

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1401 of 2015

Order reserved on: 6-10-2017

Order delivered on: 3-11-2017

Alok Agrawal, aged about 32 years, S/o Shri Poonam Chand Agrawal, R/o Daroga Para, Raigarh, Tahsil & District Raigarh (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur (C.G.)
2. The Collector (Land Acquisition), Janjgir-Champa, District Janjgir-Champa (C.G.)
3. Sub Divisional Officer, Revenue (Land Acquisition Officer), Dabhara, District Janjgir-Champa (C.G.)
4. Executive Engineer, Water Resources (Survey & Barrage), Division No.1, Kharsiya, District Raigarh (C.G.)
5. Union of India, Through Ministry of Law & Justice (Legislative Department), Through Secretary, Ministry of Law & Justice (Legislative Department), New Delhi.

---- Respondents

Writ Petition (C) No.1443 of 2015

1. Nitesh Kumar Agrawal, S/o Gulabchand Agrawal, aged about 34 years, R/o In front of Town Hall, Raigarh, P.S., Tahsil & District Raigarh (C.G.)
2. Menka Agrawal, D/o Gulabchand Agrawal, aged about 26 years, R/o In front of Town Hall, Raigarh, P.S., Tahsil & District Raigarh (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur (C.G.)

2. The Collector (Land Acquisition), Janjgir-Champa, District Janjgir-Champa (C.G.)
3. Sub Divisional Officer, Revenue (Land Acquisition Officer), Dabhara, District Janjgir-Champa (C.G.)
4. Executive Engineer, Water Resources (Survey & Barrage), Division No.1, Kharsiya, District Raigarh (C.G.)
5. Union of India, Through Ministry of Law & Justice (Legislative Department), Through Secretary, Ministry of Law & Justice (Legislative Department), New Delhi.

---- Respondents

AND

Writ Petition (C) No.2709 of 2016

Pankaj Upadhyay, S/o Pradeep Upadhyay, aged about 35 years, R/o Satigudi Chowk, Baikunthpur, Raigarh, P.S., Tahsil & District Raigarh (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur (C.G.)
2. The Collector (Land Acquisition), Janjgir-Champa, District Janjgir-Champa (C.G.)
3. Sub Divisional Officer, Revenue (Land Acquisition Officer), Dabhara, District Janjgir-Champa (C.G.)
4. Executive Engineer, Water Resources (Survey & Barrage), Division No.1, Kharsiya, District Raigarh (C.G.)
5. Union of India, Through Ministry of Law & Justice (Legislative Department), Through Secretary, Ministry of Law & Justice (Legislative Department), New Delhi.

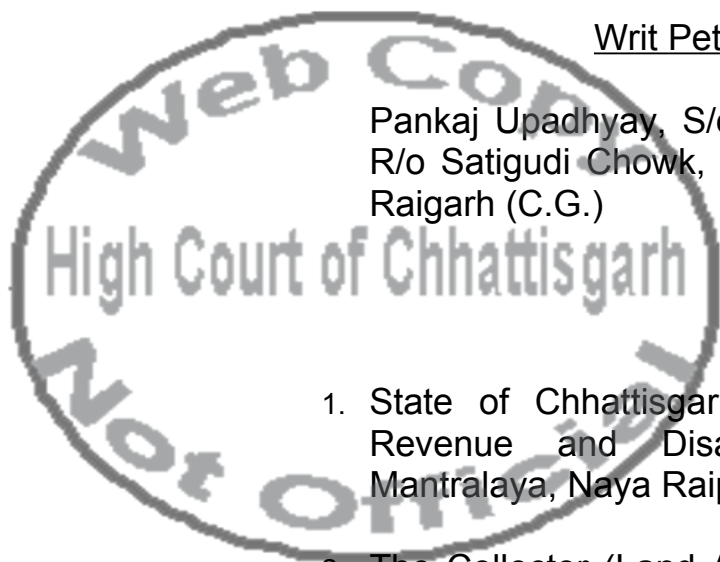
---- Respondents

For Petitioners: Mr. Sourabh Sharma and Mr. Tarkeshwar Nande,
Advocates.

For State/Respondents No.1 to 4: -

Mr. Prasun Kumar Bhaduri and Mr. Shashank Thakur,
Govt. Advocates.

For Union of India/Respondent No.5: -



Mr. B. Gopa Kumar, Assistant Solicitor General.
Amicus Curiae: Mr. Saurabh Dangi and Ms. Aditi Singhvi, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and fact is involved in these three writ petitions, they were clubbed together and heard together and are being disposed of by this common order.
2. This batch of writ petitions are directed challenging notification issued under Section 11(2) of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013') and further challenges the notification dated 2-3-2015 and notification dated 27-5-2015 as bad and unsustainable in law.
3. Essential facts necessary to adjudicate lis between the parties are as under :-

(Facts stated in WP(C)No.1443/2015 are taken for sake of convenience)

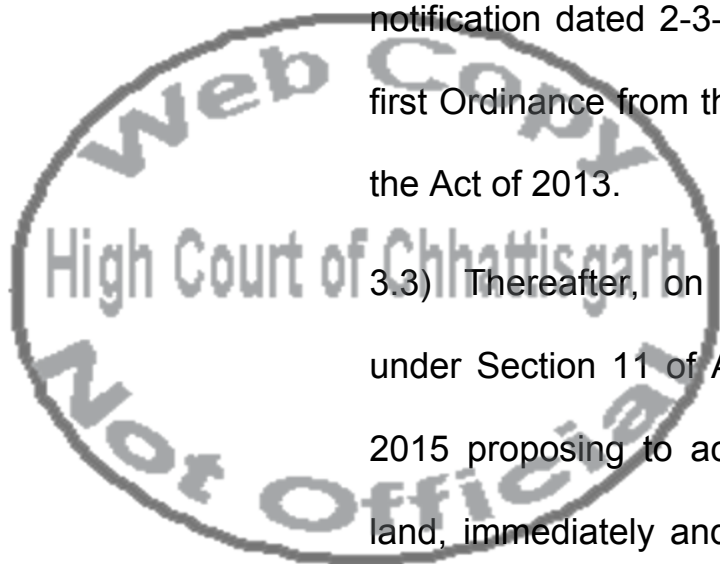
3.1) That, the petitioners' land bearing Khasra No.382/2, area 0.25 acre, at Village Apri, District Janjgir-Champa was subjected to acquisition under the Land Acquisition Act 1894, but before acquisition could take place, act of 1894 was repealed and new act hereinafter Act of 2013 came into force with effect from 1-1-2013 leading to dropping of old land acquisition proceeding and initiation of new land acquisition proceedings under the Act of 2013 for acquisition of 55.172 hectares of land including the petitioners' land for public purpose that is Saradih Barrage Project by issuance of

notification under Section 11 (1) of the Act of 2013.

3.2) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on 31-12-2014 inserting Chapter-III including Section 10-A in the Act of 2013 providing that the provisions of Chapter-II and Chapter-III shall not apply in certain projects. The State Government in exercise of power conferred under Section 10-A of the Ordinance issued general notification dated 2-3-2015 exempting all projects as stated in the first Ordinance from the application of Chapter-II and Chapter-III of the Act of 2013.

3.3) Thereafter, on 1-4-2015, the Collector issued notification under Section 11 of Act of 2013 in light of notification dated 2-3-2015 proposing to acquire subject land including the petitioners' land, immediately and thereafter, the Right to Fair Compensation and Transparency in land acquisition Rehabilitation and Resettlement (Amendment) Ordinance, 2015 came into force with effect from 31-12-2014 inserting proviso to Section 10-A and sub-section (2) to Section 10-A of Act of 2013. The State Government also issued subsequent notification dated 27-5-2015 inserting proviso to notification issued under Section 10-A of the Act.

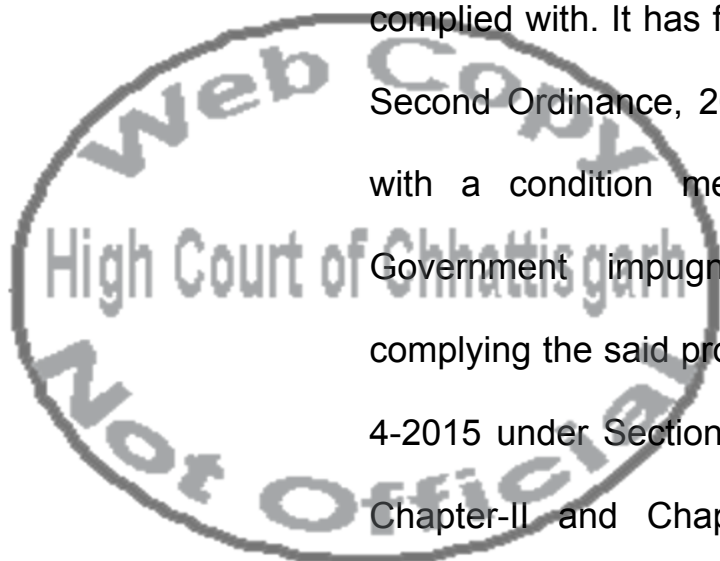
3.4) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance, 2015 came into force with effect from 31-12-2014 and ultimately, the Right to Fair Compensation and Transparency in



Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 was issued to say that the Second Ordinance shall be lapsed on 31-8-2015.

3.5) The writ petition has been filed stating that the Second Ordinance was issued for a limited period till 31-8-2015 and once that validity period of ordinance has expired, Section 10-A of the Act of 2013 also became inapplicable and therefore to acquire land the provisions of Chapter-II and Chapter-III are essential to be complied with. It has further been pleaded that Section 10-A of the Second Ordinance, 2015 exempted certain categories of projects with a condition mentioned in the provision, that the State Government impugned notification dated 2-3-2015 without complying the said provision, therefore the notification issued on 1-4-2015 under Section 11(1) of the Act of 2013 without complying Chapter-II and Chapter-III of the Act of 2013, is bad and unsustainable in law.

3.6) The respondents/State of Chhattisgarh has filed return stating *inter alia* that land is being acquired for irrigation project namely Saradih Barrage Project for providing irrigation facilities to agriculturists and notification dated 2-3-2015 issued by State Government has exempted application of the provisions of Chapter-II and Chapter-III of the Act of 2013 for projects and instant case is one of them. It was further pleaded, alternatively, since the environmental clearance has already been granted by State Level Environmental Assessment Authority, therefore, by



virtue of proviso to Section 6 of Act social impact assessment as provided under Chapter-II of the Act of 2013 would not apply.

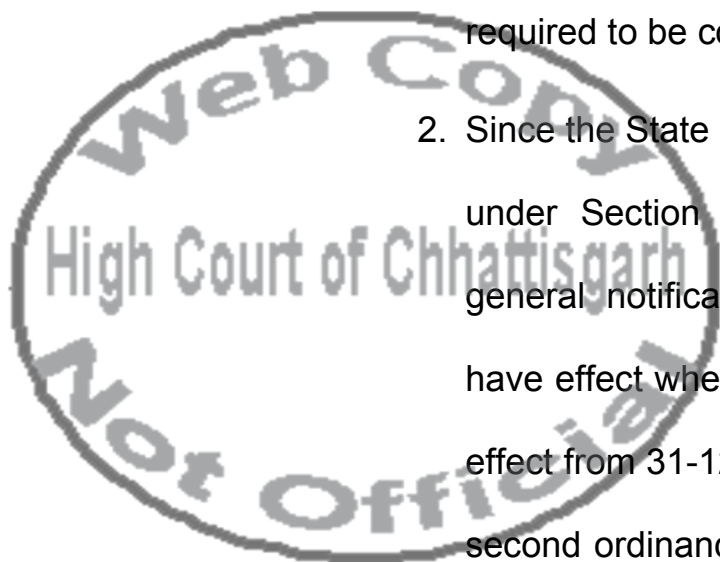
4. Mr. Sourabh Sharma, learned counsel for the petitioners, would submit as under: -

1. The impugned acquisition for Saradih Barrage Project is mainly for supply of water to private companies for their power plant, therefore, acquisition is not for public purpose, as such, the provisions of Chapter-II and Chapter-III were required to be complied with strictly.

2. Since the State Government has invoked exemption provided under Section 10-A of the Ordinance 2014, followed by general notification dated 2-3-2015, which has ceased to have effect when the Ordinance, 2015 was promulgated with effect from 31-12-2014 published on 3-4-2015 and thereafter, second ordinance published on 30-5-2015 lapsed with effect from 31-5-2015, therefore the impugned notifications dated 1-4-2015 and 2-3-2015 deserve to be quashed in absence of compliance of the provisions of Chapter-II and Chapter-III of the Act of 2013.

5. Mr. Prasun Kumar Bhaduri and Mr. Shashank Thakur, learned State counsel, would support the impugned notifications stating that the impugned notifications are strictly in accordance with law and the writ petitions deserve to be dismissed.

6. Mr. Sourabh Dangi, learned *amicus curiae*, would submit as under:



1. The impugned project is B2 project for which no environmental clearance under the Regulations, 2006 is required and for which environmental impact assessment report is necessary, therefore, the provisions of Chapter-II and Chapter-III of the Act of 2013 are required to be complied with.

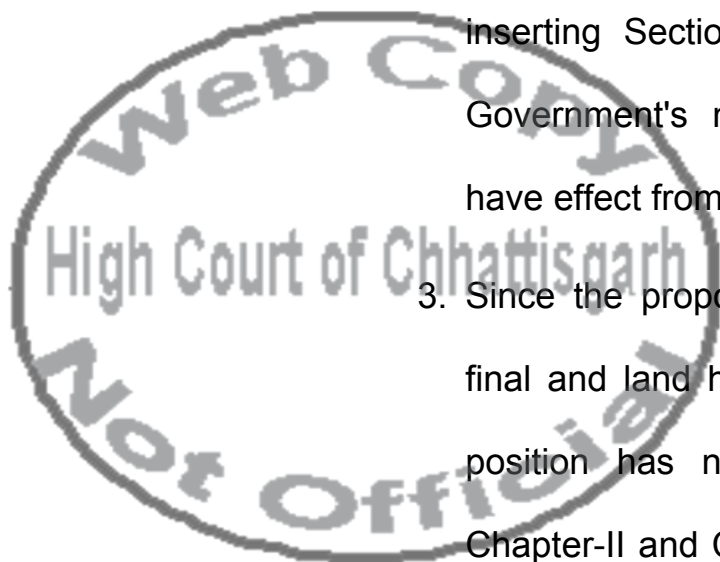
2. The first Ordinance was issued by the Central Government inserting Section 10A of the Act of 2013 and the State Government's notification dated 2-3-2015 has ceased to have effect from 31-8-2015.

3. Since the proposed impugned acquisition has not become final and land has not vested with the Government, as the position has not become irreversible, the provisions of Chapter-II and Chapter-III of the Act of 2013 are required to be complied with.

7. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also perused the material available on record with utmost circumspection.

8. The issues that arise for consideration are as under :-

1. Whether notification issued by the appropriate Government (State Government) dated 2-3-2015 under Section 10-A of the first ordinance exempting the applicability of the provisions of Chapter-II and Chapter-III of the Act of 2013, is



legal and proper?

And / Or

2. Whether notification issued by the State Government under Section 11 (1) of the Act of 2013 is legal and proper?

9. Section 10-A of the Act of 2013 which was brought into force by first ordinance states as under :-

“10A. The appropriate Government may, in the public interest, by notification, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of the Act, namely:-

(a) such projects vital to national security or defence of India and every part thereof, including preparation for defence; or defence production;

(b) rural infrastructure including electrification;

(c) affordable housing and housing for the poor people;

(d) industrial corridors; and

(e) infrastructure and social infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government.”

10. A focused glance of the above quoted provision would show that it empowers the appropriate Government to exempt any of projects mentioned in clauses (a) to (e) from the application of the provisions of Chapter-II and III of the Act of 2013 on fulfillment of condition of “Public Interest”. Public interest means general welfare of public that warrants recommendation and protection, something in which public as a whole has a stake. (See **Bihar**

Public Service Commission v. Saiyed Hussain Abbas Rizwi¹.)

¹ (2012) 13 SCC 61

11. According to the dictionary the word “any” indicates “all” or “every” as well as “some” or “one” depending upon the context and subject matter of statute. The word “any” has the following meaning :-
Some, one of many, an indefinite number. One discriminately of whatever kind or quality word “any” has a diversity of meaning and may be employed to indicate “all” or “every” as well as “some” or “one” and its meaning in a given statute depends upon the context and subject matter of statute. It is often synonymous with either “every” or “all” (see Balaganesan Metal v. M.N. Shanmugham Shetty²).

12. It is furthermore a well settled principle of law that a statutory authority must exercise its jurisdiction within the four corners of the statute. Any action taken which is not within the domain of said authority would be illegal and without jurisdiction (see V.K. Ashokan v. Assistant Excise Commissioner & Others³).

13. The State Government exercising power conferred under Section 10-A of the Act of 2013 issued notification dated 2-3-2015 exempting five classes of projects from application of the provisions of Chapter-II and Chapter-III of the Act of 2013. The said notification states as under :-

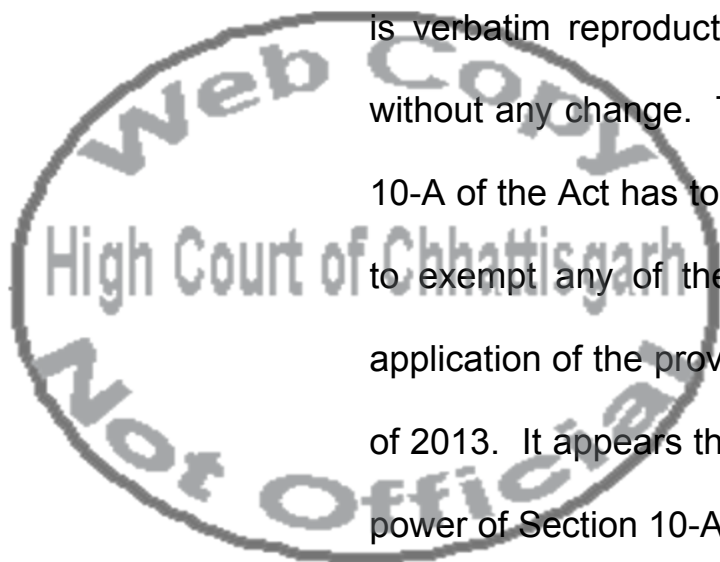
“No.F 4-28/Seven-1/2014.—In exercise of the powers conferred by Section 10A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013), the State Government, hereby, exempts the following projects from the application of the provisions of Chapter II and Chapter III of the said Act, namely :-

2 (1987) 2 SCC 77

3 (2009) 14 SCC 85

- (1) Such projects vital to national security or defence of India and every part thereof, including preparation for defence; or defence production;
- (2) Rural infrastructure including electrification;
- (3) Affordable housing and housing for the poor people;
- (4) Industrial corridors; and
- (5) Infrastructure and social infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government.”

14. A careful perusal of the above-stated notification would show that it is verbatim reproduction of Section 10-A of Act of 2013 as it is without any change. The power to issue notification under Section 10-A of the Act has to be exercised in public interest and thereafter to exempt any of the projects mentioned in that provision from application of the provisions of Chapter-II and Chapter-III of the Act of 2013. It appears that the State Government did not exercise the power of Section 10-A of Act in public interest and exempted all the project as mentioned in Section 10-A of Act in one go without considering and finding out the necessity of exempting any of the project at a particular time by issuing general notification exempting all the projects mentioned from clause (a) to (e) of that provision without indicating involvement of any public interest, as that would tantamount to frustrate the very intent of the Act of 2013 which has been enacted to ensure complete fairness and transparency in acquisition of the land. The effect of notification under Section 10-A of the Act is to exempt the application of the provisions of Chapter-II and Chapter-III of the Act of 2013 thereby State



Government is not required to conduct social impact assessment study under Section 6 of the Act and further not required to comply Section 10-A of the Act of 2013.

15. At this stage, it would be appropriate to refer the reason necessitating new legislation in the shape of the Act of 2013.

16. The Land Acquisition Act, 1894, which was enacted to expedite the process of land acquisition, suffered many short comings like forced acquisition, no negotiation with effected parties and it was

silent on the facets of rehabilitation and settlement issues, urgent need was not defined and it dependent upon executive discretion as a result, in almost all the acquisitions, urgency clauses are invoked. The Supreme Court felt that the Act of 1894 has become outdated and does not serve any public purpose. In the matter of

Ramji Veerji Patel and others v. Revenue Divisional Officer and others⁴, Their Lordships of the Supreme Court have held as

under:-

“10. The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the land owners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilized. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enacted in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”

4 (2011) 10 SCC 643

17. Thus, need for a paradigm shift to new and reformed Land Acquisition Act was felt due to various lacuna in the Act of 1894. The Parliament enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the effected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto.
18. The statement of objects and reasons appended to the Act of 2013 states as under:-

“Statement of Objects and Reasons.—The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues

related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

2. The definition of the expression “public purpose” as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a “willing seller-willing buyer” basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed to repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

3. There have been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

4. Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Lok Sabha on 6th December, 2007 and were referred to the



Parliamentary Standing Committee on Rural Development for Examination and Report. The Standing Committee presented its reports (the 39th and 40th Reports) to the Lok Sabha on 21st October, 2008 and laid the same in the Rajya Sabha on the same day. Based on the recommendations of the Standing committee and as a consequence thereof, official amendments to the Bills were proposed. The Bills, along with the official amendments, were passed by the Lok Sabha on 25th February, 2009, but the same lapsed with the dissolution of the 14th Lok Sabha.

5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, 1894 with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Schedule Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognize rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only for those who directly lose their land and other



assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

8. A National Policy on resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February, 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. These should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

9. The National Rehabilitation and Resettlement Policy, 2007 has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches government for partial acquisition for public purpose.



11. "Public purpose" has been comprehensively defined, so that government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent. of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

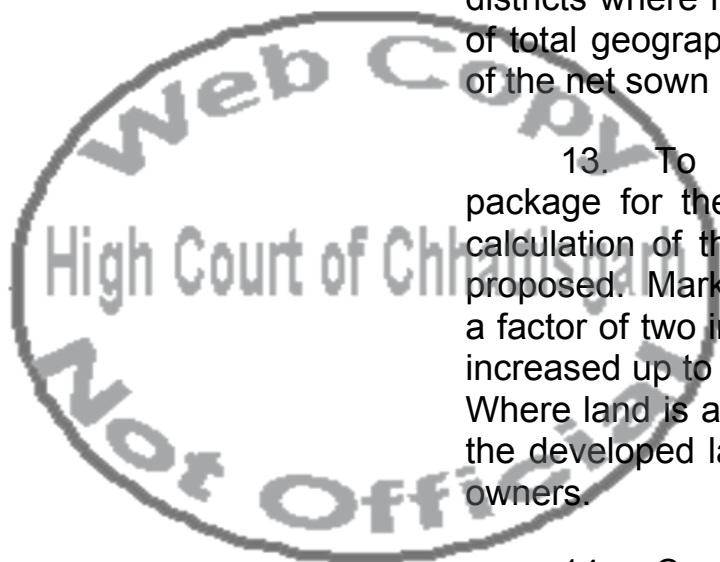
12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed, if multi-crop land is acquired. In districts where net sown area is less than 50 per cent. of total geographical area, not more than 10 per cent. of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased up to 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowances and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance of Rs 50,000; twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.



17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centre, roads and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.

19. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer of land without development, twenty per cent. of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayat (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and government in cases of false information, mala fide action and contravention of the provisions of the propose legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

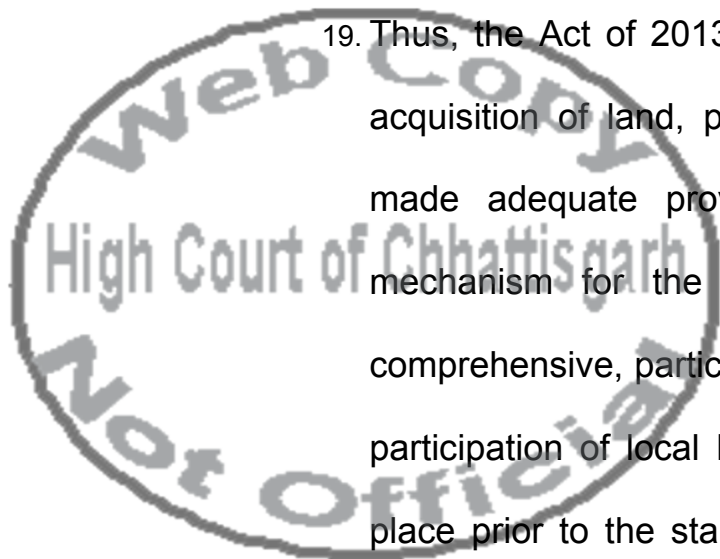
24. The Bill would provide for the basic minimum that all projects leading to displacement must



address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

25. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.”

19. Thus, the Act of 2013 provides for unified legislation dealing with acquisition of land, provides for just and fair compensation and made adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. A comprehensive, participative and meaningful process (involving the participation of local Panchayati Raj institutions) has been put in place prior to the start of any acquisition proceeding through the preparation of Social Impact Assessment Study provided under Chapter-II. The law provides that no one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared. The Third Schedule even lists the infrastructural amenities that have to be provided to those that have been displaced. The Act ensures that there is no forcible acquisition and therefore in cases where Public Private Partnership projects are involved or acquisition is taking place for private companies, the consent of not less than 70% and 80% respectively is required, of those, whose land is sought to be



acquired. To sum up, post the Act of 2013, there has been a change in paradigm of land acquisition especially in the context of compensation, rehabilitation and resettlement issues.

20. Now, the question would be whether the appropriate Government has properly exercised the power under Section 10-A of Act of 2013 exempting all the projects from application of provisions of Chapter-II and Chapter-III of the Act fulfilling the condition for exercise of that power that is in “public interest”.

21. It is well settled that if a statute requires an authority to exercise power, when such authority is satisfied that condition exist for exercise of that power, the satisfaction has to be based on existence of the grounds mentioned in the statute. The ground must be made out on the basis of relevant material. If the existence of the condition required for exercise of the power is challenged, the courts are entitled to examine, whether those conditions existed, when the order was made. A person aggrieved by such action can challenge the satisfaction by showing that it was usually based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of circumstance in question is open to judicial review (see **Indian Nut Products and others v. Union of India and others**⁵).

22. In the matter of **Shrisht Dhawan v. M/s Show Brothers**⁶, the Supreme Court has held as under :-

“If the section requires the authority to pass an order an enquiry, or on being satisfied of existence or non-

5 (1994) 4 SCC 269

6 (1992) 1 SCC 534

existence of a fact, then the duty cost is higher and an order which is passed, without due regard to duty to investigate, then the order may be mindless. But in absence of statutory requirement, it may be utmost regulatory oversight.”

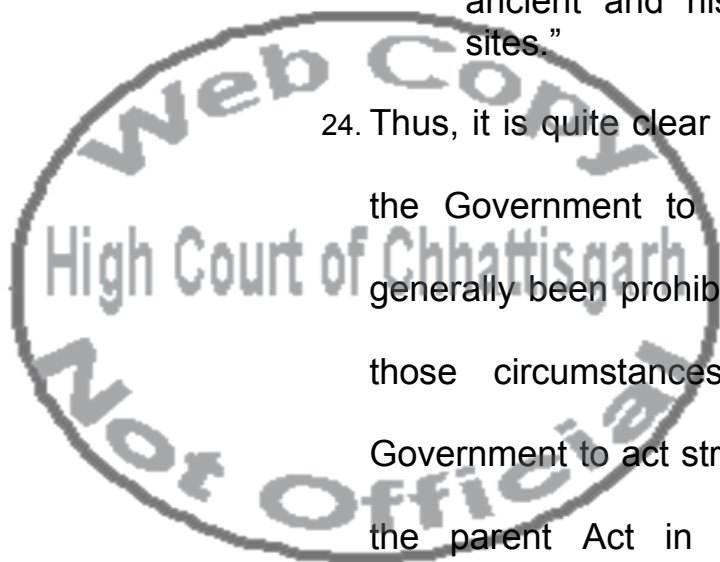
23. Thus, from the aforesaid discussion, it is quite vivid that Section 10A of the Act of 2013 clearly spells out the need of public interest before issuing any notification granting exemption from application of the provisions of Chapter-II and Chapter-III, as public interest is the most important facet under the ambit of which the appropriate Government can exercise the power of exemption and the existence of which is a condition precedent before grant of exemption. In the matter of Archaeological Survey of India v. Narender Anand and others⁷, the Supreme Court has held as under: -

“48. Section 20-A(3) lays down that the Central Government or the Director General can, in exceptional cases and having regard to the public interest, pass a reasoned order and permit a public work or any project essential to the public or other construction in a prohibited area provided that such construction does not have substantial adverse impact on the preservation, safety, security of, or access to the protected monuments or its immediate surrounding. The use of the expression "such other work or project" in clause (b) of Section 20-A(3), if interpreted in isolation, may give an impression that the Central Government or the Director General is empowered to allow any other work or project by any person in the prohibited area but, in our view, the said expression has to be interpreted keeping in view the mandate of Article 49 of the Constitution and the objects sought to be achieved by enacting the 1958 Act i.e. preservation of ancient and historical monuments, archaeological sites and remains of national importance. This would necessarily imply that “such other work or project” must be in the larger public interest in contrast to private interest.

⁷ (2012) 2 SCC 562

49. In other words, in exercise of power under Section 20-A(3), the Central Government or the Director General cannot pass an order by employing the stock of words and phrases used in that section and permit any construction by a private person de hors public interest. Any other interpretation of this provision would destroy the very object of the 1958 Act and the prohibition contained in the Notification dated 16-6-1992 and sub-section (1) of Section 20-A would become redundant and we do not think that this would be the correct interpretation of the amended provision. It also needs to be emphasised that public interest must be the core factor to be considered by the Central Government or the Director General before allowing any construction and in no case the construction should be allowed if the same adversely affects the ancient and historical monuments or archaeological sites.”

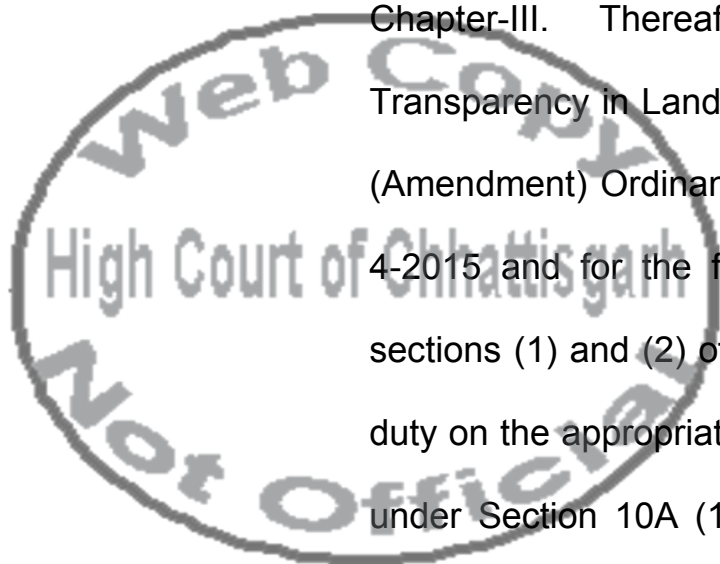
24. Thus, it is quite clear that when any power has been conferred on the Government to do some act, in public interest, which is generally been prohibited or not allowed by the parent Act, then in those circumstances it becomes more imperative for the Government to act strictly in public interest to justify deviation from the parent Act in public interest by examining each case separately. The said public interest has to be applied in the prospective of the object of the Act, then only the power conferred under Section 10-A of the Act of 2013 can be said to be exercised justifiably. In the present case, had the intention of the Central Government was to grant exemption to all the five categories in general, then it could have simply said that all the five categories are exempted from the provisions of Chapter-II and Chapter-III and in fact, the generality of the notification dated 2-3-2015 without considering the question of public interest of a particular project has frustrated, rather has caused violence to the very purpose of



the Act of 2013. Therefore, the notification dated 2-3-2015 issued by the State Government is vulnerable.

25. There is another reason for holding so. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on 31-12-2014 by which Section 10A was inserted in the Act of 2013 entitling the appropriate Government to exempt any of the projects from the provisions of Chapter-II and Chapter-III. Thereafter, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 came into force with effect from 3-4-2015 and for the first time, proviso to Section 10A and sub-sections (1) and (2) of Section 10A were inserted imposing certain duty on the appropriate Government before issuance of notification under Section 10A (1) of the Act and further imposing a duty to conduct a survey of waste land/arid land under Section 10 (2) of the Act. Thereafter, on 30-5-2015, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance, 2015 was brought into force. Thereafter, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties), Order, 2015 was brought into force with effect from 1-9-2015 stating that the Second Ordinance, 2015 shall lapse on 31-8-2015 and accordingly it lapsed.

26. The question is whether in light of the first Ordinance which was



brought into force on 31-12-2014 and the second Ordinance which was brought into force and allowed to be lapsed on 31-8-2015, the subsequent notification issued by the State Government on 2-3-2015 on the strength of the first Ordinance exempting all the five categories of the project from the provisions of Chapter-II and Chapter-III of the Act of 2013, subsequent to the notification under Section 11 (1) of the Act of 2013, would survive.

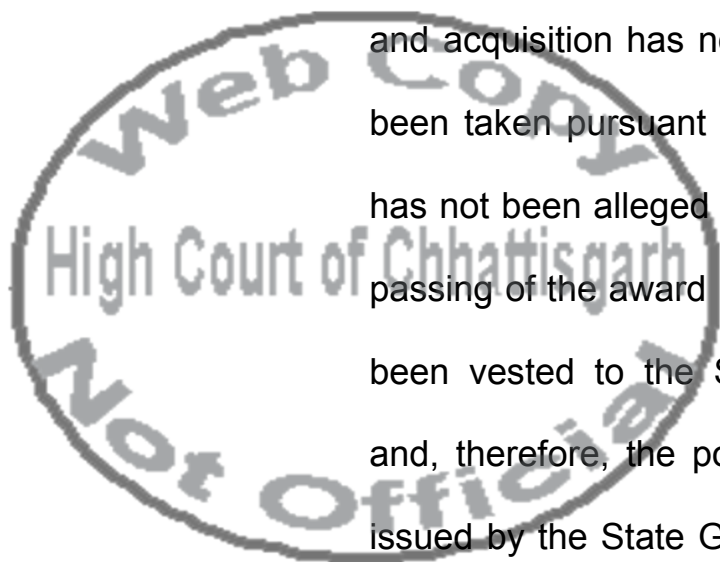
27. It is the case of the petitioners that upon lapse of the Second Ordinance with effect from 31-8-2015, the notification dated 2-3-2015 issued by the appropriate Government would also lapse. In a Seven Judges' Bench judgment of the Supreme Court, recently pronounced, in the matter of **Krishna Kumar Singh and another v. State of Bihar and others**⁸, Their Lordships have considered the question as to whether rights, privileges, obligations and liabilities would survive or endure once the Ordinance has ceased to operate/its tenure has ended, and it was held that it must be determined as a matter of construction and appropriate test to be applied is test of public interest and constitutional necessity, when the same are demonstrated by clear and cogent material. It was further held that the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. The conclusions are indicated in para 105 of the report, para 105.12. of which reads as follows: -

“105.12. The question as to whether rights, privileges, obligations and liabilities would survive an

8 (2017) 3 SCC 1

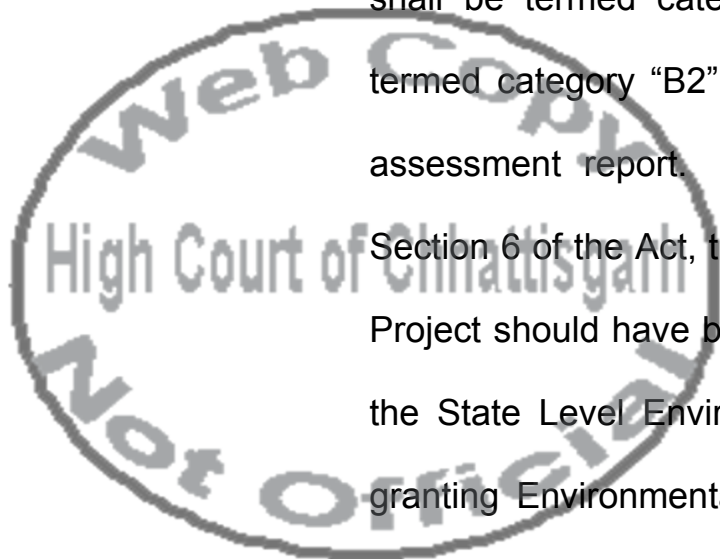
Ordinance which has ceased to operate must be determined as a matter of construction. The appropriate test to be applied is the test of public interest and constitutional necessity. This would include the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. In a suitable case, it would be open to the court to mould the relief; and”

28. Going by the principles of law declared by the Supreme Court in **Krishna Kumar Singh** (supra) to the facts of the present case, it would appear that in the present case, only the preliminary notification under Section 11 (1) of the Act of 2013 has been issued and acquisition has not been completed, as no further steps have been taken pursuant to the said notification and even possession has not been alleged to be taken under Section 38 of the Act after passing of the award under Section 37 of the Act and land has not been vested to the State Government free from encumbrances and, therefore, the position not being irreversible, the notification issued by the State Government dated 2-3-2015 would also come to an end and effect would be that the provisions of Chapter-II and Chapter-III of the Act of 2013 are required to be complied with mandatorily for land acquisition.
29. The respondent State has also taken a stand by way of filing additional return that proviso to Section 6 of the Act of 2013 would be applicable, that provisions of Chapter-II of the Act are not required to be complied with as subject land is required for construction of Saradih Barrage project for providing irrigation facility to agriculturists and it is an irrigation project and State level Environmental Assessment Authority has already granted



Environmental clearance to the said project, therefore social impact assessment study is not required at all. The submission deserves to be rejected for two reasons firstly that environmental clearance is granted under the provisions of the Environmental Protection Act, 1986 and the Central Government has issued a notification dated 14-9-2016 listing the projects which will require Environmental Clearance. Clause 7(i)(1) of the notification states the projects requiring on environment impact assessment report shall be termed category "B1" and remaining projects shall be termed category "B2" and will not require an environment impact assessment report. In order to take advantage of proviso to Section 6 of the Act, the impugned project i.e. the Saradih Barrage Project should have been categorised as "B1" category project but the State Level Environment Impact Assessment Authority while granting Environmental clearance to said project categorized the project as "B2" category project vide his clearance certificate dated 4-6-2014 (Annexure R-5) and admittedly for such project environment impact assessment report is not required, therefore, the State is not entitled to take the benefit of proviso to Section 6 of the Act of 2013 on the basis of clearance certificate granted by the competent authority.

30. It is the stand of the State Government in the return that acquisition of land for construction of Saradih Barrage Project (means a low head diversion dam) is mainly for providing irrigation facilities to the Agriculturists, whereas the environmental clearance granted by the



SEIAA (Annexure R-5) it has been clearly stated as under :-

“With the proposed scheme, Water can be stored and used mainly for supply to following power plants and also for nistari, drinking, ground water recharging.

S.No.	Name of Power Plant	Annual Water Supply
1.	M/s Ind Bharat Ltd.	20.00 Mcum.
2.	M/s Visa Power Ltd.	35.00 Mcum.
3.	M/s B.E.C. Power Ltd.	14.50 Mcum.
4.	M/s S.K.S. Ispat Ltd.	35.00 Mcum.
5.	M/s R.K.M. Jen Pvt. Ltd.	44.83 Mcum.
6.	M/s S.K.S. Power Generation	18.00 Mcum.
7.	M/s N.T.P.C. Lara	45.00 Mcum.
8.	M/s S.K.S. Ispat and Power Ltd.	20.0 Mcum.

All these power plants will generate 7600 MW power. Water shall be made available for the projects construed in the downstream of barrage. There shall not be any change in water system. There is no possibility of water logging as the water stored will be utilized by the power plants continuously.”

31. Thus, the main purpose of the project in question is supply of water to the power plants of private companies and one Government Company NTPC and it is not for the purpose of irrigation to agriculturists as stated in the notification issued under Section 11(1) of the Act of 2013.

32. In the matter of **State of Tamil Nadu and others v. K. Shyam Sunder and others**⁹, it was held that when power is exercised in bad faith to attain ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal, it is called colorable exercise of power. The action becomes bad where the true object is to reach an end different from one for which the

⁹ (2011) 8 SCC 737

power is entrusted, guided by extraneous consideration, whether good or bad but irrelevant to the entrustment.

33. Similarly, in the matter of **Kedarnath Yadav v. State of West Bengal and others**¹⁰, the Supreme Court while quashing the notification issued under Section 4(1) of the LA Act by the State of West Bengal for acquiring land at Singur for public purpose namely setting up Tata Small Car Project (Nano), observed as under :-

“86. In this day and age of fast paced development, it is completely understandable for the state government to want to acquire lands to set up industrial units. What, however, cannot be lost sight of is the fact that when the brunt of this ‘development’ is borne by the weakest sections of the society, more so, poor agricultural workers who have no means of raising a voice against the action of the mighty state government, as is the case in the instant fact situation, it is the onerous duty of the state Government to ensure that the mandatory procedure laid down under the L.A. Act and the Rules framed there under are followed scrupulously otherwise the acquisition proceedings will be rendered void ab initio in law. Compliance with the provisions of the L.A. Act cannot be treated as an empty formality by the State Government, as that would be akin to handing over the eminent domain power of State to the executive, which cannot be permitted in a democratic country which is required to be governed by the rule of law. This Court in the case of *State of Punjab v. Gurdial Singh*¹¹, has held with regard to the legal mala fides as under:

“9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use

10 (2016) SCC OnLine SC 885
11 AIR 1980 SC 318

of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat... that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

90. In view of the aforesaid categorical findings recorded by me based on the materials on record, including cabinet memo, minutes of meetings between representatives of the state government and TML as well as the notifications issued under [Sections 4 and 6](#) of the L.A. Act, 1984, it is clear that the acquisition of lands in the instant case is for the Company (TML). Admittedly, the procedure for acquisition as contemplated under Sections 39, 40 and 41 of Part VII of the L.A. Act read with Rules 3, 4 and 5 of the Land Acquisition (Companies) Rules, 1963 has not been followed, as the acquisition was sought to be guised as one for 'public purpose' under [Sections 3\(f\) \(iii\), \(iv\) and \(vii\)](#) of the [L.A. Act](#). The acquisition of land in the instant case in favour of the Company is thus, improper for not following the mandatory procedure prescribed under Part VII of the L.A. Act and Rules and therefore the acquisition proceedings are liable to be quashed."

34. On the basis of aforesaid analysis, I am of the considered opinion

that the notification dated 2-3-2015 exempting all the projects from the provisions of Chapter-II and Chapter-III of the Act of 2013 is nothing but a colourable exercise of power by the State Government to make acquisition for supplying water to the power plants of private companies and further, that such a notification would stand lapsed upon the Ordinance having been ceased to operate with effect from 31-8-2015, as the situation has not become irreversible, as only notification under Section 11(1) of the Act of 2013 has been issued and neither award has been passed nor possession has been taken from the petitioners, thereby the provisions of Chapter-II and Chapter-III ought to have been complied with by the appropriate Government (State Government) by conducting social assessment impact study and following Section 10A of the Act, which are imperative provisions, and without following the said provision, the acquisition of the petitioners' land is unsustainable and bad in law.

35. As a fallout and consequence of aforesaid discussion, the notification issued by the appropriate Government dated 2-3-2015, qua the petitioners' land, is quashed and consequently, the notification under Section 11 (1) of the Act of 2013 dated 1-4-2015, qua the petitioners is also hereby quashed. However, this will not bar the appropriate Government to proceed in accordance with law.
36. The writ petitions are allowed to the extent sketched herein above leaving the parties to bear their own cost(s).
37. Before parting with the record, this Court appreciates the valuable

assistance rendered by Mr. Saurabh Dangi, learned *amicus curiae*, who in short notice, not only argued and assisted the Court, but also submitted excellent written note.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1401 of 2015

Alok Agrawal

Versus

State of Chhattisgarh and others
and two other connected cases

Head Note

Acquisition of land for Saradih Barrage Project without complying the provisions contained in Chapter-II and Chapter-III of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is unsustainable in law.

शीर्ष टिप्पण

भूमि अर्जन, पुनर्वासन और पुनर्व्यस्थापन में उचित प्रतिकार और पारदर्शिता अधिकार अधिनियम, 2013 के अध्याय- II तथा अध्याय- III में समाहित उपबन्धों का पालन किए बिना साराडिह बाँध (बैरेज) परियोजना हेतु भूमि का अधिग्रहण विधि में अपोषणीय है।