| REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3874 OF 2006

M/s. Steel Authority of India Ltd. ... Appellant

Versus

S.U.T.N.I Sangam & Ors. ... Respondents

WITH

CIVIL APPEAL NOS.5763, 5764, 5765 5766 AND 5767 OF 2006

AND

CIVIL APPEAL NOS. 4793-4794 OF 2009
(Arising out of SLP (C) Nos.12682-12683 of 2007)

JUDGMENT

S.B. Sinha, J.

Leave granted in both the SLPs.

These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

On the requisition of M/s. Steel Authority of India Ltd. (hereinafter called and referred to for the sake of brevity as the 'SAIL') for establishment of a steel plant at Salem commonly known as Salem Steel Plant, 3651 acres of land was acquired wherefor a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called and referred to for the sake of brevity as 'the Act') was issued in the year 1964 and a declaration under Section 6 was published in 1969.

Land acquisition proceedings for preparation of awards were initiated in 1971 during the period 1971 to 1975. 305 awards were made. A large number of landholders being satisfied with the quantum of compensation awarded to them by the Land

Acquisition Officer received the same without protest.

Some of the land owners, however, at the time of passing of the award being not satisfied with the amount of compensation awarded in their favour not only received the amount under protest but also filed applications for reference to the Land Acquisition Court in terms of Section 18 of the Act pursuant whereto and in furtherance whereof references to the Civil Court were made. Admittedly enhanced amount of compensation, as determined by the Land Acquisition Judge, have also been paid.

Some of the land owners, however, filed applications for reference although they had not accepted the amount of compensation with protest which was rejected by the Land Acquisition Officer. Some of the awardees filed their applications for making reference after the period prescribed therefor. Those applications were also rejected.

It is stated that most of the claim petitions were determined upto 1979. Some of the land owners, however, formed an association SUTNI Sangam {(hereinafter called and referred to for the sake of brevity as 'the Association') for protecting the legal rights of the agriculturists whose lands were sought to be acquired.

A gist of the circular letter directing reference of cases for the purpose of enhancement of compensation reads as under :

> "POINT I
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> Awardees who received the compensation amount with protest and submitted their applications requesting a reference under Section 18 of the Land Acquisition Act after the expiry of the stipulated time.
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> POINT II
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> Awardees who received the compensation amount without protest but submitted applications requesting reference under Section 18 of the Land Acquisition Act.
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> POINT III
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> Awardees who received the compensation amount without protest but failed to submit applications under Section 18 of the Land Acquisition Act."

A clarificatory order, however, was issued by the said authority on or about 5.1.1983 stating that the earlier instructions issued by the Government were not intended to override the provisions of the said Act and they should be meticulously followed and, thus, if a person had accepted the award without protest, he would lose his right to claim any reference in terms of Section 18 of the Act.

Respondent Association thereafter filed a writ petition before the High Court of Judicature at Madras marked as Writ Petition No.55144 of 1983 praying, inter alia, for the following reliefs :

> "... a WRIT OF MANDAMUS or any other appropriate writ, order or direction, directing the Respondents to give effect to the instructions of the 2nd Respondent contained in letter No. D.Dis.II/3748/80 dated 21.5.1981 and Section 18 of the Land Acquisition Act and consequently direct Respondents 4 to 8 to refer the cases of the persons included in Annexures I, II, III and IV herein to a Civil Court for grant of enhanced compensation in respect of the lands acquired from them for the purpose of the Salem Steel Project,..."

In the said writ proceedings, the State Government filed a counter affidavit, inter alia, contending that in most of the cases the awardees and the interested persons were served with notices under Section 12 (2) of the Act who were present during the land acquisition proceedings. It is furthermore averred that the awardees in any view of the matter had knowledge thereabout and, thus, applications of those awardees who had accepted amounts of compensation under protest and filed requisite applications for reference, the matters at their instance had been referred to the Civil Court in terms of Section 18(2) of the Act. Indisputably, the appellant herein was not initially impleaded in the said writ petition. On or about 19.11.1984, it filed an application for impleading itself in the said writ petition which was allowed. By a judgment and order dated 6.3.1992, a learned Single Judge of the said Court allowed the said writ application directing that a mere protest or expression of dissatisfaction of the award without there being anything in writing would be sufficient for the concerned

authorities to refer the matters to the Civil Court. On the said premise, the Collector was directed to complete the process of reference within a period of one year therefrom.

Aggrieved by and dissatisfied with the said judgment and order dated 6.3.1992, intra court appeals were preferred both by the State Government as also by the Appellant. By reason of the impugned judgment, the writ appeal was dismissed, opining :

> "15. In so far as the category of persons who did not receive notices under Section 12(2) are concerned, the learned Single Judge has rightly directed the Government to issue notices under Section 12(2) of the Act to those persons and it is for the said persons to consider whether they are seeking reference in accordance with Section 18(2) of the Act or not.
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> 21. Having regard to this settled legal position laid down by the Apex Court as well as various High Courts it is clear that mere protest or expression of dissatisfaction to the award of compensation without there being anything in writing may be sufficient and that the authority concerned is under an obligation to refer the matter to the Court in accordance with Section 18(2) of the Act. In view of this legal position various categories as indicated hereinabove, expressing their protest and filing their applications for reference and some having not even received notices under Section 12(2) of the Act, cannot be denied the right to refer their cases to the Court under Section 18(2) of the Act and, therefore, we do not find any ground to interfere with the judgment of the learned Single Judge. Writ appeal is, therefore, dismissed with no order as to costs."

The other batch of Civil Appeals being Civil Appeal Nos.5763, 5764, 5765, 5766 and 5767 of 2006 have been filed by the Tamil Nadu Housing Board aggrieved by and dissatisfied with the judgment and order dated 14.7.2006 passed by a Division Bench of the High Court affirming the order dated 30.6.2001 passed by a learned Single Judge of the Court allowing the writ applications filed by the respondent herein relying on or on the basis of the decision referred to in the case of Steel Authority of India Ltd. (supra).

We may, however, before adverting to the common questions raised before us notice the broad facts from Civil Appeal No.5763 of

2006.

The State of Tamil Nadu on a requisition made by the appellant herein for acquiring about 90 acres of land for the purpose of building houses through it issued a notification under Section 4(1) of the Act on or about 26.6.1985 and a declaration under Section 6 thereof on 4.9.1985.

Awards were passed on 30.6.1988. The land owners, while the awards were made fixing market value of the land at Rs.1,61,538/ per hectare and on being communicated thereabout, made the following statement before the Land Acquisition Collector :

> "Award enquiry notice was served on the pattadar. Pattadar appeared for award enquiry and gave statement stating that the acquired lands belong to him by inheritance. The quantum of compensation at Rs.1,61,538/- per Hectare to be awarded is too low and the lands are abutting Salem - Dharmapuri National Highways and the adjoining lands are being sold at Rs.25,00,000/- per acre and hence compensation must be paid on that rate and there is no proof.
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> He also stated that the compensation amount may be paid to him and that he would receive the same under protest. For getting higher compensation, he requested to make reference to Sub-Court. In addition to make payment of compensation to the pattadar, a reference under Section 18 of the Land Acquisition Act will be sent to Sub-Court."

However, despite the same, no reference was made by the Collector suo motu. Representations, therefore, were made for reference by the Association on or about 10.6.1988. Reminder thereto was sent on 21.1.1991. As despite such representations and reminders thereto, no action was taken by the Land Acquisition Collector to make references under Section 18 of the Act, a writ petition was filed by the respondents herein praying, inter alia, for the following reliefs :

> "...this Hon'ble Court may be pleased to issue a writ, order or direction or any other writ in the nature of a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order of the 2nd respondent in Na. Ka No.549/96 dated 18.10.2000 quash the same and direct the second respondent to refer for higher compensation to the

competent Civil Court under Section 18 of the Land Acquisition Act, 1894 in respect of the lands belonged to the petitioners in S.No.475/1B-0.09.5 hcs. S.No.475/1AB-0.04.5 hcs, S.No.475/1AF-0.05, S.No.475/1ai-0.07.0, S.No.475/1k-0.03.5 part, S.No.475/1L-0.03.5 hcs., S.No.475/1A-0,08.5, S.No.475/1T-0.21.5, S.No.475/1M-0.03.5, S.No.475/1N-0.16.0, S.No.475/1W-0.04.5, S.No.475/1X-0.1.5, S.No.475/1AA-0.01.0, S.No.475/1AE-0.5.5, S.No.475/1Z-0.106.0, situated at A. Jetty Halli Village, Dharamapuri Taluk and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

It is prayed that this Hon'ble Court may be pleased to direct the second respondent to refer for higher compensation to the competent Civil Court under Section 18 of the Land Acquisition Act, 1894 in respect of the lands belonged to the petitioners in S.No.475/1B-0.09.5 hcs. S.No.475/1AB-0.04.5 hcs, S.No.475/1AF-0.05, S.No.475/1ai-0.07.0, S.No.475/1k-0.03.5 part, S.No.475/1L-0.03.5 hcs., S.No.475/1A-0,08.5, S.No.475/1T-0.21.5, S.No.475/1M-0.03.5, S.No.475/1N-0.16.0, S.No.475/1W-0.04.5, S.No.475/1X-0.1.5, S.No.475/1AA-0.01.0, S.No.475/1AE-0.5.5, S.No.475/1Z-0.106.0, situated at A. Jetty Halli Village, Dharmapuri Talum, pending disposal of the above writ petition and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice."

It is stated that in the year 1996, the State Government made reference in about 80 matters the validity and/or legality whereof was not questioned by the appellant. Representations, therefore, were again made for making reference in the rest of the cases which were rejected by an order dated 18.10.2000, stating that the representations had been made after a period of 12 years.

Questioning the validity of the said order dated 18.10.2000, a writ petition was filed by the respondent in November 2000. A prayer was furthermore made for insurance of a direction upon the Land Acquisition Collector to refer those cases for grant of higher compensation before the Civil Court in terms of Section 18 of the Act. By reason of a judgment and order dated 30.1.2001, the said writ petition was allowed.

We may place on record that the State Government did not raise any contention with regard to the maintainability of the orders of reference. Pursuant to or in furtherance of the said direction issued by the learned Single Judge, references were made by the

Land Acquisition Collector. Appellant-Housing Board participated therein without any demur whatsoever. By reason of a judgment dated 19.4.2003, the Reference Court enhanced the amount of compensation from Rs.1.50 per square foot to Rs.6.00 per square foot. Appellant preferred appeals thereagainst before the High Court. However, by an order dated 19.7.2004, on the appellant's failure to comply with the directions given by the Division Bench, the appeals were dismissed. The said order of the learned Single Judge dated 30.1.2001, by reason of the impugned judgment, has been upheld by the Division Bench of the High Court.

Mr. Ranjit Kumar, learned counsel appearing on behalf of the Steel Authority of India Ltd., would raise the following contentions :

1. The provisions of Section 18(1) of the Act being imperative in character; it was obligatory on the part of the land owners to file appropriate applications strictly in terms thereof and no such application having been filed by them within a period of six weeks from the date of passing of the award in the cases where awardees were present and within a period of six months from the date of communication thereof in the cases where they were not present, the awards attained finality.

2. Both the learned Single Judge as also the Division Bench committed a manifest error of law insofar as they failed to take into consideration that even assuming that the land owners had constructive notice of the award in the year 1981, appropriate applications for references should have been filed within a period of six months thereafter and not beyond the same.

3. In view of the fact that most of the individual land owners had received the amount of compensation without any protest were estopped and precluded from filing a writ application through their Association or otherwise in view of the second proviso appended to Section 31 of the Act.

4. The High Court committed a serious error in entertaining the writ petition at the instance of the respondent association

which was neither a 'person interested' within the meaning of Section 3(b) of the Act nor being entitled to act within the meaning of Section 3(g) thereof and that too after a long period of 20 to 25 years from the date of making of the award.

5. Section 5 of the Limitation Act, 1963 being not applicable, the High Court could not have issued any writ after expiry of the period of limitation or as specified in sub-section (2) of Section 18 of the Act.

6. The reliefs prayed for in the writ petition by the association for enmass reference under the Land Acquisition Act is wholly impermissible in law inasmuch as even the Land Acquisition Collector is required to go into the merit of each individual case independently.

7. Unless the impugned judgment is set aside, the appellant, which is a Public Sector Undertaking, shall incur huge financial liabilities without any legal justification whatsoever.

Mr. V. Krishnamurthy, learned counsel appearing on behalf of the Tamil Nadu Housing Board, adopted the said arguments of Mr. Ranjit Kumar. He furthermore contended that Tamil Nadu Housing Board being a person interested in the matter of enhancement of compensation should have been given due notice by the Reference Judge. Had such notice been granted in the writ petition, it could have been pointed out that the writ petition was not maintainable.

Mr. Jayant Mukhraj, learned counsel appearing on behalf of the respondent, on the other hand, urged :

1. The provisions contained insub-section (1) of Section 18 being procedural in nature, filing of an application for reference in writing is not imperative.

2. By reason of the representations made by the land owners that they were not satisfied with the amount of compensation

awarded in their favour, they called upon him to make a reference which has been agreed upon by the Land Acquisition Collector and consequently the State Government and the appellant herein are estopped and precluded from contending that sub-section (1) of Section 18 is mandatory in nature.

3. The land owners of the area being poor agriculturists and having not been informed about their legal rights, no illegality has been committed by the High Court in entertaining the writ petition of the respondent-Association.

4. The right of a land owner to obtain a fair market value of the land, being a valuable right, the same would prevail over the procedure contained in Section 18 of the Act.

5. The High Court, in exercise of its power of judicial review is entitled to issue such directions which are necessary for doing complete justice to the parties, keeping in view the ignorance of the small farmers who are residents of remote villages.

The State exercises its power of eminent domain for the purpose of acquisition of private land as also its own land. Such acquisition is permissible not only for a public purpose but also for a company. The Parliament as also the State Legislatures enacted a large number of statutes with a view to give effect to its power of eminent domain vis-à-vis the constitutional safeguard provided to the owners of the land, as envisaged under Article 300A of the Constitution of India.

While a land is acquired in terms of the provisions of the Act not only a public purpose therefor must exist, acquisition must also take place within a required time-frame. Provisions have been made for grant of compensation, procedures wherefor have been laid down in the statute itself. Unlike some other statutes, the Act makes elaborate provisions for payment of compensation. The constitution of forums had several hierarchical levels including appellate forums. A land acquisition collector is a statutory authority. He may or may not be a collector within the meaning of

the provisions of Section 2(c) of the Act.

If he is not a collector within the meaning of the provisions of the Act, he, subject to the just exceptions to which we would refer to a little later, would not be entitled to act as a collector for the purpose of Part III of the Constitution of India.

Section 4(1) of the Act provides for the publication of the preliminary notification for acquiring any land in three modes viz. in the Official Gazette, in two daily newspapers circulating in that locality -- of which one shall be in the regional language, and at convenient places in the locality where the Collector is enjoined to publish a substance of the notification.

Section 12(1) of the Act reads as follows:

> "12. Award of Collector when to be final.--(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested."

The finality of the awards is, however, subject to review by the Reference Court under Section 18 read with Section 31(2) or Section 30 of the Act. Except for the finality of these three factual matters, there is nothing in the Act making the award final as regards its legality. Moreover, the use of the word "final" in the statute only means that there would be no appeal. The use of the expression "final" or "conclusive" in a statutory provision has been interpreted by Lord Denning, M.R. in R. v. Medical Appeal Tribunal (1957) 1 QB 574, 583 in the following words:

> "The word 'final' is not enough. That only means 'without appeal'. It does not mean 'without recourse to certiorari'. It makes the decision final on the facts, but not on the law. Notwithstanding that the decision is by a statute made 'final', certiorari can still issue for excess of jurisdiction or

for error of law on the face of the record."

For the purposes of Land Acquisition Act, proceedings are carried on by an officer appointed by the Government known as Land Acquisition Collector. The proceeding under the Land Acquisition Collector is of an administrative nature and not of a judicial or quasi judicial character. When a Government intends to occupy a land in any locality it has to issue a notification under Section 4 in the official gazette as also newspaper and give a public notice which entitles anyone on behalf of the Government to enter into the land for the purposes of digging, taking level, set out boundaries etc. The notification puts forward the intention of the Government to acquire the land, in terms whereof the government officials became entitled to investigate and ascertain whether the land is suitable for the purpose for which the land is sought to be acquired. The section also makes it mandatory for the officer or person authorised by the Government to give a notice of seven days signifying his intention to enter into any building or enclosed court or garden in any locality. This is a mandatory provision of the process of land acquisition

An officer or authorised person of the Government has to tender payment for all necessary damage, and all disputes as to insufficiency of amount lie before the Collector. Under Section 5(a) any person interested in land which is notified under Section 4 (who is entitled to claim an interest in compensation) can raise an objection, in writing and in person. The collector after making inquiry to such objections has to forward the report to the Government whose decision in this respect would be final. After considering such report made by the collector under Section 5A the Government may issue a declaration within one year of the notification under Section 4 to acquire land for public purposes or company and this declaration is a mandatory requirement of the acquisition.

After the declaration under Section 6, collector has to take

order from the appropriate Government whether State or Central for the acquisition of land in terms of Section 7. The next step in the process of acquisition is that Collector has to cause land to be marked out, measured and appropriate plan to be made accurately , unless it is already done. Requirement of this section deals only with approximation and does not require exact measurement. An important process that takes place under this section is demarcation which consists of marking out boundaries of land to be acquired, either by cutting trenches or fixing marks as posts. Object is to facilitate measurement and preparation of acquisition plan and also let the private persons know what land is being taken. It is to be done by requiring a body that is the Government department or company whichever be the case. Obstruction under Section 8 and Section 4 are offences punishable with an imprisonment not exceeding one year and with fine not exceeding fifty rupees.

Section 9 requires the collector to cause a public notice displayed at convenient places expressing the Government's intention to take possession of the land and requiring all persons interested in the land to appear before him personally and make claims for compensation before him. In effect this section requires the Collector to issue two notices; one in the locality of acquisition and other to occupants or people interested in the lands to be acquired. It is a mandatory provision.

Next step in the process of acquisition requires a person to deliver names or information regarding any other person possessing interest in the land to be acquired and the profits out of the land for the last 3 years. It also binds the person by requiring him to deliver such information to the collector by making him liable under Sections 175 and 176 of the Indian Penal Code.

The Final stage of the proceedings before the Collector involves an enquiry by him into the objections made by the

interested persons regarding the proceedings under Sections 8 and 9 and making an award to persons claiming compensation as to the value of land as on the date of notification under Section 4. The enquiry involves hearing of parties who appear in response to the notices, investigate their claims, consider the objections and take all the information necessary for ascertaining the value of the land. Such an enquiry can be adjourned from time to time as the collector thinks fit. An award is to be made at the end of the enquiry. The award made must be under the following three heads:

- Correct area of land

- Amount of compensation he thinks should be given
- Apportionment of compensation, if any.

Section 11 makes it obligatory on the part of the collector to safeguard the interests of all persons interested, even though they might not have appeared before him. In awarding compensation the Land Acquisition Collector should look into the estimate value of land and give due consideration to the other factors specified therein. Value of the property in the neighbourhood can be used as a criterion. The award should be made within a period two years.

A perusal of the provisions of Sections 12, 18, 30, 31 and the procedure for reference as contained in Part III of the Act, reveals that except for the right of reference on the said three factual matters, the Act does not provide for appeal from the award of the Collector. Of course, an appeal lies under Section 54 to the High Court from an award of the Reference Judge made under Section 26 of the Act, and a second appeal lies to the Supreme Court from the decision of the High Court. But the remedy of appeal is restricted only to the questions relating to the aforesaid three factual matters. At most, therefore, the Act can be said to be a complete code, only for the special purpose of adjudicating any dispute with respect to the three factual matters of the area, value of the land

and the apportionment of the compensation among the interested persons.

Besides the same, there exists neither any express provision that no order or proceeding taken under the Act shall be called in question in any court, nor any implied intendment barring the jurisdiction of the civil court. There is no finality attached to any of the proceedings taken under the Act or as to the validity of the award, which cannot be called in question in a court of law on any judicially recognized grounds. A perusal of the scheme also reveals that there is no machinery for determining all questions of law, which may conceivably arise under the Act. The Act also does not contain a machinery for restoration of any land, which may be unauthorizedly taken away.

Even those who had not made any application for reference in terms of Section 18 of the Act have, however, a right to obtain a similar amount of compensation in terms of Section 28A thereof. Thus, only because at one stage, a holder of a land does not file any application for reference, the same would not mean that they do not have any further remedy at all. Section 28A of the Act seeks to deal with a situation where a person because of ignorance of his right was not in a position to file any application for enhancement of compensation. It provides that even in such a case, he should receive a just amount of compensation.

The provisions of the Act must be read in their entirety. A holistic approach is required to be made for the purpose of interpretation of application of the provisions of the Act and so given, we are of the opinion that the provisions thereof meet the tests of Article 300A of the Constitution of India. The Act provides for a fair procedure. The Parliament in its wisdom is entitled to lay down conditions for application of other or further relief. While it does so, it is entitled to lay down a procedure therefor in respect thereof. Such a procedure although meets the tests of fairness and reasonableness for the purpose of determining the constitutionality thereof, ordinarily, the mode and manner in which the provisions are required to be applied should be adhered to. The same shall,

however, be subject to the interpretation of the statute as to whether the procedures laid down therein would be treated to be mandatory or directory. From the scheme of the Act, as noticed hereinbefore, the mode and manner in which the amount of compensation is required to be determined is in several phases, i.e., notice to the persons interested, making of an award, the period for doing so and publication of the award itself.

Section 12 of the Act provides that the award of Collector is to be final. It also provides for a duty upon the Collector to issue notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Knowledge of making and/or publication of the award, therefore, plays an important role.

For the purpose of invoking Section 18 of the Act, the person interested is required:

(i) not to accept the award;

(ii) that the matter may be referred to the Collector for determination by the court by way of a written application inter alia pointing out his objection with regard to: (a) amount of compensation, (b) person to whom it is payable or (c) apportionment thereof amongst the persons interested.

Reference, thus, may be made by the Collector on receipt of the application in writing keeping in view the objections of the land owners or land holders in regard to one or all the matters as enumerated hereinbefore.

The law does not contemplate that even before an award is made, a general or vague objection can be entertained by the Collector. Objection to the award, therefore, must be specific. When a reference is made, the court shall ordinarily be bound by the terms of the reference. The Reference Court does not have a plenary jurisdiction. It does not have any original jurisdiction to entertain an application directly from the Collector or from the

land holders.

Once an award is made, having regard to the conclusiveness and finality attached thereto, the Collector has also a statutory duty to offer payment of the awarded amount subject, of course, to the provisions for reference. For the aforementioned purpose, Section 18 of the Act is required to be read with the provisos appended to Section 31 of the Act. The person interested may question the correctness or legality of the award on one or the other grounds specified in Section 18 of the Act. He, even, for the purpose of payment of the amount of compensation and/ or acceptance thereto, would be governed by the provisos appended to Section 31 of the Act. When payment of awarded amount is tendered, under the common parlance, a person may not accept the same, if he objects thereto. Section 31 of the Act, however, enables the person interested to accept the award under protest. Acceptance of such an award under protest, however, is circumscribed by the conditions laid down in the provisos appended both to Sub-section (2) of Section 18 of the Act as also Sub-section (2) of Section 31 thereof.

The said provisos, therefore, circumscribe the rights of the persons interested. The right to receive compensation, thus, having been circumscribed by the conditions attached, ordinarily, they should be held to be imperative in character.

When the statute provides for a law of limitation, compliance thereof is mandatory. For the purpose of applying the statute of limitation, the courts should, however, be liberal in their approach.

Section 18 (2) (b) of the Act provides for the maximum period of six months from the date of the Collector’s award. It was, therefore, impermissible to direct references to be made after a long period particularly when the provisions of Section 5 of the Limitation Act, 1963 cannot be said to have any application.

In Officer on Special Duty (Land Acquisition) & Anr. v. Shah

Manilal Chandulal & ors. [1996 (9) SCC 414], this Court held:

> "8. The right to make application in writing is provided under Section 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In Mohd. Hasnuddin v. State of Maharashtra, this Court was called upon to decide in a reference under Section 18 made by the Collector to the court beyond the period of limitation, whether the court can go behind the reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfilment of certain conditions, namely, (i) written application by interested person who has not accepted the award; (ii) nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In paragraph 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference.
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> 9. It would thus be clear that one of the conditions precedent to make a valid reference to the court is that the application under Section 18(1) shall be in writing and made within six weeks from the date of the award when the applicant was present either in person or through counsel, at the time of making of the award by the Collector under

clause (a) of proviso to sub-section (2). The Collector, when he makes the reference, acts as a statutory authority."

It was furthermore held:

"17. It is to be remembered that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the courts. Taking cognizance of the limitation prescribed in proviso to sub-section (2) of Section 18, the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority still acts as a court for the purpose of Section 5 of the Limitation Act.

18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act."

In State of Karnataka v. Laxuman [2005 (8) SCC 709], it was opined :

"9. As can be seen, no time for applying to the court in terms of sub-section (3) is fixed by the statute. But since the application is to the court, though under a special enactment, Article 137, the residuary article of the Limitation Act, 1963, would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application..."

The cause of the owners of the land is purported to have been espoused by the respondent - Association. Association is

stated to have been registered under the Societies Registration Act in the year 1970. There is, however, nothing on record to show as to whether it had filed any application for reference before the Collector.

It is, however, a matter of some significance that mostly awards were passed during the period 1972 and 1974. Only some awards were passed in the years 1970, 1975, 1976, 1977 and 1978. The State expressed its helplessness to specify exactly the number of the persons who had received the amount of award under protest or who had filed applications for reference.

We will, however, proceed on the assumption that most of the awardees were poor and illiterate and they were not aware of their rights. It is one thing to say that an Association, like the first respondent, takes up its cause but it would be another thing to say that only due to the said reason the mandatory provisions of the statutes would not be necessary to be complied with.

The Act uses the expression "person interested". The definition of the expression "person interested" as contained in Section 3(b) of the Act is an inclusive definition although not an exhaustive one. Primarily it includes "all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land".

The expression "person interested" for the purpose of Section 18 of the Act may be given a restricted meaning. A State is not a person interested. A company or a local authority for whose benefit the lands are acquired, having regard to the provisions of Sub-section (2) of Section 50 of the Act, is not entitled to file any application for reference.

The Collector is a statutory authority. He, therefore, ordinarily must exercise its statutory jurisdiction within the four-corners of the statute, although this would not mean that a

superior court in exercise of its power of judicial review would be denuded of its power to interfere with an order of reference or issue a direction when the same has unjustly been withheld in appropriate cases, but, such a power as is well known should be exercised only in exceptional situations and subject to the condition that adequate grounds exist therefor.

The Association, therefore, could file a writ application representing its members but, stricto sensu, it could not have filed any application for reference in terms of Section 18 of the Act. For the purpose of making such an application, indisputably, the period of limitation provided for therein must be resorted to. However, there cannot be any doubt whatsoever that a statute of limitation should receive strict construction.

Reference has been made to Karnataka State Road Transport Corporation v. KSRTC Staff & Workers' Federation & Anr. [(1999) 2 SCC 687], wherein in regard to a matter relating to conditions of employment of the workers of the Karnataka State Road Transport Corporation, the Association was held to have a locus standi to challenge the Government Order and consequent notification issued by the corporation, stating:

> "9. So far as the locus standi of the Union in the present proceedings is concerned, it must be kept in view that the Corporation itself by its order dated 24-12-1987 granted recognition to the Union as the sole bargaining agent for its members. It was noted by the office memorandum of the Corporation dated 24-12-1987 that the Federation having secured 53.04% of the votes polled at the Corporation level in the referendum held on 11-12-1987, the Corporation was pleased to accord recognition to the respondent-Federation as the sole bargaining agent at the Corporation level. However, this was subject to the conditions stipulated under the notification dated 30-4-1987 which prescribed four years' period from the date of such conferment of the right of collective bargaining with the employer by the Union concerned. It is also not in dispute between the parties that even in the subsequent referendum, the respondent-Federation/Union secured 61.07% of the votes polled at the Corporation level and the Corporation, by its office memorandum dated 16-7-1992, continued recognition to the Union as the sole bargaining agent subject to the conditions stipulated in the earlier notification dated 3-12-1991. It is, therefore, not in dispute between the parties that till 16-7-

> 1996, the respondent-Federation/Union remained a recognised Union. We fail to appreciate how the said Union cannot challenge the government order dated 10-9-1993 and the consequent notification issued by the Corporation on 21-9-1993. On both these occasions, the respondent-Union was admittedly a recognised Union of the employees and had got the benefit of the payroll check-off facility under the settlement of 28-7-1988...."

In a land acquisition matter, the question of a body of the persons being represented by Association does not arise. The statute provides for filing of claim applications as also filing of objections by the land holders and not by and/or on behalf of the Association and that too an independent body corporate.

An owner of a land has a right to receive just compensation. He, having regard to his human right of access to justice as has been declared by the ICESCR on December 10, 2008 should be given an opportunity to make a reference. A person may get an opportunity to get a reference only when he is informed about the making of an award.

We may notice that before the High Court it was conceded that in the cases where the award of the Collector was served on the claimant and yet reference was not made within time, prayer for reference was not maintainable.

The High Court in its judgment had divided the claimants in four categories. So far as the first category of claimants is concerned, there cannot be any doubt that their applications for reference would be maintainable. So far as the second category of claimants is concerned, their applications being barred by limitation, the same could not have been entertained by the Collector, being beyond his jurisdiction. So far as the third category of claimants is concerned, the time for making application would indisputably run from the date of communication thereof. As far as the land holders belonging to the fourth category of claimants are concerned, the question being of some importance would be discussed a little later.

We may notice a few precedents operating in the field.

In Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and Another [(1962) 1 SCR 676], this Court referring to Section 12 of the Act held:

> "It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to Section 18. It is because communication of the order is regarded by the legislature as necessary that Section 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under Section 12 (2) should directly tend to make ineffective the right of the party to make an application under Section 18, and this result could not possibly have been intended by the legislature."

Similar observations have been made in State of Punjab v. Mst. Qaisar Jehan Begum & Anr. [(1964) 1 SCR 971, thus:

> "...Now knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954 that the respondents had knowledge of the award."

The said decision, therefore, itself is an authority for the proposition that constructive knowledge would also subserve the purpose of the Act. Whether a person had the actual or constructive knowledge of the contents of a document is essentially a question of fact. The onus would be on the landholder to show that he did not have any knowledge of the contents of the award.

We may furthermore notice that in a case where communication gives rise to a cause of action, the same must be held to be mandatory in nature.

{See State of Punjab v. Amar Singh Harika [AIR 1966 SC 1313]}

But in State of Punjab v. Khemi Ram [(1969) 3 SCC 28 : AIR 1970 SC 214], it was stated :

> "16. The last decision cited before us was that of State of Punjab v. Amar Singh Harika where one of the questions canvassed was whether an order of dismissal can be said to be effective only from the date when it is made known or communicated to the concerned public servant. The facts of the case show that though the order of dismissal was passed on June 3, 1949, and a copy thereof was sent to other 6 persons noted thereunder, no copy was sent to the concerned public servant who came to know of it only on May 28, 1951, and that too only through another officer. On these facts, the Court held, rejecting the contention that the order became effective as soon as it was issued, that the mere passing of the order of dismissal would not make it effective unless it was published and communicated to the concerned officer."

In Land Acquisition officer v. Shivabai and Others [(1997) 9 SCC 710], this Court held :

> "...The limitation begins to run from the date of the notice as per the proviso to Section 18(2). The date of the award and the date of the receipt of the compensation were incidentally the same. Under these circumstances, it must be presumed that they were present on the date when the award was made and the compensation was received without any protest. Under these circumstances, they are not entitled to seek any reference."

In Parsottambhai Maganbhai Patel and Others v. State of Gujarat Through Dy. Collector Modasa and Another [(2005) 7 SCC 431], it was observed :

> "7. This Court, therefore, held that the limitation under the latter part of Section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or

> constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under Section 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement."

The State issued a notification directing the Collector to exercise its jurisdiction under Section 18 of the Act. Such a notification, therefore, would amount to a constructive knowledge. It was obligatory on the part of the land owners to file an appropriate application within the prescribed period.

The State, however, clarified the said notification on or about 25.01.1983 stating that its earlier notification of the year 1981 would not mean that the statutory period of limitation provided for under the Act should be given a complete go-by. It is only on or about 2.12.1983 that the writ petition was filed.

Indisputably, pursuant to or in furtherance of the notification of the State of Tamil Nadu issued in the year 1981, no reference was made as the awards were made principally during the period 1972 to 1974.

The writ petition, therefore, was also filed after inordinate delay.

In Mirza Majid Hussain v. State of M.P. and Another [(1995) 2 SCC 422], this Court held:

> "4. Then we have to see whether the appellant was justified in approaching the High Court after an inordinate delay of more than 10 years from the date of the order of the Collector or at any rate from the date of the order passed by the District Judge. The High Court exercised its jurisdiction under Article 226 but not under Section 115 CPC. Even if it is to be converted as a revision under Section 115 CPC, the order of the High Court is not vitiated by any error of jurisdiction or material irregularity in the exercise of its jurisdiction. The High Court has rightly refused to exercise its discretionary jurisdiction after an inordinate delay of more than 5 years from the date of the order of District Judge and more than 10 years from the date of the order of the Land Acquisition Collector. Under these circumstances, we do not think that it is a case warranting interference by this Court under Article 136."

Indisputably, those who received compensation without any protest keeping in view the second proviso appended to Section 31 must be held to have expressed no reservation in regard thereto whatsoever.

Objections, however, appeared to have been filed in printed forms contending that all awards should be subject to objections and payments would be received on protest. Raising of such an objection in response to a notice under Section 9 of the Act, in our opinion, cannot have the same effect as if an application has been filed for reference under Section 18 of the Act.

We may, however, notice that in terms of the proviso (b) appended to sub-Section (2) of Section 18, the maximum period fixed for filing of an objection is six months from the date of the Collector's award. The statute, therefore, imposed a duty on the owner of land to keep track as to what has happened to his objection.

The learned counsel, however, invited our attention to take recourse to the purposive interpretation doctrine in preference to the literal interpretation. It is a well settled principle of law that a statute must be read as a whole and then chapter by chapter, section by section, and then word by word. For the said purpose, the Scheme of the Act must be noticed. If the principle of interpretation of statutes resorted to by the court leads to a fair reading of the provision, the same would fulfil the conditions of applying the principles of purposive construction.

In New India Assurance Co. Ltd. v. Nusli Neville Wadia [(2008) 3 SCC 279], this Court held:

> "49. Section 5 of the Act, on a plain reading, would place the entire onus upon a noticee. It, in no uncertain terms, states that once a notice under Section 4 is issued by the Estate Officer on formation of his opinion as envisaged therein it is for the noticee not only to show cause in respect

thereof but also adduce evidence and make oral submissions in support of his case. Literal meaning in a situation of this nature would lead to a conclusion that the landlord is not required to adduce any evidence at all nor is it required even to make any oral submissions. Such a literal construction would lead to an anomalous situation because the landlord may not be heard at all. It may not even be permitted to adduce any evidence in rebuttal to the one adduced by the noticee nor it would be permitted to advance any argument. Is this contemplated in law? The answer must be rendered in the negative. When a landlord files an application, it in a given situation must be able to lead evidence either at the first instance or after the evidence is led by the noticee to establish its case and/or in rebuttal to the evidence led by the noticee."

In Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. [(2007) 8 SCC 705], this Court held:

"57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See Balram Kumawat v. Union of India; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. and Union of India v. West Coast Paper Mills Ltd.) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction.

We may, however, hasten to add that we do not intend to lay down a law that the protest in regard to making of an award must be done in a manner specified expressly. When an application for reference is filed, protest to the award is implicit as has been held by this Court in Ajit Singh & ors. v. State of Punjab & ors. [(1994) 4 SCC 67]:

"5. Having regard to the contiguity of these lands the High Court is correct in its valuation. Besides, the date of notification, issued under Section 4 of the Act, is October 4, 1978 while Exh. R-6 is nearer to it, namely, August 16, 1978, in comparison to

> Exh. A-6 dated January 14, 1977. Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants."

The learned counsel for the respondents would, however, make an appeal that in a situation of this nature we should exercise our jurisdiction under Article 142 of the Constitution of India. The learned counsel for the said purpose refers to a large number of cases. We may notice some of them.

In Supreme Court Bar Association v. Union of India & Anr. [(1998) 4 SCC 409], a Constitution Bench of this Court was dealing with a decision rendered in Vinay Chandra Mishra, Re [(1995) 2 SCC 584], wherein the statutory provisions dealing expressly with the subject were said to have been ignored by this Court while exercising power under Article 142 of the Constitution of India. In that case itself, it was held:

> "47. The plenary powers of this court under Article 142 of the Constitution are inherent in the court and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power, exists as a separate and independent basis of jurisdiction, apart from the statutes. It stands upon the foundation, and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the court to prevent "clogging or obstruction of the stream of justice"....."

In H.M. Kelogirao & ors. v. Govt. of A.P. & ors. [(1997) 7 SCC 722], this Court was dealing with a case where the appellants had

not accepted the award which was put in issue by them in the Writ Petition. It was in the aforementioned extraordinary situation and particularly having regard to the fact that they had filed writ petitions, this Court granted time to them to seek reference under Section 18 of the Act in exercise of its equitable jurisdiction as also in the interests of justice.

A foundational fact, therefore, in that case for reference has been made out. Such is not the position here. As indicated hereinbefore, no application for reference has been made in these cases either by the land holders or by the Association for a long time. Therefore, in our opinion, no case for exercising our extraordinary jurisdiction under Article 142 of the Constitution of India has been made out.

Reliance has also been placed on Orissa Industrial Infrastructure Development Corpn. v. Supai Munda & ors. [(2004) 12 SCC 306] wherein this Court was dealing with a case where State Authorities awarded compensation which was supported by convincing evidence. It was also furthermore found that the claimant made oral protest as regards the sufficiency of the amount of compensation which had been cowed down by resorting to coercive methods. It is in the aforementioned situation, it was held that the benefit of the proviso appended to sub-Section (2) of Section 31 of the Act was not available to the State as the claimants had received compensation under duress. The direction to proceed with the reference by this Court in the aforementioned situation was not made in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India but on the principle that a decision obtained under coercion is no decision in the eye of law and was liable to be ignored.

Land Acquisition Collector is a statutory authority. The proceeding before the Land Acquisition Collector is a quasi-judicial Proceeding. A party before it may waive its right.

In Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada [(2005) 9 SCC 123], this Court held:

> "8. In law, there is no bar in filing applications for review successively if the same are otherwise maintainable in law. The Civil Court herein admittedly had not granted to the Appellant the benefit of solatium at the rate of 30% of the amount of enhanced compensation as also the additional amount and interest as contemplated under the Amending Act of 1984. To the said benefits, the Appellant was entitled to in terms of Section 23(1A), Section 23(2) as also Section 28 of the Act. It is one thing to say that the omission to award additional amount under Section 23(1A), enhanced interest under Section 28 and solatium under Section 23(2) may not amount to clerical or arithmetical mistake in relation whereto an executing court will not be entitled to grant relief but it is another thing to say that the grant thereof would be impressible in law even if the Reference Court on an appropriate application made in this behalf and upon application of its mind holds that the statutory benefits available to the claimant had not been granted to him and pass an order in that behalf by directing amendment of decree. In a case of former nature, an executing court may not have any jurisdiction to pass such an order on the ground that it cannot go behind the decree, but in law there does not exist any bar on a Reference Court to review its earlier order if there exists an error apparent on the face of the record in terms of Order 47, Rule 1 of the Code of Civil Procedure. Such a jurisdiction cannot be denied to the Reference Court. The Act 68 of 1984 is a beneficial statute and, thus, the benefits arising thereunder cannot ordinarily be denied to a claimant except on strong and cogent reasons."

In Union of India v. Pramod Gupta (Dead) by LRs. & ors. [(2005) 12 SCC 1]:

> "104. It may not, thus, be correct to contend that the said provisions are so imperative in character that waiver thereof is impermissible in law or would be against public interest. Grant of interest in terms of Section 28 of the Land Acquisition Act is discretionary. Only rate of interest specified therein is mandatory. Section 34 of the Act ex facie, however, appears to be imperative in character as the word 'shall' has been used. A discretion vested in the court, it is trite, may not be exercised where the right to claim interest has been waived expressly by the parties and/or their counsel. Even a mandatory provision of a statute can be waived.
>
> xxx xxx xxx

108. It is not in dispute that if a person alters its position pursuant to the representation made by the other side, the principles of estoppel would be applicable and by reason thereof, the person making the representation would not be allowed to raise a plea contra thereto. In Krishna Bahadur v. Purna Theatre and Ors. (2004) 8 SCC 229, this Court held: (SCC p. 233, paras 9-10)

> "9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.
>
> 10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

[See also Vijay Cotton & Oil Mills Ltd. v. The State of Gujarat (1969) 2 SCR 60, SCR at p. 63].

109. Yet again recently in State of Karnataka and Anr . v. Sangappa Dyavappa Biradar and Ors.(2005) 4 SCC 264, the principles of estoppel was applied in

> relation to a consent award holding that once a consent award had been passed, the claimants were precluded from applying for a reference under Section 18 of the Act."

In Tamil Nadu Electricity Board v. Status Spinning Mills Ltd. [(2008) 7 SCC 353], this Court held:

> "34. Validity of the notifications on the ground that they are unreasonable has not been raised before the High Court. We, therefore, cannot go into the issue. If that be so, it is difficult to agree with Mr Parasaran that we should undertake an exercise to interpret the notifications in a manner which would not lead to unreasonableness. For the purpose of declaring a statute unconstitutional, foundational facts have to be laid therefor. (See Seema Silk & Sarees v. Directorate of Enforcement11.) Grounds are required to be raised therefor. In absence thereof it would not be possible for us to enter into the debate of constitutionality of the said provisions. The Division Bench of the High Court

had rightly or wrongly opined that the doctrine of promissory estoppel has no application. The fact that the said doctrine may apply even in relation to a statute is beyond any dispute as has been held by this Court in Mahabir Vegetable Oils (P) Ltd. v. State of Haryana12, A.P. Steel Re-Rolling Mill Ltd.9, Pawan Alloys and Casting (P) Ltd. v. U.P. SEB13 and Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO14."

The appeals preferred by the Tamil Nadu Housing Board, however, stand on a different footing. Therein, the writ petition was allowed by a learned single judge of the High Court. Pursuant thereto or in furtherance thereof, reference was made. A finding of fact had been arrived at. A prayer was also made for reference to the Civil Court. The Land Acquisition Officer assured them that a reference shall be made. The promise, however, was not kept. In the aforementioned situation, the writ petition was filed.

The judgment of the Single Judge having been acted upon and Tamil Nadu Housing Board, having participated in the proceedings without any demur whatsoever, cannot be permitted to turn round and contend that the proceeding was illegal. They not only participated in the proceedings but also questioned the adduction of evidence in regard to the quantum of compensation and preferred appeals against the judgment and award of the Reference Judge. The said proceedings having attained finality, the writ appeals preferred by them should not have been entertained.

In a case of this nature, in the absence of any material brought on record by the State and/or the appellant, we may assume that the Land Acquisition Officer is a Collector within the meaning of Section 3(c) of the Act. He was, therefore, bound by his promise.

In the aforementioned situation, it would not be a case where a statutory authority has been asked by a higher authority to perform his jurisdiction in a particular manner. No form of protest, as indicated hereinbefore, is prescribed under the Act. No form of application in writing has also been prescribed. In a given

case, keeping in view the object and purport the statute seeks to achieve, a Collector being a statutory authority and having the jurisdiction to make a reference can waive the same. We may consider it from another angle. Had a reference been made pursuant to the request made by the awardees, could it be held to be wholly illegal or without jurisdiction only because the protest made in regard to the quantum of compensation under the award is oral and not in writing? The answer to the said question must be rendered in the negative. The form, mode and manner of protest are procedural in nature. The statute does not provide for a thing to be done in a particular manner.

Submission of Mr. Krishnamurthy that the doctrine that where a statute prescribes a thing to be done in a manner as prescribed or not at all is applicable where statutory authority is to perform his function in terms of the provisions of the statute. It is not meant to be applied to a litigant. A procedure, as is well known, is hand maid of justice. A substantive provision providing for substantive right or a statutory provision providing for a substantive right shall prevail over the procedural aspect of the matter. In a situation of this nature, therefore, the Land Acquisition Collector could have been, having regard to the principles of promissory estoppel, held bound to fulfil his promise.

In Nagar Palika Nigam v. Krishi Upaj Mandi Samiti & Ors. [2008 AIR SCW 7114], this Court held:

> "8. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey 1880 (5) QBD 170, (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the

main enactment and its effect is confined to that case. It is a qualification of the Page 4544 preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in West Derby Union v. Metropolitan Life Assurance Co. 1897 AC 647 (HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors. (AIR 1991 SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.(AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P) Ltd. and Ors. (1994 (5) SCC 672)."

For the reasons aforementioned, the appeal preferred by M/s Steel Authority of India Ltd. is allowed with no order as to costs and the appeals filed by the Managing Director, Tamil Nadu Housing Board are dismissed with costs. Counsel's fee assessed at Rs. 25,000/- each.

.....J.
(S.B. SINHA)

.....J.
(CYRIAC JOSEPH)

New Delhi
July 29, 2009
ITEM NO.1F COURT NO.3 SECTION XII
(For Judgment)

SUPR EME COURT OF I ND I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 3874 OF 2006

M/S. STEEL AUTHORITY OF INDIA LTD. Appellant (s)

VERSUS

S.U.T.N.I. SANGAM & ORS. Respondent(s)

WITH

Civil Appeal NO. 5763 of 2006
Civil Appeal NO. 5764 of 2006
Civil Appeal NO. 5765 of 2006
Civil Appeal NO. 5766 of 2006
Civil Appeal NO. 5767 of 2006

Civil Appeal Nos. 4793-4794/2009
(Arising out of SLP(C) Nos.12682-12683/2007)

Date: 29/07/2009 This matter was called on for pronouncement

of judgment today.

For Appellant(s) Mr. Sunil Kumar Jain,Adv.

Mr. S. Thananjayan,Adv.

For Respondent(s) Mr. T. Harish Kumar,Adv.
Mr. Prasanth P.,Adv.
Mr. V. Vasudevan,Adv.

Mr. C.K. Sasi,Adv.

Mr. R. Nedumaran,Adv.

Mr. Pranab Kumar Mullick,Adv.

UPON hearing counsel the Court made the following

ORDER

Hon'ble Mr. Justice S.B. Sinha pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Cyriac Joseph.

Leave granted in the SLP.

For the reasons mentioned in the signed judgment, the appeals filed by M/s. Steel Authority of India Ltd. is allowed with no order as to costs and the appeals filed by

the Managing Director, Tamil Nadu Housing Board are dismissed with costs. Counsel's fee assessed at Rs.25,000/- each.

(A.S. BISHT)
COURT MASTER

(PUSHAP LATA BHARDWAJ)
COURT MASTER

(Reportable signed judgment is placed on the file)