlement award is to include all of the benefits mentioned in clauses (a) to (k) of Section 31(2), which has already been quoted earlier, unless they are not applicable to any affected family wherein it is to be mentioned as 'not applicable'.

(164) Section 31(2)(a) mentions 'rehabilitation and resettlement amount' payable to the family, thus, an amount is to be paid for their displacement as rehabilitation and resettlement amount. This is relevant and should be conjointly read with Section 47 of the Act, 2013, meaning thereby, even the rehabilitation and resettlement award has a monetary component/compensation, of course it also has a non-monetary component/compensation as is evident from Clause (c) which mentions - ‘particulars of house site and house to be allotted, in case of displaced families’ and clause (b) – ‘particulars of land allotted to the displaced families’. Further, one time subsistence allowance and transportation allowance in case of displaced families and payment for cattle shed and petty shops, one time amount to artisans and small traders; mandatory employment to be provided to members of the affected families, fishing rights, if any, involved, annuity and other entitlements, special provisions for Scheduled Castes and Scheduled

Tribes are also to be included in rehabilitation and resettlement award as is evident from Clauses (e) to (k) of sub-Section (2) of Section 31. The second proviso to Section 31 is also relevant as it provides that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index. There is no such provision under the Adhiniyam, 1965 or the Land Acquisition Act, 1894. Apparently, these provisions are more beneficial for the landowners, etc. and displaced families.

(165) All these benefits are in addition to monetary compensation determined under Section 28 and not as an alternative. Two different awards one for ‘compensation’ and another for ‘rehabilitation and resettlement’ are to be rendered by the Collector as is evident from Section 30 which relates to an award with respect to monetary compensation. Section 31 relates to rehabilitation and resettlement award Section 33 which uses the words ‘before the making of such reference, by order, correct any clerical or arithmetical mistakes **in either of the awards**’. The words ‘in either of the awards’ is also indicative of two awards required to be rendered under the Act, 2013 as noticed above.

(166) Of course, as stated earlier, there is a provision in Section 21 of the Adhiniyam, 1965 for preparing a Punarvas Yojna, that is, ‘rehabilitation scheme’ for persons who are displaced or likely to be displaced by the execution of any housing or improvement scheme, or whose removal from any area is necessary for relieving

congestion in that area. Thus, restitution in lieu of acquisition by way of non-monetary compensation in the form of rehabilitation, is envisaged in Section 21 of the Adhiniyam, 1965 also, but the eventualities in which such rehabilitation schemes are to be framed, and the modalities in this regard have not been provided in the Adhiniyam, 1965 and no other provision in any regulation, etc., has been placed before us in this regard. The provisions in Section 21 of the Adhiniyam, 1965 when compared with the provision of the Act, 2013 relating to rehabilitation and resettlement are apparently different. The latter is more beneficial, fair and just. Section 21 is quoted hereinbelow:

"Section 21. Punarvas Yojna - Whenever the Board is of opinion that it is necessary to provide accommodation for persons-

(a) who are displaced or likely to be displaced by the execution of any housing or improvement scheme under this Act, or

(b) whose removal from any area is necessary for relieving congestion in that area,

the Board may frame a Punarvas Yojana (re-housing scheme) for the construction, maintenance and management of such dwelling houses and shops or for providing such open plots along with roads, streets and open spaces as may be deemed necessary."

(167) When we peruse Section 21 of the Adhiniyam,1965, we find that it only contains a provision for a rehabilitation scheme at the discretion of the Board, but does not prescribe further modalities in this regard nor as to at what stage of the scheme of the acquisition it has to be prepared. In the cases at hand, no such scheme has been prepared, whereas, under the Act, 2013, the acquisition proceedings are preceded by an exercise of Social Impact

Assessment, as has already been referred, which is the basis for further action for compensation, including rehabilitation and resettlement and both monetary and non-monetary, go hand in hand.

(168) When the aforesaid provisions pertaining to monetary and non-monetary compensation in the form of rehabilitation and resettlement as contained in the Act, 2013, are read conjointly and compared with the provisions of the Adhiniyam, 1965 read with the Act, 1894, as applicable to the said Adhiniyam, apparently, the provisions of the Act, 2013 contain different parameters *vis-a-vis* compensation, rehabilitation and resettlement and they ensure a better, more beneficial, just, and fair compensation, including rehabilitation and resettlement, *vis-à-vis* the one prescribed and available under the Adhiniyam, 1965 and the Act, 1894. The difference is marked and apparent on a conjoint reading of the aforesaid enactments.

Compensation whether confined to monetary compensation or includes non-monetary compensation

(169) We may now consider the question as to whether compensation in lieu of acquisition of land/property is conceptually and statutorily confined to monetary compensation, or it can also include non-monetary compensation and additional benefits, such as rehabilitation and resettlement.

(170) In this regard, as already stated earlier, the Adhiniyam, 1965 itself envisages rehabilitation of displaced persons under Section 21, therefore, the legislature, while enacting the Adhiniyam, 1965 itself was aware that restitution by compensation need not be

confined to monetary compensation alone, but in addition, it could include rehabilitation as has been envisaged in Section 21 of the Adhiniyam, 1965.

(171) Shri Asit Chaturvedi, learned Senior Counsel appearing for the Board, of course, submitted that in all the decisions relied by the learned Amicus and the petitioners reference has been made to monetary compensation, that is, there cannot be two standards/criteria for determination of such monetary compensation, and as, in the case at hand, monetary compensation has been determined and will be determined in terms of the Land Acquisition Act, 2013, therefore, this issue does not arise for consideration and there is no differential treatment in the matter of compensation.

(172) However, learned Amicus Curiae, Shri Apoorva Tiwari, submitted that looking into the object behind the Land Acquisition Act, 2013, as a more beneficial legislation vis-à-vis the old Land Acquisition Act, 1894, has been put into place, which prescribes not only monetary compensation, but also non-monetary compensation, therefore, the term compensation should be understood as inclusive of both monetary and non-monetary compensation, otherwise, it will defeat the very purpose of bringing a new Land Acquisition Act, 2013, as also would be against the spirit and ratio of the decisions of the Supreme Court on the point that there cannot be any discrimination in this regard, as, land owners form part of the same group so far as compensation for acquisition of their land is concerned.

(173) The fact that in the case of ***Vithal Rao*** (supra)**,** **Vasant Rao** (supra) and **Jainul Islam** (supra), it was only monetary compensation which was under consideration is not of much legal significance or consequence for the simple reason, at that time that was the only issue involved and provisions analogous to those contained in the Act 2013 did not exist in the context of compulsory acquisition in the Act, 1894 or similar enactments, certainly not to the extent they have been incorporated in the Act 2013. Secondly, it is the ratio laid down in the said decisions which is to be followed. The principle laid down therein is that the landowners cannot be subjected to arbitrary and hostile discrimination by application of statutory provisions which are less beneficial vis-a-vis other provisions in the matter of compensation. If compensation is monetary as well as non-monetary then the ratio will apply to non-monetary compensation also just as it applies to monetary compensation, as, differential treatment of land/property owners in this regard would also be hit by Article 14 of the Constitution of India. There is nothing in the said decisions of the Supreme Court of India which prohibits application of the ratio contained therein to the concept of compensation inclusive of non-monetary compensation and additional benefits as are referred in the Act 2013.

(174) In fact, there is nothing in the Adhiniyam 1965 which may show a contrary intendment, rather, Section 21 of the Adhiniyam, 1965 itself contemplates rehabilitation so the contention of Shri Chaturvedi is contrary to the legislative intent contained in Section 21. The provision, however, lacks the ingredients for its implementation to

ensure a fair and equal treatment as is envisaged by the Act, 2013.

(175) We may also fruitfully refer to a decision of the Supreme Court in the case of ***Shantilal Mangaldas (supra)*** wherein the concept of 'compensation' in the context of acquisition of property was considered and in Para 26 it was observed as under:

"26. *Article 31 guarantees that the law providing for compulsory acquisition must provide for determining and giving compensation for the property acquired. The expression "compensation' is not defined in the Constitution. Under the Land Acquisition Act compensation is a way paid in terms of money. But that is no reason for holding- that compensation which is guaranteed by Article 31(2) for compulsory acquisition must be paid in terms of money alone. A law which provides for making satisfaction to an expropriated owner by allotment of other property may be deemed to be a law providing for compensation. In ordinary parlance the expression compensation means any thing given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay; it need not therefore necessarily be in terms of money. The phraseology of the constitutional provision also indicates that compensation need not necessarily be in terms of money, because it expressly provides that the law may specify the principles on which, and the manner in which, compensation is to be determined and "given". If it were to be in terms of money alone, the expression "paid" would have been more appropriate.*"

(176) The aforesaid judgment is an authority on the point that compensation can not only be monetary but also non-monetary.

(177) Most important, the issue of compensation in lieu of acquisition of land, right to property under Article 300-A

of the Constitution of India and its scope, has been recently considered by the Supreme Court of India in the case of ***Kolkata Municipal Corporation*** (supra). While considering seven sub Rights or Strands of Swadeshi Constitutional Fabric constituting the right to property, it recognize the duty of the State to restitute and rehabilitate – the right of restitution or fair compensation in Para 33.5 of the report. In para 33.5 of the report while considering the aforesaid right it has opined as under:

*“**33.5.The Right of restitution or fair compensation***

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

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

33.5.3. Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the sine qua non for any acquisition process [In State of U.P. v. Manohar, (2005) 2 SCC 126, this Court held that payment of compensation is an integral part of the process of land acquisition. In M. Naga Venkata Lakshmi v. Visakhapatnam Municipal Corpn., (2007) 8 SCC 748, this Court held that wherever promised, compensation is ought to be paid. In NHAI v. P. Nagaraju,

(2022) 15 SCC 1 : (2024) 2 SCC (Civ) 414, this Court held that compensation must be adequate and must be arrived at keeping in mind the market value of the acquired land. **In Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799, this Court held that even though compensation is not expressly provided for under Article 300-A of the Constitution, it can be inferred therein.** In the American jurisprudence, payment of compensation has been made part of due process [See Sweet v. Rechel, 1895 SCC OnLine US SC 208 : 40 L Ed 188 : 159 US 380 (1895), Delaware v. Town of Morristown, 1928 SCC OnLine US SC 33 : 72 L Ed 523 : 276 US 182 (1928) and United States v. Caltex, 1952 SCC OnLine US SC 105 : 97 L Ed 157 : 344 US 149 (1952)].] ."

(178) In para 33.5 to 33.5.3 on the right of restitution or fair compensation it has opined as under:

"33.5.The Right of restitution or fair compensation

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

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

33.5.3. Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the sine qua non for any acquisition process [In State of U.P. v. Manohar, (2005)

2 SCC 126, this Court held that payment of compensation is an integral part of the process of land acquisition*. In M. Naga Venkata Lakshmi v. Visakhapatnam Municipal Corpn., (2007) 8 SCC 748, this Court held that wherever promised, compensation is ought to be paid. In NHAI v. P. Nagaraju, (2022) 15 SCC 1 : (2024) 2 SCC (Civ) 414, this Court held that compensation must be adequate and must be arrived at keeping in mind the market value of the acquired land.* ***In Vidya Devi v. State of H.P., (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799, this Court held that even though compensation is not expressly provided for under Article 300-A of the Constitution, it can be inferred therein.*** *In the American jurisprudence, payment of compensation has been made part of due process [See Sweet v. Rechel, 1895 SCC OnLine US SC 208 : 40 L Ed 188 : 159 US 380 (1895), Delaware v. Town of Morristown, 1928 SCC OnLine US SC 33 : 72 L Ed 523 : 276 US 182 (1928) and United States v. Caltex, 1952 SCC OnLine US SC 105 : 97 L Ed 157 : 344 US 149 (1952)].] .”*

(179) In paragraph 33.5.2 it has specifically referred Section 23 of the Act, 2013 as containing statutory incorporation of the right to restitute a person whose land has been compulsorily acquired. We have already referred Section 23 and even at the cost of repetition we may mention that it speaks of an award by the Collector under his hand *inter alia* regarding the compensation as determined under Section 27, along with rehabilitation and resettlement award as determined under Section 31, therefore, there is statutory recognition of monetary compensation as also rehabilitation (non-monetary compensation), etc. as referred in the abovequoted decision. Thus, essentially, we are concerned with the manner and criteria of restitution which includes compensation and non-monetary compensation, as discussed.

(180) Further, as stated earlier, the Adhiniyam, 1965 vide Section 21 itself envisages rehabilitation which is recognition of non-monetary compensation in lieu of acquisition of land.

(181) In the case at hand, when we peruse provisions of the Adhiniyam, 1965, even without application of the provisions of the Act, 1894, we find that apart from monetary compensation, the State Legislature envisaged restitution in the form of non-monetary compensation by way of rehabilitation and framing of a rehabilitation scheme known as "Punarvasan Yojana" under Section 21. The scheme has already been referred earlier.

(182) This provision itself makes it evident that it was never the intention of the legislature while enacting the Adhiniyam, 1965 that compensation under it should be confined to monetary compensation; rather, the intention was to give a better benefit to the landowners under the Adhiniyam, 1965 vis-à-vis what was available to them under the Act, 1894 by providing for their rehabilitation where required in spite of the fact that this benefit was not available at the relevant time, when the Adhiniyam, 1965 was promulgated, under the Act, 1894.

(183) When we peruse the Adhiniyam, 1965 we find that rehabilitation as envisaged under Section 21 is not mentioned as an alternative to monetary compensation. There is nothing in the Adhiniyam, 1965 to persuade us to hold that under the Adhiniyam, 1965 either monetary compensation or rehabilitation can be granted as an

alternative. Under the Act, 2013, rehabilitation and resettlement are benefits in addition to monetary compensation. There is nothing in the Act, 2013 also which may persuade us to arrive at a conclusion that either monetary compensation or rehabilitation/resettlement is available to the landowner. Reason for it is a realization by the Legislature that monetary compensation need not always be sufficient or adequate for the loss or displacement caused due to compulsory acquisition. This is also evident from relevant provisions of the Act, 2013. Of course, as per Section 31 and 47 of the Act, 2013 rehabilitation and resettlement if they can be quantified in terms of money the same can be paid in full satisfaction of such obligations, as already discussed.

(184) The Hon'ble Supreme Court in ***Kolkata Municipal Corporation*** (supra) has categorically held that a person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A of the Constitution of India. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be integral part of the process of acquisition.

(185) Thus, right of restitution or fair compensation in lieu of acquisition is not confined to monetary compensation but includes rehabilitation and resettlement.

(186) Once the Board has applied the provisions of the Act, 2013 pertaining to monetary compensation, then,

there is no reason as to why, on the principles of law enunciated in ***Vithal Rao*** (supra) etc., the provisions for non-monetary compensation, such as rehabilitation and resettlement, be not also applied to acquisition proceedings under the Adhiniyam, 1965, especially as, rehabilitation under the Act, 2013 also has a monetary component, as already discussed.

(187) Not applying the provisions of non-monetary compensation, while applying the provisions of monetary compensation, would be without any rational basis and itself will amount to perpetuating the vice of arbitrary and hostile discrimination of landowners. No such reason has been put forth as to why this differential treatment should be meted out by applying the provisions of the Act, 2013 for monetary compensation, but not applying for non-monetary compensation.

(188) In view of our conclusion that restitution by compensation is not confined to monetary compensation but can also be in the form of non-monetary compensation especially as there is no contrary intent evidenced from a reading of the Adhiniyam, 1965 and the Act, 1894, we see no reason as to why we should confine restitution or fair compensation to landowners under the Adhiniyam, 1965, to monetary compensation alone, especially in view of Section 21 therein which itself envisages rehabilitation.

Application of the Act, 1894 to acquisition proceedings under Adhiniyam, 1965 as it is, whether amounts to arbitrary and hostile discrimination of land/property owners in the matter of compensation including non-monetary compensation rendering the impugned provisions unconstitutional?

(189) Having said so, we are now required to consider whether allowing application of Act, 1894 for the purposes of compensation to compulsory acquisition proceedings under the Adhiniyam, 1965, instead of the provisions of or at least the principles contained in the new Act, 2013, would amount to arbitrary and hostile discrimination of land/property owners in the matter of monetary compensation, rehabilitation, resettlement rendering the impugned provisions of Adhiniyam, 1965 ineffectual and unworkable and violative of Article 14 and 300A of the Constitution.

(190) We do not see any application of Article 19 or 21 in this regard.

(191) In spite of the clear stand of the Board in Para 67 and 68 of its counter affidavit and the stand of the State on same lines in Para 23 and 26 of its counter affidavit in PIL No. 637 of 2025 that compensation in respect of land acquired under the Adhiniyam, 1965 would be granted in terms of the Act, 2013 and not the Act, 1894, Shri Sudeep Kumar, Advocate appearing for the State tried to justify separate application of the Adhiniyam, 1965 read with the Act, 1894 vis-a-vis the Act, 2013 in this regard and laid great emphasis on the fact that the very purpose of enacting the Adhiniyam 1965 was to introduce various schemes, including housing schemes, at low cost, and according to him this gave an intelligible differentia for differentiating acquisition under the Adhiniyam 1965 vis-à-vis other enactments such as the Act 2013, therefore, we may consider these pleas. In this regard the judgment in **P.**

Vajravelu Mudaliar (supra**),** para 19 and 20 thereof are relevant. Para 19 and 20 of the report is as under:

"*19. The last contention of Mr. Viswanatha Sastri is that the Amending Act is hit by Art. 14 of the Constitution. The law on the subject is well-settled. Under Art. 14 the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But this does not preclude the Legislature from making a reasonable classification for the purpose of legislation. It has been held in a series of decisions of this Court that the said classification shall pass two tests, namely, (i) the classification must be founded on an intelligible differential which distinguishes persons and things left out of the group; and (ii) the differential must have a rational relation to the object sought to be achieved by the statute in question. To ascertain whether the impugned Act satisfies the said two tests, three questions have to be posed, namely, (i) what is the object of the Act ? (ii) what are the differences between persons whose lands are acquired for the housing schemes and these whose lands are acquired for purposes other than housing schemes or between the lands so acquired? and (iii) whether those differences have any reasonable relation to the said object. On a comparative study of the Principal Act and the Amending Act, we have shown earlier, that if a land is acquired for a housing scheme under the Amending Act, the claimant gets a lesser value than he would get for the same land or a similar land if it is acquired for a public purpose like hospital under the Principal Act. The question is whether this classification between persons whose lands are acquired for housing schemes and persons whose lands are acquired for other public purposes has reasonable relation to the object sought to be achieved. The object of the Amending Act is to acquire lands for housing schemes. It may be, as the learned counsel contends, the Amending Act was passed to meet an urgent demand and to find a way out to clear up slums, a problem which has been baffling the city authorities for a long number of years, because of want of funds. But the Act as finally evolved is not confined to any such problem. Under the Amending Act lands can be acquired for housing schemes whether the object is to clear slums or to improve housing facilities in the city for rich or poor. It may be assumed that in the Madras city the housing* *problem was rather acute and there was abnormal increase in population and consequent pressure on accommodation, and that there was also an urgent need for providing houses for the middle-income groups and also to slum-dwellers. However laudable the objects underlying the Amending Act may be, it was so framed that under the provisions thereof any land, big or small, waste or fertile, owned by rich or poor, can be acquired on the ground that it is required for a housing scheme. The housing scheme need not be confined to slum clearance; the wide phraseology used in the Amending Act permits acquisition of land for housing the prosperous section of the community. It need not necessarily cater to a larger part of the population in the city it can be confined to a chosen few. The land could have been acquired for all the said purposes under the Principal Act after paying the market value of the land. The Amending Act empowers the State to acquire land for housing schemes at a price lower than that the State has to pay if the same was acquired under the Principal Act.*

20. Now what are the differences between persons owning lands in the Madras city or between the lands acquired which have a reasonable relation to the said object. It is suggested that the differences between people owning lands rested on the extent, quality and the suitability of the lands acquired for the said object. The differences based upon the said criteria have no relevance to the object of the Amending Act. To illustrate : the extent of the land depends upon the magnitude of the scheme undertaken by the State. A large extent of land may be acquired for a university or for a network of hospitals under the provisions of the Principal Act and also for a housing scheme under the Amending Act. So too, if the housing scheme is a limited one, the land acquired may not be as big as that required for a big university. If waste land is good for a housing scheme under the Amending Act, it will equally be suitable for a hospital or a school for which the said land may be acquired under the Principal Act. Nor the financial position or the number of persons owning the land has any relevance, for in both the cases land can be acquired from rich or poor, from one individual or from a number of persons. Out of adjacent lands of the same quality and value, one may be acquired for a housing scheme under the Amending Act and the other for a hospital under the Principal Act; out of two adjacent plots *belonging to the same individual and of the same quality and value, one may be acquired under the Principal Act and the other under the Amending Act. From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the Amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one tying to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or ill. the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that, object, any land falling in any of the said categories can be acquired under the Amending Act. So too, for a public purpose any such land can be acquired under the Principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Art. 14 of the Constitution and is void.*"

(192) The observations of the Supreme Court in ***P. Vajravelu Mudaliar*** **(**supra**)** as quoted, are complete answer to Shri Sudeep Kumar's contention. Even otherwise, his contention is fallacious because as far as the acquisitions at hand are concerned, the schemes are not only housing schemes but also bazar schemes where land is to be allotted or has been allotted, as the case may be, for building hotels etc., considering the importance now acquired by the City of Ayodhya and the footfall of pilgrims and tourists on a given day. Even under the Adhiniyam, 1965 there are various types of schemes to be framed for which acquisition of land may be required.

(193) Merely saying, as was submitted by counsel for the Board and the State, that the Adhiniyam 1965 was promulgated with a specific purpose of development and town planning on account of rapid urbanization and need for housing etc. by itself is no ground for treating the landowners under the Adhiniyam, 1965 differently for the purposes of restitution or fair compensation. Most of the acquisitions are made for such a public purpose including housing scheme, development, etc.; whether it be under the Adhiniyam 1965 or the Act, 2013. We may in this context refer to Section 2 read with 3(za) of the Act, 2013 which define the public purpose for which acquisition is made. In any case, in view of ***P. Vajravelu Mudaliar*** (supra), the said contention cannot be accepted as a basis for treating acquisition under the Adhiniyam 1965 as standing on a different footing vis-à-vis acquisitions under the Act 2013. These arguments do not offer an intelligible differentia for treating landowners under the Act, 1965 differently vis-a-vis landowners under the Act, 2013 nor does it have any rational nexus with the object sought to be achieved as discussed in ***P. Vajravelu Mudaliar*** **(**supra**).**

(194) Another question raised by learned counsel for the State/Board was that acquisition in question is not by the State but by the Board whereas acquisition under the Act, 2013 is by the State, therefore, there is no application of Article 14.

(195) We may point out that even under the Adhiniyam 1965, the acquisition is by the State Government, and after

the acquired land vests in the state government, the collector hands it over to the housing commissioner. Of course, in the context of Section 16 of the Adhiniyam 1965, on being asked as to whether the schemes were initiated or framed by the board on the direction of the state government, the board as well as the state government have filed affidavits that it was an initiative by the Board on its own, but it is immaterial as to on whose initiative the schemes were framed with reference to Section 16. We may in this context refer to Section 55 of the Adhiniyam 1965 and the schedule referred therein. By Section 55, provisions of the Land Acquisition Act 1894 have been made applicable subject to the modifications specified in the schedule to the Adhiniyam 1965. When we peruse the schedule, we find that it is the state government which is the acquiring authority, in law. We may also refer to Section 17, as amended by the Schedule to the Adhiniyam 1965, according to which, in Section 17 of the Land Acquisition Act, for the existing subsection (1) and (1-A), subsection (1) as referred therein shall be deemed to be substituted, which provides- '***whenever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under the UP Awas Evam Vikas Parishad Adhiniyam 1965, the Collector, though no such award has been made, may, on the expiration of 15 days from the publication of the notice mentioned in subsection (1) of Section 9, take possession of any land needed for the purpose of the said Adhiniyam. Such land shall thereupon vest absolutely in the Government, free from all encumbrances***'. Paragraph 3 of the Schedule omits subsection (4) in its application to acquisition proceedings under the Adhiniyam 1965.

(196) Para 4 of the schedule, by which new Section 17A was added in the Land Acquisition Act 1894 for its application to acquisition proceedings under the Adhiniyam 1965, which deals with transfer of land to board, it says, ***'in every case referred to in Section 16 or Section 17, the collector shall upon payment of the cost of acquisition make over charge of the land to the housing commissioner, or an officer authorized in this behalf under the Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965, and the land shall thereupon vest in the board subject to the liability of the board to pay any further costs which may be incurred on accounts of its acquisition'***. Thus, in law, it is the collector who is to take charge of the land and after payment of cost of acquisition by the board and then he hands it over to the Housing Commissioner or an Officer authorized in this behalf under the Adhiniyam 1965, and only thereafter the land vests in the board, that too, subject to the liability of the board to pay any further costs which may be incurred on account of its acquisition.

(197) Thus, whenever the State Government so directs in the interest of the expeditious execution of a housing or improvement scheme under the Adhiniyam 1965, the Collector shall take possession of any land needed for the said purpose, as per the aforesaid provisions and thereupon, the land shall vest absolutely in the Government, free from all encumbrances. Under the next

succeeding provision, that is 17A, the Collector shall hand over such land to the Board.

(198) It could be said that this provision is applicable only when the State Government so directs. However, the fact is that, in law, the State Government does have the authority not only to direct the Board to frame a scheme under Section 16 of Adhiniyam, 1965, but also to issue directions under Section 17 for acquisition referred above in the Schedule.

(199) Moreover, even where the Board initiates such schemes on its own and land is to be compulsorily acquired for it, from the scheme of the Adhiniyam 1965 itself it is evident that the scheme does not commence until it is sanctioned by the State Government under Section 31(1) where the project cost is more than 20 lakhs, as in the case at hand and the Board is the sanctioning authority only in respect of projects having a cost of less than 20 lakhs. In today's times, most of the projects would cost above 20 lakhs, therefore, the sanction of the State Government is statutorily mandatory and a scheme of the Board commences only after such sanction.

(200) The State Government has the power to hear appeals under Section 32(3) and alter the scheme. It can decline to sanction such schemes under Section 31(1). Therefore, it is not as if the schemes and the acquisition are only at the independent volition of the Board, as there is important and decisive involvement of the State Government in this regard.

(201) Further, with the onset of the concept of welfare State, many of the functions of the State Government as a welfare State are performed by public corporations and statutory boards, such as the Board. In the aforesaid context, we may refer to section 15 pertaining to functions of the board, which includes the function to plan and coordinate various housing activities in the state, and to ensure expeditious and efficient implementation of housing and improvement schemes in the State. All these acquisitions supplement the goals and policies of the Government. Section 16 of the act itself permits the state government to issue a direction for framing of housing schemes.

(202) As already stated, the state has an all-pervasive role in sanctioning of the scheme, as also hearing appeals against objections against any decision taken on any objections to the land acquisition, as also to alter, modify, and abandon such schemes.

(203) The Board is an instrumentality of State within the meaning of Article 12 of the Constitution of India, and even otherwise supplements the work and functions of the State Government. This is also evident from the constitution of the Board and the functions it performs, as also the all-pervasive role which the State Government has in its functioning. We may, in this regard, refer to section 3(5) of the Adhiniyam, 1965. The persons mentioned in clause (a), (a-1), (c), (d), (e), (f) are all either minister in the government or high government functionaries. The Minister of Housing and Urban Planning Department,

Government of Uttar Pradesh is the Chairman of the board, of course, *ex-officio*. Even the vice presidents mentioned at section 3(5)(b), though they are non-official members, are appointed by the state government. The Housing Commissioner mentioned at section 3(5)(h) is also appointed by the state government, and invariably he is an officer of the state government, whether of the Provincial Civil Service or the Indian Administrative Service.

(204) From the functions of the board and other provisions of the Adhiniyam, 1965 also, it is evident that the board functions as an instrumentality of state, even though a statutory body, and it supplements the functioning of the state. Therefore, it is subject to the provisions of Part III of the Constitution of India, and it cannot be said that merely because the acquisition schemes in this case were initiated by the board on its own, the aforesaid constitutional provisions, especially Article 14, would not apply.

(205) In fact in ***Vithal Rao*** (supra) also this issue and Sections, 17, 17A of Nagpur Improvement Trust Act which are similar to Section, 17 of the Adhiniyam, 1965 were considered and similar opinion as noticed above was expressed in Para 21 and 22 which read as under:

"21. The first point which was raised was: whether it is the State which is the acquiring authority or it is the Improvement Trust which is the acquiring authority, under the Improvement Act. It seems to us that it is quite clear, especially in view of Section 17-A as inserted by para 6 of the Schedule, that the acquisition will be by the Government and it is only on payment of the cost of

acquisition to the Government that the lands vest in the Trust. It is true that the acquisition is for the Trust and may be at its instance, but nevertheless the acquisition is by the Government.

22. If this is so, then it is quite clear that the Government can acquire for a housing accommodation scheme either under the Land Acquisition Act or under the Improvement Act. If this is so, it enables the State Government to discriminate between one owner equally situated from another owner."

(206) The Supreme Court in **Vithal Rao (**supra**)** then held that violation of Article 14 and hostile discrimination and arbitrariness is to be seen from the standpoint of the landowner and not from the standpoint of the acquiring body and in this context it is irrelevant as to under which Act the acquisition is being made.

(207) Constitution being the supreme law of the land, all statutes and actions of State and its instrumentalities including statutory bodies are subject to Part III, especially Article 14 of the Constitution of India.

(208) We may in this very context once again refer to the Seven Judges decision in **Vithal Rao (**supra**)**, wherein the court posed a question to itself in para 29- '*can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an improvement trust or municipal corporation or the government?*' It answered- '***It seems to us that the answer is in the negative because as far as the owner is concerned, it does not matter to him whether the land is***

acquired by one authority or the other. It is equally immaterial whether it is one acquisition Act or another acquisition Act under which the land is acquired. If the existence of two Acts enables the state to give one owner different treatment from another, equally situated, and the owner who is discriminated against can claim the protection of Article 14.'

(209) In fact, this is how the law has been understood and laid down by a three-judge Bench of the Supreme Court in **Vasant Rao (**supra**)** also, where the argument advanced before it on behalf of the Jalandhar Improvement Trust involving the Punjab Improvement Trust Act, that the acquiring authority was the Trust and not the State, and a distinction was sought to be drawn vis-a-vis the case of Nagpur Improvement Trust, contending that in that case it was the State which was the acquiring authority and the State could not discriminate between one landholder and the other whose lands were sought to be acquired by choosing to acquire the land under one or the other Act so as to discriminate between such landholders.

(210) In this regard the Supreme Court in **Vasant Rao** (supra) firstly referred to Section 17-A of the Land Acquisition Act, 1894, which was inserted in all the three State Acts before it, including the Adhiniyam, 1965 with which we are concerned, and the earlier decision of the Supreme Court in the case of **Om Prakash and another vs. State of U.P. and others, (1974) 1 SCC 628,** wherein a similar provision in the U.P. Nagar Mahapalika Adhiniyam, 1959 was considered and, held, that, in view

of the aforesaid provision (17-A), it was clear beyond all manner of doubt that the acquiring authority is the Government, as observed in **Om Prakash (**supra**)**. It was further observed that there was no material difference between the impugned provisions of the Adhiniyam, 1965 and those which were in question before it in **Nagpur Improvement Trust** case. Since Section 17A inserted in the Land Acquisition Act by way of modification in all the three State Acts is in the same terms as Section 17A which was considered by this Court in **Om Prakash (**supra**)**, it held that the acquiring authority under the State Act is the Government and not the Trust. Alternatively, it went on to observe that, in any event, in Seven Judges Bench decision in **Vithal Rao (**supra**)** this Court negatived the contention that different principles of compensation can be laid if the land is acquired for or by the Improvement Trust or Municipal Corporation or the Government. This Court held that, as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other. It conclusively opined—*'thus, viewed from any angle, the submission must be rejected'*. Paragraphs 53 and 54 of the said report in ***Vasant Rao*** (supra) are relevant.

(211) In **Jainul Islam (**supra**)**, after considering the provisions of the Adhiniyam 1965, including Section 17 and 17A, etc., the contention of one of the parties before it that Article 14 cannot be invoked when the alleged discrimination is on account of laws made by two different legislatures, and the reliance placed in this regard upon a decision of the Supreme Court in the case of **G.C.**

Mandawar (supra**),** was repelled, as, according to the Supreme Court, under the provisions of the Adhiniyam, the acquisition is to be made by the same authority, viz., the State Government of Uttar Pradesh, and discrimination arises on account of action taken by the same authority.

(212) We have already stated earlier that the Board is also an instrumentality of State and supplements the action of the State, and there is active involvement of State in the entire acquisition process, which cannot take place without its sanction.

(213) The Supreme Court in **Jainul Islam (**supra**)** held that the provisions of the Adhiniyam 1965 were very similar to those contained in the Nagpur Improvement Trust Act and also that the ratio of the judgment of the Supreme Court of the Seven Judge Bench decision in **Vithal Rao (**supra**)** applied on all its fours to the provisions of the Adhiniyam 1965.

(214) It is the case of the petitioners that in the same district of Ayodhya, certain lands are being acquired by the Ayodhya Development Authority, while others by the board. And while the authority acquires the land by following the provisions and procedure prescribed under the Act 2013 and compensation, including rehabilitation and resettlement, etc. is determined under the said enactment, which is more beneficial, and in respect of other landowners, where the land is acquired by the board, the acquisition is being made under the Adhiniyam 1965 read with the Act 1894 as applicable to it, which is less

beneficial in terms of compensation, rehabilitation and resettlement. In fact, the Act 2013 not only includes landowners but affected families also. Application of different parameters for monetary compensation, rehabilitation and resettlement amongst land owners in same district or vicinity will be apparently arbitrary and discriminatory.

(215) In view of the above discussion, the contention that acquisitions are under the different enactments and by two different entities is irrelevant as there cannot be differential treatment of land owners in the matter of restitution or fair compensation which includes rehabilitation and resettlement. There is no intelligible differentia nor any nexus sought to be achieved to treat the landowners differently under the Adhiniyam, 1965 in this regard. The landowners whose land/property is acquired under the Adhiniyam, 1965 or the Act, 2013 belong to one class and they cannot be treated differently in the matter of restitution by monetary compensation and non-monetary compensation.

(216) In fact, as already stated, the Board/State is itself granting monetary compensation in terms of the Act, 2013, therefore, one fails to understand as to why these submissions, contrary to their own conduct, were advanced, nevertheless, having been advanced, we deemed it necessary to settle the legal position.

(217) In view of the discussion already made, there is no intelligible differentia to treat the landowners whose land

is acquired under the Adhiniyam 1965 read with the Land Acquisition Act 1894 differently in the matter of restitution or fair compensation for such acquisition vis-a-vis other landowners and affected families whose lands are acquired under the Land Acquisition Act 2013, nor has any such reasoning or material been placed before this court by the state or by the Board.

(218) The provisions of the Adhiniyam, 1965 applied with the aid of Act, 1894 regarding compensation are not in tune with the changing times and its need which have been succinctly explained in the Statement of Objects and Reasons to the Act, 2013 and this is evident from the provisions contained in the said Act, 2013 which recognizes the need of the times.

(219) Plea raised by Shri Sudeep Kumar, learned senior counsel appearing for the State, that Adhiniyam 1965 is a special enactment, whereas the Act, 2013 is a general enactment and that the Adhiniyam, 1965 is a self contained Code and reliance placed in this regard upon the decision in ***Girnar Traders (3) vs. State of Maharashtra and others; (2011) 3 SCC 1***, does not have much relevance in the context of the issues discussed hereinabove with regard to impermissibility of differential treatment of landowners in the matter of compensation and Article 14 of the Constitution of India.

(220) The Adhiniyam, 1965 and the Act, 2013 provide different parameters for restitution or fair compensation including rehabilitation and resettlement in lieu of land

acquisition, the latter being more beneficial than the former.

(221) Sections 28(1), 31(1) and 32 of the Adhiniyam, 1965 as impugned, do not lay down any parameter for restitution by monetary or non-monetary compensation, but, simply contain provision for notification, sanction, etc. of scheme, for which acquisition is to be made in terms of Section 55, therefore, we do not see how they are unconstitutional *per se*, but in view of the discussion already made, Section 55 and the Schedule referred therein, if applied to acquisition proceedings under the Adhiniyam for the purpose of monetary compensation, etc. in the light of the Act, 1894, without the aid of relevant provisions of Act, 2013, suffer from the vice of arbitrary and hostile discrimination of land owners as the restitution or fair compensation including monetary and non-monetary compensation under the said enactment is less beneficial vis-a-vis the benefit available under the Act, 2013, meaning thereby, Section 55 treats equals as unequals, contrary to the constitutional mandate contained in Article 14 and 300A of the Constitution of India and is liable to be declared unconstitutional, unless, we apply the provisions or at least the principles contained in the Act, 2013 relating to monetary compensation, rehabilitation and resettlement to acquisition proceedings under the Adhiniyam, 1965 by either taking aid of Exception Clause (C) to application of principle of legislation by incorporation or by considering this issue independently as referred by us while considering Question No. 3. More of it while answering Question No. 6.

(222) Question No. 5 is answered accordingly, subject to our answer to Question No. 6.

Question No. 6:

(223) The question now to be considered is as to whether we can save Section 55 of the Adhiniyam, 1965 from being declared ultra vires Article 14 and 300A of the constitution by applying the provisions, or at least the principles, contained in the Act, 2013 pertaining to determination and grant of compensation including non-monetary compensation or we have no option but to declare it to be unconstitutional.

(224) While answering Question No. 5 we have already held, based on various decisions of the Supreme Court of India such as Vithal Rao, P. Vajravelu Mudaliar and Jainul Islam (supra), that all land/property onwers belong to one class when it comes to determination and grant of compensation in lieu of acquisition of land and they cannot be differentiated in this regard on the ground of acquisition being under different enactment or by/for different authorities etc. This is the constitutional mandate under Article 14 of the Constitution.

(225) We have also held that compensation is not confined to monetary compensation but includes non-monetary compensation in the form of rehabilitation and resettlement.

(226) We have also held that Section 55 and Schedule of the Adhiniyam, 1965 read with the Act, 1894, if applied as

it is, without the aid of the Act, 2013, suffer from the vice of arbitrary and hostile discrimination of land/property owners in the matter of compensation, rehabilitation and resettlement rendering the provision susceptible to being declared unconstitutional being hit by Article 14 and 300A of the Constitution, rendering it ineffectual and unworkable.

(227) Once we have held while answering Question No. 5 that impugned provisions suffer from the vice of arbitrary and hostile discrimination then they become ineffectual and unworkable on the same line of reasoning as adopted in ***Jainul Islam*** (supra) thereby attracting Exception (c) to the application of principle of legislation by incorporation as discussed in the context of Question No. 3, thereby permitting the application of the provisions of the Act, 2013 or at least the principle contained therein to the extent referred above.

(228) Even if, as discussed in the context of Question No. 3, Exception (c) as discussed in ***M.V. Narasimhan*** (supra) and ***Jainul Islam*** (supra) is held to be not applicable in a case of repeal, though it would lead to highly unreasonable results, but assuming it to be so, even then the impugned provisions are liable to be saved from being declared unconstitutional by applying the provisions or the principle contained in the Act, 2013 as Courts always adopt a construction which leans towards constitutionality and not one which would render the provision unconstitutional.

(229) This is especially in view of the absence of any contrary intendment in the Adhiniyam, 1965 as regards application of more beneficial provisions of a new enactment repealing an earlier enactment which had been incorporated, rather, presence of an intendment in its favour in the form of Section 21 which has already been discussed earlier.

(230) We have already observed earlier in the context of Question No. 3 that there is no contrary intendentment in the Adhiniyam, 1965 to the application of more beneficial provision of the Act, 2013 as already held by the Supreme Court in ***Jainul Islam*** (supra) while interpreting Section 55 thereof, which is further strengthened by Section 21 of the Adhiniyam, 1965 which is evidence of the intent of the State legislature to have a more beneficial provision of restitution under the Adhiniyam, 1965 vis-a-vis the Act, 1894 by providing for rehabilitation in addition to monetary compensation, even though at that time there was no provision for rehabilitation under the Act, 1894 which was incorporated by Section 55 in the Adhiniyam 1965.

(231) Thus, it was never the intention of the State legislature that if at any subsequent stage, the Act, 1894 is repealed and a better enactment such as the Act, 2013 comes into place and its more beneficial provisions regarding compensation, including rehabilitation, then, it should not be made applicable to landowners/property owners in acquisition proceedings under the Adhiniyam, 1965, rather the intent for the reasons aforesaid and as

discussed in ***Jainul Islam*** (supra) was that provision more benefical than the Act, 1894 can be made applicable.

(232) The provision contained in Section 21 can be given meaning by applying the provisions of the principles contained in the Act, 2013 regarding rehabilitation and interpreting it in a manner to make it in consonance with Article 14, as the said provision as stated earlier does not mention the modalities and eventualities for it application, an aspect which has been dealt with in detail earlier in the context of Question No. 5.

(233) The provisions and principles contained in the Act, 2013 have to be applied to supplement the existing provision in the Adhiniyam, 1965 i.e. Section 21 regarding rehabilitation, to make it meanigfull and to bring parity between land/property owners in this regard and to avoid differential treatment.

(234) In view of the above, there is no reason why we should not extend the additional benefits of non-monetary compensation as envisaged under the Act, 2013 to land/property owners whose land is acquired under the Adhiniyam, 1965, as, all landowners belong to one class, especially when, not doing so will render the impugned provisions discriminatory and hit by Article 14, leaving us with no option but to declare the impugned provisions ultra vires the Constitution, whereas, the Courts should always make an endeavour to save a provision from being declared unconstitutional.

(235) We, in this context also, rely on Para 25, 40, 41 and 46 of ***Jainul Islam*** (supra) which have already been quoted earlier.

(236) We may, in this very context, point out that in the judgment of the coordinate bench in **Asha Verma and others vs. Commissioner, Awas Evam Vikas Parishad,Lucknow and others; Writ Petition No. 9373 (L/A) of 2021**, whether in the writ petition or the review application, as also in the cases at hand, the Board has accepted the fact that so far as compensation is concerned, it would be determined and granted in terms of the Act 2013, so, there is no dispute that even as per the Board, the new Land Acquisition Act 2013 will be applied so far as monetary compensation is concerned. We may refer to Paragraphs 67 and 68 of the Board's counter affidavit and Paragraphs 23 and 26 of the State's counter affidavit in Public Interest Litigation No. 637 of 2025 in this regard.

(237) Once it is the Board's own stand that monetary compensation in respect of acquisition of land under the schemes in question has been or is to be determined in terms of the new Land Acquisition Act 2013, though there is no provision for application of the provisions of the Act, 2013, meaning thereby, in spite of it, the provisions of Act, 2013 are being applied by the Board, obviously to avoid arbitrary and hostile discrimination in this regard and to confirm to Article 14 of the Constitution in keeping with the ratio of the decisions referred earlier, then there is no impediment nor does it lie in the Board's mouth or that of the State to resist application of other provision of the Act,

2013 pertaining to non-monetary compensation such as for rehabilitation, resettlement, if they are more beneficial and will also avoid differential treatment of land/property owners based on the law discussed earlier.

(238) We have already held while answering Question No. 5 that compensation includes non-monetary compensation in the form of rehabilitation and resettlement. The contention to the contrary has already been discussed and rejected by us.

(239) In this context, we may also refer to the Constitution Bench judgment in ***Offshore Holdings Private Ltd.*** (supra) para 122 and 125 which are as under:

"122. To the limited extent of acquisition of land and payment of compensation, the provisions of the Land Acquisition Act would be applicable for the reason that they are neither in conflict with the State law nor do such provisions exist in that Act. The provisions of the Land Acquisition Act relating thereto would fit into the scheme of the BDA Act. Both the Acts, therefore, can coexist and operate without conflict. It is no impossibility for the Court to reconcile the two statutes, in contrast to invalidation of the State law which is bound to cause serious legal consequences.

125. Having said so, now we proceed to record our answer to the question referred to the larger Bench as follows:

For the reasons stated in this judgment, we hold that the BDA Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of the BDA Act but with a specific exception that the provisions of the Land Acquisition Act insofar as they provide different *time-frames and consequences of default thereof, including lapsing of acquisition proceedings, cannot be read into the BDA Act. Section 11-A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under the provisions of the BDA Act.”*

(240) Though the question was of applicability of Sections 6 and 11A of the Land Acquisition Act, 1894 to the acquisition proceedings under BDA Act, 1976 and in that context while the Constitution Bench held that Sections 6 and 11A of the 1894 Act will not apply to the Bangalore Development Authority Act because the latter was a complete code in itself and the enactments were referable to two different Lists i.e., the State List and the Concurrent List, but even then, on the question of compensation, in spite of holding that the provisions of the 1894 Act had been to a limited extent in the BDA Act being conscious of the fact that there could not be differential treatment of landowners in this regard, nor even on the ground that acquisition was under two different enactments, may be by two different authorities, it categorically held that so far as the provisions of the Act, 1894, even if not incorporated, relating to compensation, etc. would be applicable to the acquisition proceedings under the BDA Act, therefore, the said decision is also an authority that Article 14 guarantees an equal treatment of landowners in the matter of compensation, has to be ensured and any deviation from this is anathema to the Constitution.

(241) We are of the considered opinion that the Constitution being the supreme law of the land and Article 14 being its cornerstone, the opposite parties before us

being bound by the said constitutional provision which ensures fair and equal treatment to similarly placed persons, instead of declaring the Section 55 of the Adhiniyam, 1965 ultra vires Article 14 of the Constitution of India, we should endeavour to save its constitutionality by applying the provisions of the 2013 Act, or at least the principles contained therein, in a manner so that land/property owners whose land is acquired, whether under the Adhiniyam, 1965 or the Act, 2013, are treated equally in the matter of compensation, rehabilitation and resettlement. This is the paramount constitutional requirement envisaged by Article 14 of the Constitution of India, and is in line with the law declared by the 7-Judges Bench of Hon’ble the Supreme Court in ***Vithal Rao*** (supra) as followed in subsequent decisions, as also the Constitution Bench decision in ***Offshore Holdings Private Ltd.*** (supra).

(242) In keeping with the decision of the 7-Judges Bench of the Hon’ble Supreme Court in ***Vithal Rao*** (supra), we can declare these provisions ultra vires the Constitution, but as has been observed in ***Jainul Islam*** (supra), when faced with such a situation, the Court should try to save the provision from being declared unconstitutional and, as, the Constitution Bench decision in ***Offshore Holdings Private Ltd.*** (supra) also in paras 122 and 125, even after holding that the Bangalore Development Authority Act was a complete Code and that the provisions of the Land Acquisition Act, 1894 had been incorporated therein for a limited purpose held that the provisions of the Act, 1894 pertaining to compensation and remedies prescribed in this

regard would certainly apply, therefore, to save the impugned provisions from being declared unconstitutional the provisions of the Act, 2013 or at least the principles contained therein with regard to restitution or fair compensation, including rehabilitation and resettlement, to the acquisition proceedings under the Adhiniyam, 1965 have to be applied to the compulsory acquisition under Adhiniyam, 1965.

(243) In either eventuality, whether we apply exception (c) to application of principle of legislation by incorporation as discussed in ***Jainul Islam*** (supra) or independent of it, the impugned provision can be saved by applying the provision of the Act, 2013 or at least the principles contained therein regarding determination and grant of compensation, rehabilitation and resettlement to acquisition proceedings under the Adhiniyam, 1965.

(244) We, therefore, hold that while initiating proceedings for compulsory acquisition under the Adhiniyam 1965 and the Act 1894, compensation, monetary and non-monetary in the form of rehabilitation and resettlement shall be on the same parameters as prescribed in the Act, 2013 and the principles contained therein and same benefits will have to be extended to the concerned landowners under the Adhiniyam, 1965. Any other understanding of the legal position will result in arbitrary and hostile discrimination and would not be sustainable under Article 14 of the Constitution of India. Impugned provisions are saved accordingly. Sections 21 and 55 are construed as aforesaid.

(245) Question No. 6 is answered accordingly in the affirmative.

(246) Before proceeding further we may refer to certain decisions relied by learned counsel for the parties.

(247) The decisions of the Supreme Court reported in ***U.P. Avas Evam Vikas Parishad v. Pushpa Lata Awasthi, (1995) 3 SCC 573; Ramesh Chandra Tiwari v. U.P. Avas Evam Vikas Parishad, (1997) 9 SCC 116*** and ***Satya Pal v. State of U.P., (1997) 9 SCC 117*** relied by counsel for opposite parties are all pre-Jainul Islam decisions, and the decision in ***Jainul Islam*** (supra) is by three Hon'ble Judges of the Supreme Court of India, apart from being a later decision, therefore, the earlier decisions do not help the cause of the opposite parties.

(248) The decision of the Coordinate Bench dated 25.08.2025 in ***Writ-C No. 8076 of 2025, Sarju Prasad Yadav and 5 Others vs. State of U.P. and Others***, relied upon by the learned Senior Counsel for the Board, does not help his cause for the reason, firstly, vires of the Adhiniyam, 1965 was not under challenge in the said case, therefore, the petition was disposed of on the ground that, although the petitioners therein submitted objections under Section 32 of the Adhiniyam, 1965, they did not apply for any permission to construct under Section 35(1) of the Act, and as there was a remedy available under Section 32(3) of the Adhiniyam, 1965. None of the issues involved herein were decided in the said case.

(249) The decision of a Division Bench of the Punjab and Haryana High Court, rendered in CWP No. 28804 of 2022, also does not persuade us to take any other view of the matter, in view of the discussion and reasons given hereinabove on relevant issues, especially as, the facts and issues involved therein were different from those involved herein. Vires of any enactment similar to the one impugned herein was not an issue before the Division Bench aforesaid.

(250) The judgment of Supreme Court of India dated 14.07.2025 rendered in ***Civil Appeal No. 7707 of 2025 (Estate Officer, Haryana Urban Development Authority and another vs. Nirmala Devi)*** also does not help the opposite parties as facts and issues involved therein were very different from those involved herein. The Scheme under consideration in the said case was held to be populist. In the case at hand there is a provision for a rehabilitation scheme under Section 21 of the Adhiniyam, 1965 itself.

(251) Reliance placed by Shri Asit Chaturvedi on another decision of Supreme Court of India in the case of ***State of Bihar vs. Rameshwar Pratap Narayan Singh and others; AIR 1961 SC 1649*** also does not have any application to the facts and issues involved in these cases before us, as, that was a case involving Article 31 A of the Constitution of India whereas the case at hand does not fall within the ambit of Article 31 A, as, these casees do not relate to agrarian reform and development.

(252) Shri Sudeep Kumar, learned Additional Advocate General for the State of U.P., placed heavy reliance upon a Full Bench decision of this Court reported in ***2018 (3) ALJ 462, Ramesh Chandra Sharma and Others vs. State of U.P. and Others***, however, this judgment stands overruled by the Supreme Court of India by a judgment reported in ***Ramesh Chandra Sharma and Others vs. State of U.P. and Others; (2024) 5 SCC 217***. The Supreme Court in ***Ramesh Chandra Sharma*** (supra) found the classification made by the authorities of 'Pushtaini' landowners and 'Gair-Pushtaini' landowners for payment of compensation at different rates, as violative of Article 14. This decision also does not help the cause of the opposite parties. The Supreme Court found that an artificial classification had been made between 'Pushtaini' landowners on the same class of landowners whose land was acquired by the same notification for the same purpose, which was disapproved. There was no challenge to the acquisition in the said case. In fact, this decision, far from helping the cause of the opposite parties, helps the cause of the petitioners on the point of violation of Article 14 and hostile discrimination and arbitrariness in extending differential treatment to landowners for the purposes of compensation.

(253) Shri Sudeep Kumar, learned Additional Advocate General for the State, also relied upon paragraphs 182 to 193 of the judgment of the Constitution Bench of the Supreme Court of India in the case of ***K.T. Plantation Private Limited (****supra****)***. However, we find that the enactment in question in the said case was referable to Article 31-A, which excluded application of Article 14 of

the Constitution of India to any such challenge. However, in the said case also, it was held that, otherwise, the challenge on the ground of Article 14 in land acquisition matters and that involving compensation, was available in the facts of a particular case, therefore, the said decision also does not persuade us to change our opinion in any manner on the issue discussed hereinabove. In the case at hand, we are concerned with differential treatment of landowners in the matter of compensation under different enactments. This was not the issue directly involved in the aforesaid Constitution Bench case.

(254) The decision relied by Shri Sudeep Kumar in ***Rajiv Sarin and another vs. State of Uttarakhand and Others ; 2011 (8) SCC 708***, also pertained to a matter referable to Article 31-A, that is, agrarian reforms and development, which is not the case here.

(255) The contentions of Shri Asit Chaturvedi, learned Senior Counsel for the Board, that objections under Section 31 of the Adhiniyam, 1965 were not filed, or if filed, no objection was raised herein and regarding availability of remedy under Section 32, are misplaced in the facts of the case where vires of certain enactments have been challenged and important legal issues are involved which could not have been seen under Section 32, assuming that the said remedy was available, as in this case, the schemes have been sanctioned by the State Government itself. Moreover, there is no estoppel against law, nor acquiescence against fundamental rights. The further contention that no reference was filed by the

petitioners under Section 18 of the Act, 1894, and that they have been "fence-sitters", is also not acceptable considering the important legal issues involved touching upon the vires of the Adhiniyam, 1965. As regards the petitioners being branded as "fence-sitters", vires of an enactment has been challenged and important legal issues have been raised which cannot be thrown out on such a plea, though we will keep this aspect in mind while considering the Relief to be granted as far as relevant.

(256) We have also considered the decision of the Hon'ble Supreme Court in ***Asha Verma*** (supra) and the decision dated 05.03.2024 in ***U.P. Avas Evam Vikas Parishad vs. Chandra Shekhar and others; Civil Appeal No. 3855 of 2024***. Though in the said decisions, earlier decision in ***Jainul Islam*** (supra) was not considered, and the said cases related to acquisition proceedings which were initiated prior to 01.01.2014, nevertheless the reference therein to Chapter II of the Act, 2013 in paragraph 20 of ***Chandra Shekhar*** (supra) has also been kept in mind by us.

Question No. 7:

(257) Much emphasis was laid by Shri Asit Chaturvedi, learned Senior Counsel appearing for the Board upon the judgment of a coordinate bench dated 07.02.2017 rendered in ***Writ Petition (Land Acquisition) No. 159 of 2014, Atul Sharma and another versus State of UP and others***, to contend that the application of the entire Act 2013 to the proceedings for acquisition under the 1965 Act read with

the provisions of the Land Acquisition Act 1894 as incorporated in the former Act, was repelled in the said case, therefore, this Court should follow the said judgment and if any contrary view is to be taken by this bench, then the matter, for reasons of propriety, will have to be referred to a larger bench for its consideration, specially as Special Leave Petition No. 18270 of 2017 against the judgment in ***Atul Sharma (****supra****)*** has been dismissed on 02.08.2017.

(258) In this context, he also referred to another decision of a division bench of this Court in ***Writ Petition No. 14698 (L/A) of 2016;, Keshav Ram & Others vs. State Of U.P. Thru. Prin. Secy., Housing & 6 Others***, out of which SLP (C) No. 14450-14451 of 2017 arose, which was also dismissed.

(259) We have gone through the judgment of the coordinate bench in Atul Sharma's case. The SLP against the said decision was dismissed *in limine*, therefore, it does not amount to affirmation of the decision in ***Atul Sharma*** **(**supra**)**, but only means that the Supreme Court was not inclined to exercise its jurisdiction under Article 136 of the Constitution of India.

(260) Likewise in the SLP which arose out of the judgment in Keshav Ram's case it was dismissed with the observation that the award had already been made on 9th September 15 in terms of the Act 2013, that is, the new Land Acquisition Act, 2013, thus, the order in SLP does not prejudice the cause of petitioners. The Division Bench

in ***Keshav Ram*** (supra) decided the case in terms of ***Atul Sharma*** (supra).

(261) Further, the judgment of Atul Sharma was relied by another coordinate bench in the case of **Asha Verma (**supra**)**, to dismiss the writ petition. A review application was filed in the said matter, bearing CM Application No. 79809 of 2021, which was also dismissed on 25.08.2021. Against the said judgment and order, a Special Leave Petition was filed by the aggrieved private persons/petitioners and the same was allowed after being converted into Civil Appeal Nos. 990-991 of 2025 and the Supreme Court applied Section 24 of the Act, 2013.

(262) Besides the above, when we peruse the division bench judgment in ***Atul Sharma*** **(**supra**)**, we do not find any conflict of opinion as expressed by us herein on the relevant issues with the said judgment.

(263) We may, in this context, point out that after going through records of writ petition of Atul Sharma, which we requisitioned, we find that that in the said case the notifications under Section 28 and 32 of the Adhiniyam 1965 had been issued on 15.04.1980, 15.07.1982, and the award had also been rendered on 23.09.1986, but the benefit of Section 24(2) of the new Land Acquisition Act 2013 was being sought in the garb that the entire Land Acquisition Act 2013 would apply once the Act 1894 had been repealed by it and in this context, the question of repugnancy and violation of Article 14 was raised, which was repelled by the coordinate bench in ***Atul Sharma***

(supra**)**. We have also rejected the claim of repugnancy, but, so far as the argument based on Article 14, that is, non-discrimination in the matter of compensation is concerned, the same was accepted by the division bench in ***Atul Sharma*** **(**supra**)** also. We may fruitfully refer to the second last paragraph of the said judgment, which reads as under:

"However, there is another shade of this discrimination which has to be avoided keeping in view the ratio of the Jainul Islam's case. To that extent we hold that if any acquisition is made by the authority under the 1965 Act after 01.01.2014 then it's actions or the assessment of compensation cannot be less than what has been contemplated in 2013 Act. The determination of the quantum of compensation, therefore, on principles will have to be applied in relation to acquisitions made by the Awas Vikas Parishad under the 1965 Act after 01.01.2014 as per the 2013 Act."

(264) Now, the above-quoted extract of the judgment clearly leaves no doubt that the argument of discrimination in the matter of compensation was accepted by the coordinate bench even in ***Atul Sharma*** **(**supra**)**, which can only be in the context of Article 14 of the Constitution of India, though, the argument with regard to Article 14 as to repugnancy and conflict between the Adhiniyam, 1965 and the subsequent enactments in the sense that the Act 2013 should be applied in toto to acquisition proceedings under the Adhiniyam, 1965, was repelled.

(265) We, even at the cost of repetition, may point out that it is not our view that the entire Act 2013 shall be applied *per se* to acquisition proceedings under the Adhiniyam,

1965. We have only considered the issue from the stand point of arbitrary and hostile discrimination in compensation for acquisition of property, therefore, the view which we have taken is in consonance with the division bench judgment in ***Atul Sharma*** **(**supra**)** and not contrary to it.

(266) The Division Bench judgment in **Atul Sharma** (supra) clearly held that in the matter of compensation there cannot be any differentiation or discrimination amongst land owners if the acquisition proceedings are subsequent to 01.012014, as in this case, and the same have to be in terms of the Act 2013.

(267) Moreover, in ***Atul Sharma*** **(**supra**)**, vires of the provisions of Adhiniyam 1965 as have been challenged in these cases, were not challenged.

(268) In view of the above, we do not find any need to refer the judgment in ***Atul Sharma*** **(**supra**)** to a Larger Bench, as, we have confined ourselves to the issue of compensation. The question as to whether compensation will include non-monetary compensation was neither raised, nor argued, nor decided by the coordinate bench in **Atul Sharma** (supra).

(269) Further, on the question of non-discrimination and non-differentiation of land owners in the matter of compensation and the relevance of Article 14 of the Constitution of India in this context, we are also bound by the seven-judge bench decision of the Supreme Court in

Vithal Rao, which has been followed in **Jainul Islam** and other decisions already discussed hereinabove.

<u>Question No. 8:</u>

(270) Whether the 'Board' ceased to be a local authority for the purposes of Act, 1894 and the Adhiniyam, 1965 on repeal of the Act, 1894 by the Act, 2013?

(271) Shri Sandeep Dixit, learned Senior Counsel also contended that the Board was deemed to be a local authority for the purposes of the Land Acquisition Act, 1894 by virtue of Section 3 of the Adhiniyam, 1965 and once the Land Acquisition Act, 1894 stood repealed by Section 114 of the Act, 2013 and the Schedule read with Section 55 of the Adhiniyam modified the Land Acquisition Act, 1894 in terms thereof by inserting clauses (i) and (j) after Section 3(h) of the Land Acquisition Act, 1894, the Act, 1894 itself having been repealed, the Board ceased to be a local authority for initiating acquisition proceedings, as such, only the appropriate authority under the Act, 2013 was competent to do so. The argument is fallacious for the reason, the provisions of the Act, 1894 have been incorporated by legislation into the Adhiniyam, 1965 subject to the modifications mentioned in the Schedule read with Section 55 thereof, and the Board under Section 3 of the Adhiniyam, 1965 is deemed to be a local authority for the purposes of the Land Acquisition Act, 1894, which will necessarily mean the Act, 1894 in its application to the Adhiniyam, 1965. Even otherwise, the Board has the

power to acquire land compulsorily under Section 17(a) read with Section 55 of the Adhiniyam, 1965, therefore, the said contention is not acceptable. Further, when we peruse the Schedule referred in Section 55 of the Adhiniyam, 1965, we find that by Section 3(i) inserted after Section 3(h) to the Act, 1894, the term ‘local authority’ has been defined as including the Board and these provisions, as they have been incorporated by legislation, have become an integral part of the Adhiniyam, 1965 . The contention is, therefore, misplaced and is rejected.

(272) Shri C.B. Pandey and Shri Rajeev Narayan Pandey appearing for the petitioners in some of the petitions have argued on the same lines as other counsel for the petitioners.

Question No. 9:

(273) **Relief:**

(i) Based on the discussion already made by us, while we see no reason to declare Sections 28, 31 and 32 of the Adhiniyam, 1965 ultra vires the Constitution, but, so far as Section 55 and Schedule thereof are concerned, we have already held while answering Questions No. 5 and 6 that these provisions, if applied as they are, without the aid of the Act, 2013, would be hit by Article 14 of the Constitution, therefore, for the reasons already given in the context of Question No. 6, instead of declaring the same ultra vires Article 14 and 300A, it is declared that the benefits under the Adhiniyam, 1965 to landowners whose land/property is acquired shall not be less than or less beneficial than the benefits i.e., monetary compensation and non-monetary compensation in the form of rehabilitation and resettlement, as provided under the Act, 2013. To facilitate the aforesaid, provision of the Act, 2013 or least the principles contained therein pertaining to compensation, rehabilitation and resettlement, as discussed, will have to be applied to acquisition proceedings under the Adhiniyam, 1965.

In view of the above, as there would be no difference in the benefits/compensation payable to landowners under the Adhiniyam, 1965, impugned provisions are saved and need not be declared ultra vires.

(ii) There are three schemes which are impugned. All the three schemes are part of a larger Plan in the form of Phase-I, Phase-II and Phase-III. They are in continuation and not entirely separate, geographically and otherwise. Moreover, land for these three schemes have been acquired through three modes i.e., purchase, land pooling and compulsory acquisition. Compulsory acquisition is only one part of it and we are only concerned with it but any interference in this regard by quashing the scheme itself would not be permissible and even if we quash the schemes *qua* compulsory acquisition of land or the compulsory acquisition only, even then, it will jeopardise the three schemes. Compulsory acquisition proceedings have been going on since 2020 (Ist Phase), 2022 (IInd Phase) and 2023 (IIIrd Phase). In respect of Scheme No. 1, the award has already been declared on 23.06.2023, 20.02.2025 and 02.09.2025 pertaining to Villages Shahnawazpur Manjha, Bariata Manzha, Tihura Manzha, respectively. In respect of one of the villages of Scheme No. 1, there is no specific challenge. In the second Scheme also, the award has been rendered on 23.12.2024. As regards the third Scheme, though the award has not been rendered as yet and possession has not taken, but, this scheme is in continuation of the earlier two schemes as stated earlier, therefore, looking into the entire scenario, if we quash the acquisition proceedings/schemes, we would be putting the clock back by several years and a lot of money and effort which has already been put into the schemes may go waste jeopardising the larger public purpose behind the schemes especially as some of the land has also been allotted to third parties for various purposes, therefore, taking a cue from the decision of the Supreme Court in ***Chandra Shekhar*** (supra), we, in exercise of our discretionary extraordinary jurisdiction under Article 226 of the Constitution of India, decline to quash these schemes/acquisition proceedings as has been prayed, instead, we order as under:-

(a) The opposite parties admit that compensation (monetary compensation) is determinable and payable to the landowners in lieu of acquisition of their property for the schemes in question as per the Act, 2013, as such, we direct that it will be paid accordingly.

(b) If the awards relating to monetary compensation already rendered, are required to be revisited to bring them strictly in tune with provision of the Act, 2013 then this shall be done forthwith and monetary compensation shall be redetermined and compensation or difference in compensation, as the case may be, shall be paid accordingly, unless already paid.

(c) We further direct the Board to conduct an exercise to ascertain as to how many of the land/property owners have been completely displaced, in the sense that their entire holdings or property has been acquired, and then, if it finds that there are such displaced persons, it shall frame a Rehabilitation Scheme under Section 21 of the Adhiniyam, 1965 read with the relevant provisions for rehabilitation as contained in the Act, 2013 and the principles contained therein, separately, and implement it, unless, this can be quantified in monetary terms in accordance with Section 31 and 47 of the Act, 2013 and principle contained therein and can be paid in full satisfaction of this obligation, as already discussed, in which case, the latter course shall be adopted . This shall be done, positively, within six months from the date of this order.

(iii) If any land/property owner is aggrieved by any award already rendered or rendered/modified hereinafter, it shall be open to him to challenge the same as per law and the issues decided by this judgment shall also be avaialable as grounds of challenge.

(iv) Henceforth, determination and grant/extension of monetary compensation, rehabilitation and resettlement under any acquisition proceedings under the Adhiniyam, 1965 will have to be undertaken in the light of the law enunciated hereinabove.

(274) All the writ petitions are ***disposed of*** in the aforesaid terms.

(275) Before parting, we would like to record our appreciation for the valuable assistance rendered by all the learned counsel for the parties including learned Amicus, Shri Apoorv Tewari.

(Manjive Shukla,J.) (Rajan Roy,J.)

August 6th, 2026
Arnima/Santosh

Digitally signed by :-
SANTOSH KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench