



**UPDATE ON SUPREME COURT'S JUDGEMENT REGARDING APPLICABILITY OF
RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION,
REHABILITATION AND RESETTLEMENT ACT, 2013 ON AWARDS PASSED UNDER
THE REPEALED LAND ACQUISITION ACT OF 1894**

The Hon'ble Apex Court, on 10th October 2021, delivered a landmark judgment in *Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Vs Mahesh and Others*. (Arising out of SLP (Civil) Nos 13093-13094 of 2018).

FACTUAL BACKGROUND

- The State of Maharashtra issued a notification on 16th June 2011 under the Land Acquisition Act 1894 for acquisition of 203.86 acres of land in a village named Adyal. Consequentially, declarations were published under Section 6 of the Land Acquisition Act 1894 and an award was pronounced 2 years after the date of declaration, in 2014 by the Special Land Acquisition Officer in terms of clause (a) of Section 24 (1) of the Land Acquisition Act of 2013.
- This award was challenged by way of Writ Petitions on 18th December 2015 and 25th January 2016. The impugned judgement delivered by the Bombay High Court ruled that in terms of Section 11A of the 1894 Act, the award ought to have been passed within 2 years from the date of declaration, that is, 8th August 2014 but because the acquisition proceedings had lapsed, the award was declared to be inconsequential and thus, set aside by the High Court.

CONTENTIONS OF THE RESPONDENTS- LANDOWNERS.

- The subject award was not made within the specified period of 2 years under Section 11A of the 1894 Act thus there is a lapse of acquisition proceedings owing to this

mandate. The landowners argued for a restrictive meaning and exclusion of Section 25 of the 2013 Act.

CONTENTIONS OF THE APPELLANTS- STATE

- Neither the period for passing an award under Section 11A of the 1894 Act nor Section 25 of the 2013 Act would apply, as this would result in a situation which the legislature had never envisaged. The consequence of having no prescribed time period for passing of award is unacceptable and contrary to legislative intent.
- The award was pronounced on 30th October 2014, which is within the period of twelve months prescribed by Section 25 of the 2013 Act which came into force on 1st January 2014

INTERPRETATION GIVEN TO STATUTES BY THE SUPREME COURT

- Section 11A of the Land Acquisition Act of 1894 requires that an award under Section 11 be passed within a period of 2 years from date of publication of declaration, and if no award is made, the acquisition proceedings will lapse.
- Section 6 of General Clauses Act 1897 is a general transitory provision that resurrects operation of the repealed law. Legal proceedings, investigation or remedy may be instituted, continued, or enforced, and any penalty, punishment or forfeiture may be enforced as if the repealed act were still in existence notwithstanding its repeal. A comprehensive repeal may be limited if the repealing enactment either directly, or by implication, expresses that it will not apply to certain matters.
- Section 24,25 and 114 of Land Acquisition Act 2013
- Section 114 of Land Acquisition Act 2013 repeals the 1894 Act which ceases to be effective and applicable from date of enforcement of 2013 Act. The repeal does not prejudice or affect application of Section 6 of General Clauses Act. However if otherwise is stated within the 2013 Act, then Section 6 of the General Clauses Act is not to be given legal effect

- Section 24 gives the 2013 Act an overriding status. Therefore, Section 114 of Land Acquisition Act 2013 and Section 6 of the General Clauses Act will not apply to the extent hindered by section 24 of 2013 Act because section 114 accepts applicability of section 6 but is subject to the non-obstante clause under the 2013 Act. As stipulated under section 24(1), where an award has been made, the proceedings would continue under the repealed 1894 Act notwithstanding its repeal. In these cases, the 2013 Act would be inapplicable.

Section 24 (1) (a) has hybridised application of the 1894 and 2013 Act. This section saves the legal effect of the notifications issued under Section 4 or 6 of the 1894 Act, obviating the need to issue a fresh notification under the 2013 Act

THE JUDGEMENT

- Following the precedent laid down in *Indore Development Authority v. Manoharlal and others*, the court held that a presumption in favour of retrospectivity may be necessary when distinct implications arise in the context of the statute which repeals a previous statute and would leave a ‘lacuna’ if the new statute did not have retrospective effect unless the language of the provision reveals an intention to the contrary.
- Section 24 (1) (a) was given a broader interpretation by including the period of limitation specified under section 25 of the 2013 act.
- Section 25 of the 2013 Act applies to awards made under Section 24(1)(a) of the 2013 Act and the period of limitation of twelve months would commence from 1st January 2014 that is, the date when the 2013 Act came into force. Acquisition proceedings had not lapsed in law and the award is legal and valid.
- The award dated 30th October 2014, was made on or before the extended date of 20th March 2015. Hence, the award is valid.

OUR COMMENT ON THIS JUDGEMENT

Application of the 2013 Act curtails time delays and cost escalation of infrastructure projects, as well, and checks land acquisition notification malpractices. Holding that Section 25 is a calculated dictate, necessary and appropriate given the time, task and effort involved in making an award under the 2013 Act, the Court has rightly given effect to the object and purpose of Section 24 (1) (a) keeping legislative intent in mind. The court has exercised a just, fair, and harmonious construction and held that in the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act serve the same purpose as the declarations under Section 19 of the 2013 Act. Therefore, in cases covered by 24 (1) (a) of 2013 Act, the limitation period for passing award would commence from the date the 2013 Act came into force, that is, 1st January 2014.

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