

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.3537 OF 2019
ALONG WITH
INTERIM APPLICATION NO.838 OF 2020
AND
INTERIM APPLICATION (L) NO.30586 OF 2022**

1.	Godrej & Boyce Manufacturing Co. Ltd., A Company incorporated under the provisions of the Indian Companies Act, 1913, having its office at Pirojsha Nagar, Vikhroli, Mumbai – 400 079.	...Petitioner
Versus....	
1.	The State of Maharashtra, through the Government Pleader, High Court, Mumbai.	
2.	The Union of India, through the Government of India, having its office at Federation of Railway Officer's Association Office, 256-A, Rail Bhavan, Raisina Road, New Delhi – 110 001.	
3.	The Revenue and Forest Department, through the Joint Secretary to the State Government, having its address at Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya, Mumbai – 400 032.	
4.	Deputy Collector (Land Acquisition) No.7, having his address at Pratapgarh Co-op. Hsg. Soc., Vinayak Apartment, Opp. Haffkine Institute, 1 st Floor, Parel Village, Mumbai – 400 012.	
5.	The Collector, Mumbai Suburban District, having his address at Administrative Building, 10 th Floor, Government Colony, Opp. Chetana	

	College, Bandra (East), Mumbai – 400 051.	
6.	National High Speed Rail Corporation Limited, having its address at Block 1104, Tower 2, India Bulls Finance, Elphinstone, Mumbai – 400 013.	
7.	Municipal Corporation of Greater Mumbai, having its office address at Head Quarter, Near Chhatrapati Shivaji Terminus, Mumbai 400 001.	...Respondents

Mr.Navroz Seervai, Senior Counsel with Ms.Arati Raghavan and Mr.Shanay Shah i/b M/s.Bachubhai Munim & Co. for the Petitioner.

Mr.Ashutosh Kumbhakoni, Senior Advocate / Special Counsel with Ms.Jyoti Chavan, AGP for the State and Mr.Akshay Shinde, “B” Panel Counsel for the Respondent Nos.1, 3, 4 and 5.

Mr.Anil Singh, Additional Solicitor General with Mr.T.J. Pandian, Mr.Aditya Thakkar, Mr.D.P. Singh, Ms.Savita Ganoo, Mr.Abhishek Bhadang, Ms.Smita Thakur, Mr.Chaitanya Chavan and Mr.Pranav Thackur for the Respondent No.2.

Mr.Anil Singh, Additional Solicitor General with Mr.Aditya Thakkar, Ms.Akshay Puthran, Mr.Sargam Agrawal and Mr.Abhiraj Rao i/b M/s.S.K. Singhi & Co. LLP for the Respondent No.6.

Ms.R.M. Hajare i/b Mr.Sunil Sonawane for the Respondent No.7.

Mr.Jagatsing Girase, Deputy Collector, Land Acquisition, State of Maharashtra present in Court.

CORAM : **R.D. DHANUKA & M.M. SATHAYE, JJ.**
RESERVED ON : **20th December, 2022**
PRONOUNCED ON : **9th February, 2023**

Judgment :- (per R.D.Dhanuka, J.)

. Rule. Mr.Ashutosh Kumbhakoni, learned Senior Counsel waives service for the respondent nos.1, 3, 4 and 5. Mr.Anil Singh, learned Additional Solicitor General waives service for the respondent nos.2 and 6. Ms.Hajare, learned counsel waives service for the respondent no.7. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a declaration that the impugned Amendment viz. Section 3 of the Maharashtra Act No.XXXVII of 2018 is repugnant to and does not prevail over the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the said Fair Compensation Act”) and is ultra vires Article 14, 254 (1) and 300A of the Constitution of India and is *void ab initio*.

3. The petitioner has filed interim application bearing No.838 of 2020 *inter alia* praying for an order and directions against the respondent to produce the letter dated 27th March, 2020 and the entire material produced before the Hon’ble President of India for his assent under Article 254(2) of the Constitution of India to the Legislative Assembly Bill No.7 of 2018 passed by the Maharashtra Legislative Assembly and Maharashtra Legislative Council.

4. The petitioner has filed interim application bearing lodging No.30586 of 2022 *inter alia* praying for amendment in the Writ Petition

and for seeking injunction against the respondents from taking any steps or acting pursuant to or in furtherance of or implementing the purported award dated 15th September, 2022.

5. The petitioner also seeks to challenge the constitutional validity of the first proviso to Section 25 of the said Fair Compensation Act on the ground that the same confers unguided, uncanalised and unfettered powers on the concerned authority, is vague, is contrary to and subverts the object and purpose of the said Act, is in violation of Article 14 and 300A of the Constitution of India and must accordingly be struck down. Consequently, all actions taken in pursuance of or furtherance of the first proviso to Section 25 of the said Act must be declared illegal and *void ab initio*.

6. The following questions fell for consideration of this Court :-

(i) Whether the petitioner is estopped from challenging the acquisition of the writ land in view of the order passed by this Court on 4th September 2019 in Writ Petition No.2131 of 2018 and has thus no locus to file this writ petition?

(ii) Whether the petitioner voluntarily offered the second alternate land for acquisition and such an offer having been accepted by the respondents, the petitioner could challenge the acquisition proceedings or could raise a dispute only regarding compensation ?

(iii) Whether the petitioner has discharged the burden to show that there is a clear transgression of the constitutional principle and thus the

presumption in favour of the constitutionality of the proviso to Section 25 of the Fair Compensation Act cannot be drawn?

(iv) Whether the personal hearing granted to the petitioner by one Deputy Collector and the impugned award passed by the another Deputy Collector would be in violation of the principles of the natural justice and the award can be set aside on that ground?

(v) Whether the acquisition proceedings have lapsed?

(vi) Whether the first proviso to Section 25 conferring the powers upon the appropriate Government to grant multiple extensions to make an award is uncanalised, unregulated, arbitrary, vague and is unconstitutional?

(vii) Whether the respondent no.1 i.e. State of Maharashtra had acted beyond the scope of entrustment under Article 258(1) of the Constitution of India by making State Amendment i.e. Section 10A to the said Fair Compensation Act?

(viii) Whether the corrections ordered in the impugned award are beyond the scope of Section 33 of the said Fair Compensation Act?

(ix) Whether the acquisition of the writ land of the petitioner being for a public project of the national importance, the Court can interfere with the acquisition proceedings culminating into an award on the ground of alleged violation of the principles of natural justice or the ground of rectification of the award not being in compliance with Section 33 of the

said Fair Compensation Act or the remedy of the petitioner would be only to seek enhancement of the compensation under Section 64 of the said Fair Compensation Act ?

(x) What are the discretionary powers of the High Court under Article 226 of the Constitution of India while dealing with the challenge to the acquisition proceedings?

(xi) Whether the Bullet Train Project being the project of the National Importance and the public interest, such public interest would prevail over the private interest of the petitioner being the owner of the writ property?

7. It is the case of the petitioner that on 30th July 1948, a Deed of Conveyance was executed between one Nowroji Pirojsha (as vendor) and the petitioner (as purchaser) for the lands constituting the entire village of Vikhroli including Sutadari lands. In the month of April, 1953, the petitioner filed a suit before this Court against the then State of Bombay seeking a declaration that it was the owner of village of Vikhroli. On 8th January 1962, a consent decree was passed declaring that some portions of land in Vikhroli vested in the Government under Section 4(c) of the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951. The consent decree further declared that all the other lands in Vikhroli were the property of the petitioner.

8. On 17th April 1973, the respondent no.1 filed a title suit in this Court bearing Suit No.679 of 1973 seeking a declaration that the suit lands (Survey No.61 to 65) in Vikhroli Village belongs to it. On 1st

December 2014, The Right to Fair Compensation and Transparency in Rehabilitation and Acquisition, Resettlement (Amendment) Ordinance, 2014 was promulgated.

9. It is the case of the petitioner that in the month of September 2017, the Petitioner learnt from the website of Respondent No.6 that the latter had commenced to take steps in furtherance of the Bullet Train Project, which is a high-speed rail corridor connecting the cities of Mumbai (in Maharashtra) and Ahmedabad (in Gujarat).

10. On 27th March 2018, The Secretary (Legislation) to the Government of Maharashtra issued a letter to the Secretary to the Governor of Maharashtra, requesting that the Government of India be moved to obtain the consent of the Hon'ble President of India for the Maharashtra Amendment Bill, as the provisions thereof were repugnant to the provisions of the Fair the Compensation Act. On 26th April 2018, The Maharashtra Act No. XXXVII of 2018 ("Maharashtra Amendment") that was enacted by of Respondent No. 1 came into effect.

11. On 21st May 2018, The Petitioner filed Writ Petition No.2131 of 2018 (First Writ Petition) before the Bombay High Court for certain reliefs in respect of the proposed acquisition of its land in the village of Vikroli (including on the ground that the plot sought to be acquired for the purpose of the Bullet Train Project would split the Petitioner's land in a manner that would render it unfit for its intended purpose of construction of International Permanent Exhibition Cum Convention Complex).

12. On 19th June 2018, this Court passed an order recording the fact that, as the Petitioner was to submit a proposal in respect of alternate land that could be acquired for the Bullet Train Project, the matter should be adjourned. On 31st July 2018, this Court passed an order, inter alia recording that parties had exchanged proposals in respect of acquisition of an alternate plot of land from the Petitioner. On 25th September 2018, Respondent No.4 issued a Public Notice wherein the Respondent authorities were agreeable to acquire land bearing CTS No. 51/A (part) in village Vikhroli (“the Subject Plot”) from the Petitioner for the Bullet Train Project by way of private negotiation.

13. On 15th November 2018, District Level Valuation Committee, under the Chairmanship of the Collector, Mumbai, (Respondent No.5), arrived at a compensation amount of Rs.572,92,45,598/- for the Subject Plot. On 29th January 2019, Respondent No. 6, by its letter addressed to the Petitioner, stated that the District Level Committee under the Chairmanship of the Mumbai Collector Suburban District (Respondent No.5) had fixed the compensation in respect of the Subject Plot at Rs.5,72,92,45,598/-. The letter stated that “NHSRCL is bound by the rate/land value as determined by District Collector based on the determination done by the District Level Committee.”

14. On 9th August 2019, Respondent No. 2, through the Ministry of Railways, issued a Notification stating that the Hon’ble President of India under Article 258(1) of the Constitution of India, directed, inter alia, that in respect of the acquisition of land for the Bullet Train Project, the

Government of Maharashtra was to perform the functions of the Central Government under the provisions of the Fair Compensation Act.

15. On 20th August 2019, Respondent No.3 issued a notification (“First Impugned Notification”) under Section 10A of the said Fair Compensation Act, stating that certain lands identified in the Schedule (the Subject Plot) were required for the Bullet Train Project and that Respondent No. 1 “...in public interest exempts the said Project from the application of the provisions of Chapter II and Chapter III of the said Act”.

16. It is the case of the Petitioner that on 4th September 2019, this Court passed an order disposing the Writ Petition No.2131 of 2018 whilst specifically reserving all rights and contentions of the parties, including the Petitioner’s right to challenge the valuation of the Subject Plot which may be determined by Respondent No. 4 at the time of acquisition of the same.

17. On 25th October 2019, Respondent no.5 issued a notification under Section 11(1) of the Fair Compensation Act (“Second Impugned Notification”), stating inter alia that the Subject Plot is required for a public purpose viz. the Bullet Train Project.

18. It is the case of the Petitioner that on 2nd November 2019, after the disposal of the First Writ Petition, the Petitioner came across the Impugned Notifications (i.e. the First and Second Impugned Notifications). According to the Petitioner, in the month of December,

2019, the MVA Government came into power in the State of Maharashtra, and the Chief Minister announced that he will review the Bullet Train Project.

19. On 5th December, 2019, being aggrieved by the Impugned Notifications (i.e. the First and Second Impugned Notifications), the instant Petition was filed by the Petitioner. On 17th January 2020, after institution of the Petition, Respondent no.5 issued a declaration under Section 19(1) of the Fair Compensation Act (“Third Notification”), inter alia stating that Respondent No.5 *“...is satisfied, after considering the reports if any, made under sub-section (2) of Section 15, that the said land is needed to be acquired for the said public purpose and therefore declared under the provisions of sub-section (1) of section 19 of the said Act, that the said land was needed for said public purpose:.”* This was published on 21st January, 2020.

20. This matter was on board on 18th December, 2018 when this Court after recording reasons refused to grant ad-interim relief in favour of the petitioner. The said order dated 18th December, 2018 is not impugned by the petitioner.

21. On 27th January 2020, pursuant to the Third Impugned Notification, Respondent No.4 issued a Notice under Section 21(1) and (4) of the Fair Compensation Act (“Fourth Impugned Notification”), declaring that the Government had decided to seize/take possession of Subject Plot. Interested persons were called upon to submit their nature of interest and the compensation claimed in respect of the Subject Plot. The date for the hearing of such claims was fixed on 28th February 2020.

22. On 30th January 2020, the Petitioner filed Interim Application No.1 of 2020 in the present Writ Petition seeking production of:

- (a) the entire material produced before the Hon'ble President of India for his assent under Article 254 (2) of Constitution of India; and
- (b) the Report prepared by Respondent No.5 under Section 15(2) of the Fair Compensation Act.

23. On 14th February 2020, this Court permitted the Petitioner to amend the Petition to impugn the Third and Fourth Impugned Notifications and carry out consequential amendments thereto, which amendments were carried out by the Petitioner on 21st February 2020. On 15th June 2020, the Petitioner received a letter dated May 8, 2020 addressed by one Mr.Vikas Gajare (as Respondent No. 4), scheduling a hearing in terms of the Fourth Impugned Notification on 17th June 2020.

24. On 19th June 2020, pursuant to a praecipe filed by the Petitioner, this Court listed the matter. This Court directed that in view of Respondent No. 4 adjourning the hearing to 15th July 2020, and agreeing to conduct the same over video conference, the Petitioner may attend the same without prejudice to its rights and contentions in the present Petition. The order further recorded that should the Petitioner be aggrieved by the order/Award passed consequent to such hearing, it would be at liberty to move this Court, seeking amendments to the Petition, and for appropriate urgent interim relief.

25. On 15th July 2020, the Petitioner appeared before Respondent No. 4 (one Mr. Vikas Gajare) through its advocates, without

prejudice to its rights and contentions in this Petition. The Petitioner also filed detailed Written Submissions dated 14th July 2020. On 15th October 2020, Respondent No.6 issued a letter to the Chief Engineer, MCGM, with a copy marked to Respondent No. 4 and requested for the necessary modification to the reservation of the Subject Plot under the Development Plan 2034.

26. On 8th December 2020, Mr. Vikas Gajare (holding office as Respondent No. 4) prepared and forwarded a draft Award for the approval of the Divisional Commissioner, Konkan Region. On 20th February 2021, after scrutinising the draft award in respect of the Subject Plot, the Divisional Commission, Konkan Region, issued a letter directing that further compliances be ensured.

27. On 18th January 2021, Notification under the first proviso to Section 25 was issued by Respondent No. 5 purporting to extend, by a period of 12 months, the period for making the award in respect of acquisition of the Subject Plot. The Notification was published by the Government Printing Press. On 13th January 2022, Notification under Section 25 of the Fair Compensation Act was published by the Government Printing Press, purporting to extend the period for passing the award in respect of the Subject Plot by twelve months (from 17th January 2022).

28. On 20th January 2022, Respondent No. 5 re-published the extension notification originally published on 13th January 2022. On 20th April 2022, the Petitioner received a notice dated 23rd February 2022,

issued under Section 37 (1AA) of the MRTTP Act, for necessary modifications to reservation under the Development Plan 2034 in respect of the Subject Plot. On 26th April 2022, Respondent No.1 scheduled a hearing on 10th June 2022, for the Petitioner to make its submissions and objections to the proposed modifications to the Development Plan 2034 in respect of the Subject Plot.

29. On 19th May 2022, in pursuance of the directions/compliance required under the letter dated 21st February 2021 by the Divisional Commissioner (Konkan Division), Respondent No. 6 scheduled a site visit to the Subject Plot on 24th-25th May. On 10th June 2022, the Petitioner submitted its objections/suggestions to the proposed modifications to the Development Plan 2034 in respect of the Subject Plot.

30. On 15th September 2022, Respondent No. 4 conducted a hearing in respect of the Petitioner's submissions, including as to the valuation of the land and Award is issued in respect of the Petitioner's Subject Plot ("Impugned Award").

31. On 20th September 2022, the Respondent No.1, sought permission to deposit the compensation purportedly awarded under the Impugned Award. On 11th October 2022, this Court permitted the Petitioner to amend the Petition to impugn the Impugned Award and the two extension Notifications dated 18th January 2021 and 20th January 2022 issued under Section 25 of the Fair Compensation Act, which amendments were carried out by the Petitioner on 13th October 2022.

32. On 14th November 2022, the Petitioner received a letter from Respondent No.4 scheduling a hearing on 18th November 2022 for correcting the Impugned Award. On 18th November 2022, the hearing for correcting the Impugned Award was held by Mr.Jagatsing Girase (for Respondent No.4) wherein the Petitioner made detailed submissions, and filed its written submissions and supporting authorities.

33. On 23rd November 2022, Ms. Nidhi Chaudhary, in her capacity as Collector (Respondent No. 5) signs and issues an order, directing that the Impugned Corrections be carried out to the Impugned Award that was passed by Respondent No.4. This order of Respondent No. 5 was forwarded to the Petitioner under cover of a letter dated 24th November 2022 issued by Jagatsing Girase (for Respondent No.4).

34. On 1st December 2022, this Court permitted the Petitioner to impugn the Impugned Corrections to the Award, which amendment was carried out by the Petitioner on 1st December 2022 itself.

35. The matter was on board on 20th December, 2022 when the learned senior counsel appearing for the parties concluded their respective arguments. Learned ASG, for respondent nos.2 and 6 and Mr.Kumbhakoni, learned senior counsel for the respondent nos.1, 3 to 5 made an oral application that the respondents be permitted to take possession of the writ property during the pendency of the pronouncement of the judgment subject to further orders that would be passed by this Court. At the request of the learned senior counsel for the petitioner, this Court granted an opportunity to file brief note on some of the issues. He made a statement that in case the petitioner does not

succeed in the petition, his client would not raise any issue in the proceedings, if required to be filed before the Hon'ble Supreme Court or any other court that the acquisition proceedings had lapsed also on the ground that the respondents did not take possession within a period of 3 months from the date of passing of such award. This Court accepted the statement made by the learned senior counsel for the petitioner.

**BRIEF BACKGROUND LEADING TO FILING OF THE
CAPTIONED PETITION:**

36. It is the case of the petitioner that by and under a writing (Kowl) dated 7th July 1835 and a further writing dated 30th November 1837, a Lease in perpetuity was granted by the then acting Collector of Thane to one Framjee Cawasjee Banajee, inter alia, of the entire village of Vikhroli. Thereafter, by diverse assignments and acts in law and ultimately by a Deed of Conveyance dated 30th July 1948, executed between Nowroji Pirojsha and the Petitioner herein, the lands constituting the entire village of Vikhroli, including the Sutidari lands were sold, assigned, transferred and conveyed to the Petitioner herein.

37. It is submitted that the subject land being CTS No. 51/A(part) admeasuring 39,570 sq. mtrs or thereabouts [equivalent to New Survey No. 64 (part)] (the “**Subject Plot**”) does not form a part of Old Survey No.15 (part) and/or Old Survey No.16 (part) which had vested in the then State of Bombay (now Respondent No.1 herein) by virtue of the aforesaid Consent Decree. The Subject Plot vested in the Petitioner, along with other parcels of land at Village Vikhroli (i.e. other than Old Survey No.15 (part) and Old Survey No.16 (part)).

38. It is submitted that on or about 17th April 1973, Respondent No. 1 filed a suit in this Court being Suit No.679 of 1973, seeking a declaration that the lands bearing New Survey Nos. 61 to 65 in Village Vikhroli purportedly belong to Respondent No. 1 (“**Title Suit**”). The Title Suit is till date pending before this Court and is at the stage of cross examination of the defendants’ witnesses (the Petitioner herein).

39. It is submitted that in or about September 2017, the Petitioner learnt through the website of National High Speed Rail Corporation Ltd. (“NHSRCL - Respondent No. 6) that it had commenced to take steps in furtherance of the Bullet Train Project between Mumbai and Ahmedabad. Since several notices were issued in connection with the intended acquisition of a different pieces of land from the Subject Plot and in view of the action proposed to be taken by the Respondent authorities, the Petitioner was constrained to approach this Court by filing Writ Petition No. 2131 of 2018 (the “**First Writ Petition**”), seeking reliefs directing Respondent Nos. 1 to 4 therein to accept the proposal of the Petitioner as recorded in the letters dated 19th April 2018 and 3rd May 2018.

40. It is submitted that in the First Writ Petition, this Court was pleased to pass an order dated 21st May 2018, directing the Respondents to intimate the Petitioner in writing, before taking any coercive action against them. On 19th June 2018, Respondent No. 2 made a statement that the parties were discussing a proposal for an alternate plot and thus the matters stood adjourned as parties were in active negotiations. Correspondence was exchanged between the parties in respect of an alternate plot that could be acquired for the purpose of Bullet Train

project. On 31st July 2018, this Court recorded that certain proposals were exchanged in respect of an alternate plot i.e. being the Subject Plot to be made available for acquisition for the Bullet Train project.

41. It is submitted that on 25th September 2018, the Deputy Collector (Respondent No.4) issued a public notice wherein the Respondent authorities were ready and willing to acquire the Subject Plot from the Petitioner. The said public notice stated that the proposal was submitted by NHSRCL (Respondent No. 6) to the Collector (Respondent No.5) to purchase lands by private negotiation for the Bullet Train Project and the Subject Plot was described in the schedule set out in the public notice.

42. It is submitted that whilst the private negotiations were ongoing, NHSRCL (Respondent No.6) had offered to pay an aggregate compensation amount of approximately Rs.572,92,45,598/- for the Subject Plot based on a determination made by a District Level Valuation Committee under the Chairmanship of the Collector, Mumbai, (Respondent No.5), in its report dated 15th November 2018. The District Level Valuation Committee had assessed the compensation on the basis that the Subject Plot was private land. This was communicated to the Petitioner by NHSRCL's (Respondent No.6) letter dated 29th January 2019. In view of the then ensuing private negotiations, the First Writ Petition was listed from time to time. However, the negotiations failed.

43. It is submitted that accordingly, by order dated 4th September 2019, the First Writ Petition was disposed of by "*reserving all rights and contentions of the respective parties including the Petitioner's right to*

challenge the valuation of the said alternate land that may be determined by Respondent No. 3 in the event of the Respondents proceeding to take steps to acquire the same under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitating and Resettlement Act, 2013”.

44. It is submitted that however, during the pendency of the First Writ Petition, on 20th August 2019, the Joint Secretary to the Government of Maharashtra (Respondent No.3) issued a notification under Section 10A of the Fair Compensation Act, stating that certain lands identified in the Schedule therein were required for the Bullet Train Project. This notification has been impugned in the present Petition as the First Impugned Notification. The First Impugned Notification was neither disclosed to this Court nor to the Petitioner in the First Writ Petition.

45. It is submitted that on 25th October 2019, the Collector (Respondent No.5), in furtherance of his purported powers under Respondent No.1's notification dated 19th January 2015 issued a notification under Section 11(1) of the Fair Compensation Act, inter alia, stating that the Subject Plot was required for public purpose, i.e. the Bullet Train Project. This notification has been impugned in the Petition as the Second Impugned Notification. The Second Impugned Notification purports to exempt the Bullet Train Project from applicability of provisions of Chapter II and Chapter III of the Fair Compensation Act in exercise of its powers under Section 10A of the Fair Compensation Act, as amended by the Maharashtra Amendment.

46. Learned senior counsel for the petitioner relied upon Article

254 (2) of the Constitution of India and submitted that the Fair Compensation Act deals with acquisition falls in the concurrent list. He submitted that the State Government has suppressed the documents produced before the Hon'ble President of India while applying for assent to the proposed amendment to Section 10 of the Fair Compensation Act. The assent obtained by the State Government from the Hon'ble President of India is not valid assent and hence, ultra vires under Article 254 (1) of the Constitution of India. He made an attempt to distinguish the judgment of the Gujarat High Court in case of ***Jigarbhai Amratbhai Patel vs. State of Gujarat, 2019 SCC OnLine Guj 6988***. He relied upon various judgments on the issue of constitutional validity of Section 10A introduced by the State Amendment by the State of Maharashtra.

47. It is submitted that the State Government has exempted the Bullet Train Project from applicability of the provisions of Chapter II and III on behalf of the Central Government by exercising delegated powers. Every action taken by the State Government for the said Bullet Train Project has been taken for and on behalf of the Central Government. All its action has to be taken under the control of the Central Government. All Notifications issued by the State Government are illegal and contrary to the provisions of the Fair Compensation Act. The State Government has no power to acquire any land for multi state project and then to grant exemption from applicability of the provisions of Chapter II and III under Section 10A is not a Central Statute.

ON LOCUS OF THE PETITIONER

48. It is submitted that the first step towards acquisition of the

Petitioner's land for the purpose of the said Project was taken in the year 2018, when the Deputy Collector (Respondent No.4) issued a Notice dated 26th March 2018 proposing to acquire by way of private negotiation, a specific plot of the Petitioner's land at Vikhroli. By letters dated 19th April 2018 and 3rd May 2018 addressed to the Deputy Collector (Respondent No.4) and NHSRCL (Respondent No.6) respectively, the Petitioner gave a composite offer for the acquisition of an alternate plot of land owned by the Petitioner. This composite offer was expressly stated to be "*.....without prejudice to the rights and contentions of the Petitioner that the mandatory provisions of Chapter II and Chapter III of the Fair Compensation Act have not been complied with....*". The Petitioner had thus from the outset made the acquisition of its land conditional upon the appropriate government carrying out its mandate under the Fair Compensation Act (and Chapters II and III in particular). This fact was to the knowledge and notice of the Respondents.

49. It is submitted that the Respondents' contentions proceed on a misreading of order dated 4th September 2019. The said order does not take away the right of the Petitioner to challenge the procedure adopted by the Respondent Authorities under the Fair Compensation Act. Moreover, the said order in paragraph 3, clearly records that despite efforts of the parties, they were unable to reach a mutually acceptable agreement. This in itself shows that the proposed acquisition of the Subject Plot by direct purchase/private negotiations had failed and thus, the parties were free to adopt and explore their remedies in law, which is evident from the express language of paragraph 5 of the said order dated 4th September 2019.

50. It is submitted that during the pendency of the First Writ Petition till its disposal by the order dated 4th September 2019, the First Impugned Notification was neither disclosed to this Court nor to the Petitioner, therefore the question of the order dated 4th September 2019 precluding the present challenge cannot and does not exist. It is submitted that for the aforesaid reasons, the Respondents can hardly contend that the Petitioner cannot adopt appropriate remedies in law by virtue of the order dated 4th September 2019.

**IMPUGNED AWARD PASSED IN VIOLATION
OF THE PRINCIPLES OF NATURAL JUSTICE**

Award was not issued by the individual who heard the Petitioner

51. It is submitted that the Impugned Award violates the basic principles of natural justice as it was not passed by the individual who heard the Petitioner's submissions *inter alia* as to the lack of jurisdiction and the compensation claimed. It is submitted that Section 21 of the Fair Compensation Act requires that the Collector to publish a public notice, stating that the government intends to take possession of certain land. Persons interested are required to be given notice to appear for a hearing (to state the nature of their interest in the land, and the particulars of compensation claimed).

52. It is submitted that Section 23 of the Fair Compensation Act stipulates that "...*the Collector shall proceed to enquire into objections (if any) which any person interested has stated pursuant to a notice given under Section 21....*", and further, that the Collector "...*shall make an award under his hand*". It is thus essential that an award is issued by the

very person who has heard and considered the objections under Section 23. He submitted that a notice under Section 21 was issued by Respondent No. 4 (Ms. Sonali Mule) on 27th January 2020. The hearing pursuant to the notice under Section 21 was eventually held on 15th July 2020 pursuant to the order dated 19th June, 2020 passed by this Court in the present Writ Petition, viz. “without prejudice to the contentions raised in the above Writ Petition”. On this date, the Petitioner (through its advocates), appeared before Respondent No.4 (one Mr. Vikas Gajare). The Petitioner (through its advocates) also filed detailed written submissions in advance of the hearing on 15th July 2020. However, the Impugned Award has been issued after more than two years by Respondent No.4 (one Mr. Santosh Bhise).

53. It is submitted that the principles of natural justice demand that the person who hears a party must be the one who renders the decision in respect of the party. In support of this submission, he relied upon the judgment in cases of ***Gullapali Nageswara Rao & Ors. vs. Andhra Pradesh State Road Transport Corporation & Anr.***, AIR 1959 SC 308 (para 31) (Constitution Bench); ***Automotive Tyre Manufacturers Association v Designated Authority & Ors.***, (2011) 2 SCC 258 (para 83 & 84).

54. It is submitted that this principle has been affirmed by the Hon’ble Supreme Court in the context of land acquisition proceedings too. In the context of hearings under Section 5A of the Land Acquisition Act, 1894, the Hon’ble Supreme Court has repeatedly affirmed that if one person were to hear, and another to decide, then personal hearings become an empty formality. In support of this submission, he relied upon

the judgments of the Supreme Court in cases of ***Laxmi Devi v State of Bihar & Ors., (2015) 10 SCC 241***, at para 9; ***Union of India & Ors. v Shiv Raj & Ors., (2014) 6 SCC 564***, at paras 12, 17 to 20.

55. It is submitted that Section 23 of the Fair Compensation Act underscores this principle by its plain terms. Section 23 is titled “Enquiry and land acquisition award by Collector”. The provision requires that the Collector to “*enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 21*”. It then provides that the Collector “*...shall make an award under his hand...*”. It thus, statutorily affirms the cardinal principle of natural justice that he who hears *must* decide.

56. It is submitted that the respondents have attempted to gloss over the fact that the award was passed by an officer other than the one who granted a hearing to the Petitioner by contending that the draft award was prepared by Mr. Vikas Gajare (who had given the Petitioner a personal hearing on 15th July 2020), and Mr. Santosh Bhise (under whose name the Award was issued) merely complied with the objections as raised by the Divisional Commissioner, Konkan Region) on the draft award prepared by Mr. Vikas Gajare.

57. It is submitted that the draft award as prepared by Mr. Vikas Gajare is *not* the same as the Impugned Award. Accordingly, the Award is a nullity and stands vitiated as a result of this serious violation of the principles of natural justice.

58. Learned senior counsel for the petitioner invited our

attention to Rule 18 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014 (**the said “2014 Rules”**) and submitted that the Divisional Commissioner under Section 5 of the Maharashtra Land Revenue Code is the Chief Controlling Authority in matters in his division. Since the Divisional Commissioner is the Custodian and Chief Controlling Authority of Land Revenue in his division, his administrative approval has been mandated in the 2014 Rules. He submitted that the said 2014 Rules does not contemplate a hearing to be given by the Divisional Commissioner, Konkan Division as this was an internal administrative process of the State Government. He submitted that these rules are framed by the State Government. The State Government cannot do any act indirectly which it cannot do it directly.

59. Mr.Seervai, learned senior counsel fairly admitted that it is not the case of the petitioner in the writ petition that the Divisional Commissioner, Konkan Division was required to grant personal hearing to the petitioner on the draft award submitted by the Deputy Collector or that the recommendations made by the Divisional Commissioner, Konkan Division were in violation of principle of natural justice.

**WHETHER LAND ACQUISITION PROCEEDINGS
HAVE LAPSED IN TERMS OF SECTION 25?**

60. It is submitted that the Petitioner shall demonstrate that the entire proceedings for the acquisition of the Subject Plot have lapsed as:

(i) The first proviso to Section 25 is unconstitutional, and should be struck down as arbitrary, vague, conferring uncanalised and unregulated power to the “appropriate Government”;

(ii) Without prejudice to the aforesaid submission, the first proviso to Section 25, properly construed, only permits a *single* extension. Thus, the second extension notification irrespective of the date of its publication, is invalid, and the entire proceedings for the acquisition of the Subject Plot stand lapsed;

(iii) The Extension Notifications are void and invalid, as they are passed in contravention of the clear requirements of the second proviso to Section 25 as (i) there were no objective circumstances warranting the extensions of the time period for making the award; and (ii) the Extension Notifications were not published on the website of the authority concerned as mandated.

61. It is submitted that the declaration dated 17th January 2020 under Section 19(1) in the present proceedings was published on 21st January 2020. The Award was passed almost thirty-two months thereafter i.e. on 15th September 2022.

62. It is submitted that the Respondents have sought to contend that despite the substantial delay in the making of the Award, the land acquisition in respect of the Subject Plot had not lapsed as it contends that Respondent No.5 purported to issue two successive notifications (“**Extension Notifications**”) to extend the time period for making the award in respect of the Petitioner’s Subject Plot:

(i) *First*, a decision dated 18th January, 2021 published in the State Government Gazette on 18th January, 2021, to extend the period to make an award by twelve (12) months; and

(ii) *Second*, a further decision dated 19th January, 2022, that was published in the State Government Gazette on 20th January, 2022.

**PROVISO TO SECTION 25 OF THE FAIR COMPENSATION ACT
WHETHER CONTEMPLATE MULTIPLE EXTENSIONS ?**

63. It is submitted that Section 25, by its plain terms, only permits a *single* extension of the statutory period of 12 months (and does not contemplate multiple extensions). The first proviso to Section 25 provides the “appropriate Government shall have the power to extend the period of twelve months...”. The power to extend is *only* in respect of the period of twelve months. The period of twelve months can only be extended by a *single* extension, as should an appropriate government issue *multiple* extensions, the successive extensions would no longer be in respect of *the period of twelve months*, but of the further *extended period*.

64. It is submitted that multiple extensions of the statutorily prescribed time period (twelve months from the publication of the declaration under Section 19(1)) would defeat the object and purpose of securing fair compensation for land owners. The objects and purpose of the Fair Compensation Act states that it seeks to ensure “... *comprehensive compensation package for landowners*” through a “... *scientific method for calculation of the market value of land*”. *Should acquisition proceedings remain pending indefinitely, the determination of compensation on the basis of out-dated market value of the land would be illusory, and would defeat the central objective of securing fair compensation for the land owners.*”

65. It is submitted by the learned senior counsel that under Section 25 of the said Fair Compensation Act, the Collector is bound to make an award within 12 months from the date of publication of declaration under Section 19 and if no award is made within that time, the entire proceedings for the acquisition of the land shall lapse. Though Appropriate Government is empowered to grant extension, if the award could not be made by the Collector within the period of twelve months from the date of publication of Declaration under Section 19, only one extension at the most is permissible. The word “twelve months” referred to in the first proviso to Section 25 of the Fair Compensation Act, implies that there is no question of any multiple extensions permitted under the said proviso to Section 25.

66. It is submitted that by second extension, if any, the Government is not extending the period of 12 months prescribed under Section 25 but the Government has further extended the extended period of 12 months initially granted by it. In this case, the State Government has granted two extensions of one year each which is not permissible. He submitted that though the first extension could be more than 12 months, only one extension was permissible and not more than one.

67. It is submitted that the case of the respondents that the State Government could grant two extensions or more is totally contrary to the object and purpose of empowering the State Government to grant extension under first proviso to Section 25 of the Fair Compensation Act. There are no principles prescribed under the said Section to guide the authority about the time of extension and period of extension. The

presumption of the constitutional validity of the second extension would be ultra vires.

68. In his alternate arguments, learned senior counsel submitted that the first proviso to Section 25 has to be read down. In support of this submission, he relied upon the judgments of the Supreme Court in case of *Dwarka Prasad Laxmi Narain vs. State of Uttar Pradesh & Ors. (supra)* and in case of *Shayara Bano Vs. Union of India & Ors. (supra)*.

69. It is submitted by the learned senior counsel that the entire acquisition proceedings have thus lapsed after expiry of initial period of 12 months prescribed under Section 25. He submitted that the second extension has been issued after the lapse of acquisition proceedings and is thus of no consequences.

70. In his alternate submission, learned senior counsel submitted that the State Government has not produced any material on record to demonstrate that any circumstances existed for grant of such extensions justifying the same. He submitted that neither the first nor the second extension met the test of first proviso to Section 25 of the Fair Compensation Act which requires demonstration of circumstances existing thereby justifying the extensions.

71. It is submitted that if the Court were to hold that the language of the first proviso to Section 25 permits more than one extension, the provision would be unconstitutional being ultra vires Articles 14 and 300A of Constitution of India, as being manifestly arbitrary as well as expropriatory. It is well settled that a Court should

endeavour to so interpret a provision as to save it from the vice of unconstitutionality, if necessary by reading down the provision. In the present case the Court ought to read down the first proviso to Section 25 and restrict its applicability to a single extension of the period of twelve months in order to save it from unconstitutionality. In support of this submission, he relied upon the judgment in case of ***Jagdish Pandey v Chancellor, University of Bihar, (1968) 1 SCR 231***, at para 9.

72. It is submitted that applying the principles enunciated by the Hon'ble Supreme Court above, it is clear that the first proviso to Section 25 cannot be construed to permit multiple extensions. The second extension notification is therefore invalid, illegal and ultra vires the statute. Accordingly, the entire proceedings for the acquisition of the Subject Plot stood lapsed on 17th January 2022 (when the first extension expired), and the Impugned Award is accordingly void ab initio and a nullity.

**WHETHER THE FIRST PROVISOR TO
SECTION 25 IS UNCONSTITUTIONAL?**

73. It is submitted that the first proviso to Section 25 confers upon the “appropriate Government” with the discretion to extend the statutorily prescribed time period for making the award (i.e. twelve months), if in its opinion, circumstances exist to justify the same. This provision is inherently arbitrary and vague as it (i) contains no prescriptions or guidelines as to what circumstances warrant the exercise of such a discretion; (ii) provides no stipulation as to the duration/extent to which the time period for making the award may be extended. It thus confers wide, uncontrolled, uncanalised power on the “appropriate

Government”, that is unguided by any criteria or guidelines. There is also no procedure or mechanism by which a party that is aggrieved by an improper or unlawful exercise of such discretion may challenge the same.

74. It is submitted that the Hon’ble Supreme Court has recognised that a law that confers power on an authority is arbitrary if the power is “...*unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority.*” In support of this submission, he relied upon the judgment in case of ***Dwarka Prasad Laxmi Narain v State of Uttar Pradesh & Ors., (1954 1 SCR 803)***, at para 7,8 and 9.

75. It is submitted that the Hon’ble Supreme Court in case of ***Shayara Bano v Union of India & Ors.*** (2017) 9 SCC 1, has articulated the test for when a law may be regarded as manifestly arbitrary (and therefore unconstitutional, for violating Article 14 of Constitution of India) (para 101): “*The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation Under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well Under Article 14.*”

76. It is submitted that the Extension Notifications are a striking instance of how the uncanalised nature of the power under the proviso to

Section 25 can be abused: the time period for making an award has been extended to *thrice* the statutorily contemplated period. There is no determining principle as to what circumstances warrant the exercise of the power (for instance, whether it can be exercised to the detriment of land owners, or whether it can be exercised if the reason for delay in making the award are attributable to the “appropriate Government”). In the present instance, the test of manifest arbitrariness would apply squarely to the first proviso to Section 25 as it is wholly irrational how a time-bound expropriatory procedure under the Fair Compensation Act can be extended indefinitely by the relevant authority, in a manner that negates one of the fundamental objectives of the statute i.e. to protect the rights of land owners *inter alia* by securing fair compensation.

77. It is submitted that the Hon’ble Supreme Court, in case of ***Thakur Raghbir Singh v. Court of Wards, Ajmer, [1953] S.C.R. 1049***, was concerned with the question of the reasonableness of the provisions of S. 112 of the Ajmer Tenancy and Land Records Act (XLII of 1950) which provided that “...if a landlord habitually infringes the rights of a tenant under this Act, he shall, notwithstanding anything in s. 7 of the Ajmer Government Wards Regulation, 1888 (1 of 1888), be deemed to be a 'landlord who is disqualified to manage his own property' within the meaning of s. 6 of the said Regulation and his property shall be liable to be taken under the superintendence of the Court of Wards.” The determination of the question whether a landlord habitually infringed the rights of a tenant was left to the Court of Wards. While holding the section to be void (as constituting an unreasonable restriction on the fundamental right to property), the Court observed that “When a law deprives a person of his possession of his property for an indefinite

period of time merely on the subjective determination of an executive officer, such a law can, on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a, civil court."

78. Without prejudice to the aforesaid submission, it is submitted that the first proviso to Section 25 of the Fair Compensation Act is void for vagueness. Neither the nature of extensions (whether single or multiple, and for what duration), or the circumstances under which it may be resorted to have been stipulated. It is submitted that when a law is inherently vague, unintelligible, and confers wide, unfettered power on an authority, it is inherently arbitrary and violates Article 14 of the Constitution of India. In support of this submission, he relied upon the judgment of the Supreme Court in case of **Harakchand Ratanchand Bantia & Ors. v Union of India & Ors., 1969 (2) SCC 166**, at para 21. The vagueness in the first proviso to Section 25 results in infringing upon the constitutional right to property, and a person's enjoyment of this right given the uncertainty as to the manner and duration for which such property could be the subject of land acquisition proceedings.

79. It is submitted that such a wide, vague, uncanalised power is inherently and manifestly arbitrary, and in violation of Article 14 of the Constitution of India. The first proviso to Section 25 of the Fair Compensation Act must accordingly be struck down as unconstitutional.

**WHETHER EXTENSION NOTIFICATIONS NOT IN
CONSONANCE WITH SECTION 25 OF THE FAIR
COMPENSATION ACT?**

80. Without prejudice to the aforesaid submission, it is submitted that the second proviso to Section 25 mandates that three conditions must be cumulatively satisfied for the decision of extending the time period to be valid: (a) that the decision to extend the period be recorded in writing; (b) that the decision be notified; (c) that the same be uploaded on the website of the authority concerned. Any extension only takes effect upon the satisfaction of all three conditions.

81. It is submitted that neither of the Extension Notifications were published on the website of the concerned authority. The publication of the notification on the website of the concerned authority is *imperative*, and *statutorily mandated* so that affected persons may be notified about whether the land acquisition proceedings in respect of their property remains pending, or have lapsed. The Respondents have proffered no response or answer in respect of their failure to publish the notifications on the website of the concerned authority.

**WHETHER PUBLICATION OF NOTIFICATION GRANTING
EXTENSION NOT UPLOADED ON THE WEBSITE OF THE
AUTHORITY VITIATES AWARD?**

82. It is submitted by the learned senior counsel that the notifications granting extension by the State Government in this case have not been uploaded on the website of the concerned authority. The petitioner thus did not come to know about the extensions. He relied upon Section 11(d) and 11(e) of the Fair Compensation Act and submitted

that the notification has to be uploaded on the website of the Appropriate Government in the affected areas in such manner, as may be prescribed.

83. It is submitted that the Deputy Collector has admitted in the impugned award that the extensions were not uploaded on the website of the authority. Even if the notifications are published in the Maharashtra Government Gazette, it would not amount to uploading the notification on the official website. He submitted that though in the affidavit-in-reply filed by the State Government, it is alleged that the extensions were recorded in writing and the notifications were published on the official website, the State Government has not disclosed about such official website in which the notifications are alleged to have been published.

84. It is submitted that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. In support of this submission, he relied upon the judgments of the Supreme Court in cases of *MCGM v Abhilash Lal & Ors*, (2020) 13 SCC 234, at para 39; *Nareshbhai Bhagubhai & Ors. v Union of India*, (2019) 15 SCC 1, at para 31 (both of which rely on *Nazir Ahmad v. King Emperor*, 1936 SCC Online PC 3 = AIR 1936 PC 253, at para. 588. The failure to publish the Extension Notifications in the manner prescribed goes to the root of the proceedings, as it affects the rights of the Petitioner/land owner. It renders the Extension Notifications *non est* and illegal. Consequently, the entire proceedings in respect of the acquisition of the Subject Plot have lapsed.

**WHETHER RESPONDENTS' JUSTIFICATIONS
FOR THE EXTENSION NOTIFICATIONS ARE UNTENABLE?**

85. It is submitted that the first proviso to Section 25 permits the “appropriate Government” to extend the time period of twelve months for making the award if “...in its opinion, circumstances exist justifying the same”. It is submitted that under the first proviso to Section 25, the satisfaction of the “appropriate Government” as to the existence of circumstances that warrant the extension of the time period for issuance of the award cannot be a subjective satisfaction, and must necessarily rest on objective, legitimate criteria that are in consonance with the legislative policy, objective and purpose of the statute.

86. It is submitted that a plain reading of the Extension Notifications makes it apparent that there was no valid reason for the two extensions. The purported circumstances set out in the Extension Notifications in order to justify the multiple extensions of the time period for making the award under Section 25 are untenable:

87. The first extension notification dated 18th January 2021 extended the time period on the purported ground that the proforma award has been submitted to the Divisional Commissioner, Konkan Division for approval and approval has not yet been received. No particulars (such as the date when the proforma award was so submitted or why it took Respondent No.4 time to so submit the proforma award or why the Divisional Commissioner, Konkan Division would require twelve (12) months to comment on a proforma award) are disclosed.

88. The second extension (issued a year later), stated that the

draft award had been submitted to the Divisional Commissioner, Konkan Division, and that the directions issued by him could not be complied with before the period expired. Further, it notes that huge losses would be sustained by the government, should the proceedings lapse, and it has to undertake the exercise of acquisition again.

89. It is submitted that the aforementioned circumstances do not warrant inordinate, multiple extensions of the time period for making an Award. It is submitted that the hardship and prejudice caused to the Petitioner as a result of such extensions has not even been considered by Respondent No. 5 in arriving at its decision to extend the time period for making the Award, thus making it clear that legitimate criteria were not considered in making the decision in respect of the Extension Notifications.

90. It is submitted that the Respondents have also failed to address the Petitioner's contention as to how the first proviso to Section 25 is contrary to the stated objective of the Fair Compensation Act of securing fair, scientifically computed compensation for land owners. It is submitted that the Respondents have purported to assert that such a proviso exists to prevent "*unscrupulous persons*" from benefitting from their own wrongs. The Respondents have sought to allege that the Extension Notifications have been necessitated by the dilatory tactics of the Petitioner.

91. It is submitted that neither of the Extension Notifications makes *any* reference to actions by the Petitioner that have necessitated an extension in the time period for making an Award. It is settled law that

when a state functionary makes an order based on certain grounds, the validity of such an order is to be judged for the stated reasons, and the order cannot be supplemented by fresh reasons (through an affidavit or otherwise). In support of this submission, he relied upon the judgment of the Supreme Court in case of ***Mohinder Singh Gill & Anr. v Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405***, at para 8. The Hon'ble Supreme Court has clearly stated that "*Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*" In support of this submission, he relied upon the judgment of the Supreme Court in case of ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji (1951) SCC 1088***, at para 9.

WHETHER SECTION 10A OF THE FAIR COMPENSATION ACT IS UNCONSTITUTIONAL?

WHETHER RESPONDENT NO. 1 HAS ACTED BEYOND THE SCOPE OF ENTRUSTMENT UNDER ARTICLE 258(1) OF THE CONSTITUTION OF INDIA?

92. It is submitted that under Article 258(1) of the Constitution of India, the President has the right to entrust, either conditionally or unconditionally, to a State Government or to its officers, "*.....functions in relation to any matter to which the executive power of the Union extends*". (Emphasis added)

93. It is submitted that for multi-state projects like the Bullet Train Project (spanning Gujarat, Dadra and Nagar Haveli and Maharashtra), the "appropriate Government" in terms of Section 3(e)(iv)

of the Fair Compensation Act is the Central Government (in consultation with the concerned State Governments or Union Territories). By the Presidential Notification dated 9th August 2019 and in exercise of the powers conferred under Article 258(1) of the Constitution of India, the President (with the consent of the Government of the State of Maharashtra) directed, *inter alia*, that “...*the functions of the Central Government as appropriate government under the said Act may be performed by the Government of Maharashtra...*”.

94. It is submitted that Section 10A stipulates that “The State Government may, *in the public interest, by notification in the Official Gazette, exempt any of the following projects from the application of the provisions of Chapter II and III of this Act...*”. (emphasis added). It is impermissible for the State Government (acting as a delegate under the aforementioned Presidential Notification) to exercise this power in respect of projects for which the Central Government is the “appropriate Government,” as it would permit the Central Government to circumvent mandatory provisions of the central statute. The Fair Compensation Act does not permit the Central Government to exempt any project from the application of Chapters II and III of the Fair Compensation Act (other than by invoking the urgency provisions under Sections 9 and 40 of the Fair Compensation Act).

95. It is submitted that the Central Government therefore cannot entrust its delegate (the Government of Maharashtra) with a power it does not possess. A delegate cannot exercise powers that the delegator does not possess, nor can the latter delegate a power that it does not itself possess. In support of this submission, he relied upon the judgment of the

Andhra Pradesh High Court in case of ***Kasturi Rangachari v. Chairman, Food Corporation of India & Ors, (1981) IILLJ 237 AP***, para 15.

96. It is submitted that the Maharashtra State Government, in exercise of the powers entrusted under the Presidential Notification dated 9th August 2019 cannot go beyond the scope of its entrustment, and exempt the Bullet Train Project from the application of Chapters II and III of the Fair Compensation Act by invoking Section 10A. He relied upon the judgment of the Supreme Court in case of ***H. Anraj & Ors. v. State of Maharashtra, (1984) 2 SCC 292***, para 8.

97. It is submitted that the Presidential Notification makes it abundantly clear that the Government of Maharashtra can act only as a delegate of the Central Government for purposes of the Bullet Train Project, including for the acquisition of land. However, by the First Impugned Notification, the State Government has in purported exercise of its powers under Section 10A, exempted the Bullet-Train Project from the application of the provisions of Chapters II and III of the Fair Compensation Act. The Central Government (as “appropriate Government” for the Bullet Train Project, whether in consultation with the state government or otherwise) is confined to the provisions of the central statute. It is therefore not entitled to exercise powers under Section 10A of the Fair Compensation Act, either directly or indirectly through a delegate.

98. It is submitted that the aforementioned contentions have not been considered or decided upon by the Gujarat High Court in case of ***Jigarbhai Amratbhai Patel (supra)***.

**WHETHER THE CORRECTIONS ORDERED IN THE
IMPUGNED AWARD ARE BEYOND THE SCOPE OF
SECTION 33 OF THE FAIR COMPENSATION ACT?**

99. It is submitted that after the Impugned Award was passed, the Deputy Collector (Respondent No.4) sought to correct purported clerical errors in the Impugned Award. The so-called clerical errors were:

(i) Amending the reference to the second extension notification published on 20th January 2022, to include a reference to an earlier publication of the notification on 13th January 2022;

(ii) altering the date for computing interest.

(collectively referred to as the “**Impugned Corrections**”)

100. Before carrying out the Impugned Corrections, the Deputy Collector (Respondent No.4) addressed several letters to schedule a hearing to consider the objections of the Petitioner to the Impugned Corrections. The hearing was held on 18th November 2022. On the date of hearing, the Petitioner, through its advocates, appeared before Mr.Jagatsingh Girase (holding office of Respondent No.4) and made detailed submissions, and tendered written objections before him as well to the Deputy Collector (Respondent No.4).

101. It is submitted that on 24th November 2022, Mr. Jagatsingh Girase, forwarded the Petitioner the order containing the Impugned Corrections by his letter dated 23rd November 2022. However, the order issued by exercising the purported powers under Section 33 of the Fair Compensation Act, containing the Impugned Corrections, was signed by Ms. Nidhi Choudhary, as the Collector (Respondent No.5).

102. It is submitted that Section 33 of the Fair Compensation Act contemplates that the Collector (Respondent No.5) may correct any 'clerical' or 'arithmetical' mistakes in the award or errors arising therein. Under the guise of exercise of the purported powers under Section 33 of the Fair Compensation Act, the Deputy Collector (Respondent No.4) corrected point No.5 of the Impugned Award whereby it now seeks to add the date of 13/01/2022 before the date of 20/01/2022 (both being notifications under Section 25 of the Fair Compensation Act issued in an attempt to save the entire acquisition proceeding from lapsing). It is submitted that this exercise does not amount to correcting either a clerical or arithmetical mistake.

103. It is submitted that under the guise of correcting the Impugned Award, the Collector (Respondent No.5) has effectively supplemented the Impugned Award, which is impermissible. Language and intention similar to that of Section 33 of the Fair Compensation Act, is also to be found in Section 152 of the Code of Civil Procedure, 1908. Powers under Section 152 of the CPC are invoked by courts to rectify such arithmetical or clerical mistakes in an order, judgment or decree, arising from any accidental slip or omission. The courts under Section 152 of the CPC are not empowered to revisit a matter, and to find that a better order or decree could (or should) have been passed. This test has been laid down by the Hon'ble Supreme Court, in the case of **Jayalakshmi Coelho Vs. Oswald Joseph Coelho, reported in (2001) 4 SCC 181**, paragraph 14 thereof. This test shall also apply to cases under Section 33 of the Fair Compensation Act, as the intent and purport of the provision is similar to that of Section 152 of the CPC.

104. It is submitted that the Karnataka High Court (specifically in the context of Section 33) in the case of ***Gogga Sidramiah Vs. SLAO, Dharwad reported in ILR 2018 KAR 2883*** in paragraph 12 thereof has held that:

*“12. An arithmetical mistake is a mistake in calculation, while the clerical mistake is a mistake of writing or typographical error by accidental slip or omission. Such errors may be due to careless mistake or the ones made unintentionally or unknowingly. **A matter, requiring elaborate arguments or evidence on a question of facts or law, for the discovery of such errors cannot be categorized as errors arising out of in the award so as to invoke the provisions of Section 33 of the Act.**”*

105. It is submitted that the Impugned Corrections were not merely clerical or arithmetical and the Petitioner accordingly had filed detailed written objections before the Deputy Collector (Respondent No.4) which have been conveniently overlooked by the Collector (Respondent No.5). Not a single contention of the Petitioner has been considered in the order passed by the Collector (Respondent No.5) incorporating the Impugned Corrections in the Impugned Award.

106. It is submitted that if the first of the Impugned Corrections, (i.e. the inclusion of a reference to the publication of the extension notification on 13th January 2022) is sustained, then the same virtually amounts to a substantive alternation of the Impugned Award in question. Without a reference to the publication of the extension notification on 13th January 2022, the entire acquisition proceedings in respect of the Subject Plot stands lapsed, in terms of Section 25 of the Fair Compensation Act. It is clear that under the guise of a correction, Respondent Nos. 4 and 5 have sought to illegally revive an acquisition proceeding that had lapsed.

The Collector (Respondent No.5) has no power to do so under the extremely limited powers under Section 33 of the Fair Compensation Act, as after passing of the Impugned Award, the concerned authority (in the present case Mr. Santosh Bhise, the then Deputy Collector – Respondent No.4) becomes *functus officio*. This is the reason why the scope of Section 33 of the Fair Compensation Act is restricted, and cannot be misused, as has been done in the present case.

107. It is submitted that the Impugned Corrections have been issued in gross violation of the provisions of the Fair Compensation Act, and the principles of natural justice. The principles of natural justice demand that the person who hears a party must be the one who renders the decision in respect of the party. This is embodied in Section 33 of the Fair Compensation Act, that makes it clear that the *same person* must hear and decide upon any objections to any corrections sought to be made in respect of the award. In the present instance, the Impugned Award was passed by Mr. Santosh Bhise (Deputy Collector – Respondent No.4), the Petitioner's objections as to corrections sought to be made to the Impugned Award were heard by Mr. Jagatsingh Girase (Deputy Collector – Respondent No.4) on 18th November 2022. However, the order permitting such corrections (and summarily dismissing the Petitioner's objections to the corrections) was issued on 23rd November 2022, and signed by a Ms. Nidhi Chaudhary (Collector -Respondent No.5).

108. It is submitted that even otherwise, the Petitioner's objections are not dealt with by the Collector (Respondent No.5), much less even adverted to in the order containing the Impugned Corrections. The Impugned Corrections are accordingly unreasoned, arbitrary and in

violation of the principles of natural justice. The Impugned Corrections are nothing but an attempt to alter and amend the Impugned Award, which is impermissible under Section 33 of the Fair Compensation Act.

109. It is submitted that the right to property has been recognised by the Hon'ble Supreme Court of India as not only a constitutional right, but also a human right. In support of this submission, he relied upon the judgment in case of **Chairman, Indore Vikas Pradhikaran v Pure Industrial Coke & Chemicals Ltd & Ors.**, paras 53-56. It is a well settled legal principle that legislation that affects a person's right to property (or has an expropriatory effect) is to be interpreted strictly. In support of this submission, he relied upon the judgment in case of **Chairman, Indore Vikas Pradhikaran v Pure Industrial Coke & Chemicals Ltd & Ors., (2007) 8 SCC 705**, paras 57-58. Any restriction or regulation of the right of the owner of a property to use or develop it must be interpreted in a manner so as to least interfere with such right.

110. It is submitted that right from the date of the publication of the preliminary notice under Section 11(1) of the Fair Compensation Act, there is a prohibition from undertaking any transaction/ creating any encumbrances in respect of the land [Section 11(4)]. In the present instance, the Section 11(1) notification was issued on 25th October 2019. Should the first proviso to Section 25 be read to confer the "appropriate Government" with the power to make multiple extensions (without any fetter on the extent/duration of such extension), it would result in grave injustice to the land owner whose right to use of the land remains indefinitely suspended.

111. It is submitted by the learned senior counsel that the draft award prepared by the Deputy Collector was sent to the Divisional Commissioner, Konkan Division for approval. The Divisional Commissioner, Konkan Division sent the said draft back to the Deputy Collector having found certain defects in the said draft award to take steps to modify the draft award with the purpose of 2034 Development Plan.

112. It is submitted that in the impugned award, an incorrect statement is made that the earlier writ petition filed by the petitioner was dismissed though the said writ petition was disposed off keeping all the contentions of the petitioner open.

113. It is submitted that the land acquisition proceedings in respect of the Subject Plot had lapsed, *inter alia* on account of the second extension notification dated 20th January 2022 having been issued *after* the expiry of the period stipulated under the first extension notification (which period expired on 17th January 2022).

114. It is submitted that the Respondents have denied this, and have sought to contend that the second extension notification was in fact originally published on 13th January 2022, and “inadvertently” re-published on 20th January 2022 on account of a *bona fide* mistake. It is the Respondents’ case that the second extension notification under the proviso to Section 25 was in fact issued by Respondent No.5 on 12th January 2022, and sent to the Directorate of Government Printing Press on the same date, and published by the Government Printing Press on 13th January 2022. The Respondents only identified this error in the Impugned

Award after the Petitioner filed its Interim Application (L) No.30586 of 2022 dated 23rd September 2022, contending that the proceedings had lapsed.

115. It is submitted that Respondent No. 4 has thereafter sought to correct purported clerical errors in the Impugned Award, including amending the reference to the second extension notification published on 20th January 2022 (to that of the extension notification published on 13th January 2022). Respondent No.4 (Mr.Jagatsingh Girase) had issued various letters, to schedule a hearing to consider the Petitioner's objections to the corrections of the purported clerical errors to the Impugned Award. However, on account of the gross inadequacy of the notice provided for the scheduled hearing, the Petitioner was repeatedly constrained to request an adjournment of the hearing, and the hearing was finally conducted on 18th November 2022, further to a letter dated 14th November 2022 issued by Respondent No.4.

116. It is submitted that by a letter dated 18th November, 2022 addressed without prejudice to the Petitioner's contentions raised in the present Writ Petition, the Advocates for the Petitioner filed the Petitioners say/brief written arguments to the purported correction/rectification to the award, and appeared before Respondent No.4 (Mr.Jagatsingh Girase) for a personal hearing on 18th November, 2022. By a letter dated 24th November, 2022, Respondent No.4 (Mr. Jagatsingh Girase) has informed the Petitioner that the Award dated 15th September, 2022 has been corrected/rectified by an order dated 23rd November, 2022.

117. The aforementioned Extension Notifications (which phrase

shall be construed to include the Extension Notification published on 13th January 2022) are unlawful, void and *ultra vires* the Fair Compensation Act. Accordingly, the land acquisition proceedings in respect of the Subject Plot have lapsed, rendering the Impugned Award a nullity.

**WHETHER THE IMPUGNED AWARD
IS PERVERSE AND ABSURD?**

118. It is submitted that the perversity in the Impugned Award dated 15th September 2022 passed by the Deputy Collector (Respondent No.4) is apparent from the fact that:

(a) during the course of private negotiations in respect of the acquisition of the Subject Plot, the District Level Valuation Committee, under the Chairmanship of the Collector, Mumbai (Respondent No. 5), had fixed the compensation in respect of the Subject Plot at Rs.572,92,45,598/-. This was recorded in a letter issued by NHSRCL (Respondent No. 6). The letter also records that “...***NHSRCL is bound by the rate/land value as determined by District Collector based on the determination done by the District Level Committee.***” (emphasis added)

(b) However, the Impugned Award dated 15th September 2022, disregards the compensation accepted at by NHSRCL (Respondent No. 6) (which was determined by the District Level Committee, under the Chairmanship of Respondent No.5), by merely noting that the unconditional consent of the landowner had not been received.

(c) The Impugned Award arrives at the compensation amount of a mere Rs.264,27,29,349/- i.e. less than half of the compensation

determined by the District Level Valuation Committee, and declared as binding on the acquiring body i.e. NHSRCL (Respondent No. 6). This itself shows complete non-application of mind on part of the Deputy Collector (Respondent No. 4) who passed the Impugned Award. It is ex-facie apparent that the Deputy Collector (Respondent No. 4) has ignored relevant and germane material and relied upon irrelevant and non-germane considerations. The Impugned Award provides no rational justification for disregarding this valuation (other than the absence of the Petitioner's unconditional consent to the compensation of Rs.572,92,45,598/-). This is wholly arbitrary, capricious, and *ex facie* absurd.

(d) Merely to exemplify the above, and not for purposes of impugning the award on merits, it needs to be noted that the Impugned Award also disregards the valuation report of Mr. Harshad S. Maniar filed by the Petitioner, along with its written submissions for the hearing on 15th July 2020. In this report, the compensation amount arrived at (inclusive of the 100% solatium payable under the Fair Compensation Act) was Rs.1,987.72 crores.

(e) Moreover, in the Impugned Award, the concerned officer incorrectly recorded the observations made in the order dated 4th September 2019, which is evident from the following observations made in the Impugned Award:

*“Pursuant to the Order dated 04/09/2019 hence and as agreement of mutual acceptance between the Petitioner and the Respondents could not be executed, **the Hon'ble Court has dismissed the said Petition**, without*

prejudice to the right of the Petitioner challenging the valuation made under forcible acquisition”.

(f) The above observations are contrary to the following observations made in the order dated 4th September 2019:

“4. In the light of the revised proposal submitted by the Respondent No.4 to the Respondent No. 3, referred to in the aforesaid Public Notice dated 25th September, 2018, the Petition has worked itself out.

5. The Petition is accordingly disposed of reserving all rights and contentions of the respective parties including the Petitioner’s right to challenge the valuation of the said alternate land that may be determined by the Respondent No. 3 in the event of the Respondents proceeding to take steps to acquire the same under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”.

119. It is submitted that in the aforesaid circumstances, the Impugned Award, as stated above, exhibits non-application of mind on the face of the Award, is perverse, absurd and such as no reasonable person applying his/her mind to the facts of the case and acting bona fide, could ever have arrived at. On this ground alone it ought to be set aside.

120. Mr.Seervai, learned senior counsel for the petitioners placed reliance on the following judgments :-

- (a) The judgment of Andhra Pradesh High Court in case of ***Kasturi Rangachari vs. Chairman, Food Corporation of India & Ors. (1981) II LLJ 237 AP.*** (paragraph 15);
- (b) The judgment of Supreme Court in case of ***H.Anraj & Ors. vs. State of Maharashtra, (1984) 2 SCC 292*** (paragraph 8);

- (c) The judgment of Supreme Court in case of ***Gullapalli Nageswara Rao and others vs. Andhra Pradesh State Road Transport Corporation and another, AIR 1959 SC 308;***
- (d) The judgment of Supreme Court in case of ***Automotive Tyre Manufacturers Association vs. Designated Authority and others, (2011) 2 SCC 258;***
- (e) The judgment of Supreme Court in case of ***Laxmi Devi vs. State of Bihar & Others, (2015) 10 SCC 241;***
- (f) The judgment of Supreme Court in case of ***Union of India & Others vs. Shiv Raj & Others with connected matters, (2014) 6 SCC 564;***
- (g) The judgment of Supreme Court in case of ***Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd. & Others, (2007) 8 SCC 705;***
- (h) The judgment of Supreme Court in case of ***Jagdish Pandey vs. Chancellor, University of Bihar & Others, AIR 1968 SC 353;***
- (i) The judgment of Supreme Court in case of ***Dwarka Prasad Laxmi Narain vs. State of Uttar Pradesh & Others, AIR 1954 SC 224;***
- (j) The judgment of Supreme Court in case of ***Shayara Bano vs. Union of India & Ors., with connected matters, (2017) 9 SCC 1;***
- (k) The judgment of Supreme Court in case of ***Thakur Raghubir Singh vs. Court of Wards, Ajmer & Anr., AIR 1953 SC 373;***
- (l) The judgment of Supreme Court in case of ***Harakchand Ratanchand Banthia & Others vs. Union of India & Others, 1969(2) SCC 166;***
- (m) The judgment of Supreme Court in case of ***Municipal***

Corporation of Greater Mumbai vs. Abhilash Lal & Others, (2020) 13 SCC 234;

- (n) The judgment of Supreme Court in case of ***Nareshbhai Bhagubhai & Others vs. Union of India & Others, (2019) 15 SCC 1;***
- (o) The judgment of Privy Council in case of ***Nazir Ahmad vs. King-Empire, AIR 1936 PC 253;***
- (p) The judgment of Supreme Court in case of ***Mohinder Singh Gill & Another vs. The Chief Election Commissioner, New Delhi & Others, (1978) 1 SCC 405;***
- (q) The judgment of Supreme Court in case of ***Commissioner of Police, Bombay vs. Gordhandas Bhanji, 1951 SCC OnLine SC 70;***
- (r) The judgment of Supreme Court in case of ***Kaiser-I-Hind Pvt. Ltd. & Anr. vs. National Textile Corp. (Maharashtra North) & Others, (2002) 8 SCC 182;***
- (s) The judgment of Supreme Court in case of ***Gram Panchayat of Village Jamalpur vs. Malwinder Singh & Others, (1985) 3 SCC 661;***
- (t) The judgment of Supreme Court in case of ***Gopal Krishnaji Ketkar vs. Mohamed Haji Latif & Others, (1968) 3 SCR 862;***
- (u) The judgment of Supreme Court in case of ***Jayalakshmi Coelho vs. Oswald Joseph Coelho, (2001) 4 SCC 181;***
- (v) The judgment of Karnataka Dharwad Bench in case of ***Gogga Sidramiah vs. The Special Land Acquisition Officer, Dhwarwad & Another, ILR 2018 KAR 2883;***
- (w) The judgment of Supreme Court in case of ***Collector of Customs,***

Madras & Anr. vs. Nathella Sampathu Chetty & Anr. with connected matters, AIR 1962 SC 316;

- (x) The judgment of Supreme Court in case of ***Shreya Singhal vs. Union of India, (2015) 5 SCC 1.***

**ARGUMENTS OF THE LEARNED SENIOR COUNSEL
FOR THE RESPONDENT NOS.1, 3, 4 AND 5 :-**

121. Mr.Kumbhakoni, learned Senior Counsel, on the other hand, on behalf of the respondent nos.1 and 3 to 5 submitted that there is a presumption of the constitutionality attached to every legislative action. He submitted that in view of the judgment delivered by the Supreme Court in case of ***Shayara Bano Vs.Union of India & Ors. (supra)***, vires of a legislation may also be challenged on the ground of “manifest” arbitrariness under Article 14 of the Constitution of India, the Petitioner must specifically plead such a case by giving cogent and sufficient reasons in support of such a contention. No enactment can be struck down by just saying that it is merely arbitrary or unreasonable or irrational.

122. It is submitted that the petitioner in this case, has not pleaded a ground of "manifest" arbitrariness at all. He submitted that the Bullet Train Project is a project of national importance and is an Infrastructural Project of great public importance. He submitted a synopsis and brief written arguments for consideration of this Court along with the copies of various judgments. During the course of his arguments, he produced a copy of the letter addressed by the State Government to the Hon'ble President of India seeking assent for carrying out State Amendment to Section 10 of the Fair Compensation Act. The copy of the said letter was

also served upon the learned Senior Counsel for the petitioner across the bar. He submitted that this Court cannot go into the merits of the assent granted by the Hon'ble President of India in favour of the State Government for carrying out State Amendment to Section 10.

123. It is submitted that in case of procedural defects if any, would affect the quantum of compensation and not the validity of acquisition. In view of there being compensation dispute raised by the petitioner in respect of the land under acquisition, the remedy of the petitioner, if any, would be under Section 51 read with 64 of the said Fair Compensation Act. Lapses, if any, in following second part of Section 25 of the Fair Compensation Act would not vitiate the first part of Section 25 of the Fair Compensation Act.

124. It is submitted by the learned Senior Counsel that the powers of the Court under Article 226 of the Constitution of India are discretionary. Even if there are any irregularities in the procedure required to be followed while acquiring the land, the Court cannot exercise discretionary power in view of the said Bullet Train Project being a public project. Even though the extension is required to be granted twice in the facts of this case, there is no gross injustice to the petitioner so as to interfere with the acquisition proceedings.

125. It is submitted that if the extension is granted for 10 years, it would not in validate the sanction but at most the action. Merely because some legal issues as canvassed by the petitioner are involved, this Court need not interfere with in every matter while exercising discretionary power under Article 226 of the Constitution of India.

126. Learned Senior Counsel invited our attention to various averments made by the Central Government in the affidavit-in-reply filed before this Court and more particularly the salient features and objectives of the said Bullet Train Project and submitted that this project is the first high speed rail and under sea tunnel for some part of it. 97% of the land was acquired by the Government and steps are already taken so as to complete the balance portion of the land required to be acquired. It is submitted that no prejudice of any nature whatsoever is caused to the petitioner. If any prejudice is caused to the petitioner, the petitioner can be compensated in terms of money. He submitted that the judgments relied upon by the petitioner cannot be read like a statute.

127. Learned Senior Counsel vehemently urged that the State Government had followed the requisite procedure by obtaining the assent granted by the Hon'ble President of India for inserting the State Amendment to Section 10 of the Fair Compensation Act and such assent granted by the Hon'ble President of India cannot be interfered by this Court. He dealt with those submissions advanced by the learned Senior Counsel for the petitioner in detail. He distinguished the judgments cited by Mr.Seervai, learned Senior Counsel for the petitioner.

128. It is submitted that the power of the Court under Article 226 of the Constitution of India is only to see whether there is any repugnancy and whether the assent sought for a particular portion which is repugnant to the State Government in the parliamentary law and which is already existed. He produced a copy of the letter dated 27th March 2018 from the State of Maharashtra to the Hon'ble President of India for obtaining assent.

129. It is submitted that the Hon'ble President of India had already granted assent to the amendment carried out by the State of Gujarat to Section 10 by inserting State Amendment. The validity of the amendment carried out by State of Gujarat is upheld by the Gujarat High Court.

130. At this stage, Mr.Seervai, learned Senior Counsel for the petitioner states that in view of the letter produced by Mr.Kumbhakoni, learned Senior Counsel from the State Government to the Hon'ble President of India for seeking assent, nothing survive in the interim application and the same can be disposed off. He states that prayer challenging the state amendment i.e.Section 10A does not survive. Statement is accepted.

131. It is submitted by the learned Senior Counsel that right to property is not a fundamental right. Indisputably, the petitioner does not have fundamental right to hold the property.

132. In so far as the notification issued by the State Government on 20th August 2019 under Section 10A of the Fair Compensation Act granting exemption to certain projects from applicability of Chapter II and III of the said Fair Compensation Act is concerned, he submitted that the said notification has not been issued by the State Government as a delegate of the Centre. The State Government in its own right has exercises power to issue such notification. Since the Bullet Train Project being an Infrastructure Project in part of the State, the State Government is empowered to exempt the said Infrastructure Project from applicability

of Chapter II and III of the Fair Compensation Act.

133. The State Government is wearing two hats in this case. No sanction or delegation of power is necessary from the Central Government. It is submitted by the petitioner that the petitioner is not affected by the State Amendment to Section 10 of the Fair Compensation Act. He submitted that in any event, Chapters II and III are not attracted to the facts of this case at all and thus the petitioner cannot challenge the constitutional validity of the notification issued by the State Government in that regard.

134. It is submitted that it is not the case of the petitioner that any part of Chapter II and III applies to the facts of this case. He invited our attention to the description of the property of the petitioner described in the impugned award. He submitted that there are various jungle trees. The land is vacant and barren land with kachha shed. The said State Amendment inserted to Section 10 applies to all infrastructure project and not only the Bullet Train Project. The Central Government has already taken 97% of the land under acquisition. There is no dispute raised by other 97% plot holders from whom the possession is taken. Construction work had already started in most of this acquired land.

135. It is submitted by the learned Senior Counsel that the petitioner had allotted alternate piece of land in lieu of the original land under acquisition. He submitted that underground tunnel is proposed from the writ property. The construction of underground tunnel itself would take more than 5 and ½ years. The declaratory suit filed by the State

Government against the petitioner is still pending before the Gujarat High Court.

136. Learned Senior Counsel disputed that there is non application of mind on the part of the Deputy Collector in the impugned award. No family is affected due to acquisition of the writ property of the said infrastructure project. There is no question of resettlement of any project affected person. No person is displaced by the respondents-acquiring body as no construction has been put up in the writ property. Substantial part of the writ property is covered by wild trees. It is submitted that the writ plot is an uneven plot and is affected by high tension line, mangroves and is undeveloped.

137. In so far as the issue of extension raised by the petitioner is concerned, learned Senior Counsel submitted that the main provision under Section 25 of the Fair Compensation Act prescribes that the award has to be made within 12 months from the date of publication of declaration under Section 19 of the Fair Compensation Act and has to be read with proviso thereto. Both the notifications granting extension of 12 months each have been recorded in writing. The notifications are published on the website of the Government. He invited our attention to some of the documents annexed to the affidavit-in-reply to show that notifications were published.

138. It is submitted that mere possibility of abuse of provision of law does not per se invalidate the statute introduced by exercising legislative power. Though the action may be vulnerable, such action would not make provision ultra vires. The petitioner has already

challenged the validity of the first proviso. He submitted that if the State Government could grant extension more than one year under the first proviso to Section 25 of the Fair Compensation Act, the State Government could grant two extensions for one year twice. The extension of 12 months each twice is not unreasonable and arbitrary in the facts of this case. The petitioner was substantially responsible for the gross delay in making an award by the Deputy Collector.

139. Learned Senior Counsel relied upon Section 30(3) of the Fair Compensation Act and submitted that the petitioner would get interest upto date of award or from the date of notification. He submitted that the reliance placed by the petitioner on the newspaper report on the issue of grant of extension is totally misplaced. The erstwhile Government did not want to acquire the writ property.

140. In so far as the issue of natural justice raised by the petitioner is concerned, learned Senior Counsel submitted that all the judgments relied upon by the petitioner are dealing with Section 5A of the Land Acquisition Act, 1894 which is not in *pari materia* to Section 23 of the Fair Compensation Act. At the most, Section 5A of the Land Acquisition Act, 1894 is equivalent to Section 15 of the Fair Compensation Act. He submitted that Sections 15 & 23 of the Fair Compensation Act are different. At Section 5A stage, it is not decided whether the property is acquired for the public purpose or not.

141. It is submitted that enquiry under Section 23 of the Fair Compensation Act is for three purposes i.e. measurement, value of land

and respective interest of the party. No prejudice of any nature whatsoever is caused to the petitioner in view of these three aspects. The petitioner did not raise any dispute about measurement. Notice to all interested person had been given by the acquiring authority. The concept of one person hearing and deciding the matter by another person would apply under Section 15 of the Fair Compensation Act & not Section 23 of the Fair Compensation Act. He strongly placed reliance on the judgment of the Supreme Court in case of **May George Vs. Special Tahsildar & Ors. (supra)** and submitted that even if notice is not issued in the prescribed manner under Section 9(3), that would not vitiate the acquisition proceedings. He submitted that if there is non compliance of any provision required to be followed for acquiring land, the award is not vitiated. The Court has to see the purpose and intent of Section 9.

142. In so far as the value of land now decided by the Deputy Collector while awarding the compensation is concerned, it is submitted by the learned Senior Counsel that it is open for the petitioner to challenge the valuation by applying for enhancement.

143. It is submitted by the learned Senior Counsel that if the draft award was prepared by the person who had heard the petitioner. The report was submitted for approval to the Divisional Commissioner, Konkan Division, by the same officer.

144. In so far as the issue raised by the petitioner in respect of the correction under Section 33 of the Fair Compensation Act in the impugned award is concerned, learned Senior Counsel invited our

attention to Form VI prescribed under the provisions of the Fair Compensation Act read with Rule 11 and submitted that the date of extension is not required to be mentioned in the award. He submitted that in any event, the date of one of the extension was missing inadvertently in the award. The correction to the effect of mentioning the corrected date under Section 33 of the Fair Compensation Act was thus made. In the correction made by the Deputy Collector, calculation of the interest is not corrected. There is no effect on the amount of interest. Only corrected period is mentioned. The petitioner has not disputed these facts in the writ petition.

145. In so far as the issue raised by the person who has heard the acquisition proceedings is concerned, learned Senior Counsel invited our attention to page 116 of the writ petition and submitted that the correction in this case is done by Mr. Girase and was approved by the Collector at page 915 of the pleadings filed by the respondents.

146. It is submitted by the learned Senior Counsel that the Divisional Commissioner, Konkan Division had raised 10 issues to the draft award submitted by the Deputy Collector on 20th February 2021. The Deputy Collector responded the queries raised by the Divisional Commissioner, Konkan Division. The Divisional Commissioner, Konkan Division had made various recommendations to the Deputy Collector to be incorporated in the award.

147. It is submitted by the learned Senior Counsel that in view of the petitioner now not pressing the prayer regarding constitutional

validity of Section 10A of the Fair Compensation Act, the arguments advanced by the petitioner challenging the constitutional validity and other arguments based on the arguments challenging constitutional validity would not survive on the same ground.

148. It is submitted that once the assent has already been granted by the Hon'ble President of India to the State Government for enacting the State Amendment to the Central Act, such State Amendment becomes a part of the Central Act with State Amendment. The State Government has exercised powers in this case by exercising powers under Section 10A of the Fair Compensation Act and not exercised powers under Article 162 of the Constitution of India.

149. It is submitted by the learned Senior Counsel that the powers of the State Government in this case under Section 10A of the Fair Compensation Act to exempt any public project in the State of Maharashtra is not in respect of Bullet Train Project but large number of other public projects. Section 10A of the Fair Compensation Act does not say that the State can grant exemption where the State is the appropriate authority.

150. Learned Senior Counsel relied upon Section 10A(f) of the Fair Compensation Act (Maharashtra Amendment) and submitted that the State Government is empowered to grant exemption, in the public interest, by issuing notification granting exemption from applicability of Chapter II and III of the Fair Compensation Act even if in case of Infrastructure Projects including projects under Public Private Partnership

where the ownership of land continues to vest with the Government. The said powers granting exemption conferred in the State Government are inclusive and not restrictive.

151. Mr.Kumbhakoni, learned Senior Counsel placed reliance on the following judgments :-

- (a) The judgment of Supreme Court in case of **Ramniklal N.Bhutta & Anr. vs. State of Maharashtra & Ors., (1997) 1 SCC 134;**
- (b) The judgment of this Court in case of **Messrs. Mohandas Issardas vs. A.N.Sattanathan, Collector of Customs, (1955) Indian Law Reports 318;**
- (c) The judgment of this Court in case of **Union of India & Ors. vs. Dhanwanti Devi & Ors. (1996) 6 SCC 44;**
- (d) The judgment of Supreme Court in case of **Roger Shashoua & Ors. vs. Mukesh Sharma & Ors., (2017) 14 SCC 722;**
- (e) The judgment of Supreme Court in case of **Ashwani Kumar Singh vs. U.P.Public Service Commission & Ors., (2003) 11 SCC 584;**
- (f) The judgment of Supreme Court in case of **G.Mohan Rao & Ors. vs. State of Tamil Nadu & Ors., 2021 SCC OnLine SC 440;**
- (g) The judgment of Supreme Court in case of **Sushil Kumar Sharma vs. Union of India & Ors. (2005) 6 SCC 281;**
- (h) The judgment of Supreme Court in case of **May George vs. Special Tahsildar & Ors., (2010) 13 SCC 98;**
- (i) The judgment of this Court in case of **Special Land**

Acquisition Officer, Mumbai vs. Bhavsar Construction Co. Pvt. Ltd., 1993(3) Mh.L.J. 840.

ARGUMENTS OF THE LEARNED ADDITIONAL SOLICITOR GENERAL FOR THE RESPONDENT NOS.2 AND 6 :-

152. Learned Additional Solicitor General tenders notes of the arguments on behalf of the respondent nos.2 & 6 along with the copies of various judgments relied upon by him in support of his rival contentions.

153. Learned ASG invited our attention to the prayers in Writ Petition No.2131 of 2018 filed by the petitioner inter alia seeking a direction to Respondent No.1 to 4 therein to accept the proposal of the Petitioner to acquire an alternate land. He submitted that it was stated by the petitioner in first writ petition that a Permanent International Exhibit Centre cum Convention Complex ("PIECC") was proposed to be constructed on a larger piece of land which included the Original Plot sought to be acquired and the then proposed acquisition would have the effect of splitting the larger piece of land in a manner that would render the PIECC impossible. The Petitioner expressed various difficulties and objections to the proposed acquisition.

154. During the pendency of the earlier Writ Petition, the Petitioner vide their letter dated 19-7-2018 offered a second alternate plot. After visiting the site, the Respondent No.2 by Letter dated 26-7-2018 conveyed their acceptance in principle stating that the second alternate plot is prima facie suitable, subject to detailed examination and also submitted a modified sketch for consideration of the petitioner. He

submitted that the respondent no.4 carried out detailed technical examination and found that the second alternate land as proposed by the Petitioner is suitable and thus the proceedings for acquisition of the same have been initiated. He submitted that on 24th September 2018, the original land acquisition proposal submitted vide letter dated 27-11-2017 was withdrawn and second alternate proposal as mutually agreed upon was submitted to the Collector Mumbai, Suburban District. There was disagreement with regards to the disbursement of compensation, more particularly with regards to repayment of compensation with interest in the event, Suit No.679/1973 is decided against the Petitioner.

155. It is submitted that the said first writ petition filed by the Petitioner was disposed of by this Court on 4th September 2019 observing that parties to the Petition have not been able to reach a mutually acceptable agreement. In the light of the revised proposal submitted by the Respondent No. 4 to the Respondent No. 3 referred to in the aforesaid Public Notice dated 25th September, 2018, the Petition has worked itself out. This Court accordingly disposed of the said writ petition reserving all rights and contentions of the respective parties including the Petitioner's right to challenge the valuation of the said alternate land that may be determined by the Respondent No. 3 in the event of the Respondents proceeding to take steps to acquire the same under the provisions of the Right to Fair Compensation Act.

156. It is submitted by the learned ASG that since the petitioner had voluntarily offered the second Alternate Plot i.e subject land for acquisition for the Bullet Train Project, the offer to acquire the subject

land was accepted by the Respondent No.4. The dispute which only remains between the parties is in respect of the price to be paid and the manner of payment considering the title dispute between the State of Maharashtra and the Petitioner. The acquisition however, was ceased to be a dispute. He submitted that due to the change of originally chosen plot to the alternate plot as proposed by the Petitioner, Reservation & De-reservation in DP-2034 was necessitated before declaring the Award which process took considerable time. The petitioner has also raised various objections to the same with a view to cause delay. The petitioner is thus estopped from challenging the acquisition proceedings now in this petition.

157. It is submitted that the respondents have accepted the proposal as submitted by the petitioner for alternate plot. By challenging the acquisition proceedings now at this stage after giving suggestion by the petitioner to acquire the alternate plot, the petitioner seeks to stall the acquisition process and referring to hand over of possession is nothing but an abuse of process of law and not a bona fide action on the part of the petitioner. He relied upon various judgments in support of this submission and submitted that the petitioner is estopped from challenging the acquisition proceedings. Learned ASG also placed reliance on Sections 20A and 41(ha) of the Specific Relief Act, 1963. The Legislature has specifically amended the Specific Relief Act, 1963 to ensure that Infrastructure Projects are not injuncted.

158. It is submitted by the learned ASG that the power of the Court under Article 226 of the Constitution of India is discretionary. It is

an equitable remedy. It is not necessary for the High Court to correct each and every illegality. He submitted that if the correction of illegality is likely to have unjust results, High Court would normally refuse to exercise its jurisdiction under Article 226 of the Constitution of India. The petitioner has thus no locus standi to file this petition for impugning the acquisition proceedings.

159. In so far as the validity of first proviso to Section 25 of the said Fair Compensation Act challenged by the petitioner is concerned, learned ASG submitted that the said challenge is made by the petitioner only in the month of October 2022 by amending the petition. He invited our attention to the ground N to the petition raised by the petitioner on this issue. He submitted that the impugned proviso to Section 25 of the Fair Compensation Act does not in any manner impinge or violate the fundamental rights of the Petitioner. The impugned proviso to Section 25 of the Fair Compensation Act is merely enabling or empowering whereby certain powers are given to the Appropriate Government. Presumption of Constitutionality has not been displaced by the Petitioner. There are no specific grounds pleaded to explain how and in what manner the statute violates the rights of the Petitioner. Ground N is a vague ground and without any particulars. He submitted that the Court would presume a statute to be constitutionally valid and the burden is on the person challenging the same to establish that it is violative of the Constitutional mandate. In support of this submission, he relied upon various judgments of the Supreme Court.

160. Learned ASG relied upon Sections 11, 15, 19, 23 and 25 to

30 of the Fair Compensation Act in support of the submission to the exceptional procedure required to be followed for acquiring the land and for making an award. He submitted that these provisions clearly show that the Legislature has balanced the rights of all the stakeholders. The rights of the Petitioners are duly protected. It is submitted that since market value is frozen as on date of the Section 11 of the Fair Compensation Act Notification, even if there is a decrease in value of the land subsequently, the same would not affect the market value payable. Legislature has provided for payment of interest to balance the delay in the acquisition process, if any.

161. It is submitted by the learned ASG that though the first part of Section 25 of the Fair Compensation Act provides that the award must be made within 12 months from the date of publication of the declaration under Section 19 of the Fair Compensation Act, the proviso creates an exception thereto on the specific terms and conditions mentioned therein. He submitted that proviso makes it clear that "if in its opinion circumstances exist justifying the same", the appropriate Government shall have power to extend the time for 12 months which would evince the clear guideline and stipulation for exercise of power being there must be circumstances which must not only exist but such circumstances must justify the extension of time.

162. It is submitted that appropriate Government would have to record reasons for its opinion recognising the existence of circumstances and the fact that such circumstances justify the extension of time. The condition imposed by the second proviso to Section 25 provides inbuilt

safeguard against abuse of power. The provision imposes sufficient checks and balances. Such a proviso is also in conformity with the objects and purpose of the Fair Compensation Act being transparency in the acquisition process.

163. It is submitted by the learned ASG that if the arguments of the Petitioner are accepted and the first proviso is struck down, it would mean that the Award would have to be made within a period of twelve months and there can be no exception in whatsoever circumstance to the same. The second proviso would be rendered otiose in the absence of the first proviso.

164. It is submitted by the learned ASG that Legislature has chosen not to put a cap on the outer limit but has left it to the discretion of the Appropriate Government within the mandate of the statute considering the myriad situations that may arise. An example could be the occurrence of the pandemic which was not predictable both in terms of its magnitude and its prolonged operation.

165. It is submitted by the learned ASG that Section 25 of the Fair Compensation Act makes an express departure from the outer limit of 2 years that was provided under the Land Acquisition Act, 1894 and more particularly Section 11A thereof. He relied upon the amendment nos.81 and 82 and the Land Acquisition Bill, 2011 by which the words “two years” were replaced by twelve months and the two provisos having been inserted. It is submitted that the submission of the petitioner that the first proviso to Section 25 of the Fair Compensation Act only

contemplates a one time extension and not multiple extensions is contrary to the plain language of the statute. He submitted that the petitioner has not disputed that the State Government could grant a one time extension for whatever period since the statute does not prescribe an outer limit but had only contended that multiple extensions for twelve months each twice are beyond the powers of the State Government.

166. The Learned ASG gave an illustration that where the Section 19 Declaration is made on 1st January, 2020. War breaks out in August, 2020 and hence, the Award cannot be passed by 31st December, 2020. The Appropriate Government is of the opinion that War may last another six months and extends time until June, 2021. The War, however, continues. It is submitted that the circumstances which justify the extension still being in existence further time would need to be extended. He submitted that if the arguments of the petitioner that only one extension of whatever period is accepted, the same may result in greater harm. In support of this submission, he relied upon various judgments.

167. In so far as the issue raised by the petitioner that the first proviso to Section 25 of the Fair Compensation Act is violative of Article 300A of the Constitution of India is concerned, it is submitted by the learned ASG that ground N raised by the petitioner does not impugn the first proviso to Section 25 of the Fair Compensation Act on the basis of violation of Article 300A of the Constitution of India except for merely asserting a violation of Article 300A of the Constitution of India. In the absence of any specific grounds, the question of any enquiry on this count cannot and would not arise. He submitted that Article 300A of

Constitution of India is not a fundamental right.

168. Learned ASG submitted that First proviso to Section 25 of the Fair Compensation Act merely empowers the extension of time for making an Award, thus, the question of such an empowerment being violative of the right to property cannot and would not arise. He submitted that the provisions are already made for due compensation for the acquisition of the land and for due compensation for the delay, if any in the Fair Compensation Act itself and hence, there is no question of any violation of Article 300A of the Constitution of India as canvassed by the petitioner. The amount of compensation would be determined by the Authorities and the remedy of further challenge thereto is also provided under the provisions of the Fair Compensation Act.

169. It is submitted by the learned ASG that there is inordinate delay for impugning the validity of the first proviso to Section 25 of the Fair Compensation Act which has been in force since 2013 and sought to be challenged only in October, 2022. There is unexplained delay on the part of the petitioner. He submitted that it is well settled a principle of law that “delay defeats equity” and thus this Court shall not exercise discretionary power under Article 226 of the Constitution of India.

170. In so far as the issue as to whether the State Government has exercised power under Section 10A of the Fair Compensation Act independently or as a delegate of the Central Government is concerned, it is submitted by the learned ASG that the said power is an independent power of the State Government. The said provision empowers the State

Government in public interest to exempt any of the projects enlisted therein from the application of the provisions of Chapter II and Chapter III of the Fair Compensation Act. The said provision is a State Amendment which enures to the benefit of all projects within the State where the State Government deems it fit to exercise its powers thereunder.

171. It is submitted that the Notification dated 9th August, 2019 under which the State Government has been declared as an Appropriate Government is an independent empowerment. The said Notification has been issued by Respondent No.2 in exercise of its powers under Article 258 (1) of the Constitution of India. The said provision is unconnected with the Maharashtra Amendment and the exercise of powers by the State Government under Section 10A. The Maharashtra Amendment is wide and is not confined to the Bullet Train Project whereas the said Notification dated 9th August, 2019 is specifically for the Bullet Train Project.

172. It is submitted by the learned ASG that the Appropriate Government under the Fair Compensation Act, does other functions also, other than acquisition. The functions of the Appropriate Government is not just restricted to acquisition of property. The Respondent No.2 has appointed Respondent No.1 as the "Appropriate Government" admittedly. He submitted that the State Government is acting as both Appropriate Government and as the State Government and the exercise of power under Section 10A of the Fair Compensation Act is as State Government and not as a delegatee.

173. In his alternate arguments, learned ASG submitted that since the Bullet Train Project is being carried out in collaboration with the funding partner Japan International Corporation Agency (JICA), the Social Impact Assessment has already been carried out by JICA. Chapter III of the Fair Compensation Act which is in respect of “irrigated multi-cropped land” is inapplicable to the subject land. Hence, there is even otherwise compliance with the provisions of the Fair Compensation Act.

174. It is submitted by the learned ASG that the objective of Social Impact Assessment as provided under Section 8(2) of the Fair Compensation Act, 2013 is to enable the appropriate Government to recommend such area of acquisition, which ensures - (i) minimum displacement of people, (ii) minimum disturbance to the infrastructure, ecology; and (iii) minimum adverse impact on the individuals affected. The aforesaid objective has otherwise been taken care of in the present matter in view of similar district-wise Social Impact Assessment already carried out by an independent agency, appointed by NHRCL under the supervision of JICA.

175. It is submitted by the learned ASG that the petitioner has not impugned the Notification dated 9th August 2019 under which the State Government has been declared as an Appropriate Government. It is thus clear that the said Notification dated 9th August 2019 is constitutionally valid.

176. Learned ASG invited our attention to various averments made in the additional affidavit filed on behalf of the respondent nos.2 &

6 pointing out the salient features and objective of the project namely Mumbai-Ahmedabad Bullet Train Project (High Speed Rail Corridor project). He submitted that the said project has been declared as Vital Infrastructure Project by Government of Maharashtra vide gazette notification dated 18th May 2018. The length of this High Speed Rail Corridor is 508.17 km (approximately) and will have 12 stations. Out of the 508.17 kms, a portion of 348.03 kms is going to be in the State of Gujarat, 4.5 kms in Union Territory of Dadra & Nagar Haveli, and 155.64 kms in the State of Maharashtra.

177. It is submitted that the railway line will pass through Mumbai, Thane and Palghar districts in Maharashtra and the districts of Valsad, Navsari, Surat, Bharuch, Vadodara, Anand, Kheda, Ahmedabad in Gujarat and the Union Territory of Dadra Nagar Haveli. 92% project length is elevated. There are many benefits of an elevated track. This will ensure no obstruction to natural flow of waters, traffic and movement of farmers. It greatly improves safety and security perception against external interference and also reduces land requirement in the project i.e. 17.5 m width against 36 m for conventional railway tracks.

178. It is submitted that this Rail Corridor consists of a 21 Kms stretch of rail line which will be underground single tube twin track tunnel, out of which a stretch of 7 Kms will be an undersea tunnel located below Thane creek. The idea behind this underground section of the rail corridor is to minimize any adverse impact on Thane Creek Flamingo Sanctuary, adjoining mangroves and high rise residential complexes of Mumbai suburban. The tunnel phase is a critical phase of the Project and

will take maximum time to construct as compared to all other civil construction packages in the project. This project after completion will give the Country its first High Speed Rail and first undersea tunnel, around 40 m deep. Japanese Government has provided financial aid through Japan International Corporation Agency (JICA) in the form of Official Development Assistance Loan (ODA) facility.

179. It is submitted that construction of tunnel of 13.2 meter diameter, largest diameter urban tunnel boring works ever undertaken in India. It shall be India's first, 7 Kms of undersea tunneling work. This section is expected to utilize maximum construction period i.e. 5.2 years amongst rest of the sections of the corridor. It is submitted by the learned ASG that the travel time between Mumbai and Ahmedabad will be reduced to 1 Hour 58 Minutes as against the current travel time of 6 Hours 35 Minutes (by Train), and shall act as a catalyst for economic growth of cities it passes through. This project will increase inter regional connectivity along the rail corridor and boost the development of satellite towns that host the Bullet Train Stations such as Palghar Township Projects of MMRDA.

180. It is submitted that the Bullet Train Project is expected to generate over 90,000 direct and indirect jobs and undertaking skill development and income restoration training for numerous project affected persons. More than 51000 technicians, skilled and unskilled work force will be required for various construction related activities. It is expected that this project will serve 92,000 passengers per day per direction by 2053. This Project is highly instrumental in pushing the

‘Make In India’ initiative of the Government under which different trade agreements between various Japanese organizations and NHSRCL, FICCL CII, ASSOCHAM to bolster technology transfer and in house skilled force developments have been executed.

181. It is submitted by the learned ASG that the estimated cost for this project is around Rs. 1.08 Lakh Crores approximately. So far an amount of more than Rs.32,000 Cr has been expended by NHSRCL towards implementation of the project. For this project, from Maharashtra, 430 Hectors (approximately) of land is required out of which as of November 2022, 97% of the land is already acquired. For the underground section between BKC and Thane, all the land parcels required are already in possession of the NHSRCL, save and except the Petitioner’s land.

182. It is submitted by the learned ASG that various permissions have already been secured such as Forest Clearances (Stage 1 & 2), Wildlife Clearances (SNGP, Tungreshwar Wildlife Sanctuary, Thane Creek Flamingo Sanctuary), CRZ clearances and Mangroves cutting clearance, clearances from Dahanu Taluka Environment Protection Authority which have resulted in NHSRCL incurring a cost of Rs 146 crores. All 28 crossings are already procured from various authorities since this rail corridor traverses through various highways, expressways, rail corridors etc. More than 85% utility diversion (i.e. diversion work of public utility sources like electricity lines, water lines affected by the project) works are complete in Maharashtra and 100% in the affected tunnel section has been completed.

183. As on November 2022, Tenders for 100% of civil works in the Maharashtra region have already been floated. In Gujarat, 100% civil works contracts are already awarded and construction is in full swing. In Gujarat, foundation work for 194 Kms rail corridor, 9.5 Kms of viaduct, 23 kms of girder casting are complete. Construction work of all 8 bullet train stations in Gujarat are already in full swing.

184. It is submitted that all the lands except the land of the petitioner are already in possession of the Government. In view of the proposal given by the petitioner for alternate land and having been accepted by the respondents, the alignment of the rail corridor sections between BKC and Thane (HSR) has been altered. As the subject land is very close to HT lines, NHSRCL will be incurring additional construction costs and safety costs. In view of the delay on the part of the petitioner, the cost of project has escalated substantially. Due to the long pending issue of acquisition of the Petitioner's land, the NHSRCL has had to cancel the tenders relating to the underground tunneling works on two occasions which resulted into cost escalation by at least Rs.1000 Crores. The petitioner did not raise the issue that the acquisition had lapsed due to efflux of time during these proceedings.

185. Learned ASG submitted that a Chart prepared by NHSRCL showing the nature of Schematic MAHSR Corridor Route Plan, Change of proposed land under acquisition suggested by the petitioner and the consequences thereof. Nature of constitution activities is required to be carried out on this project.

186. Mr. Anil Singh, Learned Additional Solicitor General for the respondent no.2 placed reliance on the following judgments :-

- (a) The judgment of Supreme Court in case of ***National High Speed Rail Corporation Limited vs. Montecarlo Limited & Anr. (2022) 6 SCC 401;***
- (b) The judgment of this Court in case of ***The National High Speed Rail Corporation Ltd. vs. State of Maharashtra & Ors.***, dated 9th December, 2022 in ***Writ Petition No. 442 of 2020;***
- (c) The judgment of Supreme Court in case of ***Molar Mal (Dead) Through LRs. vs. Kay Iron Works (P) Ltd., (2000) 4 SCC 285;***
- (d) The judgment of Supreme Court in case of ***Shri Ram Krishna Dalmia & Ors. vs. Shri Justice S.R.Tendolkar & Others, AIR 1958 SC 538;***
- (e) The judgment of Supreme Court in case of ***R.K.Garg vs. Union of India & Others with connected matters, (1981) 4 SCC 675;***
- (f) The judgment of Supreme Court in case of ***Union of India and others vs. Exide Industries Limited and Another, (2020) 5 SCC 274;***
- (g) The judgment of Supreme Court in case of ***V.S.Rice & Oil Mills & Others vs. State of Andhra Pradesh, AIR 1964 SC 1781;***
- (h) The judgment of Supreme Court in case of ***Amrit Banaspati Co. Ltd. vs. Union of India & Others, (1995) 3 SCC 335;***
- (i) The judgment of Supreme Court in case of ***Alok Shanker Pandey vs. Union of India and others, (2007) 3 SCC 545;***
- (j) The judgment of Supreme Court in case of ***Consumer Action Group and another vs. State of T.N. & Others, (2000) 7 SCC 425;***
- (k) The judgment of Division Bench of this Court in case of ***The Film***

and Television Producers Guild of India Ltd. and another vs. The Union of India and another with connected matters Writ Petition No. 680 of 2020 dated 30th June, 2021;

- (l) The judgment of this Court in case of ***Sadashivrao Mahadik Kagal Taluka Sahakari Sakhar Karkhana Limited vs. Commissioner of Sugar and others, (2015) 1 Bom C.R. 237;***
- (m) The judgment of Chancery Division in case of ***Re Bellador Silk Ltd. (1965) 1 ALL ER (Ch D);***
- (n) The judgment of Supreme Court in case of ***State of Bihar vs. Rai Bahadur Hurdut Roy Moti Lal Jute Mills and another, AIR 1960 SC 378;***
- (o) The judgment of Supreme Court in case of ***B.L.Sreedhar & Others vs. K.M.Munireddy (dead) & Others, (2003) 2 SCC 355;***
- (p) The judgment of Supreme Court in case of ***Noida Industrial Development Authority vs. Ravindra Kumar and others with connected matters, 2022 SCC OnLine SC 578;***
- (q) The judgment of Supreme Court in case of ***Mazdoor Kisan Shakti Sangathan vs. Union of India & Anr., (2018) 17 SCC 324;***
- (r) The judgment of this Court in ***Writ Petition No. 113 of 2019*** dated 9th December, 2022 in case of ***Gorakhnath Shankar Nakhwa & Ors. vs. The Municipal Commissioner of Municipal Corporation of Greater Mumbai & Ors. with connected matters.***

**REJOINDER TO SUBMISSIONS OF
RESPONDENT NOS. 1 AND 3 TO 5**

***PETITIONER CANNOT BE RELEGATED TO THE REMEDY
UNDER SECTION 64 OF THE FAIR COMPENSATION ACT***

187. It is submitted that Respondent No.1 has attempted to

bifurcate the Fair Compensation Act into (i) the procedure relating to the decision of acquisition, and (ii) the subsequent procedure culminating in the Award. The Respondent has sought to contend that any “procedural” irregularities arising after the issuance of a report under Section 15(2) of the Fair Compensation Act only affect compensation (for which the Petitioner has a complete remedy under Section 64 of the Fair Compensation Act).

188. It is submitted that this contention is demonstrably incorrect. Most notably, if the proceedings have lapsed in terms of Section 25 of the Fair Compensation Act, then the Award is rendered a nullity. Recourse to any procedure under Section 64 of the Fair Compensation Act is futile and entirely unavailing to the Petitioner.

189. Similarly, a failure to observe the principles of natural justice (in terms of Section 23) would also render an award a nullity. This has been recognised by the Supreme Court (and affirmed in the context of land acquisition proceedings). The question of a dispute as to compensation in respect of an award that is inherently illegal, invalid and a nullity does not arise, and the Petitioner would have no remedy in this regard before the Authority.

190. It is submitted that the State of Maharashtra (Respondent No. 1) has asserted that the First Impugned Notification has been issued in *its own right and capacity*, as State Government under Section 10A(f) of the Fair Compensation Act (as amended by Maharashtra Act No. XXXVII of 2018). It is submitted that Respondent No. 1 thereby implicitly admits that as a delegate of the Central Government, it could

not have issued the First Impugned Notification.

191. It is submitted that Respondent No.1 has failed to identify the source of its power to act in its own capacity, to issue a notification under Section 10A of the Fair Compensation Act in respect of the Bullet Train Project. It is submitted that the contention that the State of Maharashtra can act in its own capacity to issue a notification under Section 10A in respect of the Bullet Train Project is untenable for the following reasons:

(i) Article 162 of the Constitution of India provides that the executive power of the State shall extend to the matters with which the Legislature of the State has the power to make laws. Entry 42 of List III relates to “acquisition and requisitioning of property”.

(ii) However, the State of Maharashtra in the present instance does not have unfettered executive powers in respect of acquisition and requisitioning of property in the State. This is on account of the proviso to Article 162 which states that “*Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be **subject to, and limited by, the executive power expressly conferred** by this Constitution or **by any law made by Parliament** upon the Union or authorities thereof.*”;

(iii) It is thus clear that in respect of a matter that falls under List III (i.e. in respect of which the Legislature of State *and* Parliament have the power to make laws), the executive power of the State shall be subject to

and limited by the executive power expressly conferred upon the Union by any law made by Parliament.

(iv) In the present instance, the executive power of the state shall be subject to and limited by the executive power conferred on the Union by the Fair Compensation Act.

192. It is submitted that the State of Maharashtra acting in its executive capacity is subject to and limited by the powers of the Union in respect of acquisition of land under the Fair Compensation Act. The Union, under the provisions of the centrally enacted Fair Compensation Act, does not have the power to exempt a project from the provisions of Chapters II and III of the Act. Accordingly, the State of Maharashtra is also denuded of this power, and has no power to issue a notification under Section 10A of the Fair Compensation Act in respect of the Bullet Train Project.

193. It is submitted that under the provisions of the Fair Compensation Act, under Section 3(e)(iv), the Central Government is the appropriate government for the acquisition of land for a multi-state project (such as the Bullet Train Project). Thus, *only* the Union/ Central Government could acquire (and take steps towards the acquisition of) land for the Bullet Train Project. It is submitted that in order to enable the State of Maharashtra to acquire land for the Bullet Train Project, the Union necessarily had to entrust *its power* to the State of Maharashtra to acquire land *on the Union's behalf*. This was done by the exercise of the Union's powers under Article 258(1) of the Constitution of India.

194. It is submitted that Respondent No. 1's repeated references to the barren nature of the Subject Plot – to contend that the Petitioner was not entitled to participate in the social and environmental impact assessment as contemplated under Chapter II of the Fair Compensation Act - is disingenuous and untenable as:

(i) The Petitioner is vitally interested in the process and outcome of a social and environmental impact assessment conducted in terms of Chapter II of the Fair Compensation Act. Such a study would have required the participation of local authorities and representatives, who would have evaluated the Bullet Train Project on various parameters including costs, benefit, its effect on community property, infrastructure and the surrounding area etc. Such participative decision making is the bedrock of the Fair Compensation Act.

(ii) Further, if purportedly barren land such as the Subject Plot were in any event disentitled to the produce under Chapter II of the Fair Compensation Act, there would be no requirement to specifically exempt such land from the applicability of these provisions, as was in fact done by virtue of the First Impugned Notification dated 20th August 2019 (Exhibit B to the Petition).

195. It is submitted that Respondent No. 1 has repeatedly underscored that no fundamental right of the Petitioner has been violated on account of the actions impugned in the Petition (particularly in the context of the multiple extensions sought under the first proviso to Section 25 in respect of the period for the issuance of the award). Respondent No. 1's contention in this regard is incorrect and untenable as

(i) the Petitioner has a fundamental right to equality before the law, and the equal protection of the laws under Article 14 of the Constitution of India. The Petitioner has squarely challenged the first proviso to Section 25 of the Fair Compensation Act as being inherently and manifestly arbitrary, and therefore *ultra vires* Article 14 of the Constitution of India;

(ii) a law that violates a provision of the Constitution of India (other than provisions under Part III of the Constitution of India) is liable to be struck down as unconstitutional. It is patently erroneous to suggest that a law is only vulnerable to a constitutional challenge if it violates a fundamental right. In the present instance, a violation of a constitutional right (the right to property under Article 300A) would render a law (or executive action in pursuance of a law) liable to be declared unconstitutional, and the executive action taken thereunder struck down or quashed.

196. It is submitted that by (incorrectly) contending that no fundamental right of the Petitioner has been alleged to have been violated in the present instance as a result of the first proviso to Section 25 of the Fair Compensation Act (and actions taken in pursuance of the same) Respondent No. 1 has summarily sought to minimize/downplay the relevance of the judgments cited by the Petitioner in the case of ***Dwarka Prasad Laxmi Narain v State of Uttar Pradesh & Ors., [1954] 1 SCR 803***, at para 7; ***Shayara Bano v Union of India & Ors. (2017) 9 SCC1*** that affirm that a law that is manifestly arbitrary, unregulated by any principle, left entirely to the discretion of the authorities concerned, is capricious, and without an adequate determining principle, violates Article 14 of the Constitution of India, and is unconstitutional. The Respondent No.1 has itself (in its Short Submissions tendered on 5 December 2022) noted that the vires of a legislation may be challenged

on the grounds of manifest arbitrariness (para 4).

197. It is submitted that Respondent No. 1 has also failed to deal with the Petitioner's submissions on how the right to property has been recognized as both a constitutional and human right, and how laws that affect the right to property (and have an expropriatory effect) must be interpreted strictly. In support of this submission, he relied upon the judgment of the Supreme Court in case of **Chairman, Indore Vikas Pradhikaran v Pure Industrial Coke & Chemicals Ltd & Ors., (2007) 8 SCC 705**, paras 57-58. He submitted that the first proviso to Section 25 of the Fair Compensation Act, by its plain meaning, does not contemplate multiple extensions. The State of Maharashtra stated that should that be the case, it could have – through a single notification also- extended the time period by two years (or more). In fact, the State's response in this regard only reinforces the Petitioner's submissions on the completely unguided, uncanalised and unfettered nature of the power conferred on the appropriate Government under the first proviso to Section 25 of the Fair Compensation Act.

198. In response to the Petitioner's submissions as to the uncanalised, unguided and unfettered nature of the power conferred on the appropriate Government under the first proviso to Section 25 of the Fair Compensation Act (and illustrations as to how the power can be exercised), the Respondent No. 1 has sought to contend that the mere possibility of abuse of a provision does not render it unconstitutional. In this regard, he relied on the judgment of the Supreme Court in **Sushil Kumar Sharma v Union of India & Ors. (2005) 6 SCC 281** that was in the context of a challenge to Section 498A of the Indian Penal Code,

1861. However, this judgment is only in the context of a statutory provision that was otherwise found, *intra vires*, the Constitution of India. In support of this submission, he relied upon the judgment of the Supreme Court in case of ***Sushil Kumar Sharma v Union of India & Ors. (2005) 6 SCC 281, paras 12, 14.***

199. It is submitted that while the possibility of abuse of a statute does not invalidate it, the converse must also follow: that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. As affirmed by a Constitution Bench of the Supreme Court in ***The Collector of Customs, Madras v Nathella Sampathu Chetty, 1962 SCR (3) 786***, “*The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements.*”

200. It is submitted that where the law/ provision in question is otherwise invalid, the Supreme Court has held that it cannot be saved by the assurance of it being administered in a reasonable manner. In support of this submission, he relied upon the judgment of the Supreme Court in case of ***Shreya Singhal v Union of India, (2015) 5 SCC 1*** at para 95.

201. It is submitted that in the present instance, the first proviso to Section 25 of the Fair Compensation Act is entirely arbitrary, is unregulated by any principle or guideline as to when and how it ought to be exercised (or the maximum duration for which such extension could be sought). It is left entirely to the sweet will and unquestioned caprice of the appropriate Government. It provides no mechanism by which the exercise of such discretion can be constrained and /or supervised, or by which an affected person may seek redress. In support of this submission, he relied upon the judgment of the Supreme Court in case of ***Dwarka Prasad Laxmi Narain v State of Uttar Pradesh & Ors., [1954] 1 SCR 803***, para 7 & 8. The provision is thus patently unconstitutional.

202. It is submitted that Respondent No. 1 has provided *no* answer to the Petitioner's detailed submission that the delay in issuance of the Award, and the multiple extensions of the time period for the same are *entirely* attributable to the State of Maharashtra and its authorities. It has failed to address the Petitioner's submissions as to how even the ostensible reasons for the delay set out in the extension notifications do not amount to circumstances that justify the exercise of power under the first proviso to Section 25 of the Fair Compensation Act. Pertinently, despite deprecating the Petitioner's reliance on a newspaper article to contend that the real reason the Bullet Train Project and Award in respect of the Subject Plot was delayed was on account of the previous Government's opposition to it.

203. It is submitted that the Respondent No. 1 has not disputed the accuracy of the reports, nor *denied or refuted* the position. All of this leads to the inexorable conclusion that the extension notifications issued

under the first proviso to Section 25 are illegal, invalid, and the land acquisition proceedings in respect of the Subject Plot have in fact lapsed. Solatium under Section 30(3) of the Fair Compensation Act cannot compensate for prejudice caused by Multiple Extension Notifications under first proviso to Section 25 of the Fair Compensation Act. It is submitted that this contention is belied by the plain terms of Section 25 of the Fair Compensation Act, that contemplate the *lapsing* of the entire land acquisition proceedings, if an Award is not issued within 12 months from the date of issuance of a declaration under Section 19 of the Fair Compensation Act. An extension of such time period is clearly an *exception* to the ordinary rule of lapsing, and must only be permitted if the circumstances legitimately warranted it.

204. It is submitted that admittedly an expropriatory piece of legislation, it must be interpreted strictly, and in favour of the citizen. It is clear that the statute recognizes that compensation calculated (at 12% per annum) cannot offset or mitigate the substantial prejudice and loss caused to a land owner on account of the indefinite continuation/extension of land acquisition proceedings.

205. It is submitted that this is further reinforced by the well-settled principle of statutory interpretation in respect of a proviso, that a proviso must ordinarily be understood as an *exception* to the general rule. The interpretation and application of a proviso cannot efface the main provision. Section 25 of the Fair Compensation Act provides that if no Award is made within twelve months from the publication of the declaration under Section 19 of the Fair Compensation Act, the entire acquisition proceedings *shall* lapse. It is clear that the provision was

enacted with a view to ensure that the Award is issued in a time-bound manner. Should extensions for the time period for issuance of the Award be liberally availed of by recourse to the first proviso to Section 25 of the Fair Compensation Act through multiple extensions and/or by seeking extensions for substantial periods, it would be entirely destructive of the primary purpose of Section 25 of the Fair Compensation Act (i.e. to ensure that the Award is issued in a time-bound manner).

206. It is submitted that Respondent No. 1 has sought to contend that the extension notifications were in fact published on the website of the authority concerned, in compliance with the second proviso of Section 25 of the Fair Compensation Act. This is palpably and manifestly incorrect. Admittedly the only website on which the extension notifications were published was on the Maharashtra Government's e-gazette website <https://egazete.mahaonline.gov.in/Forms/GazetteSearch.aspx>). The Maharashtra e-gazette website uploads hundreds of notifications daily, and does not provide any mechanism by which an interested/affected party such as the Petitioner may search the website to verify whether an extension notification has been published.

207. It is submitted that the terms of the second proviso to Section 25 of the Fair Compensation Act make it clear that it has to be uploaded on the website of the *authority concerned* i.e. the authority that made the decision in respect of the extension of time period for issuance of the Award. The publication on the website is meant to ensure that affected parties are *aware of* and *notified* about the extension of time period for passing the Award (as it has implications on the ability of the party concerned to deal with, or create any encumbrances in respect of

the property that is the subject matter of the acquisition proceedings).

208. It is submitted that accordingly, the extension notification ought to have been uploaded on the website of the appropriate Government or that of the Collector for the Mumbai Suburban District, who was acting as a delegate of the Central Government in respect of the acquisition <https://mumbaisuburban.gov.in/>. In fact, this is the procedure that has been followed in respect of extension notifications relating to the Mumbai Metro. <https://mumbaisuburban.gov.in/past-notice/land-acquisition/>.

209. It is submitted that the State Government has chosen not to address this Court on the express language of Section 23 of the Fair Compensation Act which specifically states that the Collector who proceeds to enquire into the objections, shall make an award “*under his hand*”. Thus, Section 23 of the Fair Compensation Act expressly mandates that the Award is issued only by the same person who has heard and considered the objection under Section 23 of the Fair Compensation Act.

210. Prior to the enquiry as contemplated under Section 23 of the Fair Compensation Act, under Section 21(1) of the Fair Compensation Act, the Collector (Respondent No. 5) is required to publish a notice at convenient places or near the land in question stating that the Government intends to take possession of the land in question and that claims to compensation for all interests in the land may be made to him. Section 21(2) of the Fair Compensation Act requires all persons interested in the land *to appear before the Collector (Respondent No. 5)*

and state the nature of their interest in the land, particularise their claim and raise objections to the measurements. Thus, contrary to the erroneous and unfounded submissions of the State, the scheme under Sections 21 of the Fair Compensation Act and Section 23 of the Fair Compensation Act contemplates/envisages affording to the affected parties a personal hearing. It embodies in itself the principles of natural justice. Significantly, the State in the course of arguments accepted, in the context of Section 15 of the Fair Compensation Act, that since it contemplated/envisaged affording to the affected parties a personal hearing, the fundamental principle of natural justice, viz., “he who hears must decide” was applicable. On the State’s own submission, this cardinal principle must also apply to Sections 21 of the Fair Compensation Act and Section 23 of the Fair Compensation Act and the personal hearing that precedes the making of the award.

211. It is submitted that the State of Maharashtra has attempted to distinguish the judgments cited by the Petitioner on the principles of natural justice in the context of the Land Acquisition Act, 1894 (for short “**1894 Act**”) on the basis that the judgments were in the context of Section 5A of the 1894 Act (similar to Section 15 of the Fair Compensation Act), and cannot apply to a hearing under Section 23 of the Fair Compensation Act. The State’s contention in this regard is misplaced as: *First*, as the judgments cited by the Petitioner which enunciate this fundamental principle were not restricted to the specific context of Section 5A of the Land Acquisition Act, 1894. *Second*, the principle enunciated is a fundamental principle, applicable to *all* situations in which a hearing is afforded, and in fact has been treated as an aspect of the very rule of law.

212. It is submitted that the State Government has not responded to the contentions urged by the Petitioner on the draft Award prepared by Mr. Vikas Gajare (Deputy Collector who heard the Petitioner) not being the same award as that ultimately made and published by Mr. Santosh Bhise (the successor to Mr. Vikas Gajare). This assumes significance as according to the State Government, the draft Award sent to the Divisional Commissioner for his approval, did not materially change and, therefore, it made no difference as to who published the Award. This is factually incorrect.

213. The State Government relied on ***May George Vs. Special Tahsildar & Ors., reported in (2010) 13 SCC 98***, to contend that even if no notice under Section 9(3) of the 1894 Act (in the facts of May George) was not given to the affected party, the acquisition proceeding did not lapse. It is submitted that the judgment in ***May George (supra)*** is easily distinguishable, and therefore has no relevance to the facts of the present case for the following reasons: In ***May George***, the appellant was aware of the proceedings and she conveniently chose to remain silent and ultimately challenged the Award after an inordinate delay of ten years and after the land had vested in the State itself.

214. It is submitted that in that judgment, the urgency provision under the 1894 Act [Section 17] was resorted to and accordingly the hearing of objections contemplated under Section 5A of the 1894 Act was dispensed with. Under Section 17(1) of the 1894 Act, the Collector may on expiration of 15 days from publication of notice under Section 9(1) of the Act, take possession of the land needed for public purpose and thereafter, the land shall vest in the Government. The Court in ***May***

George was satisfied that notice was affixed on the land under Section 9(1) of the the 1894 Act, satisfying the requirement of law and that the Award was made within limitation. It is in that context the Supreme Court held that no prejudice was caused to a party if no notice under Section 9(3) of the 1894 Act was served upon the interested persons.

215. It is submitted that invocation of Section 17 of the 1894 Act changed the complexion of the land acquisition in **May George** as the Collector took possession of land on the notice under Section 9(1) of the 1894 Act being issued and once the land vested in the Government, the same could not be divested thereafter. As noted by the Supreme Court at para 9 of the judgment, the fact that the acquisition proceedings/award had been challenged at a belated stage i.e. a decade after the state took possession of the land. The Supreme Court noted that land once vested in the state cannot be divested, even if there had been some irregularity in the proceedings. This was the underlying basis for the Supreme Court stating that the person affected was only entitled to relief in respect of compensation.

216. Learned Senior Counsel submitted that the Supreme Court in **Automotive Tyre Manufacturers Association Vs. Designated Authority & Ors., (2011) 2 SCC 258** following the judgment of the Supreme Court in **Gullapali Nageswara Rao & Ors. Vs. Andhra Pradesh State Road Transport Corporation & Anr., AIR 1959 SC 308** held in context of a hearing by the Designated Authority under the Customs Tariff Rules, 1995 that the person who hears must decide, since if one person hears and another decides, then personal hearing becomes an empty formality. It was further held (in the context of a Designated Authority) that when the

material was collected by the predecessor of the Designated Authority, but the final findings were recorded by the successor Designated Authority who had no occasion to hear the appellants, the final order passed by the successor Designated Authority offended the basic principles of natural justice and accordingly was quashed. He submitted that this is precisely what has transpired in the present case as well. The predecessor Dy. Collector being Mr. Vikas Gajare, heard the Petitioner on 15th July 2020, but the final Award was issued by the successor Dy. Collector Mr. Santosh Bhise, who had not heard the Petitioner at all.

217. It is submitted that in ***Union of India Vs. Shiv Raj and Others, reported in (2014) 6 SCC 564*** in the context of land acquisition proceedings (under the 1894 Act), the Supreme Court referring to ***Gullapali (supra)*** and ***Automotive Tyre (supra)*** held that the very person/officer who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice.

218. It is submitted that adhering to the principles of natural justice is fundamental, irrespective of whether the hearing is before an administrative authority or a quasi-judicial authority. The State Government cannot give a go-by to the fundamental principle of natural justice, viz., “he who hears must decide” and treat the same, in the context of Sections 21 and 23 as an empty formality, as if it matters not, whether the successor Dy. Collector had heard the Petitioner’s objections or not. The contentions urged by the State Government does violence to the language of Section 23 of the Fair Compensation Act and in fact, does

not take into consideration the provisions of Section 21 of the Fair Compensation Act. It is submitted that there is no answer by the State Government that the principles of natural justice have been grossly violated, rendering the award, illegal, ultra vires and void ab-initio.

219. Mr.Seervai, learned senior counsel for the petitioner filed written submissions on behalf of the petitioner in response to the notes of arguments submitted on behalf of the respondent nos. 2 and 6 on the petitioner's conduct. It is submitted by the learned senior counsel that the first writ petition was filed for the sole purpose of challenging, inter alia, the acquisition of a plot identified by the respondent nos.2 and 6. Several correspondences were exchanged between the parties for acquisition of an alternate plot through direct purchase method. The respondent nos. 2 and 6 found the alternate plot being the subject land acceptable. He submitted that the reference to the public notice dated 25th September, 2018 in that background assumes significance since the said public notice was issued by the respondent no.4 for acquiring the subject land through direct purchase method.

220. It is submitted that the direct purchase negotiation between the parties however failed and the same was recorded by this Court in paragraph (3) of the order dated 4th September, 2019. What was worked out in the first writ petition was only the grievance of the petitioner qua the notices received for acquisition of an earlier plot. The said issue was resolved as respondent no.4 submitted a revised proposal to the respondent no.3 for acquiring an alternate plot of land which was forming the subject matter of the public notice dated 25th September, 2018. He submitted that since the revised proposal was made by the respondent

no.4 to the respondent no.3, the authorities were not pursuing the earlier plot which they identified for acquisition.

221. It is submitted that in this background, this Court in the said order dated 4th September, 2019 and in particular in paragraph (5) recorded that “the petition is accordingly disposed of reserving all rights and contentions of the respective parties”. He submitted that the submissions of the respondent nos.2 and 6 that the issue of the acquisition of the subject land, which process had barely commenced, and to the extent that it had, was deliberately suppressed both from the Court and the petitioner, is untenable. He submitted that the petitioner had not given any consent for the acquisition of the subject land in the order dated 4th September, 2019.

222. It is submitted by the learned senior counsel that once the negotiations failed, the authorities resorted to the acquisition under the Fair Compensation Act, which was not consented to by the petitioner. The petitioner was accordingly entitled in law to contest the proceedings, if the same were contrary to the provisions of the Fair Compensation Act, or ultra vires Articles 14 and 300A of the Constitution of India. It is submitted that the arguments of the respondent nos. 2 and 6 that only the valuation of the subject land can be challenged and nothing more, is wholly misplaced.

223. Learned senior counsel for the petitioner submitted that in the letter dated 19th July, 2018 addressed by the petitioner to the respondent nos.2 while giving a composite offer for the subject land, the petitioner had expressly reserved their right under the Fair Compensation

Act and had not given a go by to the same. He relied upon paragraphs (viii) and (xi) of the said letter dated 19th July, 2018. It is submitted by the learned senior counsel that the principles of estoppel as envisaged under Section 115 of the Indian Evidence Act, 1872 would not apply to the case of the petitioner on the ground that the petitioner had not given any consent for the acquisition of the subject land.

224. It is submitted that the first writ petition worked itself out since the respondent authorities chose to acquire the subject land via direct purchase method, which also eventually failed and thus the initial acquisition of an earlier plot identified, was no more an issue in the petition. The principles of estoppel cannot operate in a vacuum and the petitioner's conduct ought to be considered in the background of the first writ petition, which got worked out as the grievance raised in the first writ petition was no more subsisting. He submitted that there can be no estoppel against statute.

225. Insofar as the issue of delay on the part of the petitioner raised by the respondent nos. 2 and 6 is concerned, learned senior counsel for the petitioner submitted that in the chart submitted by the respondent nos. 2 and 6, an analysis of the packages has been provided for the Maharashtra Ahmedabad High Speed Rail Project. According to the respondent nos. 2 and 6, the subject acquisition falls under the 'C2 Works Package'. However, on a bare perusal of page 4 of the said compilation of charts, it is clear for the packages C1 to C3, which spreads over approximately 160 kms the tender bids for construction are yet to be invited/finalized.

226. Learned senior counsel submitted that from page 5 of the said compilation of charts, it is clear that the tender bids for C1 packages is under review and the tender bids for C2 and C3 packages are invited. Out of the 8 packages forming part of the said project, 3 packages are yet at a nascent stage. The respondent nos. 2 and 6 thus cannot attribute any alleged delay solely on the part of the petitioner.

227. Insofar as judgment of this Court in case of ***Writ Petition No. 442 of 2020 in case of NHSRCL vs. State of Maharashtra & Ors.***, delivered on 9th December, 2022 is concerned, it is submitted by the learned senior counsel for the petitioner that it is clear from 5th December, 2018 till 17th November, 2022, the respondent no.6 had been attempting to obtain piece meal approvals from the Ministry of Environment & Forest and such other approvals as were statutorily required for implementation of the Bullet Train Project. The respondent nos. 2 and 6 took over a prolonged period of four years for obtaining such permission. The petitioner is thus not responsible for any delay as canvassed by the respondent nos. 2 and 6.

228. The petitioner is not responsible for the alleged additional expense of Rs.1000 crores or any part thereof. No such data or material has been placed before this Court to substantiate this bald allegation. The respondents have not explained an inexplicable delay in getting the Development Plan 2034 amended for the subject plot.

229. Insofar as the reliance placed on the provisions of the Specific Relief Act, 1963 by the respondent nos. 2 and 6 is concerned, it is submitted by the learned senior counsel for the petitioner that this issue

does not arise in the present petition as the petitioner is not seeking any injunction on the Bullet Train Project. It seeks to enforce and protect its constitutional and legal rights against the acquisition of the subject land by the authorities without following the provisions of the Fair Compensation Act in gross breach of the principles of natural justice.

230. Insofar as the issue raised by the respondent nos. 2 and 6 that the writ jurisdiction is discretionary and must be exercised in the larger public interest is concerned, it is submitted by the learned senior counsel for the petitioner that in the first place, the petitioner does not dispute the advantages of the project and the same being of national importance. However, what the petitioner disputes and objects to is the manner of the acquisition by bypassing the provisions of the Fair Compensation Act, and also the illegal and ultra vires attempt by the State of Maharashtra to invoke section 10A of the Fair Compensation Act for the avowed purpose of the Bullet Train Project. He submitted that admittedly and undisputedly, it is not the appropriate Government for this project. He referred to the notification dated 20th August, 2019 and 9th August, 2019 in support of this submission.

231. It is submitted by the learned senior counsel that the entitlement in law is not merely restricted to compensation/decision on the quantum, but is to protect its constitutional and statutory rights. The respondent nos. 2 and 6 have not explained in the entire arguments as to why the entire acquisition proceedings have not lapsed. It is submitted that the concerned authority has taken nearly two years to publish the award. This submission is without prejudice to the rights and contentions of the petitioner that the respondents could not have invoked multiple

times under first proviso to section 25 of the Fair Compensation Act for grant of extension of time for passing award.

232. It is submitted that if this Court comes to the conclusion that the acquisition proceedings under section 25 of the Fair Compensation Act have lapsed, then the entire acquisition and the steps taken by the authorities consequent thereupon, must fail and be set aside. He submitted that this Court shall exercise its jurisdiction to ensure that the authorities do not blatantly disregard, or violate constitutional and statutory provisions. The petitioner has already challenged constitutional validity for the first proviso to Section 25 of the Fair Compensation Act in this petition.

REASONS AND CONCLUSIONS :-

233. We have heard the learned counsel for the parties at length and have considered their rival contentions. Some of the relevant provisions applicable to the facts of this case are extracted as under:-

RELEVANT PROVISIONS UNDER THE CONSTITUTION OF INDIA, 1950

Article 162 - Extent of executive power of State

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

Article 254 - Inconsistency between laws made by Parliament and laws made by the Legislatures of States

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

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

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

RELEVANT PROVISIONS UNDER RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

10A. Power of State Government to exempt certain projects

The State Government may, in the public interest, by notification in the Official Gazette, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this Act, namely :-

- (a) such projects vital to national security or defence of India and every part thereof, including preparation for defence or defence production ;
- (b) rural infrastructure including irrigation and electrification;
- (c) affordable housing and housing for the poor people ;
- (d) industrial area or industrial estate set up by the State Government and its undertaking;

(e) industrial corridor set up by the State Government and its undertaking (in which case the land shall be acquired up to one kilometre on both sides of designated railway line or roads for such industrial corridor) ; and

(f) infrastructure projects including projects under public-private partnership where the ownership of land continues to vest with the Government:

Provided that, the State Government shall, before issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project.

Section 15 - Hearing of objections

(1) Any person interested in any land which has been notified under sub-section (1) of section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to--

- (a) the area and suitability of land proposed to be acquired;
- (b) justification offered for public purpose;
- (c) the findings of the Social Impact Assessment report.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.

Section 23 - Enquiry and land acquisition award by Collector

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 21, to the measurements made under section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of--

(a) the true area of the land;

(b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under section 31 and which in his opinion should be allowed for the land: and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

23A. Award of Collector without enquiry in case of agreement of interested persons

(1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(2) The determination of compensation for any land under subsection (1) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(3) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (1) shall be liable to registration under that Act.

Section 25 - Period within which an award shall be made

The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:

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

Section 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.

Section 33 - Corrections to awards by Collector

(1) The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.

Section 64 - Reference to Authority

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

Rule 18(1) to Rule 18 (4) under Chapter VI of the Right to Fair Compensation (Maharashtra) Rules, 2014

18. (1) If an amount of compensation to be paid is less the rupees four crore, then the Deputy Collector (Land Acquisition) or the Sub Divisional Officer, as the case may be, shall declare an award under section 23 of the Act.

(2) If an amount of compensation to be paid is more than rupees four crore and less than rupees ten crore, then the Collector of the District shall declare the Award.

(3) If an amount of compensation to be paid is more than rupees ten crore, then the Collector shall get the previous approval of the Divisional Commissioner of the Concerned revenue division and then only declare the Award.

(4) The financial limit authorized for the Deputy Collector (Land Acquisition) or the Sub-Divisional officer or the Collector specified in

sub-rules (8), (9) and (10) above shall automatically be raised by ten per cent on 1st January of every year.

LOCUS OF PETITIONER TO FILE
WRIT PETITIONER/ESTOPPEL

234. We shall first deal with the issue as to whether the petitioner has any locus to challenge the acquisition proceedings in view of the order dated 4th September 2019 passed by this Court in Writ Petition No.2131 of 2018. It is not in dispute that the State Government had proposed to acquire another land of the petitioner prior to 2018. The petitioner had filed the said writ petition in this Court inter alia praying for an order and directions against the respondents to acquire the alternate land of the petitioner. During the pendency of the said writ petition, the petitioner vide their letter dated 19th July 2018 offered second alternate plot. After visiting the site, the Respondent No.2 by letter dated 26-7-2018 conveyed acceptance in principle stating that the second alternate plot was prima facie suitable, subject to detailed examination and also submitted a modified sketch for consideration of the petitioner.

235. Various steps were thereafter taken to pursue the said proposal made by the petitioner for the second alternate land. The respondent no.2 accepted the said proposal for alternate land and consequently on 24th September 2018, the original land acquisition proposal submitted vide letter dated 27th November 2017 was withdrawn and second alternate proposal as mutually agreed upon was submitted to the Collector Mumbai, Suburban District. There was disagreement with regards to the disbursement of compensation, more particularly with regards to repayment of compensation with interest in the event, Suit

No.679/1973 would have decided against the Petitioner.

236. In view of this backdrop and development in the matter and the petitioner submitting the proposal for acquisition of land and the respondents having accepted the said proposal after taking various steps and examining the viability of the said alternate proposal given by the petitioner, this Court disposed off the said earlier writ petition by passing an order dated 4th September 2019 observing that they were unable to reach a mutually acceptable agreement.

237. This Court also observed that in the light of the revised proposal submitted by the Respondent No.4 to the Respondent No. 3, referred to in the aforesaid Public Notice dated 25th September 2018, the Petition had worked itself out. This Court accordingly disposed off the said writ petition reserving all rights and contentions of the respective parties including the Petitioner's right to challenge the valuation of the said alternate land that may be determined by the Respondent No. 3 in the event of the Respondents proceeding to take steps to acquire the same under the provisions of the Right to Fair Compensation Act.

238. In view of the petitioner having voluntarily offered the second Alternate Plot i.e subject land for acquisition for the Bullet Train Project, and accepted by the Respondent No.4, the only dispute remains between the parties is in respect of the price to be paid and the manner of payment considering the title dispute between the State of Maharashtra and the Petitioner. The acquisition, however, is ceased to be a dispute. The parties thereafter negotiated for payment of compensation in respect

of the second alternate land. However, negotiation failed.

239. Since the parties did not arrive at mutually agreed amount of compensation, the Collector made an award. Since various steps were taken by the respondents in pursuance of the alternate proposal offered by the petitioner and the parties having taken steps in pursuant to the said offer of the alternate plot by the petitioner, the petitioner is estopped from challenging the acquisition of plot on the grounds set out in the petition or otherwise or on any other grounds. The petitioner has ample remedy available under the provisions of the Fair Compensation Act and more particularly under Section 64 of the Fair Compensation Act for enhancement of the compensation.

240. We are not inclined to accept the submission of Mr.Seervai, learned senior counsel for the petitioner that right to challenge the acquisition proceedings was not given up by the petitioner in the earlier writ petition filed when the said petition was disposed off. On the contrary, the petitioner has prayed in the first writ petition that the respondents shall be directed to accept the alternate land of the petitioner. The petitioner never applied for clarification of the said order dated 4th September 2019 and on the contrary, participated in the process of the private negotiation in so far as the determination of the amount of compensation in respect of the alternate land offered by the petitioner is concerned, all throughout. The petitioner also did not challenge the said order passed by this Court. The order passed by this Court on 4th September 2019 is self-explanatory. In our view, the petitioner has thus no locus to challenge the acquisition proceedings in view of the

circumstances stated aforesaid. Writ petition is liable to be dismissed on this ground itself. Be that as it may, we shall also deal with the grounds raised by the petitioner on its own merits in the later part of this order.

241. We shall now decide the following issues together as they are interconnected:-

- (i) ***Whether first proviso to Section 25 shall be struck down as unconstitutional?***
- (ii) ***Whether the land acquisition proceedings have lapsed?***
- (iii) ***Whether proviso to Section 25 of the Fair Compensation Act does not contemplate multiple extensions?***
- (iv) ***Whether extension notifications issued by the appropriate authority are not in consonance with Section 25 of the Fair Compensation Act? and***
- (v) ***Whether the justification given by the appropriate authority for granting two extensions of 12 months each are untenable?***

We shall first decide the issue whether the petitioner has made out a case for declaring the first proviso to Section 25 of the said Fair Compensation Act in violation of Articles 14 and 300A of the Constitution of India and thus shall be struck down or not. It is vehemently urged by Mr.Seervai, learned senior counsel that the proviso to section 25 permits a *single* extension of the statutory period of 12 months and does not contemplate multiple extensions. It is submitted that though first extension after expiry of 12 months which is initial period granted for making an award, can be for a longer period, there cannot be more than one extension for a period of 12 months each, as is the case in this matter. In this backdrop, we shall now decide whether

multiple extension of statutory period of 12 months from the date of publication of the declaration under Section 19(1) of the Fair Compensation Act would defeat the object and purpose of securing fair compensation for land owners or not or in violation of Article 14 and 300A of the Constitution of India or not?

242. It is also urged by the learned senior counsel for the petitioner that by the second extension, the Government in this case has not extended the period of 12 months prescribed under Section 25 for making an award but has further extended period of 12 months initially granted by exercising power by first proviso to Section 25 which is not permissible. It is the case of the petitioner that there are no principles prescribed under Section 25 to guide the authority about the time and period of extension and thus the presumption of the constitutional validity of the second extension would be ultra vires deserves to be accepted. The petitioner has also placed reliance on the judgment of Supreme Court in case of *Dwarka Prasad Laxmi Narain* (supra) and in case of *Shayara Bano* (supra).

243. Learned senior counsel in his alternate submission has also disputed that the State Government has not produced any material on record to demonstrate that any circumstances existed for grant of such extensions justifying the same. Reliance is also placed on the judgment of Supreme Court in case of *Jagdish Pandey* (supra). It is urged that the first proviso to section 25 of the Fair Compensation Act being vague, unintelligible, and confers wide, unfettered power on an authority, it is inherently arbitrary and violates Article 14 of the Constitution of India. The judgment of Supreme Court in case of *Harakchand Ratanchand*

Banthia & Ors. (supra) has been referred upon in support of his submission.

244. A perusal of the first of Section 25 of the Fair Compensation Act clearly indicate that though under first part of Section 25, it is provided that the award must be made within 12 months from the date of publication of the declaration under Section 19, the proviso creates an exception thereto on the specific terms and conditions mentioned therein. The said proviso clearly provides that “*if in its opinion circumstances exist justifying the same*”, the appropriate Government shall have power to extend the time for 12 months which would evince the clear guideline and stipulation for exercise of power being, there must be circumstances which must not only exist but such circumstances must justify the extension of time.

245. The proviso to Section 19 has to be read with the main provision in the first part of Section 25 providing for 12 months time to make an award from the date of publication of declaration under Section 19. In our view, if the State Government could grant extension for more than one year under the first proviso to Section 25, the State Government could grant two extensions for one year twice. There is no bar against granting multiple extension.

246. Learned ASG rightly gave us illustration of the COVID pandemic or in case of war breaks out during the period of first extension being in force and as a result thereof, it is not possible to make an award within the first extension period of 12 months. According to the said illustration given by the learned ASG, where the declaration under

Section 19 is made on 1st January, 2020 and war breaks out in August, 2020 and hence, the Award could not be passed by 31st December, 2020, the Appropriate Government is of the opinion that War may last another six months and extends time until June, 2021, the appropriate Government would not be able to grant extension in these circumstances though warranted.

247. In our view, Section 25 makes an express departure from the outer limit of 2 years that was provided under the Land Acquisition Act, 1894 and more particularly Section 11A thereof. Learned senior counsel for the petitioner did not dispute the Amendment nos.81 and 82 and the Land Acquisition Bill, 2011 by which the words “two years” were replaced by twelve months and the two provisos having been inserted. In our view, the submission advanced by the learned senior counsel for the petitioner that the first proviso to Section 25 only contemplates a one time extension and not multiple extensions is contrary to the plain language of the statute and if accepted would be a violence to plain language of the statute.

248. The Court as well as the parties have to read the entire provisions to ascertain the intent of legislature and not only the main part of the provisions and to ignore the proviso thereto. The petitioner has not raised any such ground in the writ petition impugning the first proviso to Section 25 on the basis of the violation of Article 300A of the Constitution of India except asserting it vaguely. Be that as it may, there is no substance in the submission made by the learned senior counsel for the petitioner that the first proviso of Section 25 is in violation of Article 300A of the Constitution of India.

249. Learned Additional Solicitor General has produced material on record to determine that the reasons for granting two extensions of 12 months each was attributable on the part of the petitioner substantially. The petitioner, being responsible for causing delay, the Deputy Collector could not make an award within the original stipulated period of 12 months under Section 25 of the Fair Compensation Act and within 12 months, being a part of first extension, cannot be allowed to urge that any prejudice was caused to the petitioner of any nature whatsoever in view of the two extensions granted for making an award.

250. The authority had recorded the reasons as to why such extension of 12 months each was necessary for making an award. Various steps were required to be taken by the respondents in view of the alternate land offered by the petitioner in lieu of the original land which was the subject matter of acquisition. In our view, there is thus no prejudice caused to the petitioner whatsoever in view of the respondents granting extension of 12 months each. Be that as it may, the petitioner can be compensated in view of provisions of payment of interest which can be claimed by the petitioner, if any application for enhancement of claim under Section 64 of the Fair Compensation Act is made by the petitioner.

251. In our view, for challenging any provision of the Act as unconstitutional, the petitioner has to plead with cogent reason as to why such provision is unconstitutional or ultra vires. The perusal of the pleadings filed by the petitioner clearly indicate that, there is no such pleadings or the same is totally vague and without any cogent reason. We do not find any substance in the submission made by the learned senior counsel for the petitioner that the first proviso to Section 25 confers any

uncontrolled, uncanalised or wide powers for granting extension to the appropriate Government for making an award and that the same is without any criteria or guidelines.

252. In our view, safeguards are provided in the first and second proviso while extending the period for making an award under the first part of Section 25 of the Fair Compensation Act. The reasons are required to be recorded by the appropriate Government while considering an extension. The petitioner has not seriously disputed the circumstances prevailing upon expiry of 12 months of the original period and 12 months of the first part of Section 25 necessitated for granting two extensions of 12 months each so as to make an award for the public project of this nature. Learned senior counsel for the petitioner could not point out any manifest arbitrariness in the action taken by the appropriate Government in granting two extensions so as to fall within the parameters laid down by the Supreme Court in case of **Shayara Bano** (supra) or that the decision taken by the appropriate authority to grant extension or the power to grant such extension in the first proviso to section 25 is capricious, irrational and/or without adequate determining principle. The principles laid down by the Supreme Court in case of **Sharaya Bano** (supra) would be of no assistance to the petitioner.

253. Insofar as judgment of Supreme Court in case of **Thakur Raghubir Singh** (supra) relied upon by Mr.Seervai, learned senior counsel for the petitioner is concerned, the said judgment does not apply to the facts of this case even remotely. Similarly, the judgment of Supreme Court in case of **Harakchand Ratanchand Banthia & Others** (supra) relied upon by the learned senior counsel for the petitioner also

would not assist the petitioner in support of its case that, the power conferred under first proviso to Section 25 is vague or that it infringes the constitutional right to property or the person's enjoyment of his right to hold such property.

254. The Supreme Court in case of **Sushil Kumar Sharma** (supra) has held that the mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". It is held that if a statutory provision is otherwise intra-vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra-vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the Court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved. The principles of law laid down by the Supreme Court in case of **Sushil Kumar Sharma** (supra) apply to the facts of this case. In our view, the petitioner has not made out a case of even possibility of abuse of the amendment inserted by amendment inserting Section 10A to the Fair Compensation Act and even if there is any possibility of abuse of the provisions of law, the same cannot be a ground for invalidating a legislation. It is not the case of the petitioner that by inserting Section 10A the State Government has acted arbitrarily or malafide.

255. A perusal of the record indicates that both the notifications granting extension of 12 months by the State Government have been recorded in writing and have been published on the website of the State

Government. Learned senior counsel did not dispute the power of the State Government to grant at least one extension and that also for any period as may be found necessary under first proviso to Section 25. Admittedly, in this case the State Government has granted two extensions of 12 months each after expiry of the original 12 months period from the date of declaration under of Section 19 of the Fair Compensation Act.

256. Supreme Court in case of ***Collector of Customs, Madras & Anr. vs. Nathella Sampathu Chetty & Anr. (supra)*** relied upon by learned senior counsel for the petitioner held that the possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. There is no dispute about the propositions of law laid down by the Supreme Court in the said judgment in case of ***Collector of Customs, Madras & Anr. vs. Nathella Sampathu Chetty & Anr. (supra)***. The petitioner however failed to demonstrate that the provision of Section 25 of the Fair Compensation Act falls under any of exception carved out by the Supreme Court in the said judgment.

257. Similarly in case of ***Shreya Singhal v Union of India (supra)*** relied upon by learned senior counsel for the petitioner having taken a similar view also would not advance the case of the petitioner and facts of this case and the said case is distinguishable in facts.

258. A perusal of the record clearly indicates that the petitioner has failed to discharge the onus cast on the petitioner to show that any of the proviso to Section 25 of the Fair Compensation Act is in violation of

Article 14 or Article 300A of the Constitution of India. In our view, the principles of law laid down by the Supreme Court and this Court referred to aforesaid would apply to the facts of this case. Even if the arguments of the petitioner are accepted that by conferring such powers of granting extension upon the appropriate Government, the entire acquisition proceedings would be delayed causing prejudice to the interest of the land owners, even in that circumstances, proviso to Section 25 of the Fair Compensation Act cannot be declared ultra vires and cannot be struck down on that ground.

259. Section 25 of the Fair Compensation Act provides that the Collector is required to make an award within a period of 12 months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. The said period prescribed under Section 25 of the Fair Compensation Act is subject to two proviso. In this case, the Appropriate Government who has power to grant extension having found that circumstances exist justifying the same has recorded the decisions in writing. We are not inclined to accept the submission made by the learned senior counsel for the petitioner that after expiry of 12 months from the date of issuance of declaration under Section 19 of the Fair Compensation Act, acquisition proceedings have lapsed or otherwise.

260. We have already dealt with the issue in the earlier paragraph of the judgment that the first proviso to Section 25 of the Fair Compensation Act contemplates multiple extensions. There is no bar against the appropriate Government from granting multiple extensions

however subject to the condition that the circumstances exist justifying the same and that the said decision to grant extension shall be recorded in writing and shall be notified and uploaded on the website of the authority concerned. Even according to the petitioner, the appropriate Government is empowered to grant one extension for more than 12 months, subject to the condition that circumstances exist justifying the same, instead of granting one extension for more than 12 months. In our view, the appropriate Government is empowered to grant more than one extension for 12 months subject to the condition prescribed in first and second proviso to Section 25 of the Fair Compensation Act. Even if the extension is required in view of the circumstances exist justifying the same, the petitioner would be fully compensated by claiming interest as per provisions of the said Act.

261. A perusal of the first proviso to Section 25 of the Fair Compensation Act clearly indicates that there is no cap in the outer limit on granting extension for a particular period. The said proviso prescribes for discretion of the appropriate Government to grant extension to make an award after complying with the condition prescribed in first and second proviso to Section 25 of the Fair Compensation Act.

262. Learned senior counsel for the petitioner did not dispute that the validity of first proviso to Section 25 of the said Fair Compensation Act is challenged by the petitioner only in the month of October 2022 by amending the petition and more particularly in ground N to the petition. In our view, the first proviso empowering the appropriate Government to grant extension subject to the conditions mentioned therein does not in any manner impinge or violate the fundamental rights of the Petitioner

but only enables or empowers certain powers to the Appropriate Government to take the acquisition proceedings already initiated to its logical conclusion. We do not find any specific ground in the writ petition demonstrating as to how and in what manner, the said proviso to Section 25 of the Fair Compensation Act violates the rights of the petitioner in any manner whatsoever.

263. The petitioner having challenged the constitutional validity of the said proviso, the burden is on the petitioner to establish that the said proviso is in violation of the constitutional mandate. In our view, learned ASG is right in his submission that Sections 11, 15, 19, 23 and 25 to 30 of the Fair Compensation Act have balanced the rights of all the stakeholders. The rights of the petitioner are also duly protected. In case the market value of the land under acquisition is decreased subsequently i.e. after the date of issuance of the notification issued by the appropriate Government under Section 11 of the Fair Compensation Act, the respondents become entitled to pay the compensation at the predetermined rate.

264. There is no substance in the submission made by the learned senior counsel for the petitioner that first proviso to Section 25 of the Fair Compensation Act is in violation of Article 300A of the Constitution of India. The provisions are already made for due compensation for the acquisition of the land and for due compensation for the delay, if any, in the Fair Compensation Act itself. The amount of compensation would be determined by the Authorities and the remedy of further challenge thereto is also provided under the provisions of the Fair Compensation Act.

265. The submission made by the learned senior counsel for the petitioner that Respondent No. 1 has failed to deal with the Petitioner's submissions on how the right to property has been recognized as both a constitutional and human right, and the laws that affect the right to property (and have an expropriatory effect) must be interpreted strictly has no merit.

266. In so far as the judgment of the Supreme Court in case of **Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke & Chemicals Ltd & Ors. (supra)** relied upon by Mr.Seervai, learned senior counsel for the petitioner is concerned, the issue before the Supreme Court was that the respondents had applied for and obtained sanction in terms of the building bye-laws framed by the respective Gram Panchayats in 1991 for grant of development plans under Section 29(1). The said applications were rejected by the Authority. The Supreme Court considered the issue whether the Delegated Authority could exercise the power under Section 50 of the Act under consideration and held that such an interpretation would be unlawful and would result in complete misuse of powers and arbitrary exercise thereof depriving the citizen of his right to use the land. The provisions considered by the Supreme Court in the said judgment were totally different. The said judgment thus cannot be considered as a precedent in the facts of this case and would not advance the case of the petitioner.

267. In so far as the judgment of the Supreme Court in case of **MCGM v Abhilash Lal & Ors. (supra)** relied upon by Mr.Seervai, is concerned, Supreme Court has held that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all.

The Supreme Court adverted to its earlier judgment in case of **Nazir Ahmad v. King Emperor (supra)**. There is no dispute about the propositions of law laid down by the Supreme Court. The petitioner could not demonstrate as to which part of the obligation under first and second proviso to Section 25 of the Fair Compensation Act has not been complied with in the manner prescribed in the said two proviso by the appropriate Government while granting extension of time to make an award. The said judgment thus would not advance the case of the petitioner.

268. Similar view is taken by the Supreme Court also in case of **Nareshbhai Bhagubhai & Ors. v Union of India (supra)**. For the reasons recorded in the earlier part of the judgment. The said judgment would also not advance the case of the petitioner, the judgment of the Privy Council in case of **Nazir Ahmad vs. King-Emperor (supra)** taking a similar view has been dealt with by the Supreme Court in case of **MCGM v Abhilash Lal & Ors. (supra)** which is already adverted to in the earlier part of the judgment.

269. In so far as the Supreme Court in case of **Mohinder Singh Gill & Another (supra)** relied upon by Mr.Seervai, learned senior counsel for the petitioner is concerned, it is held by the Supreme Court that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In our view, the petitioner has not demonstrated any reasons in the affidavits filed in this writ petition supplementing the reasons recorded in the impugned extensions. The said judgment in case of **Mohinder Singh Gill**

& Another (supra) would also not advance the case of the petitioner. The judgment of the Supreme Court in case of **Commissioner of Police, Bombay vs. Gordhandas Bhanji (supra)** taking a similar view in case of **Mohinder Singh Gill & Another (supra)** is also clearly distinguishable on the facts for the same reasons.

270. In so far as the judgment of the Supreme Court in case of **May George Vs. Special Tahsildar & Ors. (supra)** relied upon by the learned senior counsel for the respondent nos.1 and 3 to 5 is concerned, the Supreme Court while construing the provision of Section 9(3) of the Land Acquisition Act, 1894 has held that while determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It is held that it may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application.

271. It is held that a provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things. The Supreme Court in the said judgment has held that failure of issuance of notice under Section 9(3) would not adversely affect the subsequent proceedings including the Award and title of the Government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector

to make a reference to the Court under section 30 of the Land Acquisition Act.

272. The Supreme Court held that the Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid. In our view, since there is no cap provided as to what period under first proviso to Section 25 of the Fair Compensation Act to make an award can be extended which can be granted subject to certain safeguard provided in the said proviso, the appropriate Government granted two extensions for 12 months each in the facts on this case, cannot adversely affect the subsequent proceedings i.e. by declaration of award within the extended period granted twice. On such ground, the acquisition proceedings cannot be considered as lapsed by this Court.

273. The language of first part of Section 25 of the Fair Compensation Act that the award has to be made within 12 months from the date of issuance of declaration under Section 19 of the Fair Compensation Act becomes diluted in view of the powers conferred on the appropriate Government to grant extension in making an award subject to the condition prescribed therein. The first part of Section 25 of the Fair Compensation Act thus cannot be held as mandatory in view of proviso thereto conferring powers to grant extension which power in

this case has been exercised validly by appropriate Government by recording reasons and publishing those orders in the manner prescribed under second proviso to Section 25 of the Fair Compensation Act. The principles of law laid down by the Supreme Court in case of **May George Vs. Special Tahsildar & Ors. (supra)** will apply to the facts of this case. We are respectfully bound by the principles of law laid down by the Supreme Court in the said judgment. Mr.Seervai, learned senior counsel could not distinguish the judgment of the Supreme Court in case of **May George Vs. Special Tahsildar & Ors. (supra)**.

274. It is vehemently urged by the learned senior counsel for the petitioner that the extension notifications were published only on the Maharashtra Government e-gazette website which uploads hundreds of notifications daily, and does not provide any mechanism by which an interested/affected party such as the Petitioner may search the website to verify whether an extension notification has been published. The second proviso to Section 25 of the Fair Compensation Act provides that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned. It is not disputed by the petitioner that the notifications were uploaded on e-gazette website of the State Government i.e. (<https://egazete.mahaonline.gov.in/Forms/GazetteSearch.aspx>). It is not the case of the petitioner that the petitioner did not come to know about such extension having been granted by the appropriate Government. Be that as it may, no prejudice is caused to the petitioner even if the petitioner could not notice the notification granting extension of time to make an award by invoking second proviso to Section 25 of the Fair

Compensation Act. In our view, if there was any such lapse, as canvassed by the Petitioner, which in this case was not on the part of the respondents, the acquisition proceedings cannot be declared as lapsed on such ground. The petitioner has to demonstrate the prejudice if any suffered due to such alleged lapse, which the petitioner has failed in this case.

275. The Supreme Court in case of ***Shri Ram Krishna Dalmia & Ors. vs. Shri Justice S.R.Tendolkar & Others (supra)*** relied upon by the learned ASG has held that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It is held that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. The Supreme Court in case of ***R.K.Garg vs. Union of India & Others (supra)*** relied upon by the learned ASG has held that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. In the facts of this case, we do not find any transgression of any constitutional principles.

276. The Supreme Court in case of ***Union of India and others vs. Exide Industries Limited and Another (supra)*** relied upon by the learned ASG has taken a similar view and has held that the approach of the Court in testing the constitutional validity of a provision is well settled and the fundamental concern of the Court is to inspect the

existence of enacting power and once such power is found to be present, the next examination is to ascertain whether the enacted provision impinges upon any right enshrined in Part III of the Constitution.

277. The Supreme Court in case of ***V.S.Rice & Oil Mills & Others vs. State of Andhra Pradesh (supra)*** relied upon by the learned ASG has held that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14 specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Similar view is taken by the Supreme Court in case of ***Amrit Banaspati Co. Ltd. vs. Union of India & Others (supra)***.

278. The Supreme Court in case of ***Consumer Action Group and another vs. State of T.N. & Others (supra)*** relied upon by the learned ASG has held that in spite of very wide power being conferred on delegatee, that such a section would still not be ultra vires, if guideline could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. The Courts have to discover, whether there is any legislative policy, purpose of the statute or indication of any clear will through its various provisions. The delegatee has to exercise its powers within this controlled path to sub-serve the policy and to achieve the objectives of the Act.

279. This Court in case of ***the Film and Television Producers Guild of India Ltd. and another (supra)*** relied upon by the learned ASG

considered the provisions of Section 11(2) of the Telecom Regulatory Authority of India Act, 1997 held that the said provision is an enabling section and cannot be invalidated only on account of a possibility of its abuse. Where there is an abuse, what will be struck down is the abuse itself and not the provision.

Whether the State Government has acted beyond the scope of entrustment under Article 258(1) of the Constitution of India while inserting Section 10A by way of amendment to Section 10 of Fair Compensation Act or not :-

280. It is a common ground that Section 10A was inserted by Maharashtra Act No.37 of 2018 empowering the State Government to exempt any of the projects from the application of the provisions of Chapter II and Chapter III of the Fair Compensation Act, in the public interest, prescribed in Section 10A(a) to 10A(f) thereof. Admittedly, the Bullet Train Project is an Infrastructural Project. A perusal of Section 10A of the said Fair Compensation Act indicates that the State Government has exercised powers independently and not as a delegate of the Central Government. The Constitutional validity of Section 10A of the said Fair Compensation Act has already been given up by the petitioner.

281. The only question that arises for consideration of this Court is whether such powers exercised by the State Government in the Central Act are permissible or not. Learned senior counsel for the petitioner did not dispute that the Fair Compensation Act being the subject of acquisition would fall in the concurrent list more particularly at serial No.42 and hence State Government has powers to add the provisions in

the Central Act on such subjects by State amendment subject to restriction imposed under Article 258(1) of the Constitution of India. The said notification has been issued by Respondent No.2 in exercise of its powers under Article 258 (1) of the Constitution of India. The Maharashtra Amendment is wide and is not confined to the Bullet Train Project whereas the said Notification dated 9th August, 2019 is specifically for the Bullet Train Project. The Appropriate Government under the provisions of the Fair Compensation Act carries out functions, other than acquisition also. The petitioner has not impugned the notification dated 9th August, 2019, by which the State Government has been declared as an Appropriate Government. The challenge to the powers of the State Government to insert Section 10A of the Fair Compensation Act cannot be impugned on that ground.

282. Admittedly, the Respondent No.2 has appointed Respondent No.1 as the "Appropriate Government". The State Government is acting as both Appropriate Government and as the State Government and the exercise of power under Section 10A of the said Fair Compensation Act is as State Government and not as a delegate. In our view, the State Government in this case is wearing two hats.

283. Supreme Court in the case of ***Molar Mal v. Kay Iron Works (P) Ltd. (supra)*** relied upon by learned ASG has held that when there is no challenge to the constitutional validity of the proviso before the Court, the Court will have to proceed on the footing that the proviso, as it stands, is intra vires and interpret the same as such.

284. Supreme Court in case of ***State of Bihar vs. Rai Bahadur***

Hurdut Roy Moti Lal Jute Mills and another (supra) relied upon by learned ASG has held that in cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance.

285. During the course of arguments, learned ASG pointed out from the admitted pleadings that the description of the property of the petitioner clearly indicates that, there are various jungle trees. The land is vacant and barren land with kachha shed. The said State Amendment inserted Section 10A to the said Fair Compensation Act applies to all Infrastructure Project and not only the Bullet Train Project. No family is affected due to acquisition of the writ property for the said Infrastructure Project. There is no question of resettlement of any Project Affected Person. No person is displaced by the respondents-acquiring body as no construction has been put up in the writ property. Substantial part of the writ property is covered by wild trees. The writ plot is an uneven plot and is affected by high tension line, mangroves and is undeveloped.

286. Learned senior counsel for the petitioner could not dispute these factual aspects and that by granting exemption from applicability

of Chapter II and Chapter III of the said Fair Compensation Act, rights of the petitioner were not affected in any manner whatsoever. Since Chapter II and Chapter III of the said Fair Compensation Act which prescribed various conditions to be fulfilled were not applicable to the writ property considering the nature of the writ property and surroundings, the petitioner cannot be allowed to raise a plea that the State Government could not have granted such an exemption. The plea of constitutional validity cannot be decided in abstract.

287. There is no substance in the submission made by the learned senior counsel for the petitioner that such powers could not have been exercised even by the Central Government. Such powers have been conferred upon the State Government to grant such an exemption. Be that as it may, this argument cannot be accepted on the ground that by granting exemption from applicability of Chapter II and Chapter III of the said Fair Compensation Act, the petitioner was at all affected.

**WHETHER PRINCIPLES OF NATURAL JUSTICE
ARE VIOLATED?**

288. We shall now deal with the issue as to whether the impugned award is in violation of the principles of natural justice or not. It is vehemently urged by the learned senior counsel for the petitioner that notice under Section 21 was issued by the respondent no.4 Ms.Sonali Mule on 27th January 2020. The hearing was given on 15th July 2020. Pursuant to the order passed by this Court in the earlier writ petition, the petitioner appeared before Mr.Vikas Gajre through its advocate. However, the award has been passed by Mr. Santosh Bhise. It is vehemently urged that a person who granted hearing to the petitioner

ought to have rendered the award and not other officer who had never heard the petitioner. He also relied upon Section 23 of the Fair Compensation Act in support of this submission and various judgments.

289. On the other hand, it was the case of the respondents that the enquiry under Section 23 of the Fair Compensation Act is only for three purposes i.e. measurement, value of land and respective interest of the party. It is urged that the concept of one person hearing and deciding the matter by another person would apply under Section 15 & not Section 23 of the Fair Compensation Act.

290. Learned ASG relied upon Sections 11, 15, 19, 23 and 25 to 30 of the Fair Compensation Act in support of the submission to the exceptional procedure required to be followed for acquiring the land and for making an award. During the course of the arguments, attention of the learned senior counsel for the petitioner was invited Rule 18 of the said 2014 Rules.

291. Mr.Seervai, learned senior counsel for the petitioner could not dispute that in view of compensation in the draft award proposed by the then Deputy Collector more than Rs.10 crores, the draft award was sent to Divisional Commissioner, Konkan Division for approval. The Divisional Commissioner, Konkan Division thereafter, made various suggestions for implementation in the final award. Suggestions were incorporated by the Deputy Collector who declared the award. It is not the case of the petitioner that the Divisional Commissioner, Konkan Division ought to have granted personal hearing to the petitioner before

making any recommendations or granting approval to the draft award submitted by the then Deputy Collector under Rule 18 of the said 2014 Rules.

292. It is also not the case of the petitioner that the Deputy Collector who submitted recommendations to the Divisional Commissioner, Konkan Division ought to have given personal hearing to the petitioner again. The petitioner has not challenged the validity of Rule 18 of the said 2014 Rules requiring the approval of the Divisional Commissioner, Konkan Division to the draft award sent to him for approval by the Deputy Collector in view of the compensation having proposed for more than Rs.10 crores under Rule 18 of the said 2014 Rules.

293. In view of the fact that no such ground was raised by the petitioner in the writ petition challenging the powers of the Deputy Collector to grant approval to the draft award made by the Deputy Collector and the Deputy Collector accepting such recommendations and declaring the award after considering the recommendation made by the Divisional Commissioner, Konkan Division, the petitioner is now estopped from contending that the award is made by different Deputy Collector. There is thus no substance in the submission of Mr.Seervai, learned senior counsel that award is passed in violation of principles of natural justice. The concept of hearing by one person and award to be made by the same person would not apply in this situation.

294. There is no substance in the submission made by Mr.Seervai,

learned senior counsel for the petitioner that the State Government has not responded to the contentions urged by the petitioner on the draft award prepared by Mr. Vikas Gajare, who has heard the petitioner and the award is published by Mr. Santosh Bhise, the successor to Mr. Vikas Gajare. In view of this legal position, the judgment of Supreme Court in case of **Automotive Tyre Manufacturers Association** (supra) and in case of **Gullapali Nageswara Rao & Ors.** (supra) relied upon by the learned senior counsel for the petitioner would not advance the case of petitioner and are clearly distinguishable on facts. Similarly, the judgment of Supreme Court in case of **Union of India vs. Shiv Raj and others** (supra) relied upon by the learned senior counsel for the petitioner also is distinguishable on facts on the similar grounds.

295. There is no dispute about the proposition that the principles of natural justice is fundamental, irrespective of whether the hearing is before an administrative authority or a quasi-judicial authority. The State Government cannot give a go-by to the fundamental principle of natural justice. It is not the case of the State Government that the context of Sections 21 and 23 of the Fair Compensation Act is an empty formality. However in this case, in view of Rule 18 of the the said 2014 Rules and in view of the fact that no prejudice is caused to the petitioner, reliance placed on Sections 21 and 23 by the petitioner would be of no assistance.

296. In so far as the judgment of the Supreme Court in case of **Laxmi Devi v State of Bihar & Ors. (supra)** relied upon by Mr. Seervai, learned senior counsel for the petitioner is concerned, Supreme Court has held that the person who heard and considered the objections can alone decide them; and not even his successor competent to do so even on the

basis of the materials collected by his predecessor. In view of Rule 18 of the said 2014 Rules, the Deputy Collector was obliged to obtain approval of the Divisional Commissioner in view of compensation having proposed was more than Rs.10 crores. Be that as it may, there is no ground raised by the petitioner that the Divisional Commissioner ought to have granted personal hearing to the petitioner before making any recommendation or granting approval of the draft award forwarded by the Deputy Collector. The judgment of the Supreme Court in case of **Laxmi Devi v State of Bihar & Ors. (supra)** would not advance the case of the petitioner.

**DISCRETIONARY POWERS OF HIGH COURT UNDER
ARTICLE 226 OF CONSTITUTIONAL OF INDIA**

297. We shall now consider that even if there are any irregularities in the procedure followed by the respondents in acquiring the writ property for Infrastructural Project, whether Court can exercise its discretionary power under Article 226 of the Constitution of India and to interfere with the Infrastructural Project of public importance or that no interference is warranted since the petitioner would be compensated in terms of money by seeking enhancement of compensation under Section 64 of the Fair Compensation Act or not.

298. The Supreme Court in case of **Shayara Bano (supra)** has held that vires of a legislation may also be challenged on the ground of “manifest” arbitrariness under Article 14 of the Constitution of India. A party who challenges the constitutional validity on the ground of the arbitrariness, must specifically plead by giving cogent and sufficient

reasons in support of such a contention. A perusal of the pleadings filed by the petitioner on the aspect of constitutional validity of the proviso to Section 25 of the Fair Compensation Act indicates that the petitioner has not pleaded the ground of “manifest” arbitrariness at all. In our view, no enactment can be struck down by just saying that it is merely arbitrary or unreasonable or irrational. Mr.Seervai, learned senior counsel for the petitioner did not dispute that the the Bullet Train Project is Infrastructural and Public Project of a national importance.

299. In our view in case of procedural difficulties, if any, in acquiring the writ property, it would at the most affect the quantum of compensation and not validity of acquisition. The petitioner would be compensated while considering the claim for enhancement under Section 64 of the said Fair Compensation Act. The irregularities, if any of this nature, in following second part of Section 25 of the said Fair Compensation Act would not vitiate the acquisition of the writ property.

300. In our view, the powers of the Court under Article 226 of the Constitution of India are discretionary and merely because there are certain alleged irregularities in the procedure required to be followed while acquiring the writ property, the Court cannot exercise discretionary power in view of the fact that the said Bullet Train Project being Infrastructural and Public Project of national importance. The Supreme Court in case of **Ramniklal N. Bhutta & Anr.** (supra) relied upon by Mr.Kumbhakoni, learned senior counsel for the respondent nos.1, 3, 4 and 5 has held that our country is now launched upon an ambitious programme of all-round economic advancement to make our economy

competitive in the world market. We are anxious to attract Foreign Direct Investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian Tigers", e.g., South Korea, Taiwan and Singapore.

301. It is held that however, recognized on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is held that the persons affected however can challenge the acquisition proceedings in Courts. The challenge to the acquisition proceedings in Courts are generally in shape of writ petitions filed in High Courts. It is held that whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power for granting stay/injunction. The power under Article 226 of Constitution of India will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. It is held that in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. The Courts have to weigh the public interest *vis-a-vis* the private interest while exercising the power under Article 226 of the Constitution of India indeed any of their discretionary powers.

302. It is held that it may even be open to the High Court to

direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong but quashing the acquisition proceedings is not the only mode of redress. In our view the Bullet Train Project is a Infrastructural Project of national importance, a large numbers of public would be benefited and would have saved other benefits for betterment of this country. The principles laid down by the Supreme Court in case of **Ramniklal N. Bhutta & Anr.** (supra) apply to the facts of this case. We are respectfully bound by the principles laid down by the Supreme Court in the said judgment. Mr.Seervai, learned senior counsel for the petitioner could not distinguish the judgment of the Supreme Court in case of **Ramniklal N. Bhutta & Anr.** (supra).

303. During the course of his argument, learned ASG invited our attention to various averments and the documents from the detailed affidavit in reply filed by the respondent nos.2 and 6 and also furnished various details of the Bullet Train Project undertaken by the Government, the features of the said project, the benefits of the said project to the large number of public, steps taken so far in furtherance of the said acquisition of the writ property. Learned ASG pointed out that the said Bullet Train Project is being carried out in collaboration with funding partner Japan International Corporation Agency (JICA) and the Social Impact Assessment has already been carried out by JICA. The objective of Social Impact Assessment as provided under Section 8(2) of the Fair

Compensation Act, 2013 is to enable the appropriate Government to recommend such area of acquisition, which ensures- (i) minimum displacement of people, (ii) minimum disturbance to the infrastructure, ecology; and (iii) minimum adverse impact on the individuals affected.

304. It is pointed out that the said Bullet Train Project has been declared as Vital Infrastructure Project by Government of Maharashtra vide Gazette Notification dated 18th May, 2018. The length of this High Speed Rail Corridor is 508.17 km (approximately) and will have 12 stations. Out of the 508.17 kms, a portion of 348.03 is going to be in the State of Gujarat, 4.5 kms in Union Territory of Dadra & Nagar Haveli and 155.64 kms in the State of Maharashtra. The railway line would pass through Mumbai, Thane and Palghar districts in Maharashtra and the districts of Valsad, Navsari, Surat, Bharuch, Vadodara, Anand, Kheda, Ahmedabad in Gujarat and the Union Territory of Dadra Nagar Haveli. It is pointed out that 92% project length is elevated. There are many benefits of an elevated track. This will ensure no obstruction to natural flow of waters, traffic and movement of farmers. It would greatly improve the safety and security perception against external interference and also reduce land requirement in the project i.e. 17.5m width against 36 m for conventional railway tracks.

305. It is pointed out that the said rail corridor consists of a 21 kms stretch of rail line, which will be underground single tube twin track tunnel, out of which a stretch of 7 kms will be an undersea tunnel located below Thane Creek. We are inclined to accept the submission of the learned ASG that the idea behind this underground section of the rail

corridor is to minimize any adverse impact on Thane Creek Flamingo Sanctuary, adjoining mangroves and high rise residential complexes of Mumbai suburban. The tunnel phase is a critical phase of the Project and will take maximum time to construct as compared to all other civil construction packages in the project.

306. We are inclined to accept the submission made by the learned ASG that the said Bullet Train Project after completion will give the country its first High Speed Rail and first undersea tunnel, around 40 meter deep. The Japanese Government has provided financial aid through JICA in the form of Official Development Assistance Loan (ODA) facility. We are inclined to accept the submission made by the learned ASG that the construction of tunnel of 13.2 meter diameter, largest diameter urban tunnel boring works ever undertaken in India. It shall be India's first 7 Kms of undersea tunneling work and is expected to utilize maximum construction period i.e. 5.2 years amongst rest of the sections of the corridor.

307. Learned ASG submitted that the travel time between Mumbai and Ahmedabad will be reduced to 1 hour 58 minutes as against the current travel time of 6 hours 35 minutes (by train) and shall act as a catalyst for economic growth of cities it passes through. The said project will increase inter regional connectivity along the rail corridor and boost the development of satellite towns that host the Bullet Train stations such as Palghar Township Projects of MMRDA.

308. We are inclined to accept the submission made by the

learned ASG that the said Bullet Train Project is expected to generate over 90,000 direct and indirect jobs and undertaking skill development and income restoration training for numerous project affected persons. More than 51,000 technicians, skilled and unskilled work force will be required for various construction related activities. We are inclined to accept the submission of the learned ASG that it is expected that this project will serve 92,000 passengers per day per direction by 2053 and the said project is highly instrumental in pushing the 'Make In India' initiative of the Government under which different trade agreements between various Japanese Organizations and NHSRCL, FICCL, CII, ASSOCHAM to bolster technology transfer and in house skilled force developments have been executed.

309. We are inclined to accept the submission made by the learned ASG that estimated cost for this project is around 1.08 Lakh Crores approximately and that so far an amount of more than Rs.32,000 Crores has been expended by NHSRCL towards implementation of the project. The land approximately admeasuring 430 hectors is required out of which as of November, 2022, 97% of the land is already acquired. For the underground section between BKC and Thane, all the land parcels required are already in possession of the NHSRCL, save and except the petitioner's land.

310. We are informed that various permissions have been already secured by the respondents such as Forest Clearances, Wildlife Clearances (SNGP, Tungreshwar Wildlife Sanctuary, Thane Creek Flamingo Sanctuary), CRZ clearances and Mangroves cutting

clearance,clearances from Dahanu Taluka Environment Protection Authority which have resulted in NHSRCL incurring a cost of Rs.146 crores. All 28 crossings are already procured from various authorities since this rail corridor traverses through various highways, expressways, rail corridors etc. We are inclined to accept the statement of the learned ASG that more than 85% utility diversion (i.e. diversion work of public utility sources like electricity lines, water lines affected by the project) works are complete in Maharashtra and 100% in the affected tunnel section has been completed.

311. We accept the submission of the learned ASG that the tenders for 100% of civil works in the Maharashtra region have already been floated. In Gujarat, 100% civil works contracts are already awarded and construction is in full swing. In Gujarat, foundation work for 194 kms rail corridor, 9.5 kms of viaduct, 23 kms of girder casting are complete. Construction work of all 8 bullet train in Gujarat are already in full swing. We accept the submission made by the learned ASG that except the land of the petitioner, other lands are already in possession of the Government. The Government has already allotted alternate land. The alignment of the rail corridor sections between BKC and Thane (HSR) in view of the proposal given by the petitioner for alternate land and having been accepted by the respondents, has been altered. The Government is also required to increase additional construction cost and safety costs in view of the writ property being very close to the line.

312. The statement made by the learned ASG that due to long pending acquisition of the land of the petitioner, the NHSRCL had to

cancel the tenders relating to the underground tunneling works on two occasions which resulted into cost escalation by at least 1000 crores. The petitioner did not raise the issue that the acquisition had lapsed due to efflux of time during these proceedings. We have also perused the chart prepared by NHSRCL showing the nature of Schematic MAHSR Corridor Route Plan, change of proposed land under acquisition suggested by the petitioner and the consequences thereof, nature of construction activities which is required to be carried out on the Bullet Train Project. Learned senior counsel for the petitioner did not dispute these important facts and more particularly the work already undertaken by the respondents in the State of Gujarat as well as in the State of Maharashtra and the extent of land already acquired and possessed by the respondents for completion of the Bullet Train Project.

313. At such stage of the project, this Court cannot exercise the discretion under Article 226 of the Constitution of India and to interfere with the acquisition of the writ property which is for small portion of the land as compared to 97% of the land already having been acquired by the respondents and on the said land various activities already having been carried out substantially. The Government has already spent huge amount on completing the activities so far. The Bullet Train Project is funded by Japan International Corporation Agency (JICA) and thus any interference in the acquisition of the writ property at this stage would be totally against the public interest. In our view, any interference with the acquisition of the writ property at this stage would be also contrary to the principles of no interference with the public project under Section 20(A) and 42 (ha) of the Specific Relief Act, 1963. There are no procedural

irregularities in this matter on the part of the respondents. Even if there is any irregularity, no interference is warranted in view of the project being the Infrastructural Project of national importance and being a project in public interest.

314. The Supreme Court in case of **National High Speed Rail Corporation Limited** (supra) has considered the matter relating to the same Bullet Train Project and has held that it cannot be disputed that the Bullet Train Project is very important and national project. The Bullet Train Project is a fully foreign funded project, which was envisaged when the Japanese and Indian Governments entered into a Memorandum of Undertaking, pursuant to which it was agreed that the said project would be fully funded by a concessional Official Development Assistance (ODA) loan of Rs.1 lakh crores by Japan International Cooperation Agency (JICA). The Supreme Court also noticed that before the loan agreement was entered into, a Memorandum of Understanding/ agreement was entered into between the two Prime Ministers i.e. Japan and India, which provided how the project would be financed and operated.

315. The Supreme Court also considered the said Memorandum of Understanding and observed that the loan was on diplomatic consideration and was based on Republic of India's position in commodity of nations due to which a huge loan was granted to India with provisions of : (i) technology transfer (which is unavailable in India) ; (ii) Indian Human resource training / development by Japan International Cooperation Agency (JICA) and its consultant for operation of the said

projects; and (iii) provision to “Make in India” the bullet train which would be operating under the said project. The Supreme Court also considered various other provisions of the said Memorandum of Undertaking and importance of the said Bullet Train Project in the said judgment.

316. In paragraph 48 of the said judgment, the Supreme Court held that even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. The High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters, even in a case where the High Court is of the *prima facie* opinion that the decision is as such perverse and/or arbitrary and/or suffers from *mala fides* and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order for compensation. The Supreme Court held that the High Court may put to the petitioner in the writ petition to notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him, he may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him. The principles laid down by the Supreme Court in case of ***National High Speed Rail Corporation Limited*** (supra) apply to the facts of this case.

317. The Division Bench of this Court in Writ Petition No.442 of

2020 filed by **The National High Speed Rail Corporation Limited** (supra) while dealing with the same Bullet Train Project held that the said Bullet Train Project will not only cover the distance of 508.17 kms within a period of two and a half hours, instead of presently six and a half hours and be a *convenio par excellence* for the rail passengers of the two cities and the two States. It is held that it would increase connectivity between the busy trade corridor of Ahmedabad and Mumbai which will increase the economic productivity, running on electricity not only saving valuable cost on conventional fuel but also generating employment of about twenty thousand people in the construction phase and with an approximate of four thousand people during the operations and maintenance and about sixteen thousand indirect jobs expected to be generated during the Operations and Maintenance phase. The Government would undertake to plant over 1,10,000 mangrove saplings in between the piers to be installed in the mangrove area along with other safeguards as set out in the permissions/approvals.

318. This Court also held that the need for sustainable development, where both – the needs of development and economy on the one hand and protection and conservation of the environment on the other are balanced, would also be satisfied. This Court accordingly held that the said Bullet Train Project is in public interest and necessary for public good and a project of *bona fide* public utility. This Court accordingly directed the authorities to permit the petitioner to execute Mumbai – Ahmedabad High Speed Rail project including in the Buffer Zone in view of the public importance of the project subject to various conditions.

319. A Division Bench of this Court comprising of one of us (R.D.Dhanuka, J.) in case of ***Gorakhnath Shankar Nakhwa & Ors. vs. The Municipal Commissioner of Municipal Corporation of Greater Mumbai & Ors. (supra)*** has held that individual inconvenience alleged to have been canvassed by the petitioners cannot prevail over the national interest. The public interest would prevail over the private interest. The principles of law laid down this Court in this judgment would apply to the facts of this case. Be that as it may, Section 10A was introduced in the said Fair Compensation Act in the year 2013. Admittedly, the Petitioner has challenged the constitutional validity of the said Section 10A of the Fair Compensation Act in the year October, 2022. In view of delay/laches attributable on the part of the petitioner also, we are not inclined to exercise our discretionary power to entertain the challenge to the powers of the State Government to insert and to add in Section 10A of the Fair Compensation Act.

320. Supreme Court in case of ***Noida Industrial Development Authority vs. Ravindra Kumar (supra)*** relied upon by the learned ASG while dealing with the order passed by the High Court and dealing with the acquisition proceedings has held that it is not necessary for the High Court to correct each and every illegality. If the correction of illegality is likely to have unjust results, High Court would normally refuse to exercise of its jurisdiction under Article 226 of the Constitution of India. While maintaining the acquisition proceedings, the High Court granted a substantial relief to the land owners by directing payment of compensation under the 2013 Act which is higher than the compensation payable under the 1894 Act. The Supreme Court has held that this approach on behalf of the High Court cannot be faulted. In this case also,

the petitioner would be entitled to apply for enhancement of compensation by invoking the provisions of the Fair Compensation Act. The principles of law laid down by the Supreme Court in case of ***Noida Industrial Development Authority vs. Ravindra Kumar (supra)*** would apply to the facts of this case.

321. We do not find any illegality in the award or in the decision taken by the appropriate Government in granting extension to make an award by exercising powers under first proviso to Section 25 of the Fair Compensation Act. Be that as it may, the petitioner has not made out a case for exercising discretionary powers under Article 226 of the Constitution of India in this case.

Whether corrections in the impugned award were beyond the scope of powers prescribed under Section 33 of the Fair Compensation Act or not?

322. It is the case of the petitioner that the Deputy Collector sought to correct the purported clerical errors in the impugned award by amending the reference to the second extension notification published on 20th January 2022, to include a reference to an earlier publication of the notification on 13th January 2022 and by altering the date for computing interest.

323. We have perused Form VI prescribed under the provisions of the Fair Compensation Act read with Rule 11 which indicates that the date of extension is not required to be mentioned in the award. Be that as it may, a perusal of the record however, indicates that the date of one of the extension was missing inadvertently in the award. The correction to

the effect of mentioning the corrected date under Section 33 of the Fair Compensation Act was thus made. In the correction, calculation of the interest is not corrected. There is no effect on the amount of interest. The authority has only corrected period. There is no such dispute raised by the petitioner in the writ petition.

324. We have perused the averments made in page 116 of the writ petition which indicates that the correction was done by Mr. Girase, Deputy Collector and was approved by the Collector at page 915 of the pleadings filed by the respondents. The said corrections were within the powers prescribed under Section 33 of the said Fair Compensation Act. Mr. Seervai, learned senior counsel for the petitioner could not point out any prejudice caused to the petitioner because of such correction made in the award. There is thus no substance in the averments made by the learned senior counsel for the petitioner.

325. In so far as the judgment of the Supreme Court in the case of **Jayalakshmi Coelho Vs. Oswald Joseph Coelho (supra)** relied upon by the learned senior counsel for the petitioner is concerned, in our view, the said judgment of the Supreme Court deals with the powers under Section 152 of the Code of Civil Procedure, 1908 and would not advance the case of the petitioner. In this case, the powers were exercised under the specific provision of the Fair Compensation Act i.e. Section 33 of the said Fair Compensation Act which powers are exercised not beyond the circumstances which are provided under the said provision.

326. In so far as the judgment of the Karnataka High Court in the case of **Gogga Sidramiah Vs. SLAO, Dharwad (supra)** relied upon

by learned senior counsel for the petitioner is concerned, it is held that a matter, requiring elaborate arguments or evidence on a question of facts or law, for the discovery of such errors cannot be categorized as errors arising out of in the award so as to invoke the provisions of Section 33 of the Fair Compensation Act. In this case, the errors corrected by the authority in the award under Section 33 of the said Fair Compensation Act did not require any elaborate arguments or evidence on a question of facts or law. The correction carried out is permissible to be carried out under Section 33 of the Fair Compensation Act. The judgment of the Karnataka High Court thus also would not advance the case of the petitioner.

**Whether there is any perversity and absurdity
in the impugned award?**

327. Learned senior counsel for the petitioner took pains to point out that during the course of private negotiation, the District Level Committee under the Chairmanship of the Mumbai Collector Suburban District (Respondent No.5) had fixed the compensation in respect of the Subject Plot at Rs.5,72,92,45,598/- whereas in the Impugned Award, the compensation amount of Rs.2,64,27,29,349/- only was declared. The two amounts of compensation referred by the petitioner were at two different stages i.e. (i) during the course of private negotiation which admittedly failed and another in the impugned award, based on evidence produced by the petitioner.

328. The compensation derived at the stage of private negotiation cannot be considered as final and binding since the said private negotiation had admittedly failed and the said amount was not accepted

by the petitioner as conclusive. The petitioner thus cannot be allowed to rely upon the said compensation discussed at the stage of private negotiation. The award cannot be considered as perverse and absurd on this ground. Be that as it may, the petitioner could have applied for enhancement of the claim awarded by the authority by exercising rights under the provisions of the Fair Compensation Act.

329. This Court in case of ***Special Land Acquisition Officer, Mumbai vs. Bhavsar Construction Co. Pvt. Ltd. (supra)*** relied upon by learned senior counsel for respondent nos.1 and 3 to 5 has held that the award is only an offer. It is held that merely because the Land Acquisition Officer has fixed a higher figure and the final award has been passed at a much lower figure, by itself, cannot be the basis to hold that the claimants would be entitled to higher market value. That would be the subject matter of evidence to be led and appreciated. That aspect therefore by itself cannot be a consideration. The principles of law laid down in the said judgment delivered by the learned Single Judge of this Court apply to the facts of this case. We do not propose to take a different view in the matter.

330. In case of ***Mazdoor Kisan Shakti Sangathan vs. Union of India & Anr. (supra)*** relied upon by the learned ASG, the Supreme Court held that there may be situations where conflict may arise between two fundamental rights. In case of conflict on inter fundamental rights and intra fundamental rights, Court has to examine as to where lies the larger public interest while balancing the two conflicting rights. It is the paramount collective interest which would ultimately prevail. In the facts of this case, the private interest claimed by the petitioner does not

prevail over the public interest which would subserve Infrastructural Project of public importance which is a dream project of this country and first of its kind. We are thus not inclined to exercise discretionary powers under Article 226 of the Constitution of India in the facts of this case.

331. In view of the foregoing reasons, the petition is devoid of any merits. We accordingly pass the following order :-

- a. Writ Petition No.3537 of 2019 stands dismissed. Rule is discharged.
- b. Interim Application Nos.838 of 2022 is dismissed as not pressed.
- c. In view of dismissal of the Writ Petition No.3537 of 2019, Interim Application Lodging No.30586 of 2022 does not survive and is accordingly disposed off.
- d. No order as to the costs. Parties to act on the authenticated copy of this order.

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)

332. Mr. Seervai, learned senior counsel for the petitioner at this stage, seeks an order and direction against the respondents not to take the possession of the writ property for a period of two weeks, which is vehemently opposed by Mr.Singh learned ASG for respondent Nos.2 and 6 and Mr. Kumbhakoni, learned special counsel for respondent Nos.1, 3 4 and 5.

333. Since the ad-interim relief was already rejected by this Court on 18th December 2019 by a reasoned order, we are not inclined to

accept the request made by Mr. Seervai, learned senior counsel for the petitioner for grant of stay even for a period of two weeks. Hence the application for stay is rejected.

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)