

Neutral Citation No. - 2024:AHC:143334-DB

AFR

(Dictated in Court)

Court No. - 21

Case :- WRIT - C No. - 23248 of 2024

Petitioner :- M/s Bir Hotels Pvt Ltd

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Aishwarya Pratap Singh

Counsel for Respondent :- C.S.C.,Harshit Pandey,Nipun Singh

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Manish Kumar Nigam,J.

1. Heard learned counsel for the petitioner, Shri Harshit Pandey, learned counsel for respondent Nos. 2 & 5 and Shri Naman Agarwal, Advocate holding brief of Shri Nipun Singh, learned counsel for respondent Nos. 3 & 4.

2. The instant petition has been filed praying for quashing of the notifications dated 12.06.2004 and 24.06.2010 issued under Section 28 and Section 32 respectively of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 on the ground that the acquisition has lapsed being barred on account of delay in concluding the acquisition proceedings. The petitioner has also prayed for a writ of mandamus restraining the respondents from interfering in their possession and for a further direction to approve the building plan submitted by the petitioner for raising constructions over the said land and to decide the representation dated 25.05.2024 made in this behalf.

3. It is submitted by learned counsel for the petitioner that the award having not been declared so far, the acquisition proceedings should be declared to have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the New Act, 2013').

4. *Per contra*, learned counsel for the respondent-U.P. Avas Evam Vikas Parishad submits that in the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (for short, 'the Adhiniyam') under which acquisition in question has been made, there is no provision for automatic lapsing on ground of delay in making award. He places reliance on the judgment of the Supreme Court in **U.P. Avas Evam Vikas Parishad v. Jainul Islam and another**¹ in contending that amendment to the Land Acquisition Act, 1894 (for short 'LA Act') by the Land Acquisition (Amendment) Act, 1984, by which Section 11-A was introduced, was held to be inapplicable to acquisitions made under the Adhiniyam. Therefore, Section 11-A of LA Act would not apply and on the same analogy, Section 24(2) of the New Act, 2013 would also not apply. He also places reliance on a judgment of this Court in **Hem Chandra v. State of U.P. and others**² wherein it was held that the acquisitions under the Adhiniyam would not lapse but the award shall have to be made by treating the reference date for determining the compensation

1 (1998) 2 SCC 467

2 2024 (7) ADJ 254 (DB)

as 01.01.2014, the date of enforcement of the New Act, 2013 and not the date of notification under Section 28 of the Adhiniyam.

5. The main issue which arises for consideration is whether the acquisition in question initiated under the Adhiniyam would lapse on account of award having not been declared so far.

6. Section 55 of the Adhiniyam makes applicable certain provisions of the LA Act, 1894, as amended in its application to the State of Uttar Pradesh, subject to the modifications specified in the Schedule to the Adhiniyam. For ready reference, Section 55 of the Adhiniyam is extracted below:

"55. Power to acquire land.—(1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. 1 of 1894), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modification specified in the Schedule to this Act.

(2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of the land under the Land Acquisition Act, 1894 (Act No. 1 of 1894)."

7. By Act No. 68 of 1984, drastic amendments were made in the LA Act. The Statement of Objects and Reasons – emphasizes the need to balance individual interest with larger interest of the community. Two main features of the Amending Act, 1984 was to provide (i) timelines in initiating and concluding various stages of the proceedings so as to avoid delay of long periods which 'renders unrealistic the scale of compensation offered to the affected persons' and (ii) to provide

adequate measures to compensate for the delay. To meet these concerns, main proposals for amendments, inter alia, are as follows:

"(iii) A time-limit of one year is proposed to be provided for completion of all formalities between the issue of the preliminary notification under Section 4(1) of the Act and the declaration for acquisition of specified land under Section 6(1) of the Act.

(v) It is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of the land would lapse. He has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.

(viii) Solatium now payable at the rate of fifteen per centum of the market value of the land acquired in consideration of the compulsory nature of the acquisition, is proposed to be increased to thirty per centum. Similarly, the rate of interest payable on the excess compensation awarded by the Court and on the compensation in cases where possession of land is taken before payment of compensation, are also proposed to be increased substantially.

(ix) Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act.

(x) As a large number of cases for the acquisition of land are pending before various authorities for a very long time and payment of the market value of the land obtaining on the date of the preliminary notification under Section 4 of the Act in respect of such land is likely to be unrealistic and iniquitous, it is proposed to provide for payment of simple interest at ten per centum per annum on the amount of compensation for the period commencing from the date of issue of the notification under Section 4 of the Act to the date of tender of payment or deposit of compensation awarded by the Collector in respect of all pending proceedings on the 30th April, 1982, the date when the earlier Bill for the amendment of the Act was introduced in the House of the People."

(emphasis supplied)

8. After amendments in LA Act, question arose before the Supreme Court in **Gauri Shankar Gaur v. State of U.P.**³ whether the provisions of LA Act as amended by Amending Act, 1984 stood incorporated in the Adhinyam by virtue of Section 55 read with the Schedule. There

3 (1994) 1 SCC 92

was difference of opinion in the Two Judges Bench and the matter was referred to Larger Bench of Three Judges. The issue came to be decided by Three Judges Bench in **U.P. Avas Evam Vikas Parishad v. Jainul Islam and Another** (supra). In paragraph 13 of the judgment, the point of cleavage in opinion was noted as follows:

"13. Ramaswamy, J. was of the view that Section 55 of the Adhiniyam read with the Schedule made an express incorporation of the provisions of Section 4(1) and Section 6 as modified and incorporated in the Schedule and that the Schedule effected necessary structural amendments to Sections 4, 5, 17 and 23 incorporating therein the procedure and principles with necessary modifications and that it is a complete code in itself. He, therefore, held that Section 55 and the Schedule adopted only by incorporation Sections 4(1) and 6(1) and the subsequent amendments to Section 6 did not become part of the Adhiniyam and they have no effect on the operation of the provisions of the Adhiniyam. Sahai, J. however, took a contrary view. He was of the opinion that whether a legislation was by way of incorporation or by way of reference is more a matter of construction by the courts keeping in view the language employed by the enactment, the purpose of referring or incorporating provisions of an existing Act and the effect of it on the day-to-day working. According to the learned Judge such legislation by incorporating is subject to exceptions and that one such situation where legislation by incorporation is excluded is if it creates difficulty in day-to-day working. The learned Judge was of the view that in our constitutional set-up the exception can be extended further and the courts should lean against a construction which may result in discrimination. He, therefore, held that the amendments introduced in the LA Act by the 1984 Act would be applicable to acquisition of land for the purpose of the Adhiniyam and restriction of three years added by the first proviso to Section 6 of the LA Act was applicable to acquisition for the purposes of the Adhiniyam also. The learned Judge, however, took note of the fact that the Parishad had entered into possession and had constructed housing colonies as there was no interim order in favour of the landowners during pendency of the writ petitions in the High Court and observed that larger social interest requires this Court to mould the relief in such a manner that justice may not suffer. He, therefore, held that even though publication of declarations under the Act were beyond the period of three years it was not in the interest of justice to quash the proceedings but the landowners should be paid compensation of the land acquired on market value prevalent in the year in which the declaration analogous to Section 6 of the earlier Act was published/issued by fictionally assuming that fresh notification under the Act analogous to Section 4 was issued in that year."

9. The Supreme Court in paragraph No. 17 of the Law Report discussed the principles for determining whether a legislation is by incorporation or by reference. In case of legislation by incorporation, rule of construction is that repeal of the earlier statute which is

incorporated does not affect the operation of the subsequent statute in which it has been incorporated. So also any amendment in the statute which are made after incorporation would not affect the operation of the borrowing statute. On the other hand, if it is legislation by reference the subsequent amendments in the legislation from which the provision is borrowed would also apply to the subsequent legislation.

10. In paragraph No. 18 of the Law Report, the Supreme Court considered the interplay between the LA Act and the Adhiniyam, and observed as follows:

"Section 55 of the Adhiniyam makes a reference to the provisions of the L.A. Act, as amended in its application to Uttar Pradesh, and has laid down that any land or any interest therein required by the Parishad for any of the purposes of the Adhiniyam may be acquired under the provisions of the L.A. Act as amended in its application to Uttar Pradesh which for this purpose has to be subject to the modifications specified in the Schedule to the Adhiniyam. A number of modifications have been made in the various provisions of the L.A. Act that have been made applicable in respect of acquisition for the purposes of the Adhiniyam. The publication of the notification under Section 28(1) of the Adhiniyam has been equated with a notice under sub-section (1) of Section 4 of the L.A. Act and the publication of a notification under Section 32(1) of the Adhiniyam has been equated with a declaration under Section 6 of the L.A. Act. As regards compensation modification has been made by inserting sub-section (2) in Section 23 of the L.A. Act, as it was applicable in the State of Uttar Pradesh. As pointed out earlier, in the L.A. Act, in its application to the State of Uttar Pradesh, in so far as it related to acquisitions of land except for the purposes of the Union, sub-section (2) was inserted in Section 23 of the L.A. Act in its application to acquisition for the purposes of the Adhiniyam."

11. The Supreme Court relied on Privy Council Judgement in **Secretary of State v. Hindustan Co-operative Insurance Society Ltd.**⁴, and held that the effect of Section 59 of the Adhiniyam was to incorporate by reference into the Adhiniyam, the provisions of the Land Acquisition Act, as amended in its application to U.P. with the

4 AIR 1931 PC 149

modification specified in the Schedule to the Adhinyam. In other words, it would have the effect of actually writing the borrowed provisions, as existing at the relevant time, subject to modifications specified in the schedule, in the Adhinyam and therefore, any subsequent amendment in the Act would not affect the provisions incorporated by reference into the Adhinyam. We may usefully extract para-21 of the Law Report:

"The provisions of Section 55 read with the Schedule to the Adhinyam are on the same lines as those contained in the Calcutta Improvement Act, 1911 and the principles laid down in **Secretary of State v. Hindustan Co-operative Insurance Society Ltd.** (supra) are equally applicable to the present case. The amendments introduced in the L.A. Act by the 1984 Act were not part of the L.A. Act, as applicable in the State of Uttar Pradesh, at the time of passing of the Adhinyam. The provisions of the L.A. Act, as amended in its application to U.P., with the modifications specified in the Schedule to the Adhinyam, have, therefore, to be treated to have been incorporated by reference into the Adhinyam and became an integral part of the Adhinyam and the said provisions would remain unaffected by any subsequent repeal or amendment in the L.A. Act unless any of the exceptional situations indicated in **State of Madhya Pradesh v. M.V. Narasimhan**⁵ can be attracted."

12. The Supreme Court, thereafter, considered the issue as to whether the amendments made in the Land Acquisition Act, 1894 contemplating award of much higher compensation would apply to the acquisition made under the Adhinyam in the context of the submission on behalf of the land owners that if not made applicable, it would result in the arbitrariness and discrimination and violation of Article 14 of the Constitution.

13. While answering the said issue, the Supreme Court held that in case the amended provisions relating to determination of compensation

5 (1975) 2 SCC 377

are not made applicable to the acquisitions made under the Adhiniyam, it would result in discrimination. Accordingly, relying on the earlier judgment in **Nagpur Improvement Trust vs Vasantao And Others**⁶, the Supreme Court observed as follows:

"Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

* * *

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

14. The Supreme Court after considering the rival contentions held that the provisions of the Amending Act in so far as it relates to determination of compensation, if not applied to acquisitions made under the Adhiniyam, "the consequence would be that the provisions of the LA Act, as applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination". Such a consequence could be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the LA Act, as amended by the 1984, Act, relating to determination of compensation would apply to acquisitions of land for the purposes of the Adhiniyam. The relevant discussion is in paragraphs no.31 and 32 and the same is extracted below:-

⁶ AIR 1962 SC 955

“31. Since the present case involves acquisition of land under the provisions of the L.A. Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this Court in Nagpur Improvement Trust Vs. Vithal Rao: (1973) 1 SCC 500. Keeping in view the principles laid down in the said decision of this Court, it has to be held that if the provisions of the Adhiniyam are so construed as to mean that the provisions of the L.A. Act, as they stood on the date of enactment of the Adhiniyam, would be applicable to acquisition or land for the purpose of the Adhiniyam and that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation are not applicable, the consequence would be that the provisions of the L.A. Act, as applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the Adhiniyam are construed to mean that the provisions of the L.A. Act, as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of the Adhiniyam. There is nothing in the Adhiniyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhiniyam show that the intention of the Legislature, while enacting the Adhiniyam, was to confer the benefit of solatium @ 15% by modifying Section 23(2) in the Schedule, which benefit was not available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. It cannot, therefore, be said that the intention of the Legislature, in enacting the Adhiniyam, was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the L.A. Act after the enactment of the Adhiniyam. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the L.A. Act in the Adhiniyam the intention of the legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation, viz. Section 23(1-A) and Section 23(2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purpose of the Adhiniyam under Section 55 of the Adhiniyam.”

32. In view of the construction placed by us on the provisions of Section 55 of the Adhiniyam that the provisions of the L.A. Act, as amended by the 1984 Act relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of the Adhiniyam, it is not necessary to deal with the submission that if the provisions of the 1984 Act are held to be not applicable in the matter of acquisition of land for the purposes of the Adhiniyam the provisions of the L.A. Act, as applicable under the Adhiniyam, would be void on the ground of repugnance under Article 254 of the Constitution.”

(emphasis supplied)

15. Thus, it was authoritatively held by the Supreme Court that the subsequent amendments made in the LA Act would not apply to the acquisitions made under the Adhiniyam, but in order to save the acquisitions made under the Adhiniyam from the vice of arbitrariness and discrimination, the provisions relating to determination and

payment of compensation were made applicable. As a corollary, Section 11-A which was introduced in the LA Act by the amending Act, would not apply to the acquisitions made under the Adhiniyam. Even if award is not made within two years of the issuance of notification under Section 32 of the Adhiniyam (equivalent to Section 6 of the LA Act), the acquisition would not lapse. At the same time, the beneficial provisions relating to determination and payment of compensation introduced by amendment by the Act of 1984, would apply.

16. The aforesaid legal position was in fact clarified by Supreme Court even earlier in **Satya Pal and Others v State of U.P. and Others**⁷, relying on two previous judgments in **U.P. Avas Evam Vikas Parishad, Lucknow v Pushpa Lata Awasthi**⁸ and judgment dated 8.1.1996 in **Civil Appeal No. 1832 of 1986 (Ramesh Chandra Tiwari and Others vs. U.P. Avas Evam Vikas Parishad, Lucknow and others)**⁹. The relevant discussion in this regard is as follows: -

"4. The acquisition is under the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (for short, 'Adhiniyam'). The controversy is whether the Land Acquisition (Amendment) Act 68 of 1984 would apply to the acquisition made under the Adhiniyam. In *Gaurishankar Gaur v. State of U.P.* (1994) (1) SCC 92: (1993 AIR SCW 3029), a Bench of two-Judges of this Court, to which one of us, K. Ramaswamy, J., was a member, had considered the question. K. Ramaswamy, J. had held that this Adhiniyam and the procedure prescribed therein vis-a-vis the Land Acquisition Act, 1894 (1 of 1894) by incorporation and, therefore, the Amendment Act does not apply to the acquisition under the Adhiniyam. Hon'ble R.M. Sahai, J. had taken a different view on that matter. However, on merit both agreed for shifting of the date for payment of the compensation to the later date of declaration as under (Para 52 of AIR) :-

"Though for different reasons, we have come to the same conclusions that the civil appeals and writ petitions shall stand dismissed. But the appellants and petitioners shall be paid compensation on the market rate

7 AIR 1997 SC 2235

8 (1995) 3 SCC 573

9 (1997) 9 SCC 116

prevalent in the year the declarations analogous to Section 6 of the Land Acquisition Act, 1894 were issued. In view of the special facts and peculiar circumstances and not as of law, we have adapted this course.

5. Subsequently, the question was considered by another Bench of this Court in, U.P. Avas Evam Vikas Parishad, Lucknow v. Pushpa Lata Awasthi, (1995) 3 SCC 573, wherein it was held that the Amendment Act has no application since some of the provisions of the Land Acquisition Act, 1894 (1 of 1894) were incorporated into the Adhinyam. The same view was reiterated in Ramesh Chandra Tiwari v. U.P. Avas Evam Vikas Parishad, Lucknow (C. A. No. 1832/86) decided on January 8, 1996 (reported in 1996 AIR SCW 2312) by another Bench. Under these circumstances, it is now settled law that the Land Acquisition Amendment Act 68 of 1984 has no application to the acquisition under the Adhinyam. As a result, Section 11-A of the Land Acquisition Act, as amended by Act 68 of 1984, has no application. The notification under Adhinyam similar to Section 4(1) and the declaration similar to Section 6 do not stand lapsed after the expiry of two years from the date the Amendment Act has come into force. The High Court, therefore, was right in refusing to grant the relief."

(emphasis supplied)

17. Here, it is worthwhile to note some of the relevant provisions of the New Act, 2013. Section 24 of the Act contemplates lapsing of certain acquisition proceedings and also determination of compensation as per provisions of the New Act, 2013 in cases where no award had been made under Section 11 of the LA Act. For ready reference, Section 24 is extracted below:-

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,--

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

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

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the

beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

18. Here we may also note Section 105 of the New Act, 2013 which stipulates that the New Act, 2013 would not apply in certain cases or would apply with certain modifications :-

"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."

19. The Adhinyam is not a specified legislation under the Fourth Schedule and therefore, the provisions of the New Act, 2013 *ipso facto*, do not apply to the acquisitions made under the Adhinyam. Consequently, Section 24(2) would also not get attracted. However, keeping in view the legislative mandate contained in the New Act, 2013 particularly provisions of Section 24(1)(a), Section 6 of the General

Clauses Act, 1892 and Article 14 of the Constitution of India, a Division Bench in **Hem Chandra**, consisting of one of us namely, Manoj Kumar Gupta, J. and Kshitij Shailendra, J. extended the beneficial provisions relating to determination and payment of compensation to the Adhinyam and held that the relevant date in reference to which compensation in such cases would be determined, would be 01.01.2014, the date of commencement of the Act and not the date of notification under Section 28 of the Adhinyam or Section 4 of the LA Act. The said case was also concerning an acquisition made under the provisions of the Adhinyam and while arriving at the said conclusion, the judgment of Supreme Court in **U.P. Avas Evam Vikas Parishad v. Jainul Islam and another** and **U.P. Avas Evam Vikas Parishad v. Chandra Shekhar and others (Civil Appeal No.3855 of 2024 arising out of SLP (C) No.779 of 2016, decided on 05.03.2024)**¹⁰ were relied upon. The relevant discussion from the said judgment is extracted below:

"24. This controversy has now been settled by the Supreme Court in **Chandra Shekhar (supra)**. The said case also arose out of the acquisition made under the Adhinyam. The notification under Section 28 was issued on 17.07.2004. It also appears that the subsequent action of the Parishad was subjected to challenge and it was held that the same was not valid as proper opportunity, as contemplated under Section 5-A of the Land Acquisition Act 1894, was not given. The Supreme Court upheld the judgment of the High Court quashing the subsequent action of Parishad on the ground of non compliance of the procedure. The Supreme Court, however, held that since substantial development had already taken place, therefore, it would not be proper to quash the acquisition but the land holder should be substantially compensated. It specifically considered the impact of Section 55 of Adhinyam and held that the New Act shall be deemed to be read in place of Old Act, 1894 on the ground that the acquisition had not attained finality before 01.01.2014. The relevant observations in this regard are as follows:-

10 (2024) 3 SCR 585

“18. Having held so, the question that falls for further consideration is as to what should be the future course of action for the appellant-Board, so that neither the public interest to utilize the subject-land for the Scheme that has been substantially developed is frustrated nor the true tenure holders are deprived of the adequate compensation for their land. It may be seen from Section 55 of the 1965 Act that the compensation for the acquired land was required to be assessed in accordance with the provisions of the Land Acquisition Act 1894, which stood repealed w.e.f. 01.01.2014 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”). Section 55 of the 1965 Act cannot be given effect unless it is declared by way of a deeming fiction that instead of 1894 Act which now stands repealed, the compensation shall be assessed in accordance with the provisions of the 2013 Act. We hold accordingly. Since the acquisition could not attain finality before 01.01.2014, we are of the considered opinion that the Acquiring Authority/Board are obligated to pay compensation to the ex-propriated owners, as is to be assessed in accordance with Section 24(1) of the 2013 Act.

19. Consequently, we hold that the tenure-holders/owners of Khasra No.673, which was still under the acquisition process when 2013 Act came into force, shall be entitled to be paid compensation in accordance with Section 24(1) of the 2013 Act.”

27. In **Jainul Islam (supra)**, the Larger Bench of Supreme Court has held that the beneficial provisions of the Amending Act, 1984 relating to determination of compensation would apply to the acquisitions made under the Adhinyam to save it from arbitrariness and discrimination. As the Act, 1894, as amended from time to time, stands replaced by the New Act, 2013, we are of the considered opinion that the affected persons would be entitled to compensation as per the New Act, 2013, again to save Section 55 of the Adhinyam from being rendered unconstitutional on the touchstone of Article 14 of the Constitution.”

20. In view of the legal position noted above, we are of the opinion that while Section 24(2) of the New Act, 2013 would not apply and the acquisition would not lapse but the petitioner would be entitled to compensation as per the provisions of the New Act, 2013 and the date of reference for determining the compensation would be 01.01.2014 on which the New Act, 2013 was enforced. Thus, the challenge advanced to the notifications fail and accordingly, consequential relief for a direction to sanction the building plan also cannot be granted.

21. The petition lacks merit and is dismissed. This is without prejudice to claim compensation as per discussion made in the foregoing paragraphs.

22. No order as to costs.

Order Date :- 4.9.2024

Ved Prakash/skv

(Manish Kumar Nigam, J.) (Manoj Kumar Gupta, J.)