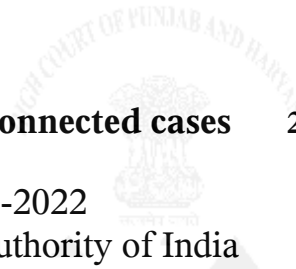


FAO-756-2022 and connected cases 2023:PHHC:048222 [1]

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

Date of decision: April 11<sup>th</sup>, 2023

1. FAO-756-2022 (O&M)  
National Highways Authority of India  
Versus  
Modan Singh and others  
...Appellant  
...Respondents
2. FAO-2065-2022  
Modan Singh  
Versus  
Union of India and others  
...Appellant  
...Respondents
3. FAO-577-2022  
Union of India and another  
Versus  
Manpreet Singh and others  
...Appellants  
...Respondents
4. FAO-2066-2022  
Manpreet Singh  
Versus  
Union of India and another  
...Appellant  
...Respondents
5. FAO-582-2022  
Union of India and another  
Versus  
Naseeb Kaur and others  
...Appellants  
...Respondents
6. FAO-2069-2022  
Naseeb Kaur  
Versus  
Union of India and others  
...Appellant  
...Respondents

- 
- FAO-756-2022 and connected cases**     2023:PHHC:048222     [2]
7.                    FAO-781-2022  
National Highways Authority of India  
...Appellant
- Versus
- Arjan Singh since deceased through his Lrs and others  
..,Respondents
8.                    FAO-3527-2022
- Arjan Singh since deceased through his LRs  
...Appellants
- Versus
- Union of India and others  
...Respondents
9.                    FAO-768-2022
- National Highways Authority of India  
...Appellant
- Versus
- Atma Singh and others  
...Respondents
10.                  FAO-2375-2022
- Atma Singh  
...Appellant
- Versus
- Union of India and another  
...Respondents
11.                  FAO-614-2022
- National Highways Authority of India  
...Appellant
- Versus
- Sher Singh @ Shamsher Singh and others  
...Respondents
12.                  FAO-3081-2022
- Sher Singh @ Shamsher Singh  
...Appellant
- Versus
- Union of India and others  
...Respondents
13.                  FAO-586-2022
- National Highways Authority of India  
...Appellant
- Versus
- Tara Singh and others  
..Respondents

FAO-756-2022 and connected cases 2023:PHHC:048222 [3]

14. FAO-2070-2022

Tara Singh

...Appellants

Versus

Union of India and others

...Respondents

15. FAO-763-2022

National Highways Authority of India

...Appellant

Versus

Hardial Singh and others

...Respondents

16. FAO-2392-2022

Hardial Singh

...Appellant

Versus

Union of India and others

...Respondents

17. FAO-767-2022

National Highways Authority of India

...Appellant

Versus

Jaswinder Singh and others

...Respondents

18. FAO-2393-2022

Jaswinder Singh

...Appellant

Versus

Union of India and others

...Respondents

19. FAO-570-2022

Union of India and another

...Appellants

Versus

Jangir Kaur and others

...Respondents

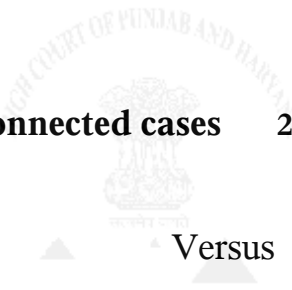
20. FAO-2063-2022

Jangir Kaur

...Appellant

<b>FAO-756-2022 and connected cases</b>		<b>2023:PHHC:048222</b>	<b>[4]</b>
Versus			
Union of India and others			...Respondents
21.	FAO-574-2022		
Union of India and another			...Appellants
Versus			
Bhagwant Kaur and others			...Respondents
22.	FAO-3087-2022		
Bhagwant Kaur			...Appellant
Versus			
Union of India and others			...Respondents
23.	FAO-604-2022		
National Highways Authority of India			...Appellant
Versus			
Jant Singh and others			...Respondents
24.	FAO-2381-2022		
Jant Singh and others			...Appellants
Versus			
Union of India and others			...Respondents
25.	FAO-603-2022		
National Highways Authority of India			...Appellant
Versus			
Tarsem Singh and others			...Respondents
26.	FAO-2076-2022		
Tarsem Singh			...Appellant
Versus			
Union of India and others			...Respondents
27.	FAO-610-2022		
National Highways Authority of India			.. Appellant

FAO-756-2022 and connected cases 2023:PHHC:048222 [5]



Versus

Darshan Singh and others ...Respondents

28. FAO-2072-2022

Darshan Singh

...Appellant

Versus

Union of India and others

...Respondents

29. FAO-607-2022

National Highways Authority of India

...Appellant

Versus

Harjinder Singh since deceased through LRs and others

...Respondents

30. FAO-3526-2022

Harjinder Singh since deceased through LRs

...Appellants

Versus

Union of India and others

...Respondents

31. FAO-605-2022

National Highways Authority of India

...Appellant

Versus

Harjinder Singh and others

...Respondents

32. FAO-2075-2022

Harjinder Singh

...Appellant

Versus

Union of India and others

...Respondents

33. FAO-602-2022

National Highways Authority of India

...Appellant

Versus

Mohinder Singh and others

.. Respondents

FAO-756-2022 and connected cases 2023:PHHC:048222 [6]

34. FAO-3092-2022

Mohinder Singh

...Appellant

Versus

Union of India and others

...Respondents

35. FAO-623-2022

Union of India and another

...Appellants

Versus

Sukhminder Kaur and others

...Respondents

36. FAO-2391-2022

Sukhminder Kaur @ Sukhwinder Kaur

...Appellant

Versus

Union of India and others

...Respondents

37. FAO-581-2022

Union of India and another

...Appellants

Versus

Sarwan Singh and others

...Respondents

38. FAO-3086-2022

Sarwan Singh @ Sarban Singh

...Appellants

Versus

Union of India and others

...Respondents

39. FAO-580-2022

Union of India and another

...Appellants

Versus

Supinder Singh and others

...Respondents

40. FAO-2395-2022

Supinder Singh

...Appellant

**FAO-756-2022 and connected cases** 2023:PHHC:048222 [7]

Versus

Union of India and others

...Respondents

41. FAO-587-2022

National Highways Authority of India

...Appellant

Versus

Kirpal Singh and others

...Respondents

42. FAO-2372-2022

Kirpal Singh

...Appellant

Versus

Union of India and others

...Respondents

43. FAO-758-2022

National Highways Authority of India

...Appellant

Versus

Ishwar Singh and others

...Respondents

44. FAO-2064-2022

Ishwar Singh

...Appellant

Versus

Union of India and others

...Respondents

45. FAO-575-2022

Union of India and another

...Appellants

Versus

Sammi Singh and others

...Respondents

46. FAO-2394-2022

Sammi Singh @ Shammi Singh

...Appellant

Versus

Union of India and others

...Respondents

- FAO-756-2022 and connected cases**      2023:PHHC:048222      [8]
47.            FAO-769-2022
- National Highways Authority of India
- ...Appellant
- Versus
- Balwant Singh and others
- ...Respondents
48.            FAO-3093-2022
- Balwant Singh
- ...Appellant
- Versus
- Union of India and others
- ...Respondents
49.            FAO-611-2022
- National Highways Authority of India
- ...Appellant
- Versus
- Shri Gurdwara Sahib through its members and others
- ...Respondents
50.            FAO-2991-2022
- Shri Gurdwara Sahib through its authorised members-Jant Singh and another
- ...Appellants
- Versus
- Union of India and others
- ...Respondents
51.            FAO-585-2022
- National Highways Authority of India
- ...Appellant
- Versus
- Randhir Singh and others
- ...Respondents
52.            FAO-2389-2022
- Randhir Singh
- ...Appellant
- Versus
- Union of India and others
- ...Respondents
53.            FAO-620-2022
- National Highways Authority of India
- ...Appellant



**FAO-756-2022 and connected cases** 2023:PHHC:048222 [9]

Versus

Kesar Singh since deceased through LRs and others ..Respondents

54. FAO-3129-2022

Kesar Singh since deceased though his LRs

...Appellants

Versus

Union of India and others

...Respondents

55. FAO-613-2022

National Highways Authority of India

...Appellant

Versus

Ajaib Singh and others

...Respondents

56. FAO-2061-2022

Ajaib Singh

...Appellant

Versus

Union of India and others

...Respondents

57. FAO-759-2022

National Highways Authority of India

...Appellant

Versus

Balvir Singh and others

...Respondents

58. FAO-3085-2022

Balvir Singh @ Balbir Singh

...Appellant

Versus

Union of India and others

...Respondents

59. FAO-762-2022

National Highways Authority of India

...Appellant

Versus

Gagandeep Kaur and others

...Respondents

<b>FAO-756-2022 and connected cases</b>		<b>2023:PHHC:048222</b>	[10]
60.	FAO-2390-2022		
	Gagandeep Kaur		...Appellant
		Versus	
	Union of India and others		...Respondents
61.	FAO-583-2022		
	Union of India and another		...Appellants
		Versus	
	Dalwara Singh and others		...Respondents
62.	FAO-2067-2022		
	Dalwara Singh @ Dalbara Singh		...Appellant
		Versus	
	Union of India and others		...Respondents
63.	FAO-578-2022		
	Union of India and another		...Appellants
		Versus	
	Jarnail Singh and others		...Respondents
64.	FAO-2068-2022		
	Jarnail Singh		...Appellant
		Versus	
	Union of India and others		...Respondents
65.	FAO-766-2022		
	National Highways Authority of India		...Appellant
		Versus	
	Gurbachan Singh and others		...Respondents
66.	FAO-2077-2022		
	Gurbachan Singh		...Appellant
		Versus	

<b>FAO-756-2022 and connected cases</b>		<b>2023:PHHC:048222</b>	[11]
Union of India and others			...Respondents
67.	FAO-765-2022		
National Highways Authority of India			...Appellant
	Versus		
Harpreet Singh and others			...Respondents
68.	FAO-3090-2022		
Harpreet Singh			...Appellant
	Versus		
Union of India and others			...Respondents
69.	FAO-761-2022		
National Highways Authority of India			...Appellant
	Versus		
Ranjit Singh and others			...Respondents
70.	FAO-3084-2022		
Ranjit Singh			...Appellant
	Versus		
Union of India and others			...Respondents
71.	FAO-779-2022		
National Highways Authority of India			...Appellant
	Versus		
Amarjit Kaur since deceased through LR and others			...Respondents
72.	FAO-2388-2022		
Amarjit Kaur since deceased through her LRs			...Appellants
	Versus		
Union of India and others			...Respondents
73.	FAO-774-2022		
National Highways Authority of India			...Appellant

**FAO-756-2022 and connected cases**      2023:PHHC:048222      [12]

Versus

Chand Singh through his LR and others

...Respondents

74.              FAO-2062-2022

Chand Singh since deceased through his LRs

...Appellants

Versus

Union of India and others

...Respondents

75.              FAO-771-2022

National Highways Authority of India

...Appellant

Versus

Avtar Singh and others

...Respondents

76.              FAO-3088-2022

Avtar Singh

...Appellants

Versus

Union of India and others

...Respondents

77.              FAO-773-2022

National Highways Authority of India

...Appellant

Versus

Major Singh and others

...Respondents

78.              FAO-2073-2022

Major Singh

...Appellant

Versus

Union of India and others

...Respondents

79.              FAO-772-2022

National Highways Authority of India

...Appellant

Versus

Balvir Singh and others

...Respondents

<b>FAO-756-2022 and connected cases</b>		<b>2023:PHHC:048222</b>	[13]
80.	FAO-2059-2022		
	Balvir Singh @ Balbir Singh		...Appellant
		Versus	
	Union of India and others		...Respondents
81.	FAO-584-2022		
	National Highways Authority of India		...Appellant
		Versus	
	Jaswant Singh and others		...Respondents
82.	FAO-2058-2022		
	Jaswant Singh		...Appellant
		Versus	
	Union of India and others		...Respondents
83.	FAO-579-2022		
	Union of India and another		...Appellants
		Versus	
	Charan Kaur @ Gurcharan Kaur and others		...Respondents
84.	FAO-780-2022		
	National Highways Authority of India		...Appellant
		Versus	
	Jasvir Singh through LRs and others		...Respondents
85.	FAO-653-2022		
	Union of India and another		...Appellants
		Versus	
	Balwinder Singh and others		...Respondents
86.	FAO-615-2022		
	National Highways Authority of India		...Appellant
		Versus	

**FAO-756-2022 and connected cases** 2023:PHHC:048222 [14]

Harwinder Singh and others  
...Respondents

87. FAO-572-2022

Union of India and another  
...Appellants

Versus

Kulwinder Singh and others  
...Respondents

88. FAO-2060-2022

Kulwinder Singh  
...Appellant

Versus

Union of India and others  
...Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. K.S. Kang, Advocate,  
Mr. D.K. Singal, Advocate,  
Mr. Sumit Gupta, Advocate,  
Mr. B.S. Toor, Advocate,  
Mr. Rahul Garg, Advocate and  
Mr. Vishavdeep Gupta, Advocate for NHAI.

Mr. Puneet Bali, Senior Advocate with  
Mr. Vishal Aggarwal, Advocate,  
Mr. Karan Nehra, Advocate and  
Mr. Nitin Mehta, Advocate for the land owners.

**AVNEESH JHINGAN, J.**

1. The Union of India/National Highways Authority of India(NHAI) and the land owners are before this Court in appeals under Section 37 of Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act').

2. The aforementioned appeals are being disposed of by a common order as these arise from one acquisition, involving similar facts and issues.

3. For convenience the facts are being considered from FAO-756-2022 and cross appeal FAO-2065-2022.

4. The facts shorn off unnecessary details are that notification

**FAO-756-2022 and connected cases** 2023:PHHC:048222 [15]

under Section 3-A of the National Highways Act, 1956 (for short, 'the 1956 Act') was notified on 25.5.2012, proposing to acquire lands of twenty five villages on National Highway No.64 from 50.700 Kms to 209.500 Kms (Patiala-Sangrur-Bathinda stretch). The notification under Section 3-D of the 1956 Act was issued on 3.5.2013. The Competent Authority for Land Acquisition (hereinafter referred to as 'CALA') on 15.1.2014 relying upon the prices fixed by Price Fixation Committee determined the compensation amount.

5. Aggrieved of the decision of CALA, the arbitration was initiated at the instance of land owners. The proceedings culminated in award dated 27.3.2019. The arbitrator relying upon the price fixed for village Badrukhan enhanced the amount from Rs.1.20 crores to Rs.1.50 crores per Acre for village Sohian, District Sangrur. The land owners who had received compensation before 31.12.2014 were held entitled to 30% solatium along with interest and for the land owners to whom the compensation was paid after 31.12.2014, solatium @ 100% was awarded. The claim that the land was commercial in nature was rejected as no evidence was adduced by either of the parties. Damages for segregation/severance was granted @ 30% of the market value subject to the condition that remaining land shall not be more than two acres. The land owners were held entitled to interest as prescribed under Section 28 of the Land Acquisition Act, 1894 (for short 'the 1894 Act'). The objections under Section 34 of the 1996 Act filed by NHAI as well as land owners were dismissed on 29.10.2021. However, the award was modified to the extent that amount of severance will be paid on market value of acquired land and not on value of the unacquired land. Further that the CALA would determine as to whether at the time of notification under

FAO-756-2022 and connected cases 2023:PHHC:048222 [16]

Section 3-A of 1956 Act, the land acquired was joint estate or partitioned.

The relevant portion of the impugned order is reproduced below

*“However, it is clarified that amount of severance will be paid on the market value of acquired land and not on the value of un-acquired land. It is also clarified that CALA will see whether at the time of notification under Section 3(A) of the National Highways Act the Khewat of acquired land was joint and whether any partition was reflected in the revenue record. So, each co sharer will not be separately entitled for the compensation on account of severance unless a partition is reflected in record.”*

6. Learned counsel for NHAI submitted that the provisions of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act') would not apply to the acquisition in question. The submission is fortified by arguing that the conditions in clause 4.6 (iii)(a) and (b) of the guidelines dated 28.12.2017 issued by the Ministry of Road Transport and Highways (hereinafter referred to as 'MORTH') (hereinafter referred to as 'guidelines') were complied with by NHAI. It is argued that the prior to 31.12.2014 full amount of the award was deposited. Decision of Rajasthan High Court in ***Gopa Ram v. Union of India, Civil Writ Petition No. 12746 of 2017***, decided on 22.1.2018 was relied upon to argue that the terms 'deposit' and 'paid' used in guidelines have same meaning. It is contended that market value was to be determined as per the provisions of 3G(7) of the 1956 Act and other provisions of the 2013 Act cannot be made applicable. The grievance is that modification of award under Section 34 of the 1996 Act is without jurisdiction. The alternative plea taken is that in case the 2013 Act applies, the compensation is to be calculated as per First Schedule and the determination of market value by the arbitrator was not in consonance



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with it.

7. Learned senior counsel appearing for the landowners argued that the Supreme Court in *Union of India and another v. Tarsem Singh and others, 2019(9) SCC 304* has decided the issue that 2013 Act would be applicable to the land acquired under the 1956 Act. He submitted that as on 31.12.2014, the compensation was not paid to the majority of land holdings under acquisition. Reliance is placed upon the guidelines to contend that the acquisition in question is covered under sub-clause (a) of clause 4.6 (iii) as the amount awarded was not paid to majority of the land holdings. He refutes the contention raised by learned counsel for NHA that there is compliance of clause 4.6(iii)(a) and (b) of the guidelines.

8. Learned senior counsel in the appeals filed by the landowners defends the award averring that the arbitrator has taken into consideration the relevant factors as per First Schedule of the 2013 Act. On instructions, it is submitted that the landowners are not pursuing the modified relief granted under Section 34 of the 1996 Act and arbitral award be sustained. It is contended that scope of interference under Section 37 of the 1996 Act is limited.

9. The relevant sections of the Acts, First Schedule of 2013 Act, order of Ministry of Rural Development and the guidelines issued by MORTH are reproduced:-

***“Sections 26, 28 and 105 (1), (2) and (3) of the 2013 Act***

***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.

*Explanation 4.*—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(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.”*

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**28. Parameters to be considered by Collector in determination of award.**—*In determining the amount of*

FAO-756-2022 and connected cases 2023:PHHC:048222 [20]

*compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—*

*firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;*

*secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;*

*thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's 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 Collector's 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, 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;*

*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 19 and the time of the Collector's taking possession of the land; and*

*seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.*

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***105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.—***

*(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.*

*(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the*

*enactments specified in the Fourth Schedule.*

*(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.*

**Section 28(1)(a) of the 1996 Act**

**28. Rules applicable to substance of dispute.—**

*(1) Where the place of arbitration is situate in India,—*

*(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;*

**Section 31(3) of the 1996 Act**

**31. Form and contents of arbitral award-**

**xx**

**xx**

**xx**

*(3) The arbitral award shall state the reasons upon which it is based, unless—*

*(a) the parties have agreed that no reasons are to be given, or*

*(b) the award is an arbitral award on agreed terms under section 30.*

**Section 3-G(7) of 1956 Act**

**3-G. Determination of amount payable as compensation-**

**xx**

**xx**

**xx**

*(7) The competent authority or the arbitrator while*

determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

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

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

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

### **First Schedule of the 2013 Act**

#### **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.

Sr. 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	To be determined as provided under	

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5.	land or building Solatium	section 29. 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.*

**Order of Ministry of Rural Development dated 28.8.2015:**

*S.O. 2368(E).—Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1<sup>st</sup> January, 2014;*

*And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;*

*And whereas, the notification envisaged under sub-*

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*section (3) of Section 105 of the RECTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31<sup>st</sup> December, 2014, thereby, inter-alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in Fourth Schedule to the RFCTLARR Act;*

*And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3<sup>rd</sup> April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;*

*And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30<sup>th</sup> May, 2015 to give continuity to the provisions of the RFCTLARR (Amendments) Ordinance, 2015 (4 of 2015);*

*And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;*

*As whereas, as per the provisions of article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31<sup>st</sup> day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Scheduled to the RFCTLARR Act as extended to the land owners under the said Ordinance;*

*And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the*



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*Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactment in the interest of the land owners;*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely :-*

*1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.*

*(2) It shall come into force with effect from the first day of September, 2015*

*2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”*

**Guidelines issued by MORTH:**

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**“4.6 Date of determination of market value of land**

*(i) Another related but important question is regarding the date on which the market value of land is to be determined in cases where land acquisition proceedings had been initiated under the NH Act, 1956 and were at different*

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*stages as on 31.12.2014. While there is no ambiguity regarding land acquisition proceedings initiated on or after 01.01.2015, this question assumes significance in view of the financial implications in respect of cases where the process of acquisition was a different stages as on 01.01.2015.*

*(ii) Section 26 of the RFCTLARR Act stipulates that "the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)". Same was the position under the 1894 Act. This is further fortified from the provisions contained in Section 69(2) of the RFCTLARR Act. As such, it is clarified that the relevant date of determination of market value of land is the date on which notification under Section 3 A of the National Highways Act, 1956 is published.*

*(iii) By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act, 1956 with effect from 01.01.2015. As such, the following is clarified:*

*(a) All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.*

*(b) In cases, where the land acquisition process was initiated and award of compensation under Section 3G had also been announced before 01.01.2015 but the full amount of Award had not been deposited by the acquiring agency with the CALA, the compensation amount would be liable to be determined in accordance with the First Schedule w.e.f. 01.01.2015;*

*(c) In cases, where the process of acquisition of land stood completed (i.e Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the*

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*CALA, and compensation paid to the landowners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process would be deemed to have been completed and settled. Such cases would not be re-opened.”*

10. The undisputed facts are that the CALA determined the compensation on 15.1.2014. The NHAI had not challenged the award of CALA. The arbitration was at the instance of the landowners. The full amount awarded was deposited by the acquiring agency with CALA before 31.12.2014 but the compensation was not paid to majority of the land holdings under acquisition.

11. The 1894 Act was repealed and 2013 Act came into force from 1.1.2014. The 2013 Act was enacted with the object to address the issue of rehabilitation and resettlement of the persons and families affected by land acquisition. The scope of 'public purpose' was restricted. A balance was sought to be achieved between the land acquisition, rehabilitation and resettlement as these were two sides of the same coin. By a single integrated law additional benefits beyond monetary compensation were provided to the families affected by involuntary displacement. The government's intervention in acquisition of land was limited to defence and certain development projects. Consent of 80% of the families affected by project was to be obtained through a prior informed process. Scientific method for calculation of market value was proposed for ensuring comprehensive package. The benefit of the new law was extended to all cases under the 1894 Act where the award was not passed or possession of land not taken.

12. Section 26 of the 2013 Act gives the criteria to be adopted for assessing the market value of the land. The proviso to sub-section(1) provides that the market value shall be determined as on the date of

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notification under Section 11 of this Act. As per sub-section (2), the market value to be calculated under sub-section (1) shall be multiplied by the factors specified in First Schedule to the Act. Sub-section (3) deals with the cases where the market value cannot be determined as per sub-sections (1) and (2). In such circumstances, the State Government shall specify the floor price and minimum price per unit of the land acquired based upon the calculation as per sub-section (1) considering similar types of land situated in the immediate adjoining areas.

13. Section 28 of the 2013 Act lays down seven parameters to be considered by the Collector for determining the amount of compensation.

14. As per Section 105 (1) of the 2013 Act, subject to the provisions of sub-section (3), the provisions of the 2013 Act shall not apply to the enactment specified in Fourth Schedule. The 1956 Act finds mention in Fourth Schedule. Under sub-section (3) of Section 105 within one year from the date of commencement of the 2013 Act, the Central Government by a notification could make applicable the beneficial provisions of the 2013 Act with regard to determination of compensation in accordance with First, Second and Third Schedule to the enactment specified in Fourth Schedule. The application of new Act shall be made with exceptions or modification that it may not result in reduction of compensation or dilution of the provisions of the 2013 Act.

15. Ordinance No. 9 of 2013 was promulgated on 31.12.2014 extending the provisions of the 2013 Act to the cases of land acquisition under the enactments specified in Fourth Schedule to the 2013 Act. To give continuity, Ordinance No. 4 of 2015 dated 3.4.2015 and Ordinance No. 5 of 2015 dated 30.5.2015 were promulgated. Ordinance No. 5 of 2015 lapsed on 31.8.2015. The order dated 28.8.2015 was issued by Central

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government exercising power under Section 113 of 2013 Act. The order came into effect from 1.9.2015. The Central Government extended the benefit of 2013 Act with regard to determination of compensation, rehabilitation and settlement to the land acquired under enactment mentioned in Fourth Schedule to the 2013 Act. The object of this was to extend the benefit of the 2013 Act uniformly to the land acquired under the enactments in Fourth Schedule of the 2013 Act.

16. Section 105(3) of the 2013 Act was substituted by three Ordinances and there was a confusion created by the circulars/clarifications issued from time to time. The guidelines were issued superseding the earlier guidelines. Both the parties have placed reliance on the guidelines.

17. It was clarified by guidelines that Section 24 of the 2013 Act is not applicable to the acquisition under the 1956 Act. Clause 4.6 (i) and (ii) elucidated that the relevant date for determination of the market value is the date on which notification under Section 3-A of the 1956 Act was published. Sub-clause (iii) of clause 4.6 deals with applicability of First, Second and Third Schedule appended to the 2013 Act. Sub-clause 4.6(iii) has three clauses. Clause (a) provides two instances in which compensation is to be paid in accordance with First Schedule to the 2013 Act. In all cases where award was not announced under Section 3-G of the 1956 Act till 31.12.2014 or where the award is announced but compensation not paid as on 31.12.2014 in respect of majority of land holding under acquisition. Sub-clause (b) deals with cases where the award under Section 3-G of the 1956 Act was announced before 1.1.2015 but the full amount of award was not deposited by the acquiring agency with CALA. In such cases also, the compensation is to be determined in

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accordance with First Schedule w.e.f 1.1.2015. As per sub-clause (c) where the process of land acquisition is deemed to be complete and settled, such cases are not to be re-opened. The pre-requisites under sub clause (c) are that on or before 31.12.2014, the award under Section 3-G of the 1956 Act was announced by CALA, the amount deposited by the acquiring agency with CALA and compensation paid to the land owners in respect of majority of land holdings under acquisition.

18. Section 3-G(7) of the 1956 Act stipulates four factors to be considered by the competent authority or the arbitrator for calculating the compensation to be awarded to the land owners.

19. As per Section 28(1)(a) of the 1996 Act, the arbitral Tribunal has to decide the dispute in arbitration as per the substantive law being in force in India at the relevant time.

20. Section 31(3) of the 1996 Act provides that the award must contain reasons for the conclusion arrived at, the exception under Section 31(3)(a) being where the parties have agreed that no reasons are to be given.

21. Before dealing with the issue in the present case, it would be relevant to have a little background. As per Section 3-J of the 1956 Act, the provisions of the 1894 Act shall not apply to the acquisition under the 1956 Act. The Division Bench of this Court in ***Golden Iron and Steel Forging v. Union of India and others, 2011(4) RCR (Civil) 375*** held the Section to be *ultra vires* to the extent it deprived grant of interest and solatium as per 1894 Act for land acquired under the 1956 Act. The judgment was challenged, the Supreme Court in ***Tarsem Singh's case (supra)*** upheld the view taken by this Court. It was held that the provisions of Section 3-J of the 1956 Act are violative of Article 14 of the Constitution of India to the

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extent it discriminates for grant of interest and solatium between land acquired under the 1894 Act and under the 1956 Act. It was considered that the Central Government issued Ordinances and order dated 28.8.2015 to extend the benefits of the 2013 Act to the acquisition under the enactments mentioned in Fourth Schedule to the 2013 Act. Further that the Government has accepted the principles laid down by the Supreme Court in *Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500*. The relevant para of *Tarsem Singh's case (supra)* is reproduced below:

*“It is thus clear that the Ordinance as well as the notification have applied the principle contained in Nagpur Improvement Trust (supra), as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of Nagpur Improvement Trust (supra) would apply to acquisitions which take place under the National Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore, require a re-look in the*

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*light of this development.[1]In any case, as has been pointed out hereinabove, the case of Chajju Ram (supra), has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court is correct, whereas the view of the Rajasthan High Court is not correct.”*

22. There is no dispute that from 1.1.2015 the beneficial provisions of the 2013 Act were made applicable to the land acquired under the 1956 Act and the other enactments specified in Fourth Schedule.

23. The issue in hand is whether the provisions of the 2013 Act would apply to the cases where CALA had announced the award and the amount deposited by the acquiring agencies with the competent authority prior to 31.12.2014, but the compensation was not paid to majority of the acquired land holdings?

24. The first contention raised by learned counsel for NHAI that the pre-conditions of clause 4.6(iii)(a) and (b) of the guidelines were fulfilled has a fallacy. It cannot be ignored that the entire exercise undertaken by the Central Government was with a view to extend the beneficial provisions of the 2013 Act to the land acquired under the 1956 Act. The laudable object being that there should be no discrimination between the land acquired under the 2013 Act and the 1956 Act. Three ordinances were promulgated amending Section 105(3) of the 2013 Act for extending the benefits of the 2013 Act to the land acquired under the 1956 Act and twelve other enactments mentioned in Fourth Schedule of the 2013 Act. Thereafter, the Central Govt. issued order dated 28.8.2015 exercising power under Section 113 of the 2013 Act. To remove the confusion that arose due to issuance of three ordinances and the order, guidelines were issued.



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25. It would be relevant to note that in sub-clauses (a) and (b) of 4.6 (iii) of the guidelines, two different expressions 'paid' and 'deposited' have been used. From the combined reading of clauses (a) to (c), it becomes crystal clear that only in completed and settled cases, the proceedings were not to be re-opened and in cases covered under sub-clauses (a) and (b), provisions of the 2013 Act shall apply to acquisition under the 1956 Act. This is in consonance with the law laid down in *Nagpur Improvement Trust's case (supra)* and the stand of Union of India as noted by Supreme court in *Tarsem Singh's case (supra)* that there should be no discrimination between the land acquired under the 2013 Act and other enactments. Further that except concluded matters the benefits should be extended to the rest.

26. For the cases to be considered as settled and completed under 4.6(iii)(c) of the guidelines, three things were to be done before 31.12.2014 i.e. the award to be announced by CALA under Section 3-G of the 1956 Act; amount to be deposited by the acquiring agency with CALA and lastly compensation to be paid to the majority of land holdings under acquisition. Sub-clause (b) makes First Schedule of the 2013 Act applicable to the cases where the award was announced before 1.1.2015 but full payment of the amount awarded was not deposited with CALA. All the cases where the award was not announced on 31.12.2014 or the compensation to the majority of the land holdings under acquisition was not paid as on 31.12.2014 the benefit of First Schedule of 2013 Act was made applicable by sub-clause (a).

27. It would be apt to note that in clause (a), the expression 'paid' is used whereas in clause (b), it is 'deposited'. The argument raised by learned counsel for NHA is based upon the reading of the word 'deposited'

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in clause (a) instead of 'paid'. The contention is against the rules of interpretation and would result in doing violence to the plain language of the guidelines and to the intent for issuing the guidelines.

28. It is admitted case that payment to majority of land holdings under acquisition was not made as on 31.12.2014.

29. If the argument of learned counsel for NHAI is accepted, the result would be that if the case of the land owners falls in sub-clause (b), they would be ousted from the benefit of 2013 Act in spite of the fact that they are fully covered under sub-clause (a). In such circumstances, the condition under sub-clause (a) would be rendered redundant. The clauses cannot be read in a manner which render the other clause otiose.

30. The issue has another angle. As per Section 3-G(1) of the 1956 Act, the amount determined by the competent authority for the land acquired shall be paid. Under Section 3-G(2) of the 1956 Act, amount is to be paid to the owner or any other person whose right of enjoyment in land is affected by acquisition. Whereas under Section 3-H(1), the Central Government shall in the manner prescribed deposit the amount determined under Section 3-G with the competent authority. Thereafter, in compliance of Section 3-H(2), the competent authority shall pay the amount on behalf of Central Govt. to the persons entitled. Section 3-G and 3-H deal with both the aspects, 'deposit' and 'paid/pay'. The expressions used in the guidelines are in consonance with the wording of Section 3-G and 3-H, hence the expressions are used with specific intent and cannot be interchanged.

31. Consequently, the provisions of the 2013 Act or determination of compensation shall apply to acquisition in question. The reliance on the decision of Rajasthan High Court in *Gopa Ram's case (supra)* by NHAI is

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of no avail. In that case, the admitted position was that the land owners had received compensation prior to 31.12.2014. The issue that deposit of compensation would tantamount to the payment made to land owners was not involved.

32. The issue raised that compensation is to be determined only as per factors mentioned in Section 3-G(7) of the 1956 Act is no longer *res integra*. The Supreme Court in ***National Highways Authority of India v. Sri P. Nagaraju @ Chelluvaish and another, 2022(3) RCR (Civil) 604*** held that Section 3-G (7) of the 1956 Act provides basic parameters of determination of compensation and after 2013 Act was made applicable to acquisition under the 1956 Act, the factors provided under Sections 26 and 28 of the 2013 Act will also apply. The relevant paragraph is reproduced below:

*“In that view of the matter, though Section 3G(7)(a) of the NH Act provides the parameters to be taken into consideration, it only provides the basic parameters to be taken note of, for determining the amount payable as compensation. While applying the said parameters for determination of compensation, since RFCTLARR Act, 2013 is also applicable as NH Act is contained in Fourth Schedule, the factors as provided under Section 26 and 28 RFCTLARR Act, 2013 including the seventh factor will also be applicable in appropriate cases for the determination of the market value as fair compensation for the acquired land. When land is acquired from a citizen, Articles 300A and 31A of the Constitution will have to be borne in mind since the deprivation of property should be with authority of law, after being duly compensated. Such law should provide for*

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*adequately compensating the land loser keeping in view the market value. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired. In that light, if Section 28 of RFCTLARR Act, 2013 is held not applicable in view of Section 3J of NH Act, the same will be violative of [Article 14](#) of the Constitution. In that circumstance, the observation in *Tarsem Singh (supra)* that Section 3J of NH Act is unconstitutional to that extent though declared so while on the aspect of solatium and interest, it is held so on all aspects relating to determination of compensation. In any event, the extracted portion of the notification dated 28.08.2015 is explicit that the benefits available to the land owners under RFCTLARR Act is to be also available to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, among which NH Act is one. Hence all aspects contained in Section 26 to 28 of RFCTLARR Act for determination of compensation will be applicable notwithstanding Section 3J and 3G(7)(a) of NH Act.*

*[Emphasis supplied]*

33. The net result of above discussion is that beneficial provisions of the 2013 Act would also be applicable to the acquisition in question.
34. The contention that the arbitral award be sustained having

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been passed after considering the evidence and recording reasons lacks merit. The arbitral award has to state reasons, unless the parties had agreed that no reasons are to be given.

35. In *Tamilnadu Electricity Board v. M/s Bridge Tunnel Constructions, 1997(4) SCC 121*, the Supreme Court observed:

“The Parliament has expressed the legislative judgement that the award shall state reasons upon which it is based unless parties have agreed otherwise or the award is covered on agreed terms under Section 30 of the new Act.

*Thus, the law on the award, as governed by the new Act, is other way about of the pre-existing law; it mandates that the award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award on agreed terms under Section 30 of the new Act, the award should state the reasons in support of determination of the liability/non-liability. Thereby, legislature has not accepted the ratio of the Constitution Bench in the Chokhamal Contractor's case that the award, being in the private law field, need not be a speaking award even where the award relates to the contact of private parties or between person and the Government or public sector undertakings. The principle is the same, namely the award is governed by Section 31(3).”*

36. The Supreme Court in *Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd., 2003(5) SCC 705* held:

*“Similarly, if the award is non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the*

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*Act, still however, it could not be set aside by the court. If it is held that such award could not be interfered, it would be contrary to basic concept of justice. If the arbitral tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.*”

37. In *M/s Som Datt Builders Ltd. v. State of Kerala, 2009(10) SCC 259*, the Supreme Court held:

*“ The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the arbitral tribunal. It is true that arbitral tribunal is not expected to write judgment like a court nor it is expected to give elaborate and detailed reasons in support of its finding/s but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the arbitral tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the arbitral tribunal upon which the award is based; want of reasons would make such award legally flawed. In what we have discussed above, it cannot be said that High Court was wrong in observing that no reasons have been assigned by the arbitral tribunal as to whether the period of completion extended by the employer for 18 months was due to reasons not attributable to the claimant. However, in our view, the High Court ought to have given the arbitral tribunal an opportunity to give reasons.”*

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38. The Supreme Court in *State of Chhattisgarh v. Sale Udyog Private Ltd., (2022) 2 SCC 275*, held:

*“The law on interference in matters of Awards under the 1996 Act has been circumscribed with the object of minimising interference by courts in arbitration matters. One of the grounds on which an Award may be set aside is “patent illegality”. What would constitute “patent illegality” has been elaborated in *Associate Builders v. Delhi Development Authority*, where “patent illegality” that broadly falls under the head of “Public Policy”, has been divided into three sub-heads in the following words:-*

*“...42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn, contains three subheads:*

*42.1. (a) A contravention of the substantive law of India would result in the death knell of an Arbitral Award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of *Section 28(1)(a)* of the Act, which reads as under:*

*“28. Rules applicable to substance of dispute. – (1) Where the place of arbitration is situated in India-*

*(a) In an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”*

*42.2. (b) A contravention of the *Arbitration Act* itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of *Section 31(3)* of the Act, such award will be liable to be set aside.*

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42.3. (c) Equally, the third subhead of patent illegality is really a contravention of [Section 28\(3\)](#) of the Arbitration Act, which reads as under:

“28. Rules applicable to substance of dispute. – (1) – (2)

\*\*\*

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.” [2015] 3 SCC 49

*This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.”*

39. The Supreme Court in ***Sri P. Nagaraju @ Chelluvaish and another's case (supra)*** held:

*“Leaving aside the facts in the instant case for a while, if in a matter as against the determination of the market value by the SLAO, the land loser had referred to the exemplar sale deeds and seeks higher compensation than prescribed in the guidance value, and in that circumstance, if no reasons are assigned by the learned Arbitrator for such determination and either approves the SLAO award or awards a lesser amount than the actual entitlement, in such circumstance the arbitration process which is thrust on the land loser should not be an impediment and limited interference should not be a reason to deny the just and fair compensation. In such cases while examining the award in the limited scope under [Section](#)*



34 of Act, 1996, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of Section 31(3) and amount to patent illegality. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background

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*of requirement under RFCTLARR Act, 2013.*

*[Emphasis supplied]*

40. The Supreme Court in ***Dr.A.Parthasarathy vs E. Springs Avenues Pvt Ltd, 2022(1) Apex Court Judgments (SC) 130*** held:

*“3. By the impugned judgment and order passed by the High Court in exercise of power under section 37 of the Arbitration and Conciliation Act, 1996, the High Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the Arbitrator for fresh decision. As per the law laid down by this Court in the case of ***Kinnari Mullick and Anr. v. Ghanshyam Das Damani (2018) 11 SCC 328*** and ***I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd. (2022) SCC OnLine SC 4***, the same is wholly impermissible. Only two options are available to the Court considering the appeal under section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator.”*

41. The law is settled that the arbitral award shall contain reasons to support the conclusion arrived at, unless otherwise agreed between the parties. Non-recording of reasons in consonance with Section 31(3) of the 1996 Act results in violation of Section 28(1)(a) of the 1996 Act, rendering

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the award patently illegal for not deciding the proceedings in accordance with the substantive law. Further that in exercise of powers under Sections 34 and 37 of the 1996 Act, neither the award can be modified nor the matter can be remanded back to the same arbitrator. The court can set aside the award, relegating the parties for fresh arbitration or consider the appeal on merits on the basis of material on record but within the restricted jurisdiction of Section 37 of the 1996 Act.

42. From the perusal of the award passed by CALA and the arbitral award, it is evident that no reasons are recorded. In award of CALA, there is only a passing reference that reports of Tehsildar and Naib Tehsildar were called with regard to potential of the land. Reliance was placed upon the prices fixed by District Price Fixation committee for determination of compensation. From the reading of the arbitral award, it cannot be even made out as to whether the compensation was determined as per the provisions of the 1956 Act, 1894 Act or 2013 Act. The compensation was enhanced from Rs. 1.20 crores to Rs.1.50 crores per acre relying upon the compensation awarded for the land in village Badrukhan. There being no difference in quality of soil was the only fact taken into consideration. The arbitrator had not even mentioned that the Collector rates of two villages were same. There cannot be strait-jacket formula for determining the just compensation, it is to be determined on the facts and circumstances of the each case. It would be a dangerous proposition to lay down that the entire chunk of the acquired land should be considered uniformly ignoring all other factors. It would not be appropriate for this Court under Section 37 of the 1996 Act to comment further on the determination of compensation. Suffice to say, the minimum requirement was that the arbitrator should have dealt with the

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factors to be considered and given reasons either for applying the said factors or for not adopting them. The non-speaking award is patently illegal being violative of Sections 28(1)(a) and 31(3) of the 1996 Act.

43. In view of above discussion, the issue raised by learned counsel for the land owners for sustaining the award as the modified relief granted under Section 34 of the 1996 Act was not being pressed has been rendered academic and needs no further expounding.

44. Resultantly, the impugned orders and the award are set aside. The parties would be at liberty to avail remedies in accordance with law for initiation of fresh arbitration.

45. The appeals are disposed of accordingly. Pending application(s), if any, are also disposed of.

46. Before parting, it would be relevant to note that under the 1956 Act, the land owners have to part with their land involuntarily. To achieve the object for expeditious acquisition, the mechanism has been provided under the 1956 Act which provides for determination of the compensation by CALA. In case of grievance, an arbitrator is appointed by the Central Govt. There is no quarrel with the proposition that the arbitrator is not to give reasons as are required in a judgment but it cannot be lost sight of the fact that in such cases arbitral award has far reaching effect due to number of land owners involved and the area under acquisition. It would be desirable if the arbitrators record reasons, making evident as to how the material available was dealt with. These small steps to an extent will curtail litigation and the time spent in litigation can be reduced. Majority of the persons affected are the farmers and rustic villagers who would be able to make out as to whether just compensation has been awarded for land acquired or not. In the case in hand, the

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acquisition was of 2012, the arbitral award was passed in March 2019, an earnest effort should be made by the arbitrator to conclude the matter expeditiously. The delay deprives the land owners (most of them being farmers) of the just compensation. The appreciation of land prices with the passage of time adds to the dissatisfaction of the land owners vis-a-vis the compensation awarded considering the market value on the date of notification. The grant of interest in itself does not redress the grievance. The proceedings should culminate in arbitral award expeditiously.

**(AVNEESH JHINGAN )  
JUDGE**

**April 11<sup>th</sup>, 2023**

mk

Whether reasoned/speaking	Yes
Whether reportable	Yes