IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.03.2021

Judgment Pronounced on : 04.10.2021

CORAM : JUSTICE **N.SESHASAYEE**

W.P.Nos.697, 701, 716, 721, 722, 724, 725, 733, 744, 746, 747, 748, 980, 983, 985, 2774, 2779, 2782, 2787, 2798, 2802, 2804, 2806, 2808, 2809, 2818, 2821, 2824, 2826, 2827, 3031, 3052, 3054, 3055, 3058, 3060, 3062, 3063, 3065, 3067, 3264, 3265, 3267, 3270, 3272, 3273, 3275, 3277, 3278, 3279, 3599, 3600, 3610, 3612, 3614, 3618, 3621, 3626, 3630, 3632, 3635, 3638, 3640, 3643, 3646, 3649, 3651, 3654 of 2021

and

W.P.No.3323 of 2020

and

WMP.No.775 of 2021 in WP.No.716 of 2021
WMP.No.3136 of 2021 in W.P.No.2782 of 2021
WMP.No.3157 of 2021 in WP.No.2818 of 2021
WMP.No.4158 of 2021 in WP.No.3626 of 2021
WMP.No.4162 of 2021 in WP.No.3630 of 2021
WMP.No.4169 of 2021 in WP.No.3640 of 2021
WMP.No.4181 of 2021 in W.P.No.3651 of 2021

1.Etti Gounder ... Petitioner in WP.No.697 of 2021
2.Thillagavathi ... Petitioner in WP.No.701 of 2021
... 1st Petitioner in WP.No.716 of 2021
3.P.Sudha ... 2nd Petitioner in WP.No.716 of 2021
4.P.Priya ... 3rd Petitioner in WP.No.716 of 2021
5.Duraisamy ... Petitioner in WP.No.721 of 2021
6.Veerappan ... Petitioner in WP.No.722 of 2021
7.Pandian ... Petitioner in WP.No.724 of

2021

8.Singaraj ... Petitioner in WP.No.725 of 2021
9.Thavamani ... Petitioner in WP.No.733 of 2021
10.S.Babu ... Petitioner in WP.No.744 of 2021
11.Balu ... Petitioner in WP.No.746 of 2021
12.K.Mani ... Petitioner in WP.No.747 of 2021
13.Palanisamy ... Petitioner in WP.No.748 of 2021
14.Natesan ... Petitioner in WP.No.980 of 2021
15.P.Selvaraj ... Petitioner in WP.No.983 of 2021
16.Rajan ... Petitioner in WP.No.985 of 2021
17.S.Santhi ... Petitioner in WP.No.2774 of 2021
18.R.Selvi ... Petitioner in WP.No.2779 of 2021
19.R.Subramani ... Petitioner in WP.No.2782 of 2021
20.Manonmani ... Petitioner in WP.No.2787 of 2021
21.B.Kanaga ... Petitioner in WP.No.2798 of 2021
22.P.Angammal ... Petitioner in WP.No.2802 of 2021
23.K.Manikandan ... Petitioner in WP.No.2804 of 2021
24.Shanthi ... Petitioner in WP.No.2806 of 2021
25.S.Selvarajan ... Petitioner in WP.No.2808 of 2021
26.P.Varadharaj ... Petitioner in WP.No.2809 of 2021
27.K.Balasubramani ... Petitioner in WP.No.2818 of 2021
28.M.Chennappan ... Petitioner in WP.No.2821 of 2021
29.C.Leelavathi ... Petitioner in WP.No.2824 of 2021
30.K.Shanmugavel ... Petitioner in WP.No.2826 of 2021
31.K.Muthammal ... Petitioner in WP.No.2827 of 2021
32.Bhanumathi ... Petitioner in WP.No.3031 of 2021
33.V.Mohan ... Petitioner in WP.No.3052 of 2021
34.Nagammal ... Petitioner in WP.No.3054 of 2021
35.Marimuthu ... Petitioner in WP.No.3055 of 2021
36.Madheswari ... Petitioner in WP.No.3058 of 2021
37.Parthiban ... Petitioner in WP.No.3060 of 2021
38.S.Patchiapan ... Petitioner in WP.No.3062 of 2021
39.Raja ... Petitioner in WP.No.3063 of 2021
40.B.Rangaraj ... Petitioner in WP.No.3065 of 2021
41.S.Sadhasivam ... Petitioner in WP.No.3067 of 2021
42.K.Sakthivel ... Petitioner in WP.No.3264 of 2021
43.Selvarani ... Petitioner in WP.No.3265 of 2021

44.S.Senthilkumar ... Petitioner in WP.No.3267 of 2021
45.N.Subramaniam ... Petitioner in WP.No.3270 of 2021
46.M.Subramanian ... Petitioner in WP.No.3272 of 2021
47.Sumathi ... Petitioner in WP.No.3273 of 2021
48.Dhanam ... Petitioner in WP.No.3275 of 2021
49.S.P.Annadurai ... Petitioner in WP.No.3277 of 2021
50.K.Jayakumar ... Petitioner in WP.No.3278 of 2021
51.N.Kaliannan ... Petitioner in WP.No.3279 of 2021
52.V.Kandasamy ... Petitioner in WP.No.3599 of 2021
53.Selvambal ... Petitioner in WP.No.3600 of 2021
54.Rangama Naicker ... Petitioner in WP.No.3610 of 2021
55.M.Kuzhanthaivel ... Petitioner in WP.No.3612 of 2021
56.M.Rajeswari ... Petitioner in WP.No.3614 of 2021
57.A.Gopi Kannan ... Petitioner in WP.No.3618 of 2021
58.M.Annamalai ... Petitioner in WP.No.3621 of 2021
59.Arumugam ... 1st Petitioner in WP.No.3626 of 2021
60.Doraisamy ... 2nd Petitioner in WP.No.3626 of 2021
61.Easwaran ... 3rd Petitioner in WP.No.3626 of 2021
62.Jayakkodi ... Petitioner in WP.No.3630 of 2021
63.Nagammal ... Petitioner in WP.No.3632 of 2021
64.Chellammal ... Petitioner in WP.No.3635 of 2021
65.S.M.Ramasamy ... Petitioner in WP.No.3638 of 2021
66.Viji ... 1st Petitioner in WP.No.3640 of 2021
67.Devi ... 2nd Petitioner in WP.No.3640 of 2021
68.Muthukumaran ... 3rd Petitioner in WP.No.3640 of 2021
69.Muthuvel ... Petitioner in WP.No.3643 of 2021
71.Manonmani ... Petitioner in WP.No.3646 of 2021
71.N.Thalamuthu ... Petitioner in WP.No.3649 of 2021
73.K.Rangasamy ... Petitioner in WP.No.3651 of 2021
73.T.Masilamani ... Petitioner in WP.No.3654 of 2021
74.A.Sampoorani
75A.Balaganesh
76.A.Narashimmraj ... Petitioners in WP.No.3323 of 2020

Vs

1.The District Collector
Namakkal District
Namakkal. ... 1st Respondent in all W.Ps
(except WP.No.3323 of 2020)

2.The Competent Authority and District
Revenue Officer, Namakkal
(Land Acquisition for National Highways)
Namakkal Collectorate Campus
Thummankurichi
Namakkal. ... 2nd Respondent in all WPs
(except WP.No.3323 of 2020)

3.The Project Director
National Highways Authority of India
Project Implementation Unit (NS)
Door No.212-3/D3-1, Srinagar Colony
Narasothipatti, Salem – 630 004.
... 4th Respondent in WP.No.3323 of 2020
... 3rd Respondent in other WPs

4.The Union of India
Rep. by the Secretary to Government
Ministry of Road Transport & Highways
Transport Bhawan, No.1, Parliament Street
New Delhi – 110 001. ... 1st Respondent in WP.No.3323 of 2020

5.The National Highways Authority of India
Rep by the Chairman
G5 & 6, Sector 10, Dwarka
New Delhi – 110 075. ... 2nd Respondent in WP.No.3323 of 2020

6.The Chief General Manager
National Highways Authority of India
Regional Office, Sri Tower, III Floor
DP-34, (SP) Industrial Estate
Guindy, Chennai – 600 032. ... 3rd Respondent in WP.No.3323 of 2020

7.The Arbitrator cum the District Collector
Salem
Salem District – 636 001. ... 5th Respondent in WP.No.3323 of 2020

8.The Competent Authority cum
Special District Revenue Officer (LA)
National Highways No.7, 46, 47 & 66
Salem – Krishnagiri District
No.433, Ex-serviceman Welfare Building
I Floor, Bangalore Road
Krishnagiri – 635 001. ... 6th Respondent in WP.No.3323 of 2020

Prayer in WP.No.3323 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying to direct the respondents to compute and pay to the petitioners for acquisition of their lands measuring 4000 sq.mts., in Survey No.44/1B, Annathanapatti Village covered under Award of the 6th respondent dated 27.06.2008 in R.O.C.No,1299/2008 (A2) as modified by the arbitral award of the 5th respondent dated 08.11.2012 in NH.No.47 Aa.Va.No.554/B2, the benefits under Section 23(1A), 23(2), and the proviso to Section 28 of the Land Acquistion Act, 1894.

Prayer in WP.Nos.697, 701, 716, 721, 722, 724, 725, 733, 744, 746, 747, 748, 980, 983, 985 of 2021 : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents herein to pay solatium amount at 30% as per Section 23(2) of the Land Acquisition Act, 1894 and an additional amount at 12% as per Section 23(1-A) of the said Act,

1894 from the date of notification under Section 3A(1) of National Highways Act, 1956, to the date of award for the compensation amount as enhanced by the first respondent i.e., 369.42 per sq.mtr., 180.06 per sq.mtr., together with interest at the rate of 9% per annum for one year from the date of possession and thereafter at 15% per annum till the date of realization as per Section 28 of the said Act, 1894 for the said enhanced compensation, solatium and additional market value in respect of the petitioner's land situated at Pappinaickenpatti Village, Namakkal Taluk and District, comprised in Survey Nos.3/6, 10/1, 33/3B, 33/3C, 34/1G2, 1/3A2B3, 3/1B1, 34/3B2B2, 4/1E, 80/8, 8/1B3, 128/1, 130/3E1, 3/5, 4/1A, 4/1C, 3/7A, 80/6B, 80/7, 80/6A, 80/5, 130/2A, 130/1B, acquired for the purpose of widening four lane of National Highways No.7 in line with the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. Tarsem Singh*** by considering the petitioner's representation dated 12.08.2020, 18.08.2020 respectively and to pass orders.

Prayer in WP.Nos.2774, 2779, 2782, 2787, 2798, 2802, 2804, 2806, 2808, 2809, 2818, 2821, 2824, 2826, 2827, 3031, 3052, 3054, 3055, 3058,3060, 3062, 3063, 3065, 3067, 3264, 3265, 3267, 3270, 3272, 3273, 3275, 3277, 3278, 3279, 3599, 3600, 3610, 3612, 3614, 3618, 3621, 3626, 3630, 3632, 3635, 3638, 3640, 3643, 3646, 3649, 3651, 3654 of 2021 : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents herein to pay solatium amount at 30% as per Section 23(2) of the Land Acquisition Act, 1894 and an additional amount at 12% as per Section 23(1-A) of the said Act, 1894 from the date of notification under Section 3A(1) of National Highways Act, 1956, to the date of award for the

compensation amount as enhanced by the first respondent i.e., 122.25 per sq.mtr., for Phase-I and 323.07 per sq.mtr., for Phase-II respectively together with interest at the rate of 9% per annum for one year from the date of possession and thereafter at 15% per annum till the date of realization as per Section 28 of the said Act, 1894 for the said enhanced compensation, solatium and additional market value in respect of the petitioner's land situated at Sellappampatti Village, Namakkal Taluk and District, comprised in Survey Nos.137/4B1, 137/2C1, 139/2AD, 105/3A, 21/5, 21/8F, 78/1C, 21/8A, 137/4B3, 105/3A, 58/2D, 75/2B1, 104/3A, 75/2B2, 75/1B, 109/4, 78/1D, 107/1C, 107/1D1, 107/2A, 107/2C1, 107/2B1, 108/2, 78/1B, 137/4C, 137/6B, 65/5, 104/2A, 109/4, 139/2A2, 139/2B, 139/2C3, 107/1F3, 107/2D, 107/2E, 65/5, 104/3A, 65/5, 137/5A, 137/2D1, 105/3E, 71/8B, 104/2G, 87/3, 87/2, 68/2B, 104/3B, 71/8A, 105/3A, 21/1A, 21/8B, 105/3A, 109/2, 109/1B, 109/1K, 109/3A, 109/3C, 139/2AE, 139/2P, 139/2AC2, 139/2A1, 139/2C3, 69/2A2, 69/2B2, 103/2B, 75/1B, 65/5, 142/3A, 142/3C, 73/6, 73/5C, 75/2A, 75/3, 69/1, 71/5, 59/6B, 71/1, 65/4B, 71/2, 71/3, 71/4, 73/7A acquired for the purpose of widening four lane of National Highways No.7 in line with the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. Tarsem Singh*** by considering the petitioner's representation dated 10.08.2020 and to pass orders.

For Petitioners : Mr.T.M.Hariharan
(in WP.No.3323 of 2020)

For Petitioners : Mr.S.Senthil
(in all other W.Ps)

For Respondents :

In WP.3323 of 2020 : Mr.G.Karthikeyan
Additional Solicitor General for R1
Mr.Su.Srinivasan for R2 to R4
Mr.D.Raja
Additional Government Pleader
for R5 & R6
Mr.Sharath Chandran
Amicus curiae

In other batch of cases : Mr.D.Raja
Additional Government Pleader
for R1 & R2
Mr.Su.Srinivasan
Standing Counsel for R3
Mr.Sharath Chandran
Amicus curiae

COMMON ORDER

The short point involved in this batch of 69 petitions concerns the entitlement of the petitioners to solatium and interest on the compensation paid to them for the acquisition of their lands under the provisions of National Highways Act (henceforth would be referred to as the Act).

A Note on Legislative History:

2. A travel through the lane of legislative history may help capturing the setting in which the petitioners rest their cause for the present action. On 24-01-1997, the President of India promulgated the National Highways Laws (Amendment) Ordinance, 1997 by which Sections 3-A to 3-J were inserted into the National Highways Act, 1956. These provisions provide for a mechanism for speedy acquisition of land for the construction of national highways and also for a speedier resolution of disputes relating to determination of compensation through a mechanism of statutory arbitration as contemplated in Section 3-G of the Act. Sec.3-G (7) of the Act sets out the relevant criteria which the arbitrator must take into account in determining the compensation under the Act. Section 3G(7) roughly corresponds to Section 23(1) of the Land Acquisition Act, 1894. Section 3-J, which, as would be seen has become the epicentre of the present *lis*, specifically declared that nothing in the Land Acquisition Act, 1894, would apply to an acquisition under the National Highways Act, 1956. As Sec. 3G(7) imported only the elements of Section 23(1) of the L.A Act for determination of compensation, Sec. 3-J had the effect of excluding the benefit of the additional compensation under Section 23 (2) statutorily computed at 30% of the market value (commonly known as 'solatium', and hence would be referred to as such in

this order) and interest under Section 28 of the Land Acquisition Act. The ordinance was replaced by the National Highways Laws (Amendment) Act, 1997 (Act 16 of 1997). This position continued till 01.01.2015 when the Right to Fair Compensation & Transparency in Acquisition, Rehabilitation and Resettlement Act, 2013 made solatium and interest payable for acquisitions under the National Highways Act as well (vide Sec. 105). To complete the narration, recently in ***Project Director, NHAI Vs Hakkim*** [2021 Scc Online 473], the Hon'ble Supreme Court has travelled far enough to hold that the entire amendment introduced in 1997 to the National Highways Act is discriminatory, but stopped short of declaring it as unconstitutional as its vires was not challenged before it. The legislative history concludes here.

Sec.3-J and Constitutionality – The Journey:

3.1 The constitutional validity of Section 3-J was first called into question before the Karnataka High Court in ***Lalita v Union of India*** [ILR 2002 Karnataka 259]. Following the judgments of the Supreme Court in ***Vajaravelu Mudaliar v Special Deputy Collector, Madras*** [AIR 1965 SC 1017] and ***Nagpur Improvement Trust v Vithal Rao*** [AIR 1973 SC 689], the Karnataka High Court, by an order

dated 11.10.2002, struck down Section 3-J as violative of Article 14 of the Constitution. However, in 2005 a Division Bench of the Rajasthan High Court in ***Banshilal Samariya v Union of India*** [2006 Supp R.L.W 559] dissented from the view of the Karnataka High Court and upheld the validity of Sec.3-J, partly on account of the fact that the decision of the learned single judge of the Karnataka High Court had been stayed by a Division Bench of the same Court in W.A 6115-17 of 2002. A few years later, a similar challenge arose before the Punjab and Haryana High Court in ***Golden Iron and Steel Forging vs Union of India*** [2008 SCCOnline P&H 498], and a Division Bench of the said Court struck down Sec.3-J of the Act as violative of Article 14. Its reasoning was along the lines of Karnataka High Court in ***Lalita case***.

3.2 Following the judgment in ***Golden Iron and Steel case*** [2008 SCC Online P&H 498], a learned Single Judge of this Court struck down Section 3-J of the Act in ***Chakrapani v Union of India*** [(2011) 7 MLJ 858]. Both the ***Golden Iron and Steel case*** and ***Chakrapani case*** have held that in an acquisition proceedings under the National Highways Act, land owners would be entitled to solatium and interest as under the Land Acquisition Act, 1894. The judgment of the Single

Judge in ***Chakrapani case*** was, however, stayed by a Division Bench in W.A.Nos. 2359 to 2388 of 2011.

3.3 In the meantime, the NHAI challenged the judgment of the Punjab and Haryana High Court in ***Golden Iron and Steel Forging vs Union of India*** in Civil Appeal 10695 of 2011. The order of the learned Single Judge of the Madras High Court in ***Chakrapani case*** too was directly assailed by the NHAI before the Supreme Court. By an order dated 03.01.2014, the Supreme Court granted leave, and tagged the matter [Civil Appeal 129-159 of 2014, pertaining to ***Chakrapani batch of cases***] along with the other batch of cases from the Punjab & Haryana High Court.

3.4 On 21.07.2016, the Hon'ble Supreme Court disposed of ***Chakrapani batch of cases*** after recording a statement of the Solicitor General of India that the solatium would be paid to the land owners in that batch of cases. However, the other batch of cases from the Punjab & Haryana High Court was kept pending.

3.5 In the meantime, two appeals, one from the Delhi High Court and another

from Punjab and Haryana High Court, came before the Supreme Court. In the case arising from the Delhi High Court, a learned Single Judge of the Court had closed the writ petition recording the submission of the NHAI that the outcome of the decision in ***Golden Iron & Steel batch of cases*** would enure to the benefit of the petitioners before the Delhi High Court as well. Challenging the same, the landowner went on an appeal. The Supreme Court vide an order dated 11.08.2016 did not choose to interfere with the order of the Delhi High Court, but noted that the ***Golden Iron and Steel batch of cases*** was pending consideration before it. However, by an order in ***Sunita Mehra & another Vs Union of India & Others*** [(2019) 17 SCC 672], the Hon'ble Supreme Court dealt with another batch of cases from Punjab & Haryana High Court. The Supreme Court directed as under:

> *"Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in Golden Iron & Steel Forging v. Union of India [Golden Iron & Steel Forging v. Union of India, 2008 SCC OnLine P&H 498] i.e. 28-3-2008. Concluded cases should not be opened. As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 1-1-2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the*

provisions of the 2013 Act."

3.6 The ***Golden Iron and Steel batch of cases*** finally came up for disposal on 26.10.2016. However, it appears that the NHAI entered into a compromise with the landowners and the appeals were ultimately withdrawn vide Order dated 03.08.2017. In view of the above, the correctness of the decision in ***Golden Iron and Steel Forging vs Union of India*** [2008 SCC Online P&H 498] was never tested before the Hon'ble Supreme Court.

3.7 Meanwhile, relying on the order of the Hon'ble Supreme Court in ***Chakrapani case,*** this Court vide its order dated 06.03.2018 in WP 1654 of 2018 batch of cases directed the Union of India to pass appropriate orders for payment of solatium and interest The NHAI assailed this order in a batch of intra court appeals in ***Union of India Vs M. Pachamuthu*** [W.A 62 of 2019 batch of cases] before a Division Bench of this Court. The Court vide its Order dated 26.03.2019, rejected the contention of the NHAI that the benefit of the orders in ***Chakrapani case*** would be available only to the petitioners before the Supreme Court. The Division Bench was categorical when it held that the claim for solatium is maintainable.

3.8 Sensing perhaps the potential implications of its strategy in seeking the Court to confine the benefit of the aforesaid order of the Division Bench dated 26.03.2019, the NHAI approached the Hon'ble Supreme Court to clarify its the order dated 21.07.2016 that it had passed earlier in ***Chakrapani batch of cases.*** See paragraph 3.4 above. This attempt however, backfired on the NHAI when the Hon'ble Supreme Court through its Order dated 26.07.2019, not only dismissed the clarification petition filed by the NHAI, but also granted liberty to the landowners to "*derive advantage from any other order of the High Court*".

3.9 Now arrives the ***Tarsem Singh v Union of India*** [(2019) 9 SCC 304] in which the Hon'ble Supreme Court struck down Section 3-J of the National Highways Act as unconstitutional. This decision penetrated through the comfort that NHAI has been hitherto was enjoying under the legislative shade. It now cannot deny the landowners of their right to be treated equally with those who lose their land under the Land Acquisition Act, 1894. The Hon'ble Supreme Court affirmed the judgments of Karnataka, Punjab & Haryana and Madras High Courts, and overruled the judgment of the Rajasthan High Court. In particular,

the Supreme Court has taken notice of the concession made by the Solicitor General in ***Chakrapani batch of cases*** and also the order passed in ***Sunita Mehra case*** [(2019) 17 SCC 672], and observed:

> *"**52.** 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 Sections 23(1-A) 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 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No. 9599 of 2019 is dismissed." (emphasis supplied)*

The Pleadings:

4.1 The 69 cases in this batch arise from two Districts – 68 from Namakkal, and 1 from Salem. The Competent Authority for Land Acquisition constituted under the National Highways Act (herein after would be referred to as CALA) passed awards in all but two cases in 2008, and in the other two in 2007. Aggrieved by the inadequacy of the compensation amount as determined by the CALA, the petitioners-land owners moved the statutory arbitrators, the respective District Collectors of the two Districts. These challenges were disposed of vide their separate proceedings dated 19-07-2013,03-02-2017, 04-02-2017, 26-06-2019 (Namakkal) and on 08-11-2012 (Salem). The details are as below:

District	*Writ Petition No.*	*Date of CALA Award*	*Date of Arbitration Award*	*Remarks*
Namakkal	697/2021, 701/2021, 716/2021, 721/2021, 722/2021, 724/2021, 725/2021,	03.06.2008	19.07.2013	Arbitration Award after **Chakrapani** case **(2011) 7 MLJ 858**
	733/2021, 744/2021, 746/2021, 747/2021, 748/2021	30.12.2007		
	980/2021, 983/2021, 985/2021	30.12.2007, 03.06.2008		
	2774/2021, 2779/2021, 2782/2021,3599/21	09.01.2008	03.02.2017	Arbitration Award after disposal of **Chakrapani** case by Supreme Court on 21.07.2016
	3031/2021	13.05.2008		
	3610/2021	09.01.2008 13.05.2008		

District	*Writ Petition No.*	*Date of CALA Award*	*Date of Arbitration Award*	*Remarks*
	2787/2021, 2798/2021, 2802/2021, 2804/2021, 2806/2021, 2808/2021, 2809/2021, 2818/2021, 2821/2021, 2824/2021, 2826/2021, 2827/2021, 3600/2021, 3612/2021, 3614/2021, 3618/2021,	09.01.2008	04.02.2017	Arbitration Award after disposal of **Chakrapani** case by Supreme Court on 21.07.2016
	3052/2021, 3054/2021, 3055/2021, 3058/2021, 3060/2021, 3062/2021, 3063/2021, 3065/2021, 3067/2021, 3264/2021, 3265/2021, 3267/2021, 3270/2021, 3272/2021, 3273/2021, 3275/2021, 3277/2021, 3278/2021, 3279/2021, 3632/2021, 3635/2021	13.05.2008		
	3621/2021, 3626/2021, 3630/2021, 3638/2021, 3640/2021, 3643/2021	09.01.2008 13.05.2008		
	3646/2021,	09.01.2008	26.06.2019	Arbitration Award after ***Chakrapani*** **case** (on 21.7.2016), **&** ***Sunita Mehra case*** **(on 11.08.2016) &** ***Pachamuchu*** **case (HC) (on 26.3.2018) and before Tarsem Singh case**
	3649/2021, 3651/2021	13.05.2008		
	3654/2021	09.01.2008 & 13.05.2008		
Salem	3323/2020	27.06.2008	08.11.2012	Arbitration Award after ***Chakrapani*** case **(2011) 7 MLJ 858**

4.2 Almost immediately after the judgment in the ***Tarsem Singh case*** the petitioner in W.P.Nos.3323 of 2020 (the lone petitioner from Salem District) has given her representation dated 30.10.2019 seeking solatium and interest. The other petitioners followed (from Namakkal District) with their request through

their separate representations in August, 2020 to the CALA and the Project Director, NHAI on the market value determined by the Arbitrators. Since, there was no response from the respondents, the petitioners are before this Court.

5. The NHAI alone contested this batch of cases. It has filed its counters in 53 cases out of 69 cases, and adopted the same in other cases. Broadly, its defences are:

- When the petitioners herein were aggrieved by non-grant of solatium and interest in the award of CALA, they ought to have raised it as a ground before the statutory arbitrators constituted under Sec. 3-G(5) of the National Highways Act. Since the petitioners have not claimed it, they are deemed to have waived and abandoned their claim.

- After the awards were passed by the arbitrators, if the petitioners were aggrieved by the non awarding of solatium and interest, they should have challenged them under Section 34 of the Arbitration and Conciliation Act (henceforth A & C Act).

- Sec. 34 of the A & C Act provides the effective and alternative statutory

remedy, and it is impermissible for the petitioners to raise the issue on solatium and interest under Article 226 of the Constitution.

● Alternatively, if at all they have to approach this Court, they ought to have done it when the learned Single Judge has struck down Section 3-J of the Act in ***Chakrapani v Union of India*** [(2011) 7 MLJ 858]. Since it was not done, the present proceedings is hit both by limitation and laches.

● Now after fence-sitting for several years, the petitioners cannot take advantage of the judgment in the ***Tarsem Singh case***. This apart, if old cases such as this are re-opened for grant of solatium and interest, that may leave a huge monetary implications on the NHAI.

6. To appreciate the points raised, and the arguments advanced, this Court thought it fit to appoint Shri.Sharath Chandran, Advocate, as an *amicus curiae*. He, with his immense commitment, and remarkable capability for legal research, was of considerable assistance. This Court records its appreciation for him.

The Arguments:

A. Of the Petitioners:

7. Leaning heavily on ***Tarsem Singh case***, the counsel for the petitioners contended that petitioners' right to claim solatium and interest can neither be disputed, nor denied purely on the technical pleas of the NHAI. They added that the time when the petitioner became entitled to claim solatium and interest is not when the awards were passed either by the CALA or the statutory arbitrator, but only when ***Tarsem Singh case*** was decided. Till ***Tarsem Singh case***, there was no certainty if solatium and interest were payable in cases of acquisition of lands under the National Highways Act. And after the judgment in ***Tarsem Singh case*** the petitioners wasted no time to remind the authorities of their obligation to pay solatium and interest. They adopted the submissions of the learned *amicus curiae*.

(b) Of the NHAI:

8. NHAI contends that all the writ petitioners have approached the authorities for payment of solatium and interest only after the judgment of the Hon'ble Supreme Court in ***Tarsem Singh case.*** The petitions are neither maintainable, nor their claim sustainable. The reasons are:

- CALA may not be directed to consider the representations of petitioners to pay solatium and interest, as they have become *functus officio,* the moment they passed the Awards. Reliance was placed on the Order of the Division Bench of this Court in ***Union of India & Others Vs M.Pachamuthu and another*** [W.A.No.62/2019 batch dated 26.03.2019].

- When the petitioners approached the statutory arbitrator under Sec. 3G(5) of the Act, they merely assailed the adequacy of the compensation as determined by the CALA but not the solatium and interest. These awards were not challenged, and hence they have attained finality. The statutory arbitrator had disposed of the proceedings only in 2017. But by then the judgment of this Court in ***Chakrapani case*** [(2011)7 MLJ 858] had been pronounced. If at all the petitioners were interested in claiming solatium and interest, they ought to have raised it before the arbitrator, and ought not to have remained fence sitters, waiting for the disposal of ***Tarsem Singh case***. Law does not enable a fence-sitters to agitate a stale claim beyond the period of limitation. Reliance was to ***State Of U.P.& Ors vs Arvind Kumar Srivastava & Others*** [(2015)1 SCC 347], ***Union of India & Another vs***

M.M. Sarkar [(2010)2 SCC 59)], ***Hasmukhraj vs Commissioner*** [SCA/14055/2011 (Gujarat)].

- The petitioners have, consciously waived their right to claim solatium and interest as they had acquiesced in the arbitral proceedings. If at all the petitioners had felt aggrieved they ought to have challenged the awards of the statutory arbitrator under Sec.34 of the A & C Act, and that too within the period of limitation provided for the same, and hence they are not permitted to adopt the writ-route to the remedy they seek.

- Not only did the petitioners opt not to challenge the order of the Arbitrator under Sec.34 of the A & C Act, they also had received the differential compensation amount consequent to the enhancement of compensation as determined by the arbitrator. If the petitioners are aggrieved by the award of the statutory arbitrator, then their remedy is under Sec.34 of the A & C Act. When a more efficacious alternate remedy is statutorily provided, Courts have always refrained from exercising its discretionary jurisdiction under Article 226 of the Constitution. Reliance was to ***Punjab National Bank vs.***

D.C.Krishna [2001 (6) SCC 569], ***Sheela Devi vs. Jaspal Singh*** [AIR 1999 SC 2859], ***Union of India vs. T.R.Verma*** [AIR 1957 SC 882].

- Where a person, himself a fence-sitter, seeks an advantage similar to the one obtained by another, he ought to approach the Court at the earliest point of time, or atleast within a reasonable time after the Order was pronounced in ***Chakrapani's case*** on 04-03-2011. A fence-sitter in hibernation is ineligible for equal treatment with those who approached the Court. It is impermissible in law to allow the persons whose litigations have been concluded and attained finality to aim to benefit out of a subsequent declaration of law in another case. Reliance was placed on the ratio in ***Mafatlal Industries Ltd and others vs. Union of India and others*** [(1997 (5) SCC page 536, para 108 (iv)].

- The petitioners have opted not to claim solatium and interest in their Arbitration Petition filed under Sec.3G(5) of the Act. In terms of Sec.3G(6), provisions of A & C Act, were made applicable to any arbitration under Sec.3G(5). That which the petitioners had an opportunity to claim, but have chosen to abandon or waive, cannot be revived pursuant

to the judgment in the ***Tarsem Singh case*** [(2019)9 SCC 304].

- Inasmuch as the awards of the statutory arbitrators have been allowed to become final, the present claim is hit by the doctrine of *res judicata.* Reliance was placed on the judgments of the Constitution Benches of the Hon'ble Supreme Court in ***Indore Development Authority vs. Manoharlal*** [(2020 (8) SCC 129], and ***Daryao and others vs. State of Uttar Pradesh*** [AIR 1961 SC 1457].

- A writ petition is not an automated route to revive a stale claim. Reliance was placed on the ratio of the Constitution Bench decision in ***Trilokchand Motichand and others Vs H.B. Munshi & another*** [AIR 1970 SC 898]. In ***The Assistant Commissioner of State Tax and Others Vs M/s Commercial Steel Limited*** [judgment dated 03.09.2021] the Hon'ble Supreme Court has held that a writ petition can be entertained in exceptional circumstances such as (i) where there is a breach of fundamental rights; or, (ii) a violation of the principles of natural justice; or, (iii) an excess of jurisdiction; or, (iv) a challenge to the vires of the statute

or delegated legislation. None of these criteria are present in the present batch of cases.

- And, today, moving the Court under Sec.34 of the Act is terribly barred by limitation. See: ***Simplex Infrastructure Ltd. v. Union of India***, [(2019) 2 SCC 455]. Invoking Art.226 of the Constitution at this stage is plainly impermissible. Reliance was placed on ***Assistant Commissioner (Ct) Ltu, Kakinada & ors vs M/S Glaxo Smith Kline Consumer Healthcare Limited*** [2020 (4) MLJ 652], ***State Bank of Travancore vs. Mathew K.C.,*** [(2018) 3 SCC 85], ***Thansingh Vs. Superintendent of Taxes, Dhubri and others*** [AIR 1964 SC 1419]. ***Assistant Commisioner (CT) Ltu, Kakinada & Others Vs M/s Glaxo Smith Kline Consumer Health Care Ltd.,*** [2020(4) MLJ 652] and ***Gurpreet Singh Vs Union of India*** [(2006) 8 SCC 257].

- The present claim is hit by delay and laches, which disentitle the petitioners to invoke Article 226 of the Constitution. ***State of Madhya Pradhesh vs. Bhailal Bhailal Bhai*** [AIR 1964 SC 1006] and ***State Of Maharashtra vs***

Digambar [AIR 1995 SC 1991]. This apart where a claim is barred by limitation (claim should have been within three years from the order in ***Chakrapani case***), writ petition cannot be maintained.

The remedy under Article 226 of the Constitution is discretionary in character. Where a set of petitioners, themselves fence-sitters, and guilty of laches, and have waived or abandoned their right of claim, approach the Court invoking its writ jurisdiction beyond the period of limitation, discretion may not be exercised in their favour. Reliance was to the ratio in ***City & Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwala and others*** [(2009) 1 SCC 168].

Submissions of the Amicus curiae:

9. To appreciate the submissions of the learned Amicus curiae, flip/scroll backwards to paragraphs 3.1 to 3.9 of this Order. His submissions are:

- Post ***Chakrapani case,*** the Supreme Court passed an order in ***Sunita Mehra case*** [(2019) 17 SCC 672], and had directed payment of solatium and interest only for cases pending on the date of the judgment of the Punjab & Haryana High Court in ***Golden Iron & steel case***. Despite this, the Supreme Court, in ***Tarsem Singh case***, has held that the Government

itself was of the view that solatium and interest should be granted for acquisitions between 1997 and 2015. In other words, the Hon'ble Supreme Court did not consider it fit to confine the relief to those cases pending on 28.03.2018, the date on which Punjab High Court passed its order in ***Golden Iron & Steel Forging v. Union of India*** [2008 SCC OnLine Punjab &Haryana 498].

- The consequences flowing from ***Tarsem Singh*** were examined and relied on by a Division Bench of this Court in ***Gandhimathi v The District Collector*** [W.A.(MD) 1680 of 2018]. The NHAI's efforts to assail this Order before the Supreme Court were in vain when the Court rejected it in limine vide its Order dated 25.02.2021. Therefore, the statutory obligation to pay solatium and interest has moved far beyond the orbit of Court hall debates.

- The plea of the NHAI that claim of solatium and interest cannot be considered since the awards of the statutory arbitrators have attained finality has already been rejected by the Division Bench of this Court in ***Pachamuthu*** and ***Gandhimathi cases.*** The precedential value of these

judgments cannot be wished away.

- So far as laches and delay goes, the decision of the Single Judge in ***Chakrapani case,*** came to be stayed by a Division Bench of this Court in a batch of appeals in W.A.2359 to 2388 of 2011 filed at the instance of the NHAI. Thereafter, the matter went to the Hon'ble Supreme Court and was eventually disposed of as per its Order dated 21.07.2016, based on the statement of the Solicitor General. (Ref: Paragraph 3.4 above). Its immediate effect was that the Order of the learned Single Judge of this Court merged with the Order of the Hon'ble Supreme Court vide the ratio in ***Khoday Distilleries v Sri Mahadeshwara*** [(2019) 4 SCC 376].

- Secondly, the final Order of the Hon'ble Supreme Court did not disturb the initial declaration of this Court that Sec.3-J of the Act was unconstitutional. A judgment of the High Court holding that a provision of a Central enactment as unconstitutional would operate pan India. Reliance was placed on the dictum in ***Kusum Ingots and Alloys Ltd v Union of India,*** [(2004) 6 SCC 254)]. The tenor of NHAI's contention appears to indicate that the benefit of the judgments in ***Chakrapani case***, or ***Pachamuthu's***

case would be available only to the petitioners in those cases.

- If a referential base-time is to be reckoned for deciding when the acquirer of private lands under the National Highways Act became obligated to pay compensation, it cannot but be 19.09.2019, the date on which judgment was pronounced by the Supreme Court in ***Tarsem Singh case.*** It is settled law that a declaration of law by the Hon'ble Supreme Court, operates retrospectively unless it is expressly made prospective. Reliance was placed on the ratio in ***Uttaranchal Jal Sansthan v Laxmi Devi*** [(2009) 7 SCC 205] and ***Goan Real Estate v Union of India*** [(2010) 5 SCC 388). And, there is no such indication in ***Tarsem Singh case*** that the Supreme Court has intended to make its dictum to operate only prospectively. Additionally, it may also be pointed out that the mandate of Article 141 of the Constitution is that the law laid down by the Supreme Court is binding on all Courts and authorities in the country. If viewed thus, the NHAI cannot whittle down the scope of the judgment by resorting to selective cherry picking by claiming that it applies to some and not to others. The ratio in ***U.P. Pollution Control Board v. Kanoria Industrial Ltd.***, [(2001) 2 SCC 549] was relied on.

- The question of laches in respect of the claims made post the striking down of a provision of law was examined by the Supreme Court in ***D.Cawasji v State of Mysore*** [(1975) 1 SCC 636]. The Supreme Court applied Section 17(1)(c) of the Limitation Act, and held that relief arising from the consequences of a mistake of law (i.e., a payment made under an unconstitutional provision) cannot be discovered before a judgment adjudging the validity of the law and the starting point of limitation for the purposes of a writ petition under Article 226 for consequential relief in such circumstances would run from the date on which any provision was declared unconstitutional. This judgment was followed by the Hon'ble Supreme Court in ***Mahabir Kishore v State of Madhya Pradesh*** [(1989) 4 SCC 1] wherein the plea that the starting point of limitation commenced only from the date on which the judgment was published in the law reports was accepted. A similar plea of laches was raised and rejected by the Supreme Court in ***U.P Pollution Control Board v Kanoria Industrial Limited*** [(2001) 2 SCC 549] where the writ petitions were entertained and allowed for refund of water cess collected under a provision which was

declared unconstitutional. It is therefore clear that the period of limitation under Section 17(1)(c) of the Limitation Act, for seeking relief would arise only from 19.09.2019, the date of the Order in ***Tarsem Singh case.*** The present batch of cases appear to closely ally themselves with the ratio of ***U.P Pollution Control Board v Kanoria Industrial Limited*** [(2001) 2 SCC 549].

- Recourse to Sec.34 of the A & C Act cannot be resorted to seek something which fall outside the scope of the authority of the CALA or the statutory arbitrator. When Section 3-J stood in the statute book, a claim for solatium and interest was not a claim "*under the Act*", for the CALA and the statutory arbitrator were statutorily injuncted from applying Section 23 and 28 of the Land Acquisition Act,1894 to those landowners who lost their lands under the National Highways Act. The procedural machinery under the Act can be utilised only to decide disputes that arise under the substantive provisions of the Act which are not ultra vires. Rejection of solatium and interest based on an unconstitutional provision is not a decision "*under the Act",* hence the procedural mechanism provided under

the National Highways Act is inapplicable. It implies that the petitions invoking Article 226 of the Constitution are maintainable. Reliance was placed on the decision of the Supreme Court in ***K.S Venkataraman v State of Madras*** [AIR 1966 SC 1089], ***Bharat Kala Mandir v Municipal Committee, Dhamangaon*** [AIR 1966 SC 249], and ***Mafatlal Industries Limited v Union of India*** [(1997) 5 SCC 536].

The Discussion :

10. As the din of the arguments settle down to permeate into the deeper layers of contemplation, it becomes evident that the controversy seeks a solution not in evaluating the legitimacy of the claim of the petitioners, but in assessing the tenability of the NHAI's defences. If the decision in the ***Chakrapani case*** does not aid the petitioners, the ratio of ***Tarsem Singh*** surely does.

11. The arrangement of defences by the NHAI is impressive, but they forsake novelty. They are picked straight from the repertoire of standard(ised) defences: the pleas of waiver and the abandonment and those of limitation and laches with the fence sitter theory and rule of *res judicata* thrown in for good measure. These are rounded off with availability of alternate remedies and the discretionary

jurisdiction of this Court under Article 226. None of these take on the entitlement, or the lack of it, of the petitioners to claim solatium and interest, but aim at avoiding a potential liability to pay. They do raise an issue on jurisdiction, but do they also camouflage any technical (or is it tactical?) escapism to manoevere through the consequences flowing from the decision of the Supreme Court in ***Tarsem Singh***? The endeavour of the Court will focus on this.

12. After the decision in ***Tarsem Singh*** it will be outlandish to contend that the landowners would not be entitled to solatium and interest, since the denial statutorily authorised by Sec.3-J is lifted. The effect of striking down Sec. 3-J is that it is deemed to have never existed or, to borrow the words of the Hon'ble Supreme Court in ***Bhikaji Narain Dhakras v State of Madhya Pradesh*** [AIR 1955 SC 781] it is "*still born .....*". Another facet of the impact-capability of a judicial decision is that, unless expressly declared otherwise, they always operate retrospectively. See: ***Uttaranchal Jal Sansthan v Laxmi Devi*** [(2009) 7 SCC 205]. There is no indication in ***Tarsem Singh*** that the declaration of law would have only prospective effect. Therefore, the default rule in the ***Laxmi Devi case*** will apply.

13. The defences of the NHAI must be contextualised in the backdrop of the Right to Property under Article 300-A of the Constitution. Though this right originally shared a space in the club of freedoms guaranteed under Article 19(1)(f), it underwent a perceived relegation to a Constitutional right under Article 300A vide the Constitution (44th Amendment) Act, 1978. The Parliamentary intent was clear, yet it ended up becoming an optical illusion, since the right to property managed to crawl its way to occupy a vital space in the constantly expanding human rights jurisprudence, with the Court integrating it within the contours of Article 21 of the Constitution. In ***Vidya Devi v State of H.P.*** [(2020) 2 SCC 569] the Supreme Court held :

> "*12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it* ***continued to be a human right*** *[Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution....* "

A school of Constitutional thought perceives that right to property is now on a firmer ground than before. Prof. P.K. Tripathi, in a seminal article titled "***Right to Property After Forty Fourth Amendment – Better Protected Than Ever***

Before" [AIR 1980 Journal Section p.49], points out that by deleting Right to Property under Article 19(1)(f) and rehabilitating it in Article 300-A, the Parliament had unwittingly unshackled it from the rigours of Article 31-A which shielded certain laws from the dragnet of Articles 14,19 and 21 and the obligation to pay just compensation. He writes:

> "*The net result, therefore, is that the right of the individual to receive compensation when his property is acquired or requisitioned by the State continues to be available in the form of an implied condition of the power of the State to legislate on "acquisition or requisitioning of property" while all the exceptions and limitations set up against and around it in Arts 31, 31A and 31B have disappeared.*"

In ***Lalaram v. Jaipur Development Authority*** [(2016) 11 SCC 31], the Supreme Court holds**:**

> *"124. The right to property though no longer a fundamental right is otherwise a zealous possession of which one cannot be divested save by the authority of law as is enjoined by Article 300-A of the Constitution of India*. Any callous inaction or apathy of the State and its instrumentalities, in securing just compensation would amount to dereliction of a constitutional duty, justifying issuance of writ of mandamus for appropriate remedial directions.
>
> *127. While recognising the power of the State to acquire the land of its*

citizens, it has been proclaimed in Dev Sharan, (2011) 4 SCC 769, that even though the right to property is no longer a fundamental right and was never a natural right, it has to be accepted that without the right to property, other rights become illusory.

129. In summa, the right to property having been elevated to the status of human rights, it is inherent in every individual, and thus has to be venerably acknowledged and can, by no means, be belittled or trivialised by adopting an unconcerned and nonchalant disposition by anyone, far less the State, after compulsorily acquiring his land by invoking an expropriatory legislative mechanism. The judicial mandate of human rights dimension, thus, makes it incumbent on the State to solemnly respond to its constitutional obligation to guarantee that a land loser is adequately compensated. The proposition does not admit of any compromise or laxity."

In ***K.A.Ravindran Vs The District Collector, Vellore District & Ors.*** [2021(4) CTC 527], I had an occasion to hold:

".... In Delhi Airtech Services Private Limited v State of U.P [2011 9 SCC 354] the Supreme Court termed the right to property as a human right under Article 21 and alluded to it as the seed bed for securing other human freedoms such as liberty. The Supreme Court observed:

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic

oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

The growth of Constitutional jurisprudence in this country has been chiefly characterized by the constant search of the Constitutional Courts to discover the expandability of the concept of right to life under Article 21. Its objective is to include as many, exclude none, and at all times to check the Executive temptations to tread upon it, even accidentally, except in accordance with the procedure established by law. The multitude of rights that go to constitute right to life, some time termed as penumbral rights, are comparable to the advaita philosophy in that each of such fractional right itself possesses the characteristics of the whole. Soham. Hence, an understanding of the right to property only in economic terms may not be a right idea, nor will be an understanding that its infringement should produce a tangible loss. An infringement of right to property will therefore enjoy an expanded meaning proportionate to the expandability of the right to life under the Constitution. It will now accommodate a meaning which includes the quality of life even in terms of the happiness-quotient which a citizen is entitled to, and the State machinery shall stay away from affecting it, unless it has a warrant in law to interfere……. It could therefore, be derived that when one is denied of

his right to exercise all that emanates from the right of ownership, which includes right to alienate or encumber by a method not supported by law, the anxiety such denial generates in the hearts of men will offend the quality of life under Article 21, and impinge upon the cherished ideals of human dignity zealously guarded by it."

14. Compensation is not a benevolence that a charitable State grants to the land owners. It is a statutory substitute, a monetary equivalent, to enable the land owners to sustain the quality of life which they are entitled to under Article 21 of the Constitution. In ***Vidya Devi case*** [(2020) 2 SCC 569] the Hon'ble Supreme Court proceeds to observe:

"*12.2 ... The obligation to pay compensation, **though not expressly included in Article 300-A, can be inferred in that Article**. [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]. "*

15. Solatium in this context is a legislative palliative to help the land losers to wade their lives through the difficulties that often accompanies a compulsory acquisition of private property. In ***Narain Das Jain v. Agra Nagar Mahapalika*** [(1991) 4 SCC 212], the Hon'ble Supreme Court explains:

" The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land

acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made."

Jurisdiction:

16. A prefatory statement may now be made. As outlined in the opening paragraphs, all the defences of the NHAI can be discussed under a single head - Jurisdiction. The prime plank of its contention is that the petitioners have no right to invoke Article 226 of the Constitution since they have an effective alternative relief under Sec. 34 of the Arbitration & Conciliation Act (henceforth A & C Act). The other set of defences constitute an ancillary line of defences and they focus on why this Court should refrain from invoking its jurisdiction.

Sec.34 of the A & C Act Vs Article 226 of the Constitution

17. This argument of NHAI is its signature tune. Its contention has been that inasmuch as Sec.34 of the A & C Act provides for an alternative relief, and since

the petitioners have not opted to challenge the arbitral award of the statutory arbitrator, not only did these awards attain finality, but has also foreclosed their option to invoke the jurisdiction of this Court under Art.226.

18.1 This argument, in the opinion of this Court, stems from a fallacious perception that a claim for solatium and interest fall within the domain of the statutory arbitrator to decide. This is explained:

- If the components of the expression 'compensation' under the Land Acquisition Act, 1894 are dissected, it will be seen that it is made of the market value of the property acquired, the solatium and the interest. Of them, the market value of the property is a variable, and the other two components-the solatium and the interest, are statutory constants. They apply themselves automatically on the market value of the property as a statutory consequence. The authorities constituted under the Land Acquisition Act are only authorised to hold an enquiry to determine the market value of the property acquired, the variable component of the compensation, and to do no more. The statute does not vest any discretion or choice in these authorities in deciding on the grant of solatium and interest.

- In the context of acquisition under the National Highways Act, Sec. 3G (7) thereof envisaged the various aspects that may have to be factored in for computing the compensation, but Section 3-J kept aside solatium and interest as payable under the Land Acquisition Act, 1894. The ***Tarsem Singh case*** has removed this embargo, and this led to an equalization of the roles of the CALA under the National Highways Act with that of their counter part under the Land Acquisition Act. This is also true of the next level tribunals constituted to remedy the greivance of those who are dissatisfied with the market value initially fixed. While it is the statutory arbitrator under National Highways, under Sec.18 of the Land Acquisition Act this role is assigned to the Reference Court. However, neither are required to enquire no more than deciding on the justness of the market value of the property as originally determined.

- It is now derivable that the issue of payment of solatium or interest is never a part of the statutory function of any of the land acquisition authority.

- This would now mean that any issue on the obligation of the State to pay the solatium and interest necessarily fall outside the domain of the

jurisdiction of the authorities created under the Statute to decide, be it the original authority or the next higher tribunal. And what merits for a challenge within the remedial mechanism created by the statute are those which are within the jurisdiction of the authorities and not outside it.

18.2 Neither the CALA, nor the statutory arbitrator (the latter's awards are now contextually relevant) can ill afford to ignore the express mandate of the very provisions from which he derived jurisdiction. When in ***Tarsem Singh*** case it is concluded that the denial of solatium was on the basis of a provision that is ultra vires the Constitution, it would follow that the denial of solatium cannot be termed as a decision under the Act. It is an omission to perform a statutory obligation merely. Where an omission of the Tribunal falls outside its jurisdiction to decide - something that it never could have decided, such acts of omission cannot be remedied within the mechanism created by the statute.

18.3 In ***K.S Venkatraman v State of Madras*** [AIR 1966 SC 1089], the question before the Hon'ble Supreme Court was whether the relief from an assessment of tax made under an unconstitutional provision would have to be pursued through the mechanism under the Act or by way of a civil suit. The Court held that the

mechanism prescribed under the Act could only determine the disputes by applying provisions "under the Act". If the authority acts on the basis of a provision which is subsequently declared void, it is deemed to have acted outside jurisdiction, and a suit to question the validity of such an assessment would lie before a Civil Court. Subba Rao, J (as His Lordship then was) makes a candid statement:

> *"19.... As the Tribunal is a creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said* objection or decide on it. As no such question can be raised or can arise on the *Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision. At the most the only question that it may be called upon to decide is whether the Tribunal has jurisdiction to decide the said question. On the express provisions of the Act it can only hold that it has no such jurisdiction.*
>
> *23... If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of*

a civil court in that regard. But an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it. If it acts on the basis of a provision of the statute, which is ultra vires, to that extent it would be acting outside the Act. In that event, a suit to question the validity of such an order made outside the Act would certainly lie in a civil court."

In ***Bharat Kala Mandir v Municipal Committee, Dhamangaon*** [AIR 1966 SC 249], in the context of a provision violating Article 276 of the Constitution, the Hon'ble Supreme Court held:

"In Secretary of State v. Mask & Co.[(1940) 67 IA] the Privy Council has observed that it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. As earlier pointed out, this decision has been approved by this Court in the case of Firm & Illuri Subbayya Chetty & Sons. Further, one of the corollaries flowing from the principle that the Constitution is the fundamental law of the land is that the normal remedy of a suit will be available for obtaining redress against the violation of a constitutional provision. The Court must, therefore, lean in favour of construing a law in such a way as not to take away this right and render illusory the protection afforded by the Constitution. So, whatever be the position with respect to Section 67 of the Indian Income Tax Act, so far as Section 83(3) of the Act is concerned, we find it reasonably possible to construe it as not depriving

a person of his right to obtain redress from a civil court in respect of an amount recovered from him as a tax in violation of Article 276 of the Constitution"

The aforesaid judgments were followed by another Constitution Bench in ***Mafatlal Industries Ltd. v. Union of India*** [(1997) 5 SCC 536]. The Court drew a distinction between an ***unconstitutional levy*** (where a provision is struck down) and an ***illegal levy*** (where a demand is made on the basis of an interpretation which has been subsequently reversed, altered or modified). The Court held (in its majority view):

"*26. We must, however, pause here and explain the various situations in which claims for refund may arise. They may arise in more than one situation. One is where a provision of the Act under which tax is levied is struck down as unconstitutional for transgressing the constitutional limitations. This class of cases, we may call, for the sake of convenience, as cases of "unconstitutional levy".* In this class of cases, the claim for refund arises outside the provisions of the Act, for this is not a situation contemplated by the Act.

29. So far as the first category (unconstitutional levy) is concerned, there is no dispute before us that it is open to the person claiming refund to either file a suit for recovery of the tax collected from him or to file a writ petition under Article 226 of the Constitution for an appropriate direction of refund. The only controversy on this score is whether the

manufacturer/payer is entitled to such refund where he has already passed on the burden of duty to others."

The Court proceeded to hold:

"*108.. (ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition."*

Having held thus, it hastens to point out an exception:

"This principle is, however, subject to an exception : Where a person approaches the High Court or the Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be reopened on the basis of a decision on another person's case; this is the ratio of the opinion of Hidayatullah, C.J. in Tilokchand Motichand [(1969) 1 SCC 110 : (1969) 2 SCR 824 : AIR 1970 SC 898] and we respectfully agree with it."

The aforesaid exception is more on the point of *res judicata*, for even a wrong judgment of the Court inter parties would bind them. It however, requires a judgment inter parties. And, none of the petitioners in this batch of cases have

ever obtained any adverse order on the point of payment of solatium and interest.

19. NHAI also relies on ***Mafatlal case***, and it leans heavily on paragraph 108(iv). Here the Supreme Court has declared that where a ruling on a claim has become final the same cannot be reopened on the basis of the judgment in another case. But this argument overlooks the fact that the discussion in paragraph 108(iv) is confined to cases of an "*illegal levy*", i.e., where a validly enacted provision is interpreted by the Court and not to cases where the provision is struck down for its unconstitutionality. The Hon'ble Supreme Court explains it:

> *"But it so happens that sometime later may be one year, five years, ten years, twenty years or even fifty years — the Supreme Court holds, in the case of some other manufacturer that the levy of that kind is not exigible in law. (**We must reiterate — we are not speaking of a case where a provision of the Act whereunder the duty is struck down as unconstitutional. We are speaking of a case involving interpretation of the provisions of the Act, Rules and Notifications**.) The question is whether "X" can claim refund of the duty paid by him on the ground that he has discovered the mistake of law when the Supreme Court has declared the law in the case of another manufacturer and whether he can say that he will be entitled to file a suit or a writ petition for refund of the duty paid by him within three years of such discovery of mistake?"*

The NHAI also pressed into service the judgment of the Supreme Court in

Assistant Commissioner, Kakinada v Glaxo Smith Kline Consumer Healthcare Limited [2020 (4) MLJ 652]. This decision is clearly distinguishable. The case did not concern a situation where a claim was made on the basis of an unconstitutional provision. The issue was whether an order of assessment which was not challenged by way of a remedy of an appeal and had therefore become final as the appeal was time barred, could be challenged by way of a writ petition under Article 226. ***Glaxo Smith Kline*** was a case where the order complained of, was made "within jurisdiction" and was sought to be challenged in a writ petition. That is not the case here. The NHAI also relied on the judgment in ***State of M.P. v. Bhailal Bhai*** [AIR 1964 SC 1006]. This judgment, however, supports the case of the petitioners. In that case, the Supreme Court had affirmed the power of the High Court to order remedial measures for the acts done without the authority of law.

20. To sum up and conclude this point, inasmuch as the issue on the payment of solatium and interest falls outside the jurisdiction of the authorities constituted under the National Highways Act to decide, and since they are statutory constants which becomes payable automatically if the condition for their application are

available, and given the fact the very obligation to pay has arisen only after the judgment in ***Tarsem Singh case,*** no circumstance exists for invoking Sec.34 of the A & C Act. The petitioners can therefore, have the right to invoke the jurisdiction of this Court under Article 226 of the Constitution.

Waiver & Abandonment:

21. Have the petitioners waived their right to solatium and interest? The NHAI contends that they have. Reverting to the basic premise, if the compensation payable for land acquisition is considered as a statutory equivalent to substitute the loss of property for sustaining the quality of life of the land owners, and deserves to be read into Article 21, then as a feature of fundamental rights, there can neither be a waiver nor can there be an abandonment of a fundamental right.

22. The rationale behind the dictum in the ***Tarsem Singh case*** in striking down Section 3-J is:

> "*Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act i.e. speedy acquisition of lands for the purpose of National Highways.*

On this ground alone, the Amendment Act falls foul of Article 14."

In such cases, a Constitutional Court has a paramount duty to remedy the injustice done to the landowner as was explained in ***Narain Das Jain v. Agra Nagar Mahapalika*** [(1991) 4 SCC 212], in the following words :

> "*Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the Court gets occasion to amend or rectify. This is the spirit of the provision, wherever made."*

23. There is another way of approaching the issue. Is awarding solatium and interest an obligation of the State, or is it a vested right of the land owners? The concept of the State as understood by political philosophy or as a jurisprudential creation is an entity where the authority converged. There is a paradigm shift in the concept of a State when democracy replaced the monarchies and the oligarchies. In a democracy the State and its instrumentalities are a manifestation of the collective consciousness of its people. The power to acquire lands in public interest springs from this. Both constitutionally and statutorily, the power of acquisition can no more be construed as an absolute power of the State, but is a privilege hedged by a statutory liability and obligation to pay compensation.

24. There is no need for a demand. But there still exists a duty to pay solatium and interest. In other words, the power of acquisition is onerous, and the State cannot sever that part which is to its advantage from the other onerous part of the acquisition: that which requires payment of compensation including solatium and interest. In ***K. Sudarsan v. Commissioner, Corporation of Madras*** [AIR 1984 Madras 292], this Court, speaking through S.Padmanabhan.J., held as under :

> *"24. The next question for consideration is whether the writ petitions for the issue of a writ of Mandamus have to be dismissed on the ground that there has been no demand and refusal. The rule which requires a demand and a refusal before an individual could move the Court for the issue of a Writ of Mandamus is not an absolute or inflexible rule. The rule is to ensure that the defaulting authority gets an opportunity of knowing what was required of him to do and for deciding whether he would do it of his own motion without being compelled by the Court. If the defaulting authority is made aware of the default or the irregularity complained of and had an opportunity of rectifying the defect or omission, no formal demand will be necessary. If it appears on the facts and circumstances of the case that the defaulting authority is already aware of the illegality charged against him and he is pursuing it, it would be an exercise in futility to make a demand for justice. In such a case no prior demand is required. Further, where there has been a breach of a public duty on the part of the State or a Public Officer, affecting by its consequence, the general interests of the public and where such duty was one imposed by a*

statute, it is not necessary that demand for justice should be made before the Court is moved for relief against the breach by way of a Writ of Mandamus. In such cases, the command of the statute must be deemed to be the demand and the failure to obey the demand is refusal. The individual who wants to compel the authority to perform the duty enjoined on him by statute need not add his own demand to the command of the law. All that he need to show is that the duty is not carried out by the public authority and if he succeeds in so showing it will amount to a refusal to comply with the demand."

This decision was confirmed by the First Bench of this Court in ***M.A Pal Mohammed v R.K Sadarangani*** [AIR 1985 Madras 23]. Thus, where there is a statutory obligation to pay compensation which includes solatium and interest, the State or its instrumentalities cannot shirk its responsibilities on the grounds of acquiescence and waiver.

25. The NHAI appears to be oblivious of the fact that payment of compensation is not the same as the consideration paid under a conveyance between two private parties. The Constitution interdicts the State and its instrumentalities from treading on the territories which may imperil the right to life of the citizen unless there is a statutory sanction to support it. Hence, it is unfortunate that NHAI as an instrumentality of the State should reduce itself to defend payment of solatium

and interest for the compulsory acquisition on a plea of waiver. This plea must necessarily fail.

Plea of *functus officio* & Resjudicata:

26. The NHAI contends that neither the CALA nor the Statutory Arbitrator can entertain any representation of the petitioners for payment of solatium and interest since on passing their respective awards, these authorities have become *functus officio*. It is already demonstrated that neither of these authorities have any power to decide on the solatium and interest, nor have they decided the issue before. So far as the present plea goes, an authority will become *functus officio* only as concerning matters which fall within the domain of their authority to decide. Since, solatium and interest fall outside their jurisdiction, they will not become *functus officio* if they are now required to perform anything in view of the ***Tarsem Singh case.***

27. The issue can be viewed from another angle. If Sec.3-J were not there in the statute book, the CALA would have done exactly that which their counterparts under the Land Acquisition Act, 1894, would be under a compulsion to do: to add the solatium and interest to the market value of the property acquired. When the

constitutionality of Sec.3-J was challenged from ***Lalita case*** of the Karnataka High Court (from where it all started) to ***Tarsem Singh case,*** notwithstanding the ***Chakrapani ratio*** or the ***Sunita Mehra ratio*** of the Hon'ble Supreme Court delivered in the interregnum, the NHAI could play an excuse-card to deny payment of solatium and interest. Not any longer after the ***Tarsem Singh case***. If the Courts are the guardian of the Fundamental Rights of the citizens, and if the compensation (including solatium and interest) as a concept are integral to the right to property and hence right to life, a duty is upon the Courts not to reduce themselves to Constitutional irrelevancy in letting the NHAI bask under the comfort of its core-misconception.

28. Alternatively, even if the contention of the NHAI that the authorities to whom the representations have been addressed have become *functus officio* is presumed valid, let it make the payment directly to the petitioners. After all, computing the solatium and interest payable to each of the petitioners only requires a calculator, and passing any supplementary award by the CALA for the purpose is only procedural. This argument necessarily fails.

29. The NHAI's plea of *res judicata* also can be fitted and tested on this plane

for evaluating its merit. If the CALA or the statutory arbitrator do not have the authority to decide on the grant of solatium and interest, no dispute concerning their payment can be the subject matter of their enquiry. Where there is no dispute, or, to be precise, where there is no statutory scope for raising a dispute, rule of *res judicata* will opt to stay at a distance, far beyond the reach of the expansive plea that seeks its application. And sensibly so. And, there possibly could have been a place for applying the rule of *res judicata* if only the petitioners had approached the Court earlier on this aspect and had lost. This argument fails too.

The Limitation, Laches and Delay:

30. NHAI's next ground to deny solatium and interest is founded on these pleas. This is last of its major plea. Reliance was placed on the dictum in ***Trilokchand Motichand & Others Vs H.B. Munshi & Another*** [AIR 1970 SC 898].

31.1 The quintessence of the ***Tarsem Singh case*** leaves a message, a correction and an instruction: The message is that the land owners shall not be treated inequally in two different enactments (the Land Acquisition Act and the National Highways Act) as it violates Article 14 of the Constitution. The correction is in

declaring Sec.3-J unconstitutional; and the instruction is to treat the land owners under the National Highways Act equally with the land owners under the Land Acquisition Act, implying thereby that the former set of landowners should be paid solatium and interest as is being given to the latter. And, to repeat ***Tarsem Singh case*** did not provide for prospective application of its dictum.

31.2 In conceiving the plea of Limitation, the NHAI appears to have misconceived, and hence missed its plot. The pre-requisite for sustaining a plea of limitation is existence of an entitlement to a right which time was allowed to consume when its holder fails to claim or enforce it within a prescribed time. This is explained now:

- Limitation and laches have one thing in common and one difference: The commonality in them requires the existence of a right in the one who approaches the Court. To expatiate it, or to return to the rudimentary principles, there must be in existence 'a right', that there is a need to enforce that right (the cause of action) and then the requirement to enforce it within the time prescribed by law. If it is not done within the time so prescribed, the right will be there, but remedy would be barred. The distinction between limitation and laches is only in point of duration,

except that, while limitation is dictated by law, laches is guided by court's discretion.

- As seen earlier, the NHAI appears to believe that solatium and interest are rights that statute has vested in the land owners, that it is available only on demand (the right part of the statement), but to its disappointment, it is not. It is a liability associated with the State's power to acquire land. A land owner does not approach the State to acquire his/her/its land, but the State does it against the former's will. The State that goes to take over private property is required to meet a certain liability. It is a statutory obligation which requires no correlative right in a land owner for discharging it. Now, for the State to discharge its liability-the statutory obligation, why should there be demand? This precisely was the foundation of the dictum in ***K.Sudarsan's case*** [AIR 1984 Madras 292]. And limitation and laches operates where there is a need for demanding something based on a certain right. Therefore any contention of the State and its instrumentalities, whose legitimacy, to remind, is sourced out of the power that the people grants, that they would perform their statutory

obligations only on demand smacks of Constitutional immorality. Could there be a greater insult to the citizens of this country?

31.3 Now to the characteristics of solatium and interest. The discussion in paragraph 11 to 15 above demonstrate that they are facets of the fundamental right to life. If solatium and interest are part of the compensation, and if compensation is integral to Article 300-A of the Constitution, and if Art.300-A is readable in Article 21, and if the citizens have a right not to be treated inequally or arbitrarily under Art.14, then the right of the land owner is not the right to solatium and interest, but a right not to be denied the same. And, this right has always been there in the land owners. They, as components of compensation, ensure that the quality of life is not disproportionately impacted by the acquisition of land. Hence, as a critical factor of fundamental right to life, right to be paid the solatium and interest cannot be waived. That which cannot be waived can rarely be lost to limitation. If the NHAI considers that ***Tarsem Singh case*** has conferred a right not previously available to the landowners, then its understanding is horrendously wrong. ***Tarsem Singh case*** did not confer a right, instead it removed an obstruction that denied the citizens of their right to be

treated equally with the landowners under the Land Acquisition Act, and reminded the State of its obligation to pay solatium and interest. A representation of the landowner to pay compensation therefore, is a reminder merely to perform this obligation. This realisation was forced on the NHAI in the ***Tarsem Singh case***, but only it is in a refusal mode to understand it.

32. In ***Trilokchand case*** (cited by the NHAI), the Hon'ble Supreme Court has held:

> *"Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within* Limitation Act *by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under* Art. 32. ***Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed ,are and how the delay arose.****"*
>
> *(Emphasis supplied)*

Few years later, ***D. Cawasji & Co. v. State of Mysore*** [(1975) 1 SCC 636], the Hon'ble Supreme Court has held:

*"**8.** Therefore, where a suit will lie to recover moneys paid under a mistake of law, a writ petition for refund of tax within the period of limitation prescribed i.e. within three years of the knowledge of the mistake, would also lie. For filing a writ petition to recover the money paid under a mistake of law, this Court has said that the starting point of limitation is from the date on which the judgment declaring as void the particular law under which the tax was paid was rendered, as that would normally be the date on which the mistake becomes known to the party. If any writ petition is filed beyond three years after that date, it will almost always be proper for the court to consider that it is unreasonable to entertain that petition, though, even in cases where it is filed within three years, the court has a discretion, having regard to the facts and circumstances of each case, not to entertain the application."*

33.The evolutionary dynamics of legal thought now expresses itself in ***Assam Sanmilita Mahasangha Vs Union of India*** [(2015)3 SCC 1], and it sums up it all. The Hon'ble Supreme Court has held:

" In Maneka Gandhi V Union of India [(1978)1 SCC 248] decided nine years after Trilokchand Motichand ...Article 21 has been give its new dimension, and pursuant to the new dimension a huge number of rights have come under the umbrella of Article 21 [for an enumeration of these rights, see Kapila Hingorani (1) V State of Bihar [(2003)6 SCC 1 : 2004 SCC (L & S)586, para 57]. Further in Olga Tellis V Bombay Municipal Corpn. [(1985)3 SCC 545], it has been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important de-

velopments in the law, the time has come for this Court to say that at least when it comes to violation of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioners."

34.Turning to the NHAI, it leaned very heavily on the following passage from the ***Trilokchand case,*** but it is distinguishable as it was not a case of mistake of law. The Court states the distinction as below:

*"Everybody is presumed to know the law. It was his duty to have brought the matter before this Court for consideration. In any event, having set the machinery of law in motion he cannot abandon it to resume it after a number of years, because another person more adventurous than he in his turn got the statute declared unconstitutional, and got a favourable decision. If I were to hold otherwise, then the decision of the High Court in any case once adjudicated upon and acquiesced in, may be questioned in a fresh litigation revived only with the argument that the correct position was not known to the petitioner at the time when he abandoned his own litigation. I agree with the opinion of my brethren Bachawat and Mitter, JJ., **that there is no question here of a mistake of law entitling the petitioner to invoke analogy of the article in the Limitation Act.**"*

Two aspects gets highlighted here: (a) All are deemed to know the law; (b) Limitation may not be available for mistake of law. Both may have application

where a right to a claim is founded on an original right, and not in enforcing an obligation which is necessary to support right to life. The distinction lies in identifying where lies the obligation. Most of the authorities which the NHAI relied on are on refund of taxes, where the obligation to pay tax is on the individual, whereas in paying solatium and interest the obligation is on the State. A claim of refund of taxes or other fees depends not only on the cause of action for the claim, but also whether the tax paid was passed on to others, and refusal to accede to the claim is often dictated by the doctrine of unlawful enrichment.

35. The NHAI, perhaps in its desperation to deny solatium and interest, has walked into a turf of uncertainty. According to it, the cause of action first arose in 2008 when the CALA determined the compensation without payment of solatium and interest. Then it argues that the starting point must begin from ***Chakrapani case*** [2011(7) MLJ 858, date of judgment of the Single Judge]. But, the NHAI has ignored the fact that the judgment of the single judge in ***Chakrapani case*** was stayed by a Division Bench of this Court on an appeal preferred by the NHAI, which later came to be transferred to the Supreme Court. Though ***Chakrapani case*** came to be closed on 21.07.2016 on a promise to pay solatium and interest to the landowners in that case, yet the NHAI appeares to have evolved a strategy

to pay solatium and interest only to those who claim them. This strategy was destroyed by ***Tarsem Singh case,*** except that the NHAI continues to believe that its earlier strategy is workable post the ***Tarsem Singh case.*** Yet another defence the NHAI has lost.

The Miscellany

(a) Oh .. the Fence Sitters:

36. This Court considers it sufficient to reproduce a passage from ***U.P. Pollution Control Board v. Kanoria Industrial Ltd.,*** [(2001) 2 SCC 549], and stop there as it provides the answer to this plea of the NHAI. It reads:

> *"18. Another reason to defeat the claim for refund put forth is that the respondents have filed writ petitions challenging unsuccessfully the validity of levy in question and those orders have become final inasmuch as no appeal against the same has been filed. The contention is put forth either on the basis of res judicata or estoppel. It is no doubt true that these principles would be applicable when a decision of a court has become final. But in matters arising under public law when the validity of a particular provision or levy is under challenge, this Court has explained the legal position in* ***Shenoy and Co. V. CTO*** *[(1985) 2 SCC 512] that when the Supreme Court declares a law and holds either a*

particular levy as valid or invalid it is idle to contend that the law laid down by this Court in that judgment would bind only those parties who are before the Court and not others in respect of whom appeal had not been filed. To do so is to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. To contend that the conclusion reached in such a case as to the validity of a levy would apply only to the parties before the Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. When the main judgment of the High Court has been rendered ineffective, it (sic the judgment of the Supreme Court) would be applicable even in other cases, for exercise to bring those decisions in conformity with the decisions of the Supreme Court will be absolutely necessary. Viewed from that angle, we find this contention to be futile and it deserves to be rejected."

A rider to it may be added. Does NHAI require every land owner to challenge the constitutionality of 3-J? A challenge to the Constitutionality of any statutory provision is a class action and its benefit enure to advantage of all who are the affected by of the provision.

(b) Opening the pandora box:

37. The NHAI is now desperate and contends that if these petitions are allowed, they would re-open all earlier cases and the NHAI will be burdened to pay around

Rs.2,000 crores. It is a brave plea indeed after the ***Tarsem Singh case.*** This Court notes that in paragraph 52 of the ***Tarsem Singh case***, the Hon'ble Supreme Court has recorded that the Central Govt. itself was of the view that solatium and interest should be paid for acquisitions between 1997 and 2005. Also see: ***Ratlam Municipality Vs Vardhichand*** [AIR 1980 SC 622]. Therefore, except appreciating the confidence of the NHAI to plead it, this Court does not find merit in it.

38. It ought to have been an easy travel to the destination. But the NHAI with its set of pleas has made the process a bit tedious. But it is well within its right to do what it has done. This Court appreciates all the counsel and the *amicus curiae* for making this journey intellectually engaging.

Conclusion:

39. The writing is on the wall. All the writ-petitions will stand allowed. The CALA in each of the cases will now pass consequential orders determining the differential compensation payable on the head of solatium and interest on the amount already determined as the market value of the acquired property of the each of the petitioners, and pay it over to them. Such exercise shall be completed

within a period of twelve weeks from the date of receipt of the copy of this Order.

No costs. Consequently, all the connected miscellaneous petitions are closed.

04.10.2021

Index : Yes / No
Internet: Yes / No
Speaking order / Non-speaking order

ds

To:

1.The District Collector
Namakkal District
Namakkal.

2.The Competent Authority and District
Revenue Officer, Namakkal
(Land Acquisition for National Highways)
Namakkal Collectorate Campus
Thummankurichi
Namakkal.

3.The Project Director
National Highways Authority of India
Project Implementation Unit (NS)
Door No.212-3/D3-1, Srinagar Colony
Narasothipatti, Salem – 630 004.

4.The Union of India
Rep. by the Secretary to Government
Ministry of Road Transport & Highways
Transport Bhawan, No.1, Parliament Street
New Delhi – 110 001.

5.The National Highways Authority of India
Rep by the Chairman
G5 & 6, Sector 10, Dwarka
New Delhi – 110 075.

6.The Chief General Manager

National Highways Authority of India
Regional Office, Sri Tower, III Floor
DP-34, (SP) Industrial Estate
Guindy, Chennai – 600 032.

7.The Arbitrator cum the District Collector
Salem
Salem District – 636 001.

8.The Competent Authority cum
Special District Revenue Officer (LA)
National Highways No.7, 46, 47 & 66
Salem – Krishnagiri District
No.433, Ex-serviceman Welfare Building
I Floor, Bangalore Road
Krishnagiri – 635 001.

N.SESHASAYEE.J.,

ds

Pre-delivery Order in
W.P.Nos.697, 701, 716, 721, 722, 724, 725, 733, 744, 746, 747, 748, 980, 983, 985, 2774, 2779, 2782, 2787, 2798, 2802, 2804, 2806, 2808, 2809, 2818, 2821, 2824, 2826, 2827, 3031, 3052, 3054, 3055, 3058, 3060, 3062, 3063, 3065, 3067, 3264, 3265, 3267, 3270, 3272, 3273, 3275, 3277, 3278, 3279, 3599, 3600, 3610, 3612, 3614, 3618, 3621, 3626, 3630, 3632, 3635, 3638, 3640, 3643, 3646, 3649, 3651, 3654 of 2021
and W.P.No.3323 of 2020

04.10.2021