

**AFR**

**Reserved**

**Court No. - 21**

**Case :-** WRIT - C No. - 11417 of 2023

**Petitioner :-** Balwan Singh And Another

**Respondent :-** National Highway Authority Of India And Another

**Counsel for Petitioner :-** Harsh Vardhan Gupta

**Counsel for Respondent :-** Pranjal Mehrotra

With

**Case :-** WRIT - C No. - 18478 of 2023

**Petitioner :-** Vikas Goyal And Another

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Sanjay Kumar Mishra

**Counsel for Respondent :-** A.S.G.I.,C.S.C.,Pranjal Mehrotra,Rajesh Tripathi

With

**Case :-** WRIT - C No. - 18521 of 2023

**Petitioner :-** Dr. Sudhir Agarwal And Another

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Sanjay Kumar Mishra

**Counsel for Respondent :-** A.S.G.I.,C.S.C.,Pranjal Mehrotra,Rajesh Tripathi

**Hon'ble Manoj Kumar Gupta, Acting Chief Justice**

**Hon'ble Donadi Ramesh, J.**

(Per Manoj Kumar Gupta, A.C.J.)

1. The main issue for consideration in these writ petitions is whether Section 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act, 2013') relating to payment of interest on delayed payment of compensation amount would apply to the acquisitions made under the provisions of the National Highways

Act, 1956 (for short 'NH Act') as amended by the National Highways Laws (Amendment) Act, 1997.

2. Before we advert to the above issue, we may note in brief the facts of each individual case:-

**Writ-C No.11417 of 2023**

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|---|--------------|
| 1. Date of notification under Section 3-A<br>(In Gazette)                               | - 18.06.2012 |
| (In Newspaper)  | - 18.07.2012 |
| 2. Date of notification under Section 3-D<br>(In Gazette)                               | - 17.06.2013 |
| (In Newspaper)  | - 20.08.2013 |
| 3. Date of award  | - 22.09.2020 |
| 4(a) Rs.59,20,163/- deposited as compensation<br>in the account of the petitioner no.1. | - 03.03.2022 |
| (b) Rs.63,47,648/- deposited as compensation in<br>the account of petitioner no.2.      | - 03.03.2022 |

Note:- The compensation amount deposited in the account of the petitioners included interest upto 22.09.2020 i.e. upto the date of award – petitioners claimed interest for eighteen months from the date of award dated 22.09.2022 till date of actual payment i.e. 03.03.2022 at the rate of 12% per annum (Rs.10,79,100), but which was not granted.

### **Writ-C No.18478 of 2023**

1. Date of notification under Section 3-A - 21.06.2019  
(In Gazette)  
(In Newspaper) - 03.07.2019
2. Date of notification under Section 3-D - 18.09.2019  
(In Gazette)  
(In Newspaper) - 28.09.2019
3. Date of award - 07.12.2019  
Project Director, NHAI addressed a - 28.02.2020  
communication to Competent Authority  
mentioning that financial approval has  
been granted to the compensation amount  
as per award, except in case of the  
petitioners, where the award was to be  
challenged before the Arbitrator.  
Award challenged before the Arbitrator  
under Section 3-G (5)  
Arbitrator rejected the challenge - 03.01.2021  
In Writ-C No.22284 of 2021 filed by the - 01.11.2021  
petitioners, direction was issued to the  
respondents to transfer compensation  
amount in the account of the petitioners  
within one month provided the requisite  
formalities are completed by the  
petitioners – the petitioners claim to have  
completed all the formalities.  
Contempt Application (Civil) No.1966 of - 05.04.2022  
2021 filed by the petitioners was disposed  
of by granting one more opportunity to the  
opposite parties to comply with the order

of the Writ Court.

The Competent Authority refused to pay - 01.06.2022  
compensation on the ground that objection  
under Section 34 was pending before the  
court.

In Contempt Application (Civil) No.4125 - 03.12.2022  
of 2022 filed by the petitioner, notice was  
issued to the opposite parties.

Competent Authority addressed a - 02.02.2023  
communication to NHAI that payment was  
made to the petitioners by RTGS on  
30.01.2023, but the amount has not been  
received from NHAI.

The petitioners filed application for - 18.03.2023  
payment of interest from the date of award  
i.e. 7.12.2019 upto the date of actual  
payment, but which request has not been  
accepted.

**Writ-C No.18521 of 2023**

- |    |  |   |            |
|----|--|---|------------|
| 1. | Date of notification under Section 3-A | - | 21.06.2019 |
|    | (In Gazette)                           |   |            |
|    | (In Newspaper)                         | - | 03.07.2019 |
| 2. | Date of notification under Section 3-D | - | 18.09.2019 |
|    | (In Gazette)                           |   |            |
|    | (In Newspaper)                         | - | 28.09.2019 |
| 3. | Date of award                          | - | 07.12.2019 |
|    | Date of possession under Section 3-E   |   |            |
|    | Project Director, NHAI addressed a     | - | 19.05.2020 |
|    | communication to Competent Authority   |   |            |

mentioning that approval has been granted to the compensation amount as per award with the exception in the case of petitioners, where the award is to be challenged before the Arbitrator

Award challenged before the Arbitrator under Section 3-G (5)

Arbitrator rejected the challenge - 03.01.2021

In Writ-C No.22406 of 2021 filed by the petitioners, direction was issued to the respondents to transfer compensation amount in the account of the petitioners within one month provided the requisite formalities are completed by the petitioners – the petitioners claimed to have completed all the formalities. - 01.11.2021

Contempt Application (Civil) No.1965 of 2022 filed by the petitioners was disposed of by granting one more opportunity to the opposite parties to comply with the order of the Writ Court. - 05.04.2022

The Competent Authority refused to pay compensation on the ground that objection under Section 34 was pending before the court. - 02.06.2022

Second Contempt Application (Civil) No. 4124 of 2022 filed by the petitioners. Notice issued to opposite parties. - 03.12.2022

Competent Authority addressed a communication to NHAI that payment - 02.02.2023

was made to the petitioners by RTGS on 30.01.2023, but the amount has not been received from NHAI.

The petitioners filed application for - 18.03.2023 payment of interest from the date of award i.e. 7.12.2019 upto the date of actual payment, but which request has not been accepted.

### **Submission of Counsel for the Parties**

3. Learned counsel for the petitioners made the following submissions: -

(a) The Supreme Court in **Union of India and others Vs. Tarsem Singh and others**<sup>1</sup> has declared Section 3-J of NH Act as unconstitutional, being violative of Article 14 of the Constitution. It has also been held that the State cannot be permitted to discriminate between land owners on account of difference in Statutes under which their lands are acquired, as it would be violative of Article 14 of the Constitution.

(b) The solatium and interest is payable to the land owners whose property is compulsorily acquired as part of compensation. Any discrimination in this regard would render the provision relating to acquisition under the National Highways Act unconstitutional. The petitioners would

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<sup>1</sup> (2019) 9 SCC 304

therefore be entitled to interest in case of delay not only on the compensation amount enhanced by the Arbitrator [Section 3-H(5) of the NH Act], but also on the amount initially determined by the Competent Authority, by virtue of Section 80 of the Act, 2013.

4. On the other hand, Sri Pranjal Mehrotra, learned counsel appearing on behalf of NHAI submitted as follows:

By virtue of Section 105 (1) of the Act, 2013, the provisions of the Act have been made inapplicable to the enactments relating to land acquisition specified in the Fourth Schedule. The NH Act is enlisted at Serial No.7 in the Fourth Schedule. Therefore, the provisions of the Act, 2013 would not be applicable nor the petitioners can claim any interest under Section 80 of the Act, 2013.

#### **Statutory Regime -**

5. A bird's eye view of the relevant old and new statutory regime would help us in deciding the controversy. The NH Act initially did not contain any provision for acquisition of land even when required for construction of Highway. The acquisitions used to be made under the Land Acquisition Act, 1894 (for short 'the Old Act'). It was resulting in considerable delay. In order to expedite the process of land acquisition where land is required for construction of National Highways, the National Highways Laws (Amendment) Act, 1997

was enacted. By inserting Sections 3-A to 3-J of NH Act, a parallel machinery to the existing provisions under the Old Act was provided for acquisition of lands for National Highways. Under it, preliminary notification is made under Section 3-A declaring intention of the Central Government to acquire land followed by final declaration under Section 3-D. The important feature is that on publication of declaration under Section 3-D, the land vests absolutely in the Central Government free from all encumbrances and consequently, the Central Government is clothed with power to take possession. Section 3-G is the machinery provision for determination of compensation and 3-H stipulates that the Central Government shall deposit the compensation amount in such manner as may be laid down by Rules made in this behalf with the Competent Authority before taking possession of the land. The National Highways (Manner of Depositing the Amount by the Central Government; Making Requisite Funds Available to the Competent Authority for Acquisition of Land) Rules, 2019 lays down the mechanism in which the compensation amount would be made available to the Competent Authority. It mandates that the Executive Agency would make available the amount determined under Section 3-G of the Act within fifteen days of the raising of demand by the Competent Authority and where the amount determined by the Arbitrator under sub-section (7) of Section 3-G of the Act is in excess of the amount



determined by the Competent Authority, the excess amount, together with interest, if any, awarded by the Arbitrator would be deposited within thirty days of the communication of the Arbitrator's award unless such award has been further challenged by either of the aggrieved parties. Rule 4 enlists the circumstances in which the Competent Authority can deposit unclaimed or disputed amounts with the principal court of civil jurisdiction and in which event, it would be deemed as payment made to the entitled persons under sub-section (2) of Section 3-H of the Act. Section 3-H stipulates that as soon as may be after the amount has been deposited under sub-section (1), the Competent Authority shall on behalf of Central Government pay the amount to the person or persons entitled thereto. Sub-section (5) stipulates that where the amount determined under Section 3-G by the Arbitrator is in excess of the amount determined by the Competent Authority, the Arbitrator may award interest at 9% per annum on such excess amount from the date of taking possession under Section 3-D till the date of the actual deposit thereof.

**6.** Section 80 of the 2013 Act contemplates that where compensation amount is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession until it shall have been so paid or deposited. The rate of interest is upto 15% per annum where there is delay beyond

one year in making payment. Section 80 of the Act is extracted below for ready reference:-

**“80. Payment of interest.**—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent. per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

7. Chapter X of the Act, 2013 and Section 80 whereof is part, relates to payment of the compensation amount. Section 77 relates to payment or deposit of same in the account of the Land Acquisition Rehabilitation and Resettlement Authority. It reads as follows:-

**“77. Payment of compensation or deposit of same in Authority.**—(1) On making an award under Section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in Sub-section (2).

(2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under Section 64 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount: Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under Sub-section (1) of Section 64:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

**8.** Sections 78 and 79 relate to investment of money deposited with the Authority. The said provisions read as follows:-

**“78. Investment of money deposited in respect of lands belonging to person incompetent to alienate.—**(1) If any money is deposited in the Authority concerned under Sub-section (2) of Section 77 and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Authority concerned shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held; or

(b) if such purchase cannot be effected forthwith, then in such Government of other approved securities as the Authority concerned shall think fit,

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of money deposited to which this Section applies the Authority concerned shall order the costs of the following matters, including therein all reasonable charge and expenses incident thereon, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of the Authority concerned of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.”

**“79. Investment of money deposited in other cases.**—When any money shall have been deposited in the Authority concerned under this Act for any cause other than the causes mentioned in Section 78, the Authority may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and paid in such manner as it may consider will give the parties interested therein the same benefit from it as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.”

9. A conjoint reading of Sections 77, 78, 79 and 80 reveals that as soon as award is made, the Collector is under mandate to tender payment of the compensation awarded by him to the persons entitled thereto by depositing the amount in their accounts unless prevented by some one or more of the contingencies mentioned in sub-section (2). Sub-section (2) permits the Collector to deposit the amount with the Authority to which a reference under Section 64 would be submitted, where the person entitled to compensation has not

consented to receive it or if there be any person competent to alienate the land or if there be any dispute as to title to receive compensation or as to the apportionment of it.

**10.** When we compare the provisions relating to payment of interest under NHAI Act, 1956 with the provisions under the 2013 Act, it transpires that the provisions under the Act, 2013 are more beneficial to the land owners. As already noted, the only provision for payment of interest under the NH Act is Section 3-H (5), whereunder interest at the rate of 9% per annum is payable only on excess amount determined by the Arbitrator. The Act is silent in respect of payment of interest in cases where compensation amount is not paid or deposited on or before taking possession of the land in respect of which the interest is allowable in terms of Section 80 of the Act, 2013.

### **Analysis**

**11.** In the above backdrop, we now proceed to examine the main issue regarding applicability of Section 80 of the Act of 2013 to the acquisitions made under the NH Act.

**12.** There's no gainsaying that by virtue of sub-section (1) of Section 105 of the Act of 2013, the provisions of the Act do not automatically apply to the acquisitions made under the NH Act. However, it is noteworthy that under sub-section (3), the Central Government is invested with the power to issue notification for

making applicable any of the provisions of the Act of 2013 relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules with such exceptions or modifications as would not reduce the compensation or dilute the provisions of the Act of 2013 to the Act specified in the First Schedule. Section 105 of the Act 2013 reads as follows: -

**Section 105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.** - (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of Section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

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

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in

making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.”

**13.** In **Tarsem Singh** (supra), the main issue was whether the provisions relating to non grant of solatium and interest to lands acquired under the NH Act would render the said Act violative of Article 14 of the Constitution. While examining the said issue, the Supreme Court noticed the differences between the two Acts. One of the important difference noted by the Supreme Court between the provisions of the two Acts is regarding absence of provision under the NH Act relating to grant of interest except in cases where there is enhancement of compensation amount by the Arbitrator and that too, only on the amount enhanced. The Supreme Court also noticed the notification issued by the Central Government dated 28.08.2015 under Section 105 read with Section 113 of the 2013 Act which makes the compensation provisions under the said Act applicable to the acquisitions under the NH Act. It was also noticed that there was specific provision in shape of proviso to Section 28 under the Old Act whereunder interest was awardable at the rate of 15% per annum if such payment was made beyond one year. It was noticed that before the 1997 Amendment Act and after coming into force 2013 Act, solatium and interest were payable to the land owners in case of

acquisition for purposes of National Highways. Bearing in mind the aforesaid important aspect, it was observed that denial of solatium and interest was not the object of the Amendment Act, 1997 and therefore, the provisions of the NH Act providing for grant of compensation without solatium and interest would not fall within the protective umbrella of Article 31(C) of the Constitution. Accordingly, in case of infraction of Article 14, the provision would be rendered illegal. Resultantly, Section 3-J of the NH Act which excludes the applicability of the Act 2013 was struck down as violative of Article 14 of the Constitution. The relevant extracts from the said judgment laying down the above proposition are as follows:

“12. The First Schedule to the said Act provides that solatium equivalent to 100% of the market value multiplied by various factors, depending on whether the land is situated in a rural or urban area, constitutes minimum compensation package to be given to those whose land is acquired. The Fourth Schedule to this Act, to be read along with Section 105, expressly includes under Item 7, the National Highways Act, 1956. In Item 9, this Schedule also includes The Requisitioning and Acquisition of Immovable Property Act, 1952. By a notification dated 28 th August, 2015 issued under Section 105 read with Section 113 of the 2013 Act, it is provided that the 2013 Act compensation provisions will apply to acquisitions that take place under the National Highways Act. The result is that both before the 1997 Amendment Act and after the coming into force of the 2013 Act, solatium and interest is payable to landowners whose property is compulsorily acquired for purposes of National Highways. This is one other very important circumstance to be borne in mind when judging the constitutional validity of the 1997 Amendment Act for the interregnum period from 1997 to 2015.



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Even if the Amendment Act, 1997 be regarded as an Act to carry out the purposes of Article 39(b), the object of the Amendment Act is not served by removing solatium and interest from compensation to be awarded. It is obvious, therefore, that the grant of compensation without solatium and interest is not basically and essentially necessary to carry out the object of the Amendment Act, 1997, even if it is to be considered as an acquisition Act pure and simple, for the object of the said Amendment Act as we have seen is to obviate delays in the acquisition process of acquiring land for National Highways. On application of this test as well, it is clear that the grant of compensation without solatium and interest, not being basically and essentially necessary to carry out the object of the Amendment Act, would not receive the protective umbrella of Article 31-C and, therefore, any infraction of Article 14 can be inquired into by the Court.”

**14.** The Supreme Court also took into consideration the Ordinance of 2014 making applicable the provisions relating to compensation, rehabilitation and resettlement under the Act 2013 to the acquisitions made under the NH Act and a subsequent notification to the same effect dated 28.08.2015. Para 38 of the Law Report which takes notice of the aforesaid notifications, is extracted below:

“38. It is worthy of note that even in acquisitions that take place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. In fact, with effect from 1st January, 2015, an Amendment Ordinance No.9 of 2014 was promulgated amending the 2013 Act. Section 10 of the said amendment Ordinance states as follows:

“10. In the principal Act, in Section 105,-

(i) for Sub-section (3), the following Sub-section shall be substituted, namely:-

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.”;

(ii) Sub-section (4) shall be omitted.” It is only when this Ordinance lapsed that the notification dated 28 th August, 2015 was then made under Section 113 of the 2013 Act. This notification is important and states as follows:

“MINISTRY OF RURAL DEVELOPMENT

ORDER

New Delhi, the 28th August, 2015

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

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

And whereas, the notification envisaged under Sub- Section (3) of Section 105 of RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, inter-alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

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

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015); And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

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

And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the

determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

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

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

(2) It shall come into force with effect from the 1st day of September, 2015.

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

[F.No. 13011/01/2014-LRD]

K. P. KRISHNAN, Addl. Secy.”

It is thus clear that the Ordinance as well as the notification have applied the principle contained in Nagpur Improvement Trust (supra), as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, the National Highways Act being one of the aforesaid enactments. This being the case, it is clear that the Government has itself accepted that the principle of Nagpur Improvement Trust (supra) would apply to acquisitions which take place under the National

Highways Act, and that solatium and interest would be payable under the 2013 Act to persons whose lands are acquired for the purpose of National Highways as they are similarly placed to those landowners whose lands have been acquired for other public purposes under the 2013 Act. This being the case, it is clear that even the Government is of the view that it is not possible to discriminate between landowners covered by the 2013 Act and landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. The judgments delivered under the 1952 Act as well as the Defence of India Act, 1971, may, therefore, require a re-look in the light of this development. 1 In any case, as has been pointed out hereinabove, the case of Chajju Ram (supra), has been referred to a larger Bench. In this view of the matter, we are of the view that the view of the Punjab and Haryana High Court is correct, whereas the view of the Rajasthan High Court is not correct.”

**15.** In para 41 of the judgment, the Supreme Court held that the provision relating to solatium and interest would also be applicable to cases that arise between 1997-2015. Accordingly, Section 23(1-A) and (2) and interest payable in terms of proviso to Section 28 of the Old Act has been held to be applicable to acquisitions made under the NH Act. Para 41 is extracted below:

“41. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium

and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed.”

**16.** Applying the principles enunciated in **Tarsem Singh** (supra), we are of considered opinion that provision relating to interest i.e. Section 80 of the Act 2013 being a more beneficial provision would apply to acquisitions made under the NH Act. This also expressly flows from the mandate of sub-section (3) of Section 105 which stipulates that while making applicable the provisions relating to compensation, rehabilitation and resettlement under the Act of 2013 to acquisitions made under various Acts specified in Schedule-1, the only exception or modification permissible would be such as would not reduce the compensation or dilute the provisions of the Act, 2013.

**17.** As already noted, the interest being part of compensation, the more beneficial provision of 2013, Act relating to interest i.e. Section 80 on the amount determined in the first instance (by Competent

Authority under NH Act) would undoubtedly apply to the acquisitions made under the NH Act.

**18.** In the result, all the petitions succeed and are allowed. The respondents are directed to calculate the interest as per the provisions of Section 80 of the Act 2013 and pay the same to the petitioners within four weeks from the date of the communication of the instant order.

**19.** No order as to costs.

**Order Date :-** 16.12.2023  
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(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)