IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9864 of 2018
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 9864 of 2018
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 9864 of 2018
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 3 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 9864 of 2018
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 4 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 9864 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15392 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15398 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15399 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15400 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15401 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15402 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15404 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15406 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15407 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15408 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15409 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15410 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15411 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15412 of 2018
With

R/SPECIAL CIVIL APPLICATION NO. 15413 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15414 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15416 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15417 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15418 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15419 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15420 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15421 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15422 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15423 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15424 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15426 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15427 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15428 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15435 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15436 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15961 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15962 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15963 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15964 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15965 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15967 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15968 of 2018

With
R/SPECIAL CIVIL APPLICATION NO. 15969 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 15970 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17161 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17164 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17167 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17186 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17187 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17192 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17193 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17196 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17201 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17204 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17207 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17209 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17653 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17654 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17655 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17656 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17657 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 20458 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 1784 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ANANT S. DAVE sd/-
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

==========

JIGARBHAI AMRATBHAI PATEL
Versus
STATE OF GUARAT

==========

Appearance:
MR MIHIR JOSHI, SENIOR COUNSEL, MR AJ YAGNIK, ADVOCATE AND MR MC BHATT, ADVOCATE for the Petitioner(s)
MR KAMAL TRIVEDI, ADVOCATE GENERAL with MS SANGEETA VISHEN, AGP for the Respondent(s) No. 1,3
MR DEVANG VYAS(2794) for the Respondent(s) No. 5
MR RAMNANDAN SINGH(1126) for the Respondent(s) No. 6
MS ARCHANA U AMIN(2462) for the Respondent(s) No. 2
NOTICE SERVED(4) for the Respondent(s) No. 4

==========

CORAM: **HONOURABLE MR. JUSTICE ANANT S. DAVE**
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 19/09/2019

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE ANANT S. DAVE
& HONOURABLE MR. JUSTICE BIREN VAISHNAV)

The respondent National High Speed Railway Corporation Limited (NHSRCL), a Special Purpose Vehicle formed by the Ministry of Railways has undertaken construction and implementation of the Mumbai – Ahmedabad High Speed Rail Project (Bullet Train) which is expected to cover 508 kms between Mumbai and Ahmedabad. The petitioners before us are agriculturists who have challenged the acquisition of their lands for the aforesaid project.

The petitioners have inter alia challenged the validity of Section 10A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016 enacted by the Legislature of the State, inter alia, providing for exemption from Chapter-II and Chapter-III of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Apart from the aforesaid challenge to the legality and validity of the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016, the petitioners have also prayed for declaring the preliminary notification dated 09.04.2018 issued under sub-section (1) of Section 11 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the ground of it being violative of fundamental rights, illegal, arbitrary, violative of Articles 14, 19, 21 and 300A of the Constitution of India and hence unconstitutional.

With this preface, we proceed to pen down our views on the entire controversy in question which has been heard and decided pursuant to lengthy and exhaustive

arguments by learned advocates for both the sides and voluminous materials on records.

PART - I

1. Since all these petitions arise out of common questions of facts and law, they are being considered and decided by this common judgement. The petitions so filed are seeking the following prayers (For the sake of brevity and convenience, we reproduce the prayers sought for in Special Civil Application No. 9864 of 2018):-

> "A. Be pleased to declare the preliminary notification issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat) Act, 2013 by the respondent State and annexed to the present petition at ANNEXURE-A as being in contravention of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and thus is illegal, arbitrary, violative of Articles 14, 19, 21 and 300A of the Constitution of India and hence unconstitutional **And Be Further Pleased** to quash and set aside the preliminary notification dated 9th April 2018 issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by the respondent State and annexed to the present petition at ANNEXURE-A.
>
> B. Be pleased to direct respondent Special Land Acquisition Officer/Collector, District Bhavnagar to immediately initiate the revision and updation of the market value for the District Surat following the mandate of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013 r/w the provisions of the Bombay Stamp Act, 1958 and not to permit/restrain the respondent Special Land Acquisition Officer /Collector from initiating/proceeding further for land acquisition proceedings for the Mumbai Ahmedabad High Speed Rail Project until the process of revision and updation of market value is complete as per the statutory norms and rules and following the mandate of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

C. Be pleased to hold that the preliminary notification issued by the respondent State of Gujarat under Section 11(1) annexed to the present petition at ANNEXURE-A is not issued by the appropriate government as defined in Section 3(e)(iv) of the Act of 2013, for the project of Mumbai-Ahmedabad High Speed Rail Project to establish bullet train and hence are de hors the jurisdiction and without any power and authority and hence illegal and unconstitutional and **Be Further** pleased to quash and set aside the same.

D. Be pleased to hold and declare that Section 10A read with Section 2(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016 is ultra vires the constitution including Article 254(2) and therefore violative of fundamental rights and hence unconstitutional.

E. Be pleased to hold and declare that notification issued by respondent State under Section 10(A) read with Section 2(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016 and annexed to the present petition at ANNEXURE-G is unconstitutional and violative of fundamental rights and **Be Further** pleased to quash and set aside the same.

EE. Your Lordships be pleased to hold and declare

that notification issued under Article 258(1) dated 08.10.2018 by the respondent Union of India is illegal, violative of fundamental rights, bad in law and hence unconstitutional and be further pleased to quash and set aside the same.

EEE. In the alternative, Your Lordships be pleased to hold and declare that notification issued under Article 258(1) dated 08.10.2018 by the respondent Union of India is illegal, violative of fundamental rights, bad in law to the extent that it gives retrospective effect and legalizes and validates all actions, decisions and notifications issued by the respondent State till 08.10.2018 pursuant to the process of land acquisition for the project of Mumbai-Ahmedabad High Speed Rail.

F. During the pendency and/or final hearing of the present petition be pleased to stay operation of Section 10A read with Section 2(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016 with regard to the project of Mumbai-Ahmedabad High Speed Rail Project and particularly in the notification issued by the respondent State dated 06.02.2018 and annexed to the present petition at ANNEXURE-G exempting the project of Mumbai-Ahmedabad High Speed Rail Project from the provisions of the Chapter II and III of the Principal Act.

G. During the pendency and final disposal of the present petition be pleased to stay the preliminary notification dated 9th April, 2018 issued by the respondent Revenue Department, State of Gujarat under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and annexed to the present petition at ANNEXURE-A.

H. During the pendency and final disposal of the present petition by pleased to direct respondent Special Land Acquisition Officer /Collector, District Surat to immediately initiate the revision and updation of the market value for the District Surat

following the mandate of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 r/w the provisions of the Bombay Stamp Act, 1958.

I. During pendency and final disposal of the present petition be pleased to restrain respondent Special Land Acquisition Officer/ Collector, District Surat from initiating/proceeding further for land acquisition proceedings for the Mumbai Ahmedabad High Speed Rail Project until the process of revision and updation of market value is complete as per the statutory norms and rules and following the mandate of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

J. During the pendency and/or final disposal of the present petition be pleased to stay the notification issued under Section 10A read with Section 2(1) of the Amendment Act of 2013 and annexed to the present petition at ANNEXURE-G.

JJ. During the pendency and/or final disposal of the present petition, Your Lordships be pleased to hold and declare that notification issued under Article 258(1) dated 08.10.2018 by the respondent Union of India is illegal, violative of fundamental rights, bad in law and hence unconstitutional and be further pleased to quash and set aside the same.

JJJ. During the pendency and/or final disposal of the present petition, Your Lordships be pleased to hold and declare that notification issued under Article 258(1) dated 08.10.2018 by the respondent Union of India is illegal, violative of fundamental rights, bad in law to the extent that it gives retrospective effect and legalizes and validates all actions, decisions and notifications issued by the respondent State till 08.10.2018 pursuant to the process of land acquisition for the project of Mumbai-Ahmedabad High Speed Rail.

K. To pass any other and further reliefs that may be

deemed fit and proper and in the interest of Justice and Equity."

2. The background of facts under which these petitions are filed are as under:

2.1 The petitioners are holders of lands situated within various parts of South Gujarat. Their lands are sought to be acquired for implementation of the vanity "Mumbai-Ahmedabad High Speed Bullet Train Project". It is their case that in 2016/2017, the Central Government laid the foundation stone for the 'Bullet Train' as popularly known, between Ahmedabad and Mumbai. The Mumbai Ahmedabad High Speed Rail Project (for short 'MAHSR' Project), as it is known, is being carried out by the Government of India in collaboration with the Government of Japan. The financial assistance for the Mumbai-Ahmedabad High Speed Rail Project is being offered by the Government of Japan in the form of a loan with an interest rate of 0.1 per cent with deferred schedule and payments.

2.2 For the implementation of the said project, Japan International Cooperation Agency (JICA) prepared a feasibility report. A special purpose vehicle, National High Speed Railway Corporation Limited is formed by the Ministry of Railways for the construction and implementation of the project. The project is expected to cover 508 kms between Ahmedabad to Mumbai. It will commence from Ahmedabad and pass through Anand, Vadodara, Bharuch, Surat, Valsad and Vapi districts of Gujarat.

2.3 The Government of Gujarat, through the Revenue Department started the land acquisition process by issuing a preliminary notification under Section 11(1) of the Act of 2013 on 09.04.2018, declaring its intention to acquire the land in the concerned areas. A notice under Rule 13(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat) Rules, 2017 was issued which according to some of the petitioners, was never sent but was lying at the Panchayat Office. Such notice was dated 24.05.2018.

2.4 The petitioners of Special Civil Application No. 17653 of 2018 are tenants/occupants of individual shops at Kadak Bazar in Vaodadara. It is their case that they are occupying such premises for 40 years. Lands at Kadak Bazar are sought to be acquired for establishment of a Terminal in support of and to be connected to the bullet train station at Vadodara. According to the petitioners, the Vadodara Municipal Corporation has passed a resolution on 31.07.2018 to sell the land at Kadak Bazar to the National High Speed Rail Corporation Ltd. The petitioners being "affected families" have sought to challenge these acquisitions on similar grounds.

2.5 According to the averments made in the petition being Special Civil Application No. 9864 of 2018, Section 26 of the Act of 2013 provides for criteria for assessing and determining the market value of land which is :

I. Market value as specified in the Bombay Stamp Act for registration of sale deeds or agreements;

II. The average of the sale price for similar type of land in the nearest village (one half of the total number of sale deeds or agreements on the higher side);

III. Consented amount of compensation for acquisition of land for a private company or a public private partnership project whichever is higher.

2.6 According to the petitioners, the proviso to Section 26 presupposes that the Collector shall before initiation of any land acquisition proceedings, in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area, meaning thereby that the Collector, before initiating any land acquisition proceedings, in any area, necessarily has to update and revise the market value of the land as per the prevalent rate in that area.

2.7 It is the case of the petitioners that Section 2(na) of the Gujarat Stamp Act defines 'Market Value'. The market value has to be revised and updated by formulating a sound scientific valuation process. According to the petitioners the Annual Statement of Rates/Jantri (ASR in short) of the year 2011 which is being taken as a base for determining the market value of properties is neither scientifically determined nor reliable. As per the mandate of Section 26 of the Act of 2013, before initiating the land acquisition process, the market value has to be revised and updated, meaning thereby that as per the Gujarat Stamps Act, 1958, the Annual Statement of Rates/Jantri has to be revised and updated and more particularly, the same has to be done in conformation with sound scientific valuation process.

2.8 The petitioners further proceeded to state that in the State of Gujarat the market value of the land is determined on the basis of the Jantri or circle rates which is determined by the Land Revenue Department by the Government of Gujarat and published vide a resolution. That before initiation of any land acquisition proceedings, the Collector has to necessarily take steps to update and revise the market value of the respective area where land is to be acquired and it is incumbent on the Collector to update and revise the same.

2.9 The mandate therefore is that the market value of the land is to be decided on the basis of Jantri which has to be revised and updated so as to update and revise the market value. The petitioners' case in the present petitions is that the respondent Collector before initiating the acquisition process under the Act of 2013 has not revised and updated the market value of the land on the basis of the prevalent market rate in that area. Thus, despite of the legislative mandate of revising and updating the market value before initiation of land acquisition process not having been fulfilled, the preliminary notification under Section 11(1) of the Act of 2013 has been issued and the land acquisition process has been commenced.

2.10 The entire land acquisition process has therefore been carried out and commenced in complete derogation of the mandate of Section 26 without revising and updating the Jantri rates. The Jantri in the State of Gujarat was last revised in the year 2011 and hence the Jantri or Circle Rates used as ready recliner by the respondent Competent Authority are of the year 2011. It is the case of the petitioners that after the

resolution of 18.04.2011 declaring the Jantri rates, there has been no revision of such rates and therefore there is no consequential revision of market value. Without such revision of market value prior to the issuance of the preliminary notification, the notification under Section 11(1) and notices under Rule 13(1) are illegal and arbitrary. The non-revision of such jantri rates, according to the petitioners have a cascading effect on clause (b) of Section 26 and explanation thereof as the average sale price referred to in clause (b) shall be determined taking into account the sale deeds registered for similar type of area in the nearby village or vicinity during the immediately preceding three years. Thus the logical corollary that follows is that the revision of market value and updation of market value by the Collector is to be undertaken before the initiation of land acquisition proceedings under the Act. Since the market value has not been revised and updated by the respondent Collector and yet without following the legislative mandate and giving it a go by the land acquisition process for the project of bullet train having been initiated is illegal, arbitrary, violative of Articles 14, 19 and 21 of the Constitution of India and hence unconstitutional.

2.11 Various paragraphs of the Comptroller and Auditor General's report have been adverted to pointing out that non-revision of Jantri rates or ASR has caused non-revision of market value and as a result the object of enhanced compensation as envisaged under the Act of 2013 is defeated.

2.12 The other limb of challenge to the acquisition proceedings are in context of the definition of the term "appropriate government" as defined under Section 3(e) of

the Act of 2013. The said section reads as under:

> (e) "**appropriate Government**" means,--
>
> (i) in relation to acquisition of land situated within the territory of, a State, the State Government;
>
> (ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;
>
> (iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry;
>
> (iv) **in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and**
>
> (v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:
>
> Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;

2.13 As per the definition of “appropriate government” and particularly clause (iv) of sub-section (e) of Section 3 of the Act of 2013, it has been specifically stated that if the acquisition of land for public purpose is required for a project in more than one state, appropriate government is

Central Government and not the State Government. Since the land is sought to be acquired in more than one State, the appropriate government would be the Central Government and not the State Government. Hence, the preliminary notification issued under Section 11(1) is de hors the jurisdiction.

2.14 Further, as set out in the petition, it is the case of the petitioners that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted to ensure a more participative, informed and a transparent process. The progressive pillars of the legislation included Social Impact Assessment and Consent Clause.

2.15 The petitions then further chart out the bringing out of Gujarat Amendment Act of 2016 which received the assent of the President on 08.08.2016. By such Amending Act, the principal Act of 2013 came to be amended by the State of Gujarat, inter alia, completely doing away with the Social Impact Assessment and Consent Clause/s, the object and reason for the same being that Gujarat is an industrially progressive and more and more investment is coming to the state and hence the state government aims to provide all basic facilities and infrastructure to the entrepreneurs. Since it has been experienced that after coming into force of the said act which has very stringent provisions for acquiring the land, land acquisition has become a very lengthy and difficult proposition. It is therefore considered necessary to make the procedural part of the land acquisition smooth and easy without interfering with the rights of the persons whatsoever

whose lands are acquired.

2.16 It is dismantling and more particularly the irrational, arbitrary and excessive delegation to the executive i.e. the State Government to exempt any project, in the name of public interest, from the provisions of Chapter II and III of the principal act i.e. Social Impact Assessment and Consent Clause which is under challenge.

2.17 It is the case of the petitioners that prior to the preliminary notification under Section 11(1) dated 08.04.2018, the State Government had issued a notification dated 06.02.2018 under Section 10A read with Section 2(1) of the Amended Act 2013 by way of Gujarat Amendment Act of 2016 thereby exempting the project of Mumbai-Ahmedabad High Speed Rail Project from the provisions of **Chapter II** and **Chapter III** of the Principal Act of 2013.

2.18 According to the pleadings in the petition, the very heart and spirit of the Principal Act were completely done away with. The notification dated 06.02.2018 and the provisions of Section 10A read with Section 2(1) of the Gujarat Amendment Act of 2016, according to the petitioners suffer from vice of arbitrariness and excessive delegation. Challenge to this Act of 2016 is also made in context of Section 107 of the Act of 2013.

2.19 Pleadings succinctly dealing with respect to the challenge with regard to Article 254 of the Constitution of India read thus:

> "...the granting of assent by the President under Article 254(2) of the Constitution of India is not exercise of legislative power of the President as contemplated under Article 123 but is part of legislative procedure. The words "reserved for consideration" used in Article 254(2) cannot be an empty/idle formality but would require serious consideration on the material placed before the President. The President is required to examine if compelling reasons to sanction such a significant deviation exist. It is always open for the Court to review whether the procedure which requires thorough reflection and conscious application of mind by the President was observed or not."

2.20 The petitioners, pending the hearing, have had to amend the petitions. This has been so because the Union of India, Ministry of Railways issued a notification under Article 258(1) of the Constitution of India. The notification is also under challenge, as by such notification, the executive power/function of the Central Government as an appropriate government under the Act of 2013 for acquisition has been delegated in the State Government. It is the case of the petitioners that the notification has been given retrospective effect in order to validate and justify all actions of the State of Gujarat. According to the petitioners, this exercise is an evidence/admission that according to Section 3(e)(iv) it is the Central Government which is the appropriate government. Challenge is also on the ground that executive functions cannot be delegated with retrospective effect. Pleading with regard to such challenge as averred in paras 4.52 and 4.53 read as under:

> "4.52. Moreover, any illegal or unlawful action of exercising power, in the present case, exercise of power by respondent State of Gujarat conferring

itself the power of appropriate government under the Act of 2013 and thereby issuing notification on 06.02.2018 under Section 10A read with 2(1) of the Act of 2013, prior to issuance of notification dated 8th October, 2018 being without jurisdiction, authority and power and therefore being illegal and unlawful from very inception can never be legalized and validated by invoking deeming fiction under the Doctrine of Retrospective or retroactive action. That which is illegal and unlawful from very inception can never be legalized and validated by deeming fiction even by exercising power under the Constitution of India.

4.53. The second important aspect is whether such delegation of executive function of respondent Central Government to the respondent State Government can allow and permit respondent State Government to acquire land not under the Central unamended legislation of the Act of 2013 but under the amended State legislation by the respondent State of Gujarat that has come into effect from 12th August, 2016. It is stated and submitted that by the impugned notification the respondent State of Gujarat with retrospective effect by way of delegation is entrusted with the executive function to acquire land for Mumbai-Ahmedabad High Speed Rail Project and therefore it steps into the shoes of respondent Central Government. However because acquisition of land for Mumbai-Ahmedabad High Speed Rail Project being a multi-state project and that is why Central Government is the appropriate government to acquire land and hence even under delegated power the respondent-State of Gujarat has to acquire land under the unamended Central legislation of 2013 by initiating the process of acquisition afresh. The ongoing acquisition cannot go further as it is taking place in accordance with the state amendment of the central legislation. In other words, in order to acquire land for the project of Mumbai-Ahmedabad High Speed Rail the state of Gujarat has to implement provisions as envisaged in Chapter II and III of the Act of 2013."

2.21 It is the case of the petitioners that as per the Act of 2013, if the Central Government is the appropriate government then despite the delegation to acquire lands, it is the Central Government which has to follow the provisions of Chapters II and III of the Act of 2013 and therefore the notification issued by the State Government under Section 10A read with Section 2(1) of the Gujarat Amendment Act, 2016 exempting the project from the provisions of Chapters II and III of the Act of 2013 is unconstitutional and hence bad in law. The notification of 08.10.2018, according to the petitioners also suffers from the vice of arbitrariness as it denies to the residents within the State of Gujarat the benefits of compensation, rehabilitation under the Central Act which would be available to the residents of Dadra and Nagar Haveli for the same purpose. Based on these pleadings in the petitions, the prayers are reproduced hereinabove, are sought by the petitioners.

3. In addition to filing a reply in Special Civil Application No. 9864 of 2015, the State has filed an extensive reply dealing with each of the contentions raised. Such reply has been filed in Special Civil Application No. 17653 of 2018. It will therefore be appropriate to just take an overall view of how the contentions are answered, before we go into the submissions made by the learned Advocate General on behalf of the State of Gujarat. Reference is made to the reply filed by Keshavlal Dhulabhai Upadhyay, Deputy Secretary Revenue Department dated 10.12.2018.

3.1 The preface to the setting up the project has been explained in paragraph no. 4.1 of the reply, which reads as

under:

> "4.1 It was after the visit of the Indian delegation led by the Hon'ble Prime Minister of our country to Japan that a need for construction of High Speed Train was realized in the larger public interest, which led to the announcement in the month of May 2013 for carrying out a joint feasibility study on Mumbai-Ahmedabad Rail Project to be co-financed by Government of India and Japan through its governmental agency i.e. Japan International Cooperation Agency ("**JICA**" for short) which is chartered with assisting economical and social growth in developing countries and promotion of International Cooperation. As a result of the aforesaid study, JICA submitted its Joint Feasibility Report in the month of July 2015 wherein, after having considered various options, **a particular route** for the said Mumbai-Ahmedabad High-Speed Rail Project ('**the Project**' for short) came to be decided along with the estimated cost thereof to the tune of Rs.98,000 Crores."

3.2 Reference is made to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment Ordinance), 2014 followed by issuance of another Ordinance on 30.05.2015 which contained various provisions including Section 10A empowering the appropriate government to exempt certain projects from the application of provisions of Chapters II and III of the Central Act of 2013. This was done in exercise of powers flowing from Entry 42 of the Concurrent List.

3.3 The chronology of events thereafter have been expressed in paragraphs no. 4.3 to 4.15 of the reply which read as under:

"4.3 Thereafter during the period from August 2015 to December 2015 various developments took place wherein the Government of Japan offered assistance package for the Project followed by formation of an Empowered Committee on Innovative Collaboration under the Chairmanship of Vice-Chairman, Niti Ayog, which put up a proposal of the Project followed by its Report recommending the implementation of the Project with Japanese financial and technical assistance. Ultimately it was in the month of December 2015, that a Memorandum of Cooperation was signed between the Government of Japan and Government of India for implementation of the Project providing *inter-alia* for transfer of Technology, Make in India for High Speed Rail trains and establishing of Training Institute for High Speed Rail.

4.4 With a view to facilitating speedy implementation and execution of the said Project, on 12.02.2016, the Government of India and participating State Governments formed a company called 'National High-Speed Rail Corporation Ltd.' i.e. the Respondent No.3 ('**the Corporation**' for short) with a main object to be pursued viz. to plan, design, develop, build, commission, maintain, operate and finance High-Speed Rail Services between the State of Maharashtra and State of Gujarat. This was followed by formation of different committees / working groups like Joint Committee, Working Group, Technical Group, etc. During the period from March 2016 to December 2016, several rounds of meetings of the said different committees and working groups viz. (i) Joint Committee, (ii) Working Group, (iii) Technical Group, etc. took place for finalizing the detailed plans for implementation and execution of the Project.

4.5 On 31.03.2016, Gujarat State Legislature passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat amendment) Bill, 2016.

4.6 Pertinently, in view of the provisions of the said Bill being repugnant to the provisions of Central Act of 2013 as an existing law falling under Entry 42 of the Concurrent List, the aforesaid Bill was reserved by the Hon'ble Governor for the kind consideration of the Hon'ble the President under Article 254(2) of the Constitution of India and ultimately, the assent came to be accorded by the Hon'ble President on 08.08.2016 to the aforesaid Bill whereupon, the said Bill got culminated into the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat amendment) Act, 2016 ("**the State Amendment Act of 2016**" for short). A copy of the Statement of its Objects and Reasons ("**the SOR**" for short) of the said Bill as well as a copy of the said State Amendment Act of 2016 are annexed herewith and collectively marked as **Annexure-II (colly.)**.

4.7 On 12.01.2017, a Memorandum of Understanding came to be arrived at between the Government of Gujarat through Gujarat Infrastructure Development Board on one hand and the Corporation on the other. As per the said Memorandum of Understanding, for efficient implementation / development of the Project, it was agreed that the Government of Gujarat will facilitate the acquisition of the land for the Project. For ready reference, a copy of the aforesaid Memorandum of Understanding dated 12.01.2017 is annexed hereto and marked as **Annexure-III**.

4.8 Thereafter, the Government of India, Ministry of Railways, Railway Board, addressed a communication dated 31.03.2017 to the Chief Secretary, Government of Gujarat, stating, *inter-alia*, that since the Project is monitored by a Joint Committee under the Vice-Chairman, Niti Ayog, Delhi and owing to adherence to the strict time lines, the State Government may nominate in each District, a Dedicated Land Acquisition Officer along with required support staff with a view to seeing that the land acquisition process can be initiated as

soon as the land plan is submitted. Similar communication dated 31.03.2017 was also addressed to the Chief Secretary, Government of Maharashtra and copies of the said two communications, both dated 31.03.2017 of the Government of India, Ministry of Railways (Railway Board) addressed to the Governments of Gujarat and Maharashtra are annexed hereto and collectively marked as **Annexure-IV (colly.)**.

4.9 Apropos the aforesaid communication dated 31.03.2017, the State Government, passed an Order dated 25.04.2017 with a copy endorsed to the Executive Director / PPP Railway Board, New Delhi, appointing Land Acquisition Officers for land acquisition for 8 Districts as indicated in the said letter, by designating them as 'Competent Authority for Land Acquisition' for the project. A copy of the said order dated 25.04.2017 passed by the State Government is annexed hereto and marked as **Annexure-V**.

4.10 On 14.09.2017, the Hon'ble Prime Minister and his Japanese counterpart Mr. Shinzo Abe laid foundation stone in the city of Ahmedabad for the country's first 508 kms. High Speed Rail Project between Mumbai and Ahmedabad. Thereafter, on 17.09.2017, loan agreements came to be signed between JICA on one hand and Government of India on the other in Delhi, providing Japanese ODA loans of 85.974 billion yen to be repaid in 50 years with 15 years grace, with interest at the rate of 0.1%.

4.11 On 09.10.2017, the Corporation addressed a letter, *inter-alia*, requesting the Chief Secretary of the State Government that the Corporation is planning to submit Land Acquisition Papers to the respective Land Acquisition Officers progressively with an expectation that all the papers for the land acquisition would be submitted to the concerned Government Authorities during the month, more particularly in view of the project being linear in nature, whose success largely depends upon timely

acquisition inasmuch as the Project has been desired to be delivered in August 2022. It was further proposed in the said letter to constitute a High Power Committee under the Chairmanship of the Chief Secretary which may review the progress of land acquisition and other related matters. For ready reference, a copy of the said letter dated 09.10.2017 of the Corporation addressed to the Chief Secretary, Government of Gujarat is annexed hereto and marked as **Annexure-VI**.

4.12 The State Government thereafter, in its Roads & Buildings Department constituted a High Power Committee on 22.12.2017 for various issues, viz. for land acquisition, forest & environment, power supply, utility shifting for implementation of the Project. Pertinently, vide a communication dated 02.02.2018 addressed to all the concerned authorities by the State Government, the State Government, *inter alia*, informed about the convening of the first meeting of the said Committee under the Chairmanship of the Chief Secretary of the Government of Gujarat, along with various Central as well as the State Authorities on 16.02.2018 to discuss the issues relating to the project including the issue relating to the land acquisition, as per the agenda attached therewith. After the said meeting the minutes thereof were sent to all the authorities vide a communication dated 20.03.2018. For ready reference, a copy of the said communication dated 02.02.2018 along with the agenda items is annexed hereto and marked as **Annexure-VII**, whereas a copy of the communication dated 20.03.2018 addressed to all the authorities conveying the minutes of the said meeting for information and further action is annexed hereto and marked as **Annexure-VIII**.

4.13 I respectfully say that in the month of February 2018, the Under Secretary, Revenue Department of the State Government issued various taluka / village-wise notifications in exercise of the powers conferred under Section 10A of the State Amendment Act of 2016, exempting the lands specified in the said notifications to be acquired for the project in question, from the

application of the provisions of Chapter-II and Chapter-III of the Central Act of 2013.

4.14 As a result of series of meetings having been convened as aforesaid, in the months of April and May 2018, the State Government at the behest of the Central Government issued various taluka / village-wise notifications under sub-section (1) of Section 11 of the Central Act of 2013 declaring that the lands mentioned in the schedule annexed to the said notifications are required for the designated public purpose, i.e. the Project in question.

4.15 The above referred notifications came to be followed by issuance of Presidential Notification dated 08.10.2018 under Article 258 of the Constitution of India, entrusting to the State Government, the executive function relating to the land acquisition in question while ratifying all the actions taken by the State Government in relation to the acquisition of land within the territory of the State as if the same have been taken for and on behalf of the Central Government. A copy of the aforesaid Presidential Notification dated 08.10.2018 is annexed herewith and marked as **Annexure-IX**."

3.4 The important highlights of the project have been set out in paragraph no. 5 of the reply which highlights are as under:

"5. Before proceeding further, I may set out hereunder the important highlights of the Project in question.

(a) Total length of **Mumbai - Ahmedabad High Speed Train Corridor** is going to be around **508 kms,** out of which a portion of **350.53 kms** is going to be in the State of Gujarat, **2 kms** in Union Territory of Dadra & Nagar Haveli, and **155.64 kms** in the State of

Maharashtra.

(b) Pertinently, most of the portion of the aforesaid corridor is going to be elevated, except **21 kms** (approx) which would be underground tunnel, of which **7 kms** will be under sea.

(c) It is for the purpose of having the said elevated corridor, that requirement of land is of a patch having width of **17.5 mtrs** for the train track at all places other than Station and Depot areas.

(d) There will be one parallel road having width of 4 mtrs, which would be constructed all along the track (except on bridges, tunnels and special occasions) within the patch of 17.5 mtrs, which would be available for the local public for the usage. Within a range of 5 mtrs, from the edge of the said patch of 17.5 mtrs on both the sides, people will be at liberty to construct after having intimated to the Corporation and after having taken requisite permission of concerned developmental authorities.

(e) One of the main objectives of the project in question is to reduce traffic pollution and to strengthen intraregional connectivity and to enhance wide - ranging economical development of the target areas.

(f) There will be going to be two types of trains, out of which, one would be covering the distance between Ahmedabad - Mumbai in about **2 hours**

with 4 stations and another within 3 hours with 12 stations, in such a fashion that there will be **35 pairs of such trains** which would be running between two destinations and would be available at the interval of every 30 minutes during the normal hours and every 20 minutes during the peak hours.

(g) Total area of land to be acquired under the State of Gujarat for the project is in the order of about **966 hectares**, out of which **753 hectares** represent private owned land, **89 hectares** of land belong to the State and State Authorities, **124 hectares** belong to Indian Railways and **0.7 hectares** is the forest land.

(h) Pursuant to the requirement of JICA, an independent agency called **M/s Arcadis** was short listed by the Corporation with the concurrence of JICA to carryout district wise impact survey under the supervision of JICA, which was accordingly carried out during the period from December, 2017 to July, 2018, followed by submission of "Resettlement Action Plan - Mumbai - Ahmedabad High Speed Railway Project" dated 10.08.2018, wherefrom, the following information can be gathered:

(i) Total project affected household - 13006 (8472 - Guj);

(ii) Total Structures likely to be affected - 3683 (1904 - Guj).

(i) 2nd Schedule to the Central Act of 2013 deals with various elements of

> rehabilitation and resettlement entitlements for the affected families. For the project in question, elements referred to as Sr. Nos. 4, 5, 6, 7, 8, 10 and 11 are being pressed in services as per the eligibility criteria of the affected families. At the time of passing the Award under section 43 of the Central Act of 2013 by the administrator i.e. Acquisition Officer, the provisions of section 31A of the State amendment Act, 2016 will also be taken into account, which provides for the grant of lump sum amount of compensation equivalent to 50% of the amount of compensation determined under section 27 as Rehabilitation and Resettlement Cost."

4. The challenge raised in the petition are dealt with. Though at the cost of burdening the records, in order to see that how each challenge is answered, the same is reproduced from the State's reply only briefly:

Reproduction from affidavit-in-reply:

Para 7 : **Re: A - Section 10-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement (Gujarat Amendment) Act, 2016 vide which the project of Bullet Train has been exempted from the provisions of chapter II and III of the Act of 2013 is ultra-vires the constitution and hence unconstitutional.** (Paras - 1A and 4.7 to 4.19)

7.2 … It is submitted that it is well established position of law that the delegation bereft of guidelines is known as "excessive delegation". In the present case, SOR of the State

Amendment Act of 2016, alongwith its Section 10A provide sufficient guidelines as to when the contemplated exemption may be granted. The said SOR clearly suggests that the land acquisition under the Central Act of 2013 is lengthy and difficult process and that it is considered necessary to make the procedural part of the land acquisition smooth and easy, without interfering with the rights of the persons whose lands are acquired. As against this, when the Project in question is admittedly the infrastructural Project as referred to in Section 10A and being very important to the country as a whole, the State Authority has been fully justified in issuing various Notifications in the month of February, 2018 in exercise of the powers conferred under Section 10A of the State Amendment Act of 2016, providing requisite exemption.

7.4 The petitioners have given lot of emphasis on the conduct of Social Impact Assessment as referred to under the Central Act of 2013 by agitating that the said Social Impact Assessment is the nucleus of the Central Act of 2013 and the State Amendment Act of 2016 seeks to destroy the very nucleus through its Section 10A ... the need for conducting Social Impact Assessment under the provisions of the Central Act of 2013 is only for the purpose of recommending such area of acquisition which would ensure – (**i**) minimum displacement of people; (**ii**) minimum disturbance to the infrastructure and ecological; and (**iii**) minimum adverse impact on the individual affected. The project in question being linear in nature as discussed hereinabove, all the aforesaid aspects are even otherwise taken care of and hence, the petitioners are not right when they contend that the State Amendment Act of 2016 seeks to destroy the Central Act of

2013, as alleged or otherwise. Thus, exemption from Social Impact Assessment under the State Amendment Act of 2016 cannot be considered to be in cross purposes with the Central Act of 2013.

7.5 ...the extent of width land required for the Project being linear in nature, is very minimal i.e. to the extent of only 17.5 metres of width. In view of this, the resultant consequential impact in terms of displacement would be very meagre as compared to other large Projects in respect of which, additional benefits beyond monetary compensation like rehabilitation and resettlement are required to be provided to the families affected by involuntary displacement. ... Under the circumstances, it is very much competent on the part of the State Legislature to provide for Section 10A in the State Amendment Act of 2016 by guaranteeing additional benefits in terms of rehabilitation and resettlement cost. In view of this, it cannot be said that such provision is in cross purpose with the Objects and Reasons of the Act of 2013 or that the same seeks to destroy the nucleus of the Act of 2013.

7.7 It is not permissible to the petitioners to contend that the acquisition in question will cease to be transparent and fair in nature merely because of the absence of Social Impact Assessment. Even otherwise, very similar exercise like Social Impact Assessment carried out by **M/s. Arcadis** in the State of Gujarat under the supervision of JICA by undertaking district-wise impact survey during the period from December 2017 to July 2018, has captured all the details and information which are ordinarily available as a result of the conduct of the Social Impact Assessment like (i) estimation of affected

families and their number of members; (ii) extent of land acquired, such as agricultural land, private land or common properties; (iii) issues as regards the land compensation, livelihood, rehabilitation and resettlement of the population. In support of this, I set out hereunder the following Charts i.e. Tables taken from "Resettlement Action Plan - Mumbai - Ahmedabad High Speed Railway Project" dated 10.8.2018, submitted by M/s Arcadis as a result of aforesaid exercise undertaken by it, which are self-explanatory:

(i) Table 1-1 indicating '**District wise Project Impact**'.

SN	District	Area in (Ha)	Private Land (Ha)	Number of total Land Parcel	Number of Land Parcel Surveyed *	Percentage of Land Parcel Survey*	Actual Data		Estimated Data		Percentage of Actual PAH to Estimated	No of CPR	
							PAH	Structures	PAH	Structures			
1	Ahmedabad	160.59	30.24	541	441	81.52	804	231	928	243	86.64	1	
2	Kheda	106.18	96.52	815	765	93.87	771	109	783	121	98.47	9	
3	Anand	52.35	48.2	434	433	99.77	898	140	901	143	99.67	4	
4	Vadodara	166.94	115.42	1738	1620	93.21	1783	502	1828	505	97.54	9	
5	Bharuch	140.33	128.18	921	724	78.61	830	62	1015	72	81.77	4	
6	Surat	160.14	139.17	833	394	47.30	458	30	639	130	72.00	0	
7	Navsari	87.76	79.53	836	704	84.21	916	288	1045	301	87.66	3	
8	Valsad	128.33	107.2	861	851	98.84	2012	542	2046	548	98.34	6	
9	Palghar	279.87	188.26	1341	1035	77.18	3498	1551	4396	1581	80.00	1	
10	Thane	139.07	78.69	437	318	72.77	915	159	1166	179	78.47	0	
11	DNH	8.12	7.26	118	100	84.75	121	68	137	68	88.32	0	
12	Mumbai	4.6	3.7	3	3	100.00	0	1	0	1	0.00	0	
	Total	**1434.28**	**1022.37**	**8878**	**7388**	**83.22**	**13006**	**3683**	**14884**	**3892**	**87.38**	**37**	

(ii) Table 2-1 indicating '**Distribution of land area by Ownership**'.

SN	District/ UT	No of villages	Land plots affected (No.)					Land area (Ha)				
			Pvt.	Govt.	Forest	IR[1]	Total	Pvt.	Govt.	Forest	IR	Total

1.	Ahmedabad	16	410	78	0*	53	541	30.24	23.2	0.19	106.95	160.59
2.	Kheda	22	691	122	0*	2	815	96.52	9.22	0.26	0.18	106.18
3.	Anand	11	367	67	0*	0	434	48.2	3.91	0.24	0	52.35
4.	Vadodara	35	1422	264	0*	52	1738	115.42	21.64	0.1	29.78	166.94
5.	Bharuch	27	729	191	0*	1	921	128.18	11.09	1	0.06	140.33
6.	Surat	28	641	191	0*	1	833	139.17	20.47	0.38	0.12	160.14
7.	Navsari	28	681	154	0*	1	836	79.53	7.72	0.47	0.04	87.76
8.	Valsad	30	679	173	9	0	861	107.2	17.66	3.46	0	128.33
9.	Palghar	73	911	336	91	3	1341	188.26	30.51	60.63	0.456	279.87
10.	Thane	22	329	68	37	3	437	78.69	41.7	17.36	1.32	139.07
11.	Mumbai Sub	2	2	1	0	0	3	3.7	0.9	0	0	4.6
12.	DNH	2	101	17	0	0	118	7.26	0.86	0	0	8.12
	Total	**296**	**6963**	**1662**	**137**	**116**	**8878**	**1022.37**	**188.88**	**84.09**	**138.906**	**1434.28**
	Percentage (%)		**78**	**19**	**2**	**1**	**100.00**	**71**	**13**	**6**	**10**	**100.00**

(iii) Table 2-8 indicating '**District wise Common Property Resources affected**'.

District	CPR	Area of CPR (sqm)		
		Total	Affected	Extent of impact (%)
Ahmedabad	Property on Gauchar	No area available		
Kheda	Pond	157	140	89.17
	School	288	72	25
	Toilet of school	7	2	28.57
	Toilet	21	21	100
	Pond	200	150	75
	Temple	182	182	100
	Pond	252	33	13.1
	Panchayat plot - 2 No	NA	NA	NA
Anand	Temple	90	81	90
	Pond	100	80	80
	Pond	200	120	60
	School	360	72	20
Vadodara	Temple	75.845	75.845	100
	Temple	152.625	152.625	100
	Temple	20.14	20.14	100
	Hanuman temple		NA	NA
	School		NA	NA
	Panchayat land – 3 No		NA	NA
	Property on gauchar land		NA	NA

	Society common Plot		NA	NA
Bharuch	Graveyard – 2 No		NA	NA
	Property on		NA	NA
	Government land			
	Mosque		NA	NA
Navsari	Temple	2.7	2.7	100
	Temple	6.67	6.67	100
	School	10000	500	5
Valsad	Handpump	4	4	100
	Water Tank	7.29	7.29	100
	Water Storage Tank	6.384	6.384	100
	Panchayat land -2 No		NA	NA
	Small portion of school		NA	NA
Palghar	Temple	120	120	100

(iv) Table 2-9 indicating '**Vulnerability Status of Project Affected Households**'.

Particulars	Vulnerable		Vulnerability Category										
	Yes	No	BPL	WHH	Disable	Destitute	Orphan	Landless	Elderly person without dependent	ST	SC	> 1 category	Others
Ahmedabad	565	362	30	68	14	2	1	16	5	103	316	4	6
Kheda	240	543	84	38	23	11	2	7	0	18	55	2	0
Anand	324	577	108	120	24	2	20	10	3	5	19	11	2
Vadodara	634	1194	105	171	41	4	2	7	9	71	130	19	75
Bharuch	351	665	71	138	20	2	0	5	5	51	37	6	16
Surat	56	584	6	3	1	0	0	0	1	14	29	2	0
Navsari	504	541	112	115	11	2	0	24	32	140	36	17	15
Valsad	944	1102	90	158	25	3	1	4	5	589	60	4	5
Palghar	1286	3110	99	93	15	5	3	6	4	887	136	32	6
Thane	279	887	36	8	0	0	0	3	19	168	32	7	8
DNH	79	58	1	3	2	0	1	1	0	51	19	1	0
Mumbai	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	**5262**	**9622**	**742**	**915**	**176**	**31**	**30**	**83**	**83**	**2097**	**869**	**105**	**133**
Percentage	**35.4**	**64.6**	**14.10**	**17.39**	**3.34**	**0.59**	**0.57**	**1.58**	**1.58**	**39.85**	**16.52**	**2.00**	**2.53**

(v) Table 2-10 indicating '**Project Affected Households with breakup**

of Title Holders and Non - Title holders'.

District	PAH Ownership						Total
	TH	NTH					
		Encroacher	Squatter	Tenant	Others	Total	
Ahmedabad	284	39	563	21	21	644	928
Kheda	740	12	18	2	11	43	783
Anand	875	5	5	1	15	26	901
Vadodara	1378	296	17	79	58	450	1828
Bharuch	961	21	15	0	18	54	1015
Surat	584	13	17	25	0	55	639
Navsari	988	18	24	3	12	57	1045
Valsad	1621	54	220	148	3	425	2046
Palghar	2048	1197	353	771	27	2348	4396
Thane	717	175	58	182	33	449	1166
DNH	109	0	21	0	7	28	137

It is pertinent to note that in order to achieve minimum consequential impact in terms of displacement amongst other things, which is one of the main objectives of Social Impact Assessment Study, the funding agency has already in advance decided, inter-alia about the following two main aspects-

(i) Selection of a particular route, and

(ii) Bare-minimum extent of land i.e. patch of land having width of 17.5 metres only for accommodating the elevated corridor.

Therefore, the petitioners are not factually correct that no record has been created to identify the extent lands as well as number of people from different categories affected by land acquisition process. I respectfully say that even if such an exercise at the behest of JICA had not been carried out in the present case in place of Social Impact Assessment, there would not have been any illegality, more particularly when the purpose for which Social Impact Assessment is required to be

carried out under the Central Act of 2013, is otherwise being taken care of in view of the project in question being linear in nature wherein, the resultant consequential impact in terms of displacement would be very meagre as compared to other large projects as discussed hereinabove.

7.10 ... the State Amendment Act of 2016 has been assented to by the Hon'ble the President and hence, the same is protected by the provisions of Article 254 (2) of the Constitution of India. In this view of the matter, challenge to the provisions of the State Amendment Act of 2016 does not survive and therefore, various grounds in detail raised by the petitioners in this behalf do not deserve any consideration.

Para 8 : **Re: B - Section 31A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement (Gujarat Amendment) Act, 2016, is ultra-vires the constitution and hence unconstitutional.** (Paras – 1B and 4.20)

8.2 ... The petitioners cannot quarrel with the exercise of legislative power of fixing lump sum amount to the tune of 50% of the compensation determined under the Central Act of 2013 and Rehabilitation and Resettlement Cost, under section 31A. Therefore, the petitioners cannot say that instead of 50%, the said benchmark should be 60% or 80% since in that eventuality, a question may arise as to where to draw a line of demarcation. In such circumstance, the test, is so long as the resultant amount of lump sum compensation to be paid as Rehabilitation and Resettlement Cost arrived at on the basis of the said benchmark of 50% is not illusory, which is, in fact,

not so in the instant matter, section 31A of the State Amendment Act 2016 cannot be questioned on the ground that the amount so fixed or amount determined on the basis of the said benchmark is not adequate.

9. **Re: C - Initiation of Land Acquisition Process without revising and updating the market value of the land/s in question as mandated by section 26 of the Act of 2013 is illegal and unconstitutional.**

9.2 I categorically deny and dispute the aforesaid interpretation of Section 26 of the Central Act of 2013 on the part of the petitioners. I further deny that the market value of the land/s in question in the present case is being derived exclusively on the basis of Statement of Annual Rates (Jantri) of the year 2011, while arriving at the market value of the said lands in the year 2017-2018.

9.4 In furtherance of the above, I respectfully state that sub-section (1) of Section 26 of the Central Act of 2013, read with Explanation 1 thereto provide that in assessing and determining the market value of the land, any of the criteria as indicated in clause (a), clause (b) or clause (c) may be adopted. The provision of clause (b) of sub-section (1) of Section 26 is clear and simple inasmuch as, it provides for one of the criteria to be adopted by the Collector in assessing and determining the market value of the land i.e. average sale price for similar type of land situated in the nearest village or nearest vicinity area. Thus, sufficient methods are provided by virtue of several Explanations to sub-section (1) of Section 26 and more particularly Explanation 1 which inter-alia

provides for taking into account the sale deeds / agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the area year which such acquisition of land is proposed. Thus, read the provisions of sub-section (1) of Section 26 of the Central Act of 2013, in its entirety, it becomes clear that the Central Act of 2013 provides for sufficient guidelines to be adopted for assessing and determining the market value of land to be acquired.

9.6 In the above connection, I further state that the State Government, in its Revenue Department, has issued two Government Resolutions, both dated 11.9.2018, *inter alia*, clarifying the issues as regards the parameters to be observed while determining the compensation under the Central Act of 2013. I respectfully say that vide Government Resolution No.LAQ/2018/1976/GH dated 11.9.2018, the State Government has resolved that the farmers who are willing to offer their lands with consent as contained in the Government Resolution dated 4.4.2018 of the Revenue Department and if the acquiring body is ready and willing to pay compensation by adopting '**indexation formula'**, then in those cases, indexation formula be applied to the Annual Statement of Rates, 2011 i.e. 2011 Jantri. Copies of the aforesaid Government Resolutions, both dated 11.09.2018 are annexed herewith and collectively marked as **Annexure-X** (**colly.**). It is further respectfully stated that the aforesaid indexation formula has its roots in "**Cost Inflation Index** (CII)" notified by the Central Government for the F.Y. 2018-19 at Rs.280, with the Base Year 2001-02 (with Cost Inflation Index at Rs.100) vide notification No. S.O.1790 (E) dated 05.06.2017, a

copy whereof is annexed herewith and marked as **Annexure-XI.** Pertinently, Income Tax Department applies the said formula relating to indexation for the purpose of determining long term capital gains, wherein it is likely that the investors in property stand to gain in most of the cases with the shifting of the base year from F.Y. 1981-82 to F.Y. 2001-02. It is further submitted that if the aforesaid Cost Inflation Index formula is applied to Annual Statement of Rates, the farmers will be getting compensation approximately 50-60% on higher side.

9.7 In order to appreciate the aforesaid aspect of the matter, I may refer to hereunder, a hypothetical example for better understanding:

> Suppose, the total Jantri of the parcel of land is Rs.10,00,000/- in the Financial Year 2011-12, then in that case, its present day i.e. 2018-2019 value i.e. Compensation amount can be worked out as under:

Indexation of FY 2018-19 (A)	Rs.280 (which value was taken as Rs.100 in the year 2001-02)
Indexation of FY 2011-12 (B)	Rs.184 (which value was taken as Rs.100 in the year 2001-02)
Jantri Value of FY 2011-12 (C)	Rs.10,00,000/-
Compensation to be awarded (C X A ÷ B)	$\frac{10,00,000 \times 280}{180}$ = Rs.15,21,739/-
Percentage Increase	52.17%

9.8 It is worthwhile to mention at this stage that, much larger proportion of land owners whose lands are proposed to be acquired, have offered their lands by consent for the reason that there is a provision of indexation and additional payment of 25% extra on land value for land owners offering the land by way of consent. In order to appreciate this aspect of the matter, I crave leave to annex herewith and collectively mark as **Annexure-XII** (**colly.**), two charts viz. (i) A chart containing details of some of the land owners of Village: Chansad, Taluka: Padra, District: Vadodara where, they had volunteered to allow the acquisition of their lands by way of consent whereupon, 80% of the compensation amount has already been paid to them pending the declaration of award, and (ii) A chart containing details of some of the land of Village: Geratpur, Taluka: Daskroi, District: Ahmedabad where, they had volunteered to allow the acquisition of their lands by way of consent whereupon 80% of the compensation amount has already been paid to them pending the declaration of award.

9.9 For a better understanding, I may take the instance of a land owner called Patel Dineshbhai Parshottambhai in the first chart referred to above at Sr. No.1, having land bearing Survey No.1476, admeasuring about 972 sq.mtrs., whose Jantri value is 935/- per sq.mtrs. where, while applying indexation formula, the market value comes to the tune of Rs 1422.79 per sq.mtr. and ultimately, after considering the payment of 25% extra + application of factor 2 (i.e. Rs.1422.79 x 2 = 2845.58) + 100% solatium, totaling to the tune of Rs.6048.86 per sq.mtr. which works out to total amount of Rs.58,77,547.92. If indexation formula had not

been applied and 25% extra payment had not been made, the said value could have come to the tune of Rs.36,35,280, giving rise to a difference of Rs.22,52,267. Similarly, in the second chart against prevailing Jantri rate of Rs.900/- per sq.mtr. of land, average sale price for similar type of land situated in the nearest vicinity area comes to the tune of Rs.1466/- per sq.mtr. and while applying indexation formula, the said rate has come to the tune of Rs.1369.62 per sq.mtr. of compensation. Pertinently, the major difference between the said two charts lies in the fact that in the former chart, it was the Jantri rate of the land which was higher as compared to average sale price, whereas in the later chart, it is the average sale price of similar type of land which was higher than the Jantri rate.

10. **Re: D - Violation of provisions of Gujarat Stamp Act, 1958 read with Gujarat Stamp (Determination of Market Value of Property) Rules, 1984 as amended by the notification dated 21st March, 2016.** (Paras – 1D and 4.35 to 4.37)

10.1 Petitioners' grievance against the alleged violation of the provisions of the Gujarat Stamp Act, 1958 ("**the Stamp Act**" for short) read with Gujarat Stamp (Determination of Market Value of Property) Rules, 1984 ("**the Rules**" for short) as amended by Notification dated 21.03.2016 is absolutely misconceived, erroneous and besides the controversy sought to be raised in the captioned writ petition.

10.2 It is true that as per the new Rule 5 of the Rules, Annual Statement of Rates showing average rates of lands etc

situated at every Taluka, Municipal Corporation or local body area, would be prepared and submitted for approval of the Revenue Department latest by 31st October in each year. The said Rule 5 also provides for an eventuality as to what should be done if exercise relating to such preparation and approval is not undertaken. In that view of the matter, even otherwise, whilst assuming without admitting that the aforesaid exercise as required by Rule 5 of the Rules is not undertaken, then in that case also, as discussed hereinabove in paras 8 to 8.7, it is very much possible to determine the true market value of the lands in question. Under the circumstances, I categorically deny that non-revision of the market value is illegal in terms of section 26 of the Central Act of 2013 as well as in terms of section 32A of the Stamp Act, as alleged or otherwise. So far as section 32A of the Stamp Act is concerned, it provides for determination of market value of property which is the subject matter of conveyance, etc, according to which, when any instrument or conveyance, etc. is produced before the authority for registration, and if registering authority has reason to believe that the consideration set forth therein does not approximate to the market value of the property, then in that case, same is to be referred to the Collector of the District where the property is situated for determining the true market value of such property and the appropriate duty payable on the instrument. It is not understandable as to how non-revision of the market value by the State would be violative of the provisions of section 32A of the Stamp Act.

11. **Re: E - The Gujarat Amendment Act, 2016 is ultra-vires the Constitution including Article 254(2) of the Constitution of India.** (Paras – 1-E, 4.38, 4.39)

11.1 Adverting to the challenge of the petitioners against the validity of the assent to the Bill of 2016 by the Hon'ble President, I may set out hereunder in the chronological manner, the factual narration as regards the passing of the Bill by the Gujarat Legislative Assembly followed by submission thereof for the kind consideration of H.E. the Governor and the aspect of reserving the Bill of 2016 for the consideration of the Hon'ble the President in view of some of the provisions thereof being repugnant to the provisions of the Central Act of 2013.

SN o.	**Date**	**Particulars**
(1)	31.03.2016	The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016 came to be passed in the Legislative Assembly.
(2)	26.04.2016	The Legislative & Parliamentary Affairs Department of the State Government addressed a communication to the Principal Secretary to the Hon'ble the Governor, forwarding therewith the copy of the aforesaid Bill by *inter alia* informing that the provisions of the Bill of 2016 are repugnant to the provisions of the Act of 2013, which is an existing law falling under Entry 42 in the concurrent list, it is, therefore, necessary to reserve the Bill of 2016 for the kind consideration of the Hon'ble the President as per Article 254(2) of the Constitution of India. Annexed hereto and marked as

SN o.	Date	Particulars
		Annexure-XIII is a copy of the said communication dated 26.04.2016 along with its enclosures, addressed by the Legislative & Parliamentary Affairs Department to the Principal Secretary to Hon'ble the Governor of Gujarat.
(3)	21.05.2016	The office of the Secretary to the Hon'ble the Governor addressed a letter and sent the Bill of 2016 to the Secretary, Ministry of Home Affairs, Government of India *inter alia* requesting to obtain the assent of the Hon'ble the President to the Bill of 2016 under reference. Annexed hereto and marked as **Annexure-XIV** is a copy of the said letter dated 21.05.2016 addressed by the office of the Principal Secretary to Hon'ble the Governor of Gujarat to the Secretary, Ministry of Home Affairs, Government of India.
(4)	08.08.2016	After the receipt of the request by the office of the Hon'ble the Governor for the assent of the Hon'ble the President to the Bill of 2016, ultimately the assent came to be accorded by the Hon'ble the President to the Bill of 2016. Annexed hereto and marked as **Annexure-XV** is a copy of the assent accorded by the Hon'ble the President to the Bill of 2016.
(5)	10.08.2016	The Ministry of Home Affairs, Government of India, addressed a letter returning the authenticated copies of the Bill with the Hon'ble President's assent

SN o.	Date	Particulars
		dated 08.08.2016 signifying thereon under Article 201 of the Constitution of India.
(6)	12.08.2016	The office of the Secretary, to the Governor of Gujarat in turn, forwarded the said letter dated 10.08.2016 of Ministry of Home Affairs returning the Bill with the President's assent to the Secretary, Legislative and Parliamentary Affairs Department. Annexed hereto and marked as **Annexure-XVI** is a copy of the said letter dated 12.08.2016 addressed by the office of the Secretary to the Governor of Gujarat to the Secretary, Legislative & Parliamentary Affairs Department.
(7)	12.08.2016	The State Government, in exercise of the powers conferred under Sub-section (2) of Section 1 of the Amendment Act of 2016, appointed "15.08.2016" as the date on which the Amendment Act of 2016 shall come into force.
(8)	15.08.2016	The State Amendment Act of 2016 came to be implemented.

11.2 In view of what is stated hereinabove, I respectfully state that as the Bill of 2016 has been accorded the assent by the Hon'ble the President on 8th of August, 2016, this Hon'ble Court, in exercise of its powers conferred under Article 226 of the Constitution of India may not like to judicially review the validity of such assent. Further, from the contents of the aforesaid letter dated 26.4.2016, it is clearly discernible that the Hon'ble President was apprised about the provisions of the Bill of 2016 being repugnant to the provisions of the

Central Act of 2013. Ultimately, as aforesaid, the assent came to be accorded to the Bill of 2016 on 08.08.2016, which was brought into effect by the State Government vide a Notification issued in exercise of the powers conferred by the sub-section (2) of Section 1 of the State Amendment Act, 2016.

12. Re: F - The Gujarat Amendment Act, 2016 is violative of Section 107 of the Central Act of 2013 (Paras - 1F and 4.38)**.**

12.2 ...the rationale underlying Section 107 of the Central Act of 2013 has nothing to do with the Social Impact Assessment. I reiterate that the need for conducting Social Impact Assessment is only for the purpose of recommending such area for acquisition which would ensure – (i) minimum displacement of people, (ii) minimum disturbance to the infrastructure and ecology, and (iii) minimum adverse impact on the individual affected. In view of the project in question being linear in nature, all the aforesaid aspects are even otherwise taken care of.

12.3 ...mere absence of Social Impact Assessment, more favourable and beneficial provisions of the State Amendment Act of 2016 will not go in vain and will be very much operative independent of SIA. I do not admit that unless SIA is not done, there is no mechanism to recognise the affected petitioners, which will in turn take away their right of compensation and rehabilitation.

13. **Re: G - While departing from provision/s of law as**

laid down by the Parliament, it is required and is rather a relevant consideration that such local condition prevailed in the particular State so as to call for a departure from the Central Enactment. (Paras- 1G and 4.39)

13.1 The aforesaid contention of the petitioners is misplaced and without any basis inasmuch as, if one peruses the SOR of the State Amendment Act of 2016, it clearly spells that the amendment has been effected in furtherance of providing the infrastructure facilities to the public at large. However, the interest of the persons whose land has been acquired has been kept intact and the paramount objective is to see that the rights of the persons are not interfered with. Thus, the provisions of the State Amendment Act of 2016 aim at achieving the desired objective and at the same time, balancing the rights of all the citizens.

13.2 I respectfully say that the essential ingredients of Article 254(2) of the Constitution of India in the matter of seeking assent of the Hon'ble the President with reference to any State law are: (i) mentioning of Entry / Entries with respect to one of the matters enumerated in the Concurrent List; (ii) stating repugnancy to the provisions of an earlier law made by the Parliament and the State law and reasons for having such law; (iii) thereafter, it is required to be reserved for consideration of the Hon'ble the President; and (iv) receipt of the assent of the Hon'ble the President.

13.3 Under the circumstances, though local condition may be one of the factors to be taken into account in a given case in

the matter of grant of assent by the Hon'ble the President, the same is not essential factor and the essential factors are only those which are referred to hereinabove and which are required to be present in the matter for the grant of assent by Hon'ble the President.

14. **Re: H - The Gujarat State Amendment Act, 2016 was enacted despite of the preceding Ordinances of the Central Government enacting similar provisions not having passed the majority test in the Parliament.** (Paras -1H and 4.40)

14.1 The very fact of the Central Government having come with the Ordinance containing similar provisions is suggestive of one thing that provision regarding exemption from the requirement of Chapter II and Chapter III of the Central Act of 2013 was not an abnormal provision that can never be thought of. Union Parliament as well as the State Legislature, both are competent to bring such provisions and the Central Government did try to do the same initially by issuing the Ordinance dated 30.05.2015, which did not go further, but ultimately, Gujarat State Legislature passed the Bill relating to the State Amendment Act of 2016 containing similar provisions, by virtue of its powers pursuant to the provisions of Entry 42 of the Concurrent List. Moreover, the State Amendment Act of 2016 has also been assented to by the Hon'ble the President, and thus, the same is saved by the provisions of clause (2) of Article 254 of the Constitution of India.

16. **Re: J - Section 40(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Act, 2016 is ultra vires the Constitution and hence unconstitutional.** (Paras - 1J and 4.44 to 4.47)

16.1 Pertinently, petitioners' challenge against section 40(2) of the State Act of 2016 is academic in nature, since the same deals with the special powers in case of urgency to acquire land and the same has not been invoked in the present case.

16.2 Without prejudice to what is mentioned above, I respectfully say that the grounds raised while challenging the validity of section 40(2) of the State Act of 2016 are as vague as they can be. In fact, it is well settled proposition of the law that while challenging any of the provision, the party aggrieved is obliged to set out the grounds with utmost precision supported by the sufferance. However, the grievance raised by the petitioners in the captioned writ petition, has even remotely no connection with the provisions of section 40(2) of the State Amendment Act of 2016 and on this ground alone, the challenge to the validity of section 40(2), deserves to be rejected at the threshold. Even otherwise, if one peruses the language of section 40(2), it speaks about special powers in case of urgency to acquire land in certain cases and that the appropriate Government has been clothed with the powers to give direction to the Collector for taking possession of any land needed for public purpose. Pertinently, the State legislature derives its competence to enact law vide Entry 42 of Concurrent List and

thus, the appropriate Government, by virtue of the provisions of sub-section 2 of Section 40 has to comply with the direction given by the Central Government to the State Government as the case may be. Thus, the said provision, in the facts of the present case, does not affect any of the rights, legal or fundamental, of the petitioners coupled with the fact that the petitioners are not subjected to any sufferance by said provisions. In this view of the matter, as aforesaid, challenge to the provisions of sub-section 2 of Section 40 of the State Amendment Act 2016 does not merit acceptance and deserves to be rejected.

5. Before actually coming to the grounds of the challenge raised in the petition, Senior Counsel Mr. Mihir Joshi, has briefly outlined the contours of the controversy at hand before us.

5.1 According to Shri Joshi, the new Act i.e. The Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act of 2013') is far different than the Land Acquisition Act, 1894 (for short 'Act of 1894'). In the Act of 2013, there is a shift and a strong emphasis to balance the "public purpose" of acquisition viz-a-viz the "social impact" or societal loss that such an acquisition would cause on the land owner/occupier. Merely because of the stakes of a project, there will not be the overwhelming desire or "public interest" for acquisition of land, without evaluating the impact on the society. A large part of the decision making process on the acquisition is governed on the Social Impact Assessment, an appraisal to

evaluate social costs versus public interest.

5.2 Mr. Joshi would further submit that in the facts of the present case, where lands are sought to be acquired for implementation of the vanity "Mumbai Ahmedabad High Speed Bullet Train" by issuance of a preliminary notification under Section 11 of the Act of 2013, it shows that the entire exercise is pre-conceived, pre-determined to acquire the lands. Before the process of acquisition, agreements were signed, meetings were held under the auspices of Niti Ayog, Memorandum of Co-operation was signed and agreements were entered into. The whole exercise therefore is an idle formality and a lip service to the Act of 2013.

5.3 Briefly delving into the grounds of challenge to the insertions of Sections 10A and 31A of the Act of 2013, Mr. Joshi contended that the new Act of 2013 contemplates the determination of social impact and public purpose. The Parliament, in its wisdom thought it was imperative, however, the amendment of leaving out this entire exercise and exempting to project from such assessment at the hands of the State Executive, dispensing with the SIA is directly in conflict with the purposes for which the Act of 2013 was enacted by the Parliament.

5.4 Conceding to the fact that powers flowing from Entry 42 of the Concurrent List, the Union and the State, both, are empowered to enact law relating to "acquisition and reacquisition", the exercise of insertion of Sections 10A and 31A are in direct conflict with the provisions of Chapter II of the Act of 2013 and Sections 9 and 40 of the Act of 2013. The

Presidential Assent, under Article 254(2) can be a subject to restricted judicial review but the Court can, assuming that validity of the assent is valid, look into whether in obtaining such assent, specific attention of His Excellency, the President, was drawn to the provisions of Sections 9 and 40 of the Act of 2013.

5.5 According to Mr. Joshi, there was no overwhelming need to overcome the statutory principles for which the Act of 2013 was enacted merely because in the perception of the State, the project was important and was in public interest for a public purpose. Admittedly, according to the submissions of the learned Senior Counsel, Mr. Joshi, lands to be acquired for the project are in Gujarat, Maharashtra and in Dadra & Nagar Haveli and therefore the "appropriate government" under Section 3(e)(iv) is the Central Government. The notification is issued by the State Government. Pending the petition, the Ministry of Railways issued a notification under Article 258(1) of the Constitution of India by which the executive power/function of the Central Government under Act of 2013, has been delegated in the State of Gujarat. While the entire exercise under Chapters II and III of the Act of 2013 has to be done at the hands of the Central Government, the exercise of exempting the project from such chapters is done by the State. It is, according to Mr. Joshi, an exercise of excessive delegation of legislative powers. No exemption can be sought from the SIA merely because the project is linear. Justification of exempting linear projects under the cloak of powers under Section 105 of the Act of 2013 read with the Fourth Schedule thereof is wrong as it does not fall within the Schedule.

5.6 Mr. Joshi, learned Senior Counsel has invited our attention to the preamble of the Act of 2013 laying emphasis that the purposes of the enactment was for a more humane, participative, informed for development of essential infrastructure facilities. The project on hand could not be an essential infrastructural facility no matter how important it was perceived to be. Taking us through the provisions of the Act of 2013, Mr. Joshi, learned Senior Counsel drew our attention to the specific provisions as under:

(i) Sections 2(a) and 2(b) in context of the use of lands in context of the public purpose which shall include purposes listed in Sections 2(a) and 2(b) (i) to (vii). Merely because a project is termed as a mega project, in Mr. Joshi's submission, that itself does not exempt the authorities from following the mandate of Act of 2013. The necessity to carry out a Social Impact Assessment and the participative process to do so is evident from the provisions of Chapter II of the Act of 2013. Rehabilitation and Resettlement are important areas of consideration of affected families.

(ii) Section 3 of the Act contains definitions which include the definition of the term "appropriate government" in sub-section (e) of Section 3. He drew our specific attention to Section 3(e)(iv) which reads as under:

3(e) appropriate government:-

> (iv) **in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and**

(iii) Drawing our attention to the definition of "cost of acquisition" in Section 3(i), Mr. Joshi submitted that such costs include the costs for settlement of displaced or adversely effected families. The social impact of displacement therefore goes into the cost of acquisition.

(iv) Section 3(o) defines "infrastructure project" as specified in clause (b) of sub-section (1) of Section 2. Mr. Joshi, then invited our attention to the definition of "public purpose" in Section 2(za) which means activities specified under sub-section (1) of Section 2 which does not include project like the one under challenge. Our attention was also invited to Sections 3(zb) and 3(zc) pertaining to "Requiring Body" and "Resettlement area" respectively.

(v) Great emphasis was laid on the provisions of Chapter II of the Act of 2013 which provides for determination of Social Impact and Public Purpose. In Mr. Joshi's submission, whenever the appropriate government intends to acquire land for public purpose, it shall consult the local authorities and carry out Social Impact Assessment study in consultation with them. Attention was drawn to the factors that the Social Impact Assessment study would include as provided in sub-

section (4) of Section 4 of the Act of 2013.

(vi) Section 5 provides for public hearing for SIA.

(vii) Even after such an exercise, Section 7 provides for appraisal of Social Impact Assessment report by an expert group. If the expert group would opine that the project does not serve public purpose or that the social costs and adverse social impacts outweigh the potential benefits and inspite of such recommendations if the appropriate government proceeds with acquisition, it must record reasons for doing so.

(viii) Section 8 provides that the appropriate government shall examine proposal for land acquisition and Social Impact Assessment Report. It should consider acquisition keeping that such acquisition would ensure minimum displacement of people.

(ix) Attention was invited to Section 9 which provides that where land is proposed to be acquired invoking the urgency provisions under Section 40, the appropriate government may exempt undertaking of the Social Impact Assessment study. Drawing our attention to Section 40, Mr. Joshi submitted that special powers of urgency to acquire land is only restricted to the cases where land is required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency. None of the parameters in the project purpose on hand stand satisfied.

(x) Inviting our attention to Chapter III of the Act which provides for special provision to safeguard Food Security, Mr. Joshi drew our specific attention to the proviso to Section 10 and submitted that the safeguards would not be applicable to cases where acquisition is for projects linear in nature. Therefore, where exemption is specifically provided, it applies only viz-a-viz consideration of food security and not to SIA.

(xi) Section 11 falling under Chapter IV deals with notification and acquisition. Drawing our attention to sub-section (3) of Section 11, Mr. Joshi submitted that the notification issued should contain nature of public purpose, reasons necessitating displacement and summary of the Social Impact Assessment report. There is therefore an overwhelming emphasis on the SIA in the entire exercise preceding issuance of a preliminary notification which is absent in the present case.

(xii) Inviting our attention to the provisions of Sections 11 to 16 of the Act of 2013, Mr. Joshi learned Senior Counsel submitted that the exercise under Section 11 is based on the SIA and even after such report there is a stage of hearing persons interested with regard to the findings of the SIA report which underlines the importance of the exercise before undertaking the exercise of acquisition. Rehabilitation and Resettlement schemes have to be put in place.

5.7 Mr. Joshi invited our attention to Sections 23 to 26 of the Act of 2013 in connection with the determination of the market value of land by the Collector. The market value of the land to be acquired must be assessed from the year 2017. The Collector ought to have updated and revised the jantri. The Annual statement of rates showing the market value of immovable properties have been stagnant since 2011 therefore even if the defence of the Government is of having fixed sale price on basis of sub-section (b) of Section 26, the true market value would not be reflected in absence of updation of market value by the Collector. Section 26 proviso mandates that the Collector shall before initiation of any land acquisition proceedings in any area take all necessary steps to revise and update the market value of the land on the basis of prevalent market rate in the area.

5.8 Attention is invited to the statement of objects and reasons for insertion of Section 10A (Page 142&140). No public purpose or public interest is served, in Mr. Joshi's submission for providing basic infrastructural facilities and merely because the provisions of the Act of 2013 have stringent provisions and land acquisition has become lengthy and difficult proposition, it would not warrant doing away with Social Impact Assessment. While assailing the decision making process undertaken by virtue of Article 254(2), Mr. Joshi submits that the statement of objects and reasons together with the previous provisions was not put before His Excellency the President together with Sections 9 and 40 of the Act of 2013 leading the President to look into the necessity of acquiring such land.

5.9 Our attention was drawn to the provisions of Article 254(2) of the Constitution of India. Pages 271 and 272 are read before us of the paper book of Special Civil Application No. 9864 of 2018. On record is a communication dated 26.04.2016 issued by the Legislative and Parliamentary Affairs to the Principal Secretary to Governor to Gujarat. It is Mr. Joshi's submission that it is not disputed that the subject matter falls under Entry 42 in List III of the Seventh Schedule of the Constitution of India. He submits that from the papers annexed, it can safely be presumed that the Statement of Objects and Reasons has not accompanied the dossier before His Excellency the President of India. Comparative statement at Page 275 onwards suggests that while inserting Section 10A, Sections 9 and 40 and provisions of Chapter II are not brought to the attention or pointed out to the President so as to make the assent under Article 254(2) justifiable. The Schedule II and Section 107 of the Act of 2013 too have not been pointedly drawn attention of while inserting Section 31A of the Amending Act 2016.

5.10 In context of the ambit of judicial review to the assent of the President under Article 254(2) of the Constitution of India,our attention is invited to the decision of the Supreme Court in the case of **Kaiser-I-Hind Pvt. Ltd and Another vs. National Textile Corporation (Maharashtra North) Ltd. and Others reported in (2002) 8 SCC 182**. Paragraphs no. 14 to 28 of the judgement are relied upon to point that

> (a) before obtaining assent of the President, State Government has to point out so that there is active application of mind by the President to the repugnancy

of the proposed State law and the law made by the Parliament;

(b) the President should apply his mind to what the Parliament has enacted and also consider the local conditions prevailing in a particular state.

These inputs in the case on hand are apparently absent and therefore within the parameters of judicial review available to the Court. In absence of the State pointing out the repugnancy, which is a "*sine qua non*" for "consideration" or "assent", the "assent" without looking into such aspects is bad (Essential ingredients as mentioned in para 27 of the judgement in Kaiser Hind are missing)

5.11 Mr. Joshi, learned Senior Counsel invited our attention to the notification dated 09.04.2018 issued under Section 11 of the Act of 2013, which was at page 53/55 of the paper book of Special Civil Application No. 9864 of 2018. Drawing our attention to paragraph no. 4 of the said notification, it was submitted that it clearly indicates that the Government of Gujarat if satisfied about acquisition of the land for the purpose of Mumbai-Ahmedabad High Speed Rail Project, may publish a final declaration under Section 19. This therefore indicates that the State Government has exercised such powers under Section 11(1) which is clearly contrary to law as in accordance with the provisions of Section 3(e)(iv) the "appropriate government" is the Central Government.

5.12 Petitions challenging this notification were filed in July 2018 on the ground that prior to the issuance of such notification there was no revision of ASR. Pending such a

challenge now what appears is that on 08.10.2018, in exercise of powers conferred by clause (1) of Article 258, the President, with the consent of Government of State of Gujarat issued a notification entrusting and stating that all the actions taken by the Government of Gujarat in relation to acquisition of land within the territory of Gujarat for the aforesaid purpose shall be deemed to have been taken for and on behalf of the Central Government and shall be deemed to be legal and valid for all purposes. Drawing our attention to the provisions of Article 258 of the Constitution of India, Mr. Joshi would contend that the language indicates that the President may with the consent of the Governor of the State entrust functions in relation to any matter to which the executive power of the Union extends. The word used is "entrust". Nowhere, is the intention of the power under Article 258, which suggests that it "authorises" or "validates" an action already taken, as the facts of the present case reveal. In the case on hand, Mr. Joshi submits that a preliminary notification is already issued on 09.04.2018. The purport of the word "entrust" can only mean actions which are taken henceforth in future hereinafter. Entrustment cannot be retrospective, of an act done previously. Powers therefore under Article 258 of the Constitution of India cannot be used to "authorise" or "validate" something already done because that is clearly not "entrustment".

CHALLENGE IN CONTEXT OF POWERS UNDER ARTICLE 258 Re: Notification dated 08.10.2018

5.13 Mr. Joshi, learned Senior Counsel submitted that Article 258 indicates that notwithstanding anything in this

Constitution, the President may, with the consent of the Governor of a State entrust to that Government, functions in relation to any matter to which the executive power of the Union extends. Inviting our attention further to clause (2) of Article 258, Mr. Joshi submitted that as far as making of laws is concerned such power is conferred upon the State in context of laws made by the Parliament notwithstanding that it relates to a matter in respect of which the State Legislature has no power to make laws. Conferment of powers is only in the matter where the State in such matter has no power to make laws. In the case of hand, the subject matter falls in the Concurrent List at Entry No. 42.

5.14 In the context of clause (a) which speaks of entrustment of functions in relation to any matter to which the executive power of the Union extends, Mr. Joshi, invited our attention to the provisions of Article 73 which enumerates the extent of executive power of the Union. Article 73 provides that subject to the provisions of the Constitution, the executive power of the Union shall extend (a) to the matters with respect to which the Parliament has power to make laws and (b) to the exercise of such rights exercisable by the Government of India by virtue of any treaty or agreement. According to Mr. Joshi, the extent of the executive power in matters with respect to which the Parliament has power to make laws gets circumscribed by the proviso which suggests such power shall not, save as expressly provided in this Constitution, or in any law made by the Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. Therefore, the power of the Executive, in which matters where the Parliament has powers to make

laws cannot go into or beyond the borders of matters which fall within the Concurrent List. The power has to stop at the borders of the Concurrent Sphere. Once the limits are bound, as so provided in the Constitution by the saving clause i.e. save as expressly provided in the Constitution, likely recourse to exercise of powers under Article 258 merely because the Article's language begins with the non-obstante clause notwithstanding anything in this Constitution, would not extend the executive power beyond what the Constitution permits. There can also be a delegation of such power only to a point wherever such executive power extends. Section 3(e)(iv) is a provision of law which says that the Central Government alone is the appropriate government. When there is no power or no law which empowers the State Government to be the appropriate government, there can be no entrustment to extend the executive power to the State.

5.15 Mr. Joshi further submitted that assuming that there is an implied entrustment with retrospective effect, once issuance of a notification under Section 11(1) is done by the State Government which is non-est, such an act, which is non-est cannot be revised by such exercise. Once it is admittedly clear that the appropriate government is the Central Government, there cannot be an act validating something which is contrary to law. The exercise runs counter to and in fact overruns the provisions of the Act of 2013.

5.16 Elaborating further, how the entire exercise is a pre-determined one and therefore goes against the mandate of the law, Mr. Joshi, briefly invited our attention to the various paragraphs of the Statement of Objects and Reasons of the

Act of 2013. The Act emphasizes on the social costs of acquisition, provides for just and fair compensation, restricting the scope of acquisition of land for strategic purposes vital to the State. There is a process of consultation with institutions of local self-government for a more humane, participative, informed and transparent process of land acquisition. The process of land acquisition has to be set in after assessing the "public purpose – public interest" with social costs and then a reasoned decision needs to be taken. Inviting our attention to the affidavit-in-reply, particularly pages 178 and 179, Mr. Joshi submitted that without any such exercise, a pre-determined decision was taken that the land is needed for the project. Meetings were held between the dignitaries of the two countries in May 2013, announcement was made, JICA submitted a joint feasibility report in July 2015. A memorandum of Co-operation was signed in December 2015 for implementation of the project. There was therefore a fait accompli. National High Speed Rail Corporation was formed in 2016 to design and operate High Speed Rail. In Mr. Joshi's submission, under the old Land Acquisition Act, the government was the sole arbiter of the need to acquire land. The Act of 2013 has undergone a structural change. A structural process has been put into place which needs to be undertaken before the decision is taken. The purposes for which the land is required is well marked in sub-section (b) of Section 2. Chapter II which begins with Section 4 requires the appropriate government to consult local bodies and carry our Social Impact Assessment whenever there is an intention to acquire the land. Even before the exercise is so undertaken, a decision is taken to acquire land, plans are charted out, a structure is put in place,

presenting a fait accompli, without assessing the social costs etc., as mandated under the Act of 2013. The compliance of the provisions of the Act of 2013 is a mere lip service. There are stages of SIA and particularly sub-section (5) of Section 7 provides that an expert group will opine on the potential benefits and weigh the social costs. All this has been given a go-by.

5.17 The authorities have directly pole vaulted into issuing a preliminary notification under Section 11 of the Act of 2013. Acquisition is enforced without undertaking the process of hearing of objections as so provided under Section 15 of the Act of 2013.

5.18 According to Mr. Joshi, the farmers are faced with a fait accompli. In July 2015, a joint feasibility report was submitted. In December 2015, there was an agreement with the Government of Japan. In February 2016, the Special Purpose Vehicle was formed, discussions went on from March 2016 to December 2016 and a Memorandum of Undertaking was signed on 12.01.2017. On 31.03.2017, the Railway Board wrote a letter to the Chief Secretary, State of Gujarat saying that land surveys have been undertaken to firm up the alignment and the actual process of acquisition is to start. A dedicated land acquisition officer is sought to be appointed. Attention is drawn to a communication dated 25.04.2017 where officers for land acquisition are appointed by designation as competent authority under the Land Acquisition Act. A communication dated 09.10.2017 refers to the time line being set for completion of the Project after a ground breaking ceremony has been held on 14.09.2017.

5.19 An exemption notification under Section 10A is issued on 06.02.2018. All these factors indicate that the entire exercise is pre-determined. The entire exercise is dehors the provisions of the Act of 2013. The entire exercise obviates fair consideration of objections and therefore not only violates fundamental rights but the right to property as envisaged under Article 300A of the Constitution of India.

CHALLENGE TO NOTIFICATION UNDER SECTION 11(1)

5.20 Next, Mr. Joshi has focused his challenge to the Notification dated 09.04.2018 issued under Section 11(1) of the Act of 2013. The notification so issued is as submitted, by the State Government and therefore non-est, as the appropriate government is the Central Government. The notification is issued by an authority which is not competent to do so. Inviting our attention to the response filed by the State at pages 188 (para 8.2) it was submitted that it is even admitted by the State that the appropriate government is the Central Government. The reply suggests that the notification dated 09.04.2018 has been issued by the State Government at the behest of the Central Government under Section 11(1) of the Act of 2013. The argument of the State is that the lands fall within the State of Gujarat and therefore the appropriate government is the State. Such an argument is negated when a validation notification is issued on 09.10.2018. Such validation is bad as there can be no entrustment of past. Entrustment has to be of future actions. In any case validation and entrustment can be with retrospective effect. Reliance in support is placed on judgement in the case of

Income Tax Officer, Allepey vs. M.C. Ponnoose and Others reported in (1969) 2 SCC 351, especially paragraph no. 7 of the judgement.

5.21 While exercising powers under Article 258 of the Constitution of India, no reference is made to the provisions of Section 10A. The act therefore at best validates notification under Section 11 and not the exercise of insertion of Section 10A. Under the Act, it is the Central Government, which is the appropriate government. A validation is done in exercise of powers under Article 258 by the President, whereas it is the State Government which has undertaken the exercise of arriving at a satisfaction that SIA has to be done away with. The question is can the State's satisfaction of doing away with SIA be termed as valid when the Central Government is the appropriate government.

RE: CONSTITUTIONAL VALIDITY OF INSERTIONS OF SECTION 10A OF THE AMENDING ACT OF 2016

5.22 In Mr. Joshi's submission, though the subject matter of the law i.e. land acquisition falls in the Concurrent List, the Legislature lacks competence to enact the Amending Act. The question is, whether there can be a law contrary to the policy of the Central Legislation? The Amending Act, which takes out Chapter II and III of the Central Act are bad because they completely ignore and are without reference to the social/local necessities. The power vested under Article 254 of the Constitution of India cannot be used in principle to enact a State law contrary to the law enacted by the Parliament.

5.23 Reading Article 254(2) of the Constitution of India, Mr. Joshi submitted that the same gives guidance on the scope and ambit of the power. A law can be made which may be conflicting but there must be sound reasons to justify the need for framing such a legislation. According to Mr. Joshi, if the documents attached to the letter forwarding the consideration to His Excellency the President are seen, they are entirely silent on the exact needs and reasons as to why inspite of its repugnancy to the Central law, it needs to be framed. In absence of such reasons and consideration, the insertion of Section 10A is beyond legislative competence. In support of this submission, Mr. Joshi relied on a decision of the Bombay High Court in the case of **Basantilal Banarsilal vs. Bansilal Dagdulal, reported in AIR 1955 Bombay 35**. Our attention was drawn to paragraph no. 3 of the judgement to contend that the President while giving assent should apply his mind to the local conditions prevailing in a particular State and if he is satisfied that judging the local conditions a particular State may be permitted to make a provision of law different from the provision made by Parliament. Plenary powers cannot be used to overstep the spirit of the Central law. Merely because, as per the Statement of Objects and Reasons, there are very stringent provisions for acquiring the land and since the procedure is envisaged as very lengthy and difficult, it is no ground to exercise such power. The failure to meet the local needs and to exercise power under the guise of the procedure being lengthy makes such an action, violative of Article 14 of the Constitution of India.

5.24 There is an excessive delegation without proper

safeguards. What is evident from reading the affidavit of the State (page 267 onwards) that the attention of the President was not drawn to the provisions of Sections 4, 9, 40 and Section 107 of the Act of 2013. In support of his submission Mr. Joshi has relied on the decision in the case of **Kaiser-I-Hind Pvt. Ltd. and Another vs. National Textile Corporation Ltd and Others reported in (2002) 8 SCC 182**.

CHALLENGE TO INSERTION OF SECTION 31A BY the AMENDING ACT, 2016

5.25 According to Mr. Joshi, the State has justified the insertion by providing that an ad-hoc valuation at a benchmark of 50% of the amount of compensation is fixed without taking into consideration the provisions of rehabilitation and resettlement. The decision cannot be arrived at on a purely monetary aspect. Compensation has to be determined according to parameters as provided in Section 105 of the Act of 2013. Determination has to be in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and the Third Schedule being beneficial to the affected families. The legislation has also failed the test of Section 107 by which the State had the power to enact a law more beneficial to affected families. There is no basis as to why the figure of 50% has been picked up.

5.26 Falling back, in this context to the challenge to the notifications dated 09.04.2018 and 18.10.2018, Mr. Joshi submitted that assuming that the notification of 09.04.2018

was validated, even then it fails the test of Section 26 of the Act of 2013. Inviting our attention to the proviso of Section 26, it was pointed out that the Collector/State ought to have taken steps to revise and update the market value of the land before initiation of the land acquisition proceedings. When the notification is issued on 09.04.2018 what is taken is the ASR of 2011. When a mandate under Section 26 has not been complied with, the notification as issued under Section 11(1) must fail. Section 11 notification could not have been issued without the statutory revision of ASR as is incumbent under the amended Rule 5 of the Gujarat Stamp (Determination of Market Value of Property) Rules, 1984 which provides that the Annual Statement of Rates must be revised every year on 1st April taking into account the average rates of lands and buildings. Inviting our attention to pages 189 to 191 of the State's reply, Mr. Joshi contended that the facts stated overlook that Section 26(1) provides for determination of market value on the basis of either (a), (b) or (c) whichever is higher. The true market value will only be reflected if the ASR is revised.

5.27 Mr. Joshi submitted that assuming that all the notifications are in valid exercise of powers, in context of notification dated 06.02.2018 and even if Section 10A is validly introduced, is the exercise of power to grant exemption really expedient in public interest? The term "public interest" is vague and of a wide amplitude. Reading of the notification indicates a repetitive parrot like context. No elaborate reasons are forthcoming as to what public interest is sub-served in the context of exempting the acquisition process from the entire Chapter II and Chapter III providing for Social

Impact Assessment and Food Security. In a given case in absence of reasons, the action though termed to be in public interest could suffer from the vice of arbitrariness. On reading the notification what is evident is that there is complete non-application of mind to the objectives and the formation of an objective opinion is absent, which makes the entire exercise susceptible to arbitrariness.

5.28 The test of objectivity is to be applied more strictly because exemption to the project from the provisions of the Act of 2013 is striking at the basis and the spirit for which the law is enacted. The nature of the power exercised is not furtherance of public interest. Reliance is placed on a decision of the Supreme Court in the case of **Vasu Dev Singh and Others vs. Union of India and Others reported in (2006) 12 SCC 753**. The standard of application of mind has to be higher. The scope of judicial review of subordinate legislation while considering validity of delegated legislation would be wider when judging one which falls in the category of granting exemptions. There has to be a rational basis for exemption. Reading of the statement of Objects and Reasons would indicate that the Act of 2013 was framed and there was a substantive legislative policy which mandated undertaking of Social Impact Assessment. Insertion of Section 10A cannot exist in a vaccum. Social Impact Assessment envisaged under Section 4 of the Act of 2013 is a salient feature and there is a strong intent to have a Social Impact Assessment. The overwhelming spirit behind the legislative policy cannot be brushed aside on a vague assumption because the State finds it “Expedient in public interest”. Merely because the project is expedient and they have a deadline to finish one, that the

procedure is lengthy is no ground to do away with SIA because the State perceives hindrances. The pre-determination is evident by charting a particular course and a deadline of 2022. Merely because the State perceives the project as essential they cannot efface the need of SIA under the Act of 2013.

CONTENTION REGARDING THE STATE'S DEFENCE THAT IT IS A LINEAR PROJECT

5.29 Mr. Joshi invited our attention to various affidavits filed by the State suggesting that since the project is linear in nature and only a strip of 17.5 meters of land is sought to be acquired, a presumption is drawn that such projects are exempted. According to Mr. Joshi, the State's stand suffers from a serious misconception. Taking us through the provisions of Section 2, Mr. Joshi pointed out that it nowhere indicates linear projects. It is only in context of Chapter III with regard to Food Security that there are no rigors viz-a-viz linear projects. Such exemptions would not operate automatically for compliance of Chapter II i.e. Social Impact Assessment. Inviting our attention to provisions of Section 9 and Section 40 of the Act of 2013 he submitted that linear projects cannot claim justification from the exemption of SIA.

5.30 In this context Mr. Mihir Joshi drew our attention to Section 105 of the Act of 2013. He submitted that the Government draws support from the provision of Section 105 of the Act of 2013. According to Mr. Joshi the State seeks cover under Schedule IV in the List of Enactments to which provisions of the Act (as per Section 105) would not apply.

Merely because tracks are involved, analogy of the Railways Act, 1989 cannot be drawn. Merely because of this, the linear project cannot claim exemption under the legislative policy. Admittedly, the acquisition is not under any of the Acts of the Fourth Schedule. There can be no exemption from SIA under the belief of the operation of the Railways Act, 1989.

5.31 Our attention is also drawn to Section 2(37A) of the Railways Act, 1989 where "Special Railway Projects" are defined. Powers for land acquisition for such projects have been made under the provisions of Section 20A of the Railways Act, 1989. Taking us through the objects and reasons for the insertion of Section 20A of the Railways Act, 1989, it was pointed out that no parity can be drawn between the legislative intent of the Railways Act, 1989 and the Act of 2013.

5.32 In Mr. Joshi's submission, Section 10A cannot be invoked as the appropriate government is the Central Government. The satisfaction underlying the necessity of carrying out or otherwise of the Social Impact Assessment has to be by the Central Government. Central Government is the fountain head of satisfaction and there can be no substituted satisfaction. If the SIA is overlooked it could have a cascading effect on rehabilitation and resettlement, compensation etc and counter productive to the purpose and spirit of the Act of 2013.

6. Mr. M.C. Bhatt, learned advocate appearing on behalf of the petitioners has submitted that the entire issue on hand has to be appreciated in context of Article 300A of the

Constitution of India. The Article guarantees that no person shall be deprived of his property save by authority of law. Drawing our attention to the historical background where the Article was inserted by way of the 44th amendment of the Constitution, Mr. Bhatt submitted that the amendments inserted, and under challenge directly infringe the provisions of Article 300A.

6.1 It is well settled by the judgements according to Mr. Bhatt that there has to be strict compliance of laws and there is no question of liberal interpretation of the laws viz-a-viz Article 300A of the Constitution of India. In support of his submission that the procedure prescribed by law must be strictly followed and when there is a constitutional right of any citizen involved under Article 300A, there is no question of taking a liberal view Mr. Bhatt has relied upon a decision of the Apex Court in the case of **E.A Aboobacker & Others vs State of Kerala and Others in Civil Appeal No. 2772 of 2011 and allied appeals dated 27.09.2018**. He has specifically drawn our attention to para 11 of the judgement. Referring to the decision of the Supreme Court in the case of "Triple Talaaq", Mr. Bhatt submitted that a law which is manifestly arbitrary can be so declared when it infringes and seeks to deprive a citizen of India of his property. The amendments by introducing Section 10A and 31A of the Act of 2013 directly infringe the right of a citizen and deprive him of his property without authority of law.

6.2 In the context of Article 254(2) of the Constitution of India, Mr. Bhatt invited our attention to pages 278 & 279 of the paper book to submit that what was sent for the assent of

the President was a bill. Article 254 provides that what is to be sent for the assent of the President is the "law". A bill can only become a law after a procedure has been followed and therefore in absence of a law being sent for assent, the entire exercise of the amendment is bad. In the submission of Mr. Bhatt, even the Governor has yet not signed the bill. The amendment therefore is violative of Article 254 since the law has not been properly enacted. All consequential actions therefore fall flat.

6.3 According to Mr. Bhatt, the old land acquisition Act of 1894 only had the concept of monetary compensation and was mainly catering to projects like schools, hospitals etc. The transition from compensation to rehabilitation and people's participation including all stakeholders are the essential features of the Act of 2013, as the Act involves acquisition of land for mega projects, infrastructures etc. Therefore, in consonance with the spirit enshrined under Articles 243A to E consultation with local authorities is a must. The stress is on people's participation, rehabilitation and prevent adverse effect to the food supply. It is in this context that Chapters II & III of the Act of 2013 have been inserted by giving a go-by to these essential provisions of the Act. By the amendments under challenge the entire purpose of such enactment is demolished.

6.4 Inviting our attention to page 136 of the paper book of Special Civil Application No. 9684 of 2018, Mr. Bhatt submitted that a preconceived and a pre-determined mindset of the authorities is evident because the language of proviso to sub-section (2) of Section 2 inserted uses the word "shall be

exempted" and therefore no choice is left.

6.5 The authorities are seriously misconceived in their perception that because the acquisition is for linear projects, they are entitled to be exempted from Chapters II & III of the Act of 2013. Moreover, the amendments at page 137 have been questioned by Mr. Bhatt on the ground that the land actually would not vest with the Government on acquisition. The entire financial framework and funding of the project is by the National High Speed Rail Corporation Limited. He specifically invited our attention to pages 161 and 196 of the paper book and suggested that considering that the project is monitored by a joint committee under the Vice Chairman of Niti Ayog and that the entire cost of the establishment and staff will be borne by NHSRCL, it is obvious that the land shall not vest in the Government but shall be with the NHSRCL. Inviting our attention to page 101 filed in Special Civil Application No. 17653 of 2018, it cannot be said that the insertion of Section 10A is done only keeping in mind linear projects. In fact if the entire conspectus of acquisition of land is examined, the Section takes into its fold all kinds of projects which otherwise fall in Section 2 of the Act of 2013.

6.6 Since the appropriate Government is the Central Government, the power to amend such laws will only vest in the Central Government. There is no delegation of legislative power and therefore by virtue of the notifications the rule making powers suffer from the vice of excessive delegation, abdication which would tantamount to confer powers which result in discrimination and hence violate Article 14 of the Constitution of India. He invited our attention to the

judgement of the Apex Court in the case of **Delhi Laws Act reported in AIR 1951 SC 332**.

6.7 Taking us to the relevant provisions of the Act of 2013, he has assailed the powers of amending the Act and submitted that what is apparent from such notification is that it is the Under Secretary and not the Cabinet who has exercised powers and such powers have not been guided by the spirit of the statements of object and reasons for which the Act of 2013 was enacted. There cannot be an amendment of the Act which goes against the preamble. By such amendments, the preamble itself is deleted.

6.8 The object of the Act of 2013 stands nullified. Inviting our attention to the notifications, Mr. Bhatt submitted that in each village a particular fixed measure of land has been admeasured for acquisition which shows that the concept of objecting to such an exercise has been virtually ruled out.

7. Mr. A.J. Yagnik, learned counsel for the petitioners in petitions which the tenants have filed, submitted that merely because they are not land owners they cannot be left high and dry. The contention of the State that they have no locus is misconceived. Provisions of Section 3 of the Act of 2013 specifically provide that effected family can be a stakeholder and the definition of such effected family under Section 3(c) is wide enough to include artisans, agriculture labourers and tenants including any form of tenants. Even Section 3(x) speaks of interested persons and provides that all persons interested would mean Scheduled Tribes and other traditional forest dwellers etc and therefore to oust such petitioners is

against the basic spirit of the Act of 2013.

7.1 Inviting our attention to Section 16 of the Act, Mr. Yagnik submitted that by arriving at a standard figure of providing 50% as compensation to the owners, persons other than the owners have been left high and dry. Whether the President was specifically put to notice of the repugnancy of the Act viz-a-viz provisions relating to the Scheduled Castes and Scheduled Tribes is not coming forth and therefore such exercise violates the assent given under Article 254 of the Constitution of India.

7.2 Mr. Yagnik invited our attention to the provisions of Section 31A of the Act. He submitted that reading of the Section makes it evident that it shall be competent for the State Government to pay, whenever the land is acquired for its own use. Therefore, such a provision is applicable only when land is exclusively used by State for a project within the State. Admittedly, in the facts of the present case, Section 31A cannot be applied as the purpose of the acquisition is for a project involving 3 states for which the appropriate government is the Central Government. Rehabilitation and resettlement cannot be given a go-by as provided under the provisions of the Act of 2013. Even after the amendment and insertion of Section 31A , the State is obliged to follow the provisions of Section 31 in respect to the Rehabilitation and Resettlement.

7.3 Mr. Yagnik invited our attention to the provisions of Section 16 of the Act of 2013 which envisages preparation of Rehabilitation and Resettlement scheme. In context of the

provisions of the Panchayat (Extension of Scheduled Areas) Act, 1996 (for short 'PESA'), Mr. Yagnik submitted that the entire exercise for acquisition of land in villages under the PESA have gone without consultation of the Gram Sabha in the Scheduled Area. Compensation/Rehabilitation and resettlement and the 50% amount of compensation contemplated under Section 31A is nowhere keeping in mind the statutory scheme of Rehabilitation & Resettlement under the Act of 2013. Drawing our attention to Schedule V, Mr. Yagnik emphasized on the proviso to Serioal No. 2 with regard to the Elements of Rehabilitation and Resettlement entitlements and submitted that in every project those persons losing land and belonging to the Scheduled Castes and Scheduled Tribes will be provided land equivalent to the land acquired. Nothing of this is contemplated or enforced in the present regime of the amended provisions by the State Government. There are 17 villages falling under PESA. Section 31A does not follow the scheme of rehabilitation and resettlement as contemplated under the Act of 2013. It seriously compromises with the requirement of PESA.

7.4 Drawing our attention to the provisions of Article 254(2) of the Constitution of India, Mr. Yagnik submitted that while considering the question and obtaining the assent of the President, such inconsistencies and repugnancies with the aspect of rehabilitation and resettlement such as Section 16 onwards have not been brought to the notice of the President. The provisions of PESA, Forest Act and provisions pertaining to the SC and ST have not been brought to the notice of His Excellency the President of India. Mr. Yagnik drew our attention to the provisions of Section 41 of the Act which

deals with special provisions for Scheduled Castes and Scheduled Tribes. No development plans have been prepared where there has been involuntary displacement of the Scheduled Castes and Scheduled Tribes families. No prior consent as provided under sub-section (3) of Section 41 has been obtained. Mr. Yagnik would want us to keep the term "involuntary displacement" in mind in context of the JICA guidelines, to which he would draw our attention. Mr. Yagnik drew our attention to Article 253 of the Constitution of India to suggest that a legislation can be made for implementing an international agreement. No such legislation has been made. If contracts have been entered into in accordance with Articles 298 and 299 of the Constitution of India the land losers are not made aware of the terms of such contracts.

7.5 Mr. Yagnik drew our attention to pages 295A and 306 of Special Civil Application No. 9864 of 2018 to contend that extensive SIA has been carried out for acquisition of land for the same project, in the Union Territory of Dadra and Nagar Haveli where the Central Government is therefore making an artificial distinction by drawing a classification viz-a-viz land holders of Dadra and Nagar Haveli and Gujarat. There is no reason or a nexus with the object sought to be achieved to undertake such assessment for one State/UT and not for Gujarat. Such discrimination is therefore violative of Article 14 of the Constitution of India. The same is therefore manifestly arbitrary.

7.6 Mr. Yagnik, while taking up the case of Special Civil Application No. 15932 of 2018 drew our attention to page AD/AE namely pages 307 and 308 of the JICA guidelines. He

further drew our attention to pages 145 and 172 of the JICA guidelines which deal with the term "involuntary displacement". He contests the argument of the State that says that there is going to be minimal displacement. Even if the State has exercised its powers and given a go-by to carry out Social Impact Assessment by inserting Section 10A, JICA guidelines extend a certain responsibility which the State is undertaking and some kind of exercise is being carried out pursuant to such JICA guidelines. In Mr. Yagnik's submission the stand of the State is hypocritical that they would not adhere to the Indian law of the need to carry out SIA but would follow the guidelines of JICA. There is no reason for the Government to ignore Social Impact Assessment and show that they are complying with the international agreement though in fact at the same time saying that there is no large scale involuntary displacement. Now at the last hour the acquiring body has come out with an affidavit that they are undertaking an exercise on the lines of the Scheme of the provisions of Section 16 to Section 22 of the Act of 2013.

7.7 The MOU was entered into in December 2015. No legislation was in force then. JICA guidelines were pressed into service to show the agency that they would adhere to following them. In 2016, the amendment is brought in to do away with Social Impact Assessment. This is in conflict therefore with the International Agreement entered into under Article 299 of the Constitution of India.

8. Mr. Kamal Trivedi, the Advocate General recapitulating the submissions made on behalf of the petitioners submitted that there are five major limbs of the arguments made on

behalf of the petitioners. Summarising such heads, Mr. Trivedi submitted the heads of the limbs as under:

(I) That according to the petitioners, Section 10A of the amendment is ultra vires the Act of 2013 and fails the test of reasonableness and article 300A inasmuch as

(a) It is repugnant to the Act of 2013 and strikes at the very basis of the legislative policy namely Chapters II and III are missing and therefore repugnant.

(b) If the assent under Article 254(2) of the Constitution of India were to act as a shield, then the assent itself is invalid as (i) the President was not apprised of the repugnancy and (ii) he has not been apprised of the need and the necessity to bring in such an amendment keeping in view the local conditions

(c) Article 254 refers to “laws” and not “Bill” and what has gone for assent is the Bill and therefore the assent is invalid

(d) Section 10A suffers from vice of excessive delegation ; is bereft of guidelines. No guidelines as to how State may exempt itself from the rigors of Chapter II and III in public interest

(e) This is a project where the Central Government is the “appropriate government”. How can the State exempt under Section 10A of the Amendment Act.

(II) That Section 31A is ultra vires:

(a) It fixes 50% as compensation which is ad-hoc and there is no logic discernible behind the fixation

(b) It is in violation of Section 107 of the Act of 2013 and does not take into consideration whether 50% figure is beneficial in context of the Rehabilitation and Resettlement programme.

(c) This wishes away compliance of Section 16 of the Act of 2013, rendering the Sections at nought.

(III) Section 10A notifications are issued in discharge of functions and there is an excessive delegation of legislation by an Executive.

(IV) While referring to the preliminary notifications under Section 11 of the Act of 2013 the same are without authority of law as

(a) Conditions precedent regarding revision of market rates of ASR under Section 26 have to be done

(b) The three requirements of sub-section 26(a), (b) and (c) or which is higher is not done. The submission is that unless ASR is revised, the question of revising of such rates of ASR, would reflect on the correct market value and make a correct assessment.

(V) Attack to the notification dated 08.10.2018 issued under Article 258 of the Constitution of India

(a) It is the “Governor” who has to consent but here

the Governor has not signed but the State Government has through the Under Secretary who has signed and therefore the exercise is invalid.

(b) "entrust" as the connotation goes, cannot be retrospective

(VI) Everything is pre-determined.

(a) Chapters II and III are the heart of the Central Act. There must be a structural process. Everything is set at naught.

(b) Whole legislation is manifestly arbitrary. Violates Article 14 as in Dadra and Nagar Haveli, Social Impact Assessment is done whereas such an exercise is dropped by inserting an Amendment Act in 2016.

(VII) JICA guidelines – a facade to follow the same is made whereas the Social Impact Assessment is completely left out. The President has not been informed of the JICA guidelines therefore assent under Article 254 is invalid.

8.1 Mr. Trivedi, learned Advocate General as a prefatory note invited our attention to the affidavit in the Special Civil Application No. 17653 of 2018 at page 80. He has drawn our attention to the Ordinance at pages 114 and 115 to submit that what the Gujarat Amendment has done, was already on the mind of the Central Government. He invited our attention to the Statement of Object and Reasons. The contents of the affidavit from paragraphs no. 4 and paragraphs no. 4.14, 4.15

and 4.16 have been read. Attention was invited to page 89 of the reply in context of rehabilitation and resettlement. Para 7.7 of the reply at page 92 has been read.

8.2 Mr. Kamal Trivedi, learned Advocate General placed reliance on paragraph no. 7.7 of the affidavit-in-reply filed in Special Civil Application No. 17653 of 2018 rebutting the contention of the petitioners that the entire Social Impact Assessment has been given a go-by. It was Mr. Trivedi's submission that merely because of the absence of Social Impact Assessment, the entire exercise of acquisition is not vulnerable. A similar exercise like the Social Impact Assessment has been carried out by M/s. Arcadis in the State under the provisions of JICA. Our attention was drawn to Annexure 'AD' at page 306 produced by the petitioners themselves in Special Civil Application No. 9834 of 2018.

8.3 Page 5 is a table wherein district wise impact survey has been undertaken from December 2017 to July 2018 which shows details of the private land, number of total land parcels and structures. This is akin to the conduct of the Social Impact Assessment like assessment of affected families, extent of land acquired such as agricultural land, private land or common properties and issues as regards land compensation.

8.4 Viz-a-viz the contention of the petitioners that the authorities ought to have followed the Indian legal framework rather than JICA, Mr. Trivedi submitted that a detailed analysis in table 4.2 from pages 87 to 91 would suggest that a comparative assessment is made between the guidelines and

the Act of 2013 and measures to fill gaps which occur between the two instruments has been taken care of. By way of an illustration, Mr. Trivedi has drawn our attention to heading at Sr. No. 15 at page 91 which suggests that attention must be paid to the needs of vulnerable groups meaning those displaced especially those below the poverty line, landless, elderly women and the column of gap filling measures in the remarks would suggest that JICA and NHSRCL recognise other vulnerable groups in addition to SC and ST indicated in the Act of 2013. Entitlement matrix under the legal and policy framework covers such vulnerable groups. With regard to Rehabilitation and Resettlement, Mr. Trivedi pointed out that as reflected in the Second Schedule of the Act of 2013, where there is a provision at Sr. No. 2 regarding land for land, the same has been taken care of in the same spirit. A compensation determination as per steps outlined under Section 26 of the Act of 2013 will be taken, that Rehabilitation and Resettlement amount/assistance shall be 50% of the amount of compensation for land as determined under the Amendment Act which is in compliance of Rule 29 of the Rules. A sample calculation of compensation has been shown at page 100. In other words, a categorical statement has been made by Mr. Trivedi that steps akin to the heart and the spirit of Chapter III of the Act of 2013 has been undertaken and a statement is made that the Schedule II will be implemented fully in the method and the structured formula shown at page 98 of the paper book 'AD' 306.

8.5 Mr. Trivedi also submitted that as contemplated under Section 15 of the Act which provides for hearing of objections, a similar exercise has been carried out where the

stakeholders have been consulted. At the district level, consultations have been held with persons interested. The list in the tabular form has been given which for instance shows that at Kheda, a public hearing was held on 25.03.2018 where approximately 155 interested stakeholders attended to, of which 10 to 15 were females. In other words, though what is sought to be canvassed is that the State Government has not taken care of the entire machinery and the spirit of the Act of 2013, under the auspices of JICA, a structured procedure akin to the provisions of the Act of 2013 has been followed.

8.6 Mr. Trivedi has also invited our attention to the paper book 'AE' at page 307 to contend that the State of Gujarat is obliged as per the agreement of the funding agency to follow the guidelines and the spirit of Chapters II & III of the Act of 2013, though the Amending Act exempts the State Government from doing so. Even then all aspects resembling Social Impact Assessment have been taken care of.

8.7 Detailed reliance is placed on 'AE 307' with relation to the care being taken of the tribal population showing that a conscious approach to minimise land acquisition impact on people of the 5th Scheduled areas is being taken including taking care of access to basic social infrastructure and public services such as drinking water sources and sanitation. Even trial stakeholders are being identified. Focused group discussions have been held in various tribal areas and details of consultation done in such areas have been placed at pages 89 to 93 together with photographs. Mr. Trivedi has drawn our attention to pages 157 and 159 of the affidavit-in-reply in Special Civil Application No. 17653 of 2018 to suggest that

care has been taken to see that the land holder gets more than his market value in context of the table at pages 157 and 159. Mr. Trivedi has drawn our attention to para 9.6 of the reply. According to him, the resolutions dated 11.09.2018 and 04.04.2018 are being observed while determining compensation under the Central Act of 2013. The acquiring body is ready and willing to pay compensation by adopting the indexation formula. The indexation formula has its root in cost inflation index identified by the Central Government for the Financial Year 2018 – 2019 which is at Rs.280/-. Such cost inflation index is applied to ASR where the farmers will get compensation approximately 50% - 60% on the higher side. Para 9.7 of the affidavit-in-reply which is reproduced herein at page 102 suggests how such formula works.

8.8 Mr. Trivedi took up as an illustrative case, the case of the land owner at Sr. No. 1 on page 157. For his land the Zone Value is Rs. 935. The value as per Income Tax Indexation formula is Rs.487.79. Adding both these figures an incentive to the figure (a) 25% the price would work out to be Rs.2845.58. Para 9.9 of the reply suggests that as against the prevailing Jantri rate of Rs. 900 per sq. meter of land, the average sale price comes to Rs.1466/- and since the indexation formula is applied, the farmer has got a compensation of Rs.58,77,547.92 against the value of Rs.36,35,280/- if indexation was not applied.

8.9 Drawing our attention to the Statement of Objects and Reasons for bringing in the Amending Act of 2016, Mr. Trivedi submitted that reading of the Statement of Objects and Reasons makes it clear that Gujarat is an industrially

progressive State where more and more investment is coming to the State with an aim to provide basic facilities and infrastructure to the entrepreneurs and looking to the experience that after coming into force of the Act of 2013, there are stringent provisions which make land acquisition very lengthy, it has been decided to consider to make the procedural part smooth without interfering with the rights of persons whatsoever, whose lands are acquired. In other words, care is appropriately taken to see that the rights of the persons are not interfered with.

8.10 Mr. Trivedi has invited our attention to the definition of Section 2(za) and Section 2(zb) of the Act and Section 3(e) which talks about "affected family". To the contention that in accordance with Section 3(e)(iv) it is the Central Government which is the appropriate Government, Mr. Trivedi pointed out that the learned advocate for the petitioners had not read the definition in its entirety. Reading the definition, Mr. Trivedi submitted that in relation to acquisition of land for public purpose in more than one State, the Central Government in consultation with the State Government is the appropriate Government. Therefore, it is not the Central Government alone. Naturally, when as far as lands which fall in the State of Gujarat are concerned, it is the State of Government which is involved, the appropriate Government in consultation with the Central Government is the State of Gujarat. He submitted that since the acquisition of lands is in more than one State, it is "the Central Government in consultation with the concerned State Governments", which would be the "appropriate government" in the present case, however, this does not and cannot debar the applicability of Section 10A of

the State Act, 2016 to the acquisition of lands situated in the State of Gujarat.

8.11 Mr. Trivedi reiterated his submission that as far as the machinery that is provided in Sections 4 to 9 of the Act of 2013 is concerned, the same has been taken care of which highlight the resettlement policy. The entire synthesis of such impact assessment is under Section 8 of the Act and reading the report of M/s. Arcadis, it is apparent that this has been taken care of.

8.12 Our attention was then invited to Section 10 and the proviso thereto which provides that the provisions of the section shall not apply in the case of projects that are linear in nature such as those relating to railways etc. He submitted that though Chapters II and III are important, there is a legislative intent to exempt linear projects from Chapter III. There are legislative inconsistencies. There is therefore a provision in the Constitution of India that a State can make a law inconsistent and goes against the legislative policy of the Central Act provided the assent is reserved for consideration.

8.13 Inviting our attention to the Fourth Schedule of the Act of 2013 and Section 105 of the Act, it was submitted by Mr. Trivedi that there is a provision where the provisions of the Act may not apply in certain cases. There is a power under sub-section (2) of Section 105 providing that the Central Government can omit or add to any of the enactments relating to land acquisition. The Fourth Schedule has 13 such enactments of which at least 6 are concerning linear projects. Relying on sub-section (3) of Section 105 of the Act of 2013,

Mr. Trivedi submitted that it was open for the Government within one year from 01.01.2014, the date when the Act came into force i.e. by 01.01.2015 issue a notification that any of the provisions of the Act shall apply.

8.14 Section 113 was brought to our notice to suggest that in accordance with this Section if any difficulty arises in giving effect to the provisions of the Act, the Central Government may by order make such provisions or give such directions. Our attention was drawn to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 by which the provisions of the Act of 2013 have been extended to apply to the 13 enactments in Schedule IV. The Government though had the option to undertake the process of acquisition under the Railways Act, 1989, but it has opted to do so under the Act of 2013. The philosophy is that the effect of these provisions as in Schedule I to Schedule III would apply and they need not be governed by the Social Impact Assessment. Proviso to Section 10 itself is clear that it does not apply to linear projects. Apparently, in case of linear projects there is no large scale displacement. The philosophy is therefore existing and there is nothing new in seeking to do away with the Social Impact Assessment. Inviting our attention to Section 10A of the Amending Act particularly the list of projects it was pointed out that at clause (e) was “infrastructure projects” and the question is can the State try and give a go-by to the edifice of the Act of 2013?

8.15 Inviting our attention to the provisions of Sections 15, 16 and other provisions upto Section 31, Mr. Trivedi rebutted the

submissions of the petitioners that these provisions are being wished away. Inviting our attention to Rule 29 of the Gujarat Rules, he submitted that the provisions of assessment of compensation has a basis and it cannot be said to be ad-hoc. In addition to this compensation care is being taken and for that a separate requirement for the purposes of rehabilitation and resettlement is made.

8.16 Mr. Trivedi submitted that it is not correct for the petitioners to contend that the benefit of sub-section (1) of Section 26 is not at all available. As explained in the affidavit, modalities of compensation have been worked out. It is incorrect to assail that the entire exercise of issuing a preliminary notification under Section 11 should fail because the Collector has not taken necessary steps to revise and update the market value before initiation of any land acquisition proceedings. Inviting our attention to Rule 5 and sub-rules (3) & (4), it was submitted that even if there is no revision of ASR, there is a relevant space for incremental steps to be taken by the Chief Controlling Revenue Authority, in consultation with the Revenue Department keeping in view the increase in market rates of immovable properties. He also invited our attention to the proviso of sub rule (6) of Rule 5 providing for enquiry. Sub-rule (8) provides for the Land Acquisition Officer for awarding amounts higher than the one payable on the basis of ASR. The sub-section (1) of Section 26 has to come into play. There has to be a purposive interpretation of the proviso. There is no vacuum in absence as Rule 5 takes care of a situation, moreover, there is an adjudicatory machinery of Appeals. The petitioners have failed to bring to the notice of any case where compensation

awarded has failed the test. Mr. Trivedi then invited our attention to the provisions of Sections 64, 69 and 74 of the Act of 2013. These sections provide an inbuilt mechanism of safeguards to the person whose lands are acquired.

8.17 Reverting to the contention of the petitioners that Section 10A of the State Act. 2016 is beyond the legislative policy of the Central Act, Mr. Trivedi submitted that in fact it is the legislative policy of the State Act, 2016 which is to be taken into account while determining the validity of its Section 10A and not the legislative policy declared and announced by the Central Act, 2013. He submitted that admittedly, the basic legislative policy of the Central Act, 2013 amongst other things, is the determination of the Social Impact Assessment and determination of public purpose as specified in Chapter II and safeguarding of the food security as provided in Chapter III of the Central Act, 2013. On the other hand, the State Act, 2016 seeks to exempt certain projects from the purview of the said Chapters II and III of the Central Act, 2013 dealing with the aforesaid aspects, with a legislative policy of facilitating land acquisition for infrastructure projects in a timely and transparent manner without interfering with the right of the land owners. Therefore, the State Act, 2016 cannot be pitted against the aforesaid legislative policy of the Central Act, 2013.

8.18 Further reverting to the contention of the petitioners that Section 10A is repugnant to the legislative policy of the Central Act of 2013 of which Chapters II and III are the heart, Mr. Trivedi submitted that even otherwise, an absolutely irreconcilable State legislation can override an existing

Central law in the State provided such a repugnant State law is backed by the assent of the Hon'ble the President. In this regard he has relied on a few decisions to show that State laws dramatically opposite to the Central laws can exist.

8.19 Reliance was placed on the decision in the case of **Mr. M. Karunanidhi vs. Union of India and Another reported in (1979) 3 SCC 431**. Paragraphs no. 8 and 24 of the judgement were relied upon to show under what circumstances repugnancy could occur.

8.21 The case of **T. Barai vs. Henry Ah Hoe and Another [(1983) 1 SCC 177]** with specific attention to paras 1, 7, 8, 11, 15 and 16 was relied upon. Paras 9 and 10 were pressed into service in the case of **Gorwa Vibhag Co-operative Housing Societies Ltd and Another vs. State of Gujarat and Others reported in 1993(1) GLH 571**. Mr. Trivedi submitted that the petitioners can in no case submit that the State cannot make a law inconsistent with Central law. Since there is a valid assent, such a law can be made and can exist.

8.21 Addressing on the question of a valid assent under Article 254(2) of the Constitution of India, Mr. Trivedi categorically submitted that the assent granted by the Hon'ble the President on 08.08.2016 to the State Act, 2016 is not subject to judicial review. He submitted that what was sought was a general assent and not a specific assent. He invited our attention to pages 160 and 167 of the affidavit-in-reply in Special Civil Application No. 17653 of 2018 and submitted that comparative statement was placed before the

President specifically pointing out the repugnancy.

8.22 By relying on various paragraphs of the judgement cited by the petitioners in the case of **Kaiser-I-Hind Pvt. Ltd (supra),** Mr. Trivedi sought to distinguish the judgement in context of the facts on hand. The question that was considered was with regard to the assent of the President given to the Extension Acts of 1981 and 1986 of the Bombay Rent Act for the limited purpose of repugnancy to the Transfer of Property Act and Presidency Small Causes Court Act, 1852. There is no "consideration" or "assent" when repugnancy between a State law and one of the Central law is not pointed out in the case on hand between the Rent Act and Eviction Act.

8.23 From reading the statement of Objects and Reasons of the Amending Act of the State and looking at the letter, it is clear that the repugnancy of the Central law to the State law was pointed out inasmuch as required and therefore it cannot be said that the assent was invalid. That the assent is general is evident, in Mr. Trivedi's submission, on reading page 184 of the affidavit-in-reply.

8.24 Reliance is also placed on the decision of the Apex Court in the case of **Rajiv Sarin and Another vs. State of Uttarakhand and Others reported in (2011) 8 SCC 708**. Paragraphs no. 61 to 68 were pressed into service. This was to submit that it is not necessary that in every case a specific assent has to be sought. He submitted that the ratio of the judgement in the case of **Kaiser-I-Hind (supra)** has to be read and understood in light of the judgement of the Apex

Court in the case of **Rajiv Sarin (supra)**. According to Mr. Trivedi, the judgement in **Kaiser-I-Hind's** case stands clarified and to an extent watered down in **Rajiv Sarin (supra)** by referring to the earlier judgement in **Jamalpur's (supra)** case. Kaiser-I-Hind has to be read and the ratio to be culled out on the facts obtaining in that case and not otherwise.

8.25 A combined reading of these judgements would show that the assent granted by the President is not justiciable. Only to a limited scope it is open to a formal inquiry. In the facts of the case on hand, in **Kaiser-I-Hind (supra)**, a limited inquiry was necessary only because of the facts of the case. In the facts of the present case, the requisition of assent is not specific but general. The assent was sought for the whole Bill and not with reference to a particular provision/article. Whether it is subject specific it is the same whether it is under Articles 31A or 31C or Article 254(2). When the letter of assent as in Kaiser-I-Hind's case is compared to the letter written in the facts of the present case, in terms the letter of the State Government stands on a much better footing. He submitted that as per the judgement in the case of the Kaiser-I-Hind (supra), limited inquiry can be there for the purpose of finding out as to whether the assent was at all sought and given in respect of the repugnant State legislation with reference to the existing Central Law.

8.26 Specific attention was drawn to paragraph no. 27 of the judgement in **Kaiser-I-Hind (supra)** where it was observed that the Supreme Court was not considering the question that the assent of the President was rightly or wrongly given

without considering the extent and nature of repugnancy should be taken as no assent at all. He submitted that in the present case, all the essential ingredients of Article 254(2) as specified in paragraph no. 27 of **Kaiser-I-Hind (supra)**, have stood complied with.

8.27 Reliance was placed by Mr. Trivedi on a decision of the Apex Court in the case of **Yogendra Kumar Jaiswal and Others vs. State of Bihar and Others reported in (2016) 3 SCC 183**. Paras 63 to 70 were specifically relied upon. In Mr. Trivedi's submission, the Court clearly held that it was not its intention to hold that it is necessary in every case that the assent of the President should be in specific terms. Considering the case of **Rajiv Sarin (supra)**, the Supreme Court on examination of the letter had held that the entire Bill was sent for assent and therefore it can safely be presumed that the President was apprised of the reason and the same was in general terms. That the Act of State was repugnant was an admitted fact and in the case of the present, admittedly the judgement will apply and since the assent letter clearly had sent the entire Bill, the assent in the case of Kaiser-I-Hind, in the case of Orissa Special Courts Act and in the present would reveal that when the assent sought is general, it is valid for all purposes. He submitted that it clearly appears that the requisition for assent in the present case complies with all the essential ingredients.

8.28 Mr. Trivedi reiterated that the State had enclosed the entire Bill with the Statement of Objects and Reasons for enacting the Act. The repugnancy was writ large. One cannot go into the microscopic examination of what is said/or not

said. The assent is not justiciable. Local conditions/needs need not be gone into all cases. Repugnancy there is a valid assent and the Bill cannot be struck down on the invalidity of the assent.

8.29 Mr. Trivedi submitted that local conditions prevailing in a State may be one of the factors to be taken into account in a given case as held by the Bombay High Court reported in **Basantilal Banarsilal (supra)** but the same is not the essential ingredient and hence not specified as such in paragraph no. 27 of **Kaiser-I-Hind (supra)** judgement.

8.30 Mr. Trivedi submitted that without prejudice to the above, it is stated that the Statement of Objects and Reasons in the present case (page 118/178 of Special Civil Application No. 17653/2018) indicates the local conditions prevailing in the State as well as the need and the necessity for the repugnant law in the State, by stating, *inter alia* therein that (i) the State being industrially progressive and more and more investment coming, aims to give all basic facilities and infrastructures; (ii) land acquisition proceeding under the Central Act, 2013 is a very lengthy and difficult proposition and therefore, considered necessary to make the procedural part of the land acquisition smooth and easy without interfering with the rights of the landowners and (iii) consequently it is proposed to exempt certain projects from the application of Chapter II and Chapter III of the Central Act, 2013.

Mr. Trivedi submitted that therefore the assent dated 08.08.2016 accorded by the Hon'ble the President in the present case is valid and does not deserve any interference.

8.31 Referring to the peripheral submission of Mr. M.C. Bhatt with regard to Article 254 and that the assent should be held to be invalid as what was sent was a “Bill” and not the “Law”, Mr. Trivedi invited our attention to the provisions of Article 31 and 31C which also talk about “law”. It is only the “Bill” which has to go for the assent. In support of his submission that it is the “Bill” which has to go for assent, Mr. Trivedi relied, firstly on a decision of the Bombay High Court in the case of **Smt. Salubai Ramchandra and Others vs. Chandu Saju and Others reported in AIR 1966 Bombay 194**. Our attention was drawn to paragraph no. 18 of the judgement. There is no doubt, that it is the Bill which can be reserved for consideration of the President. The whole argument that there has to first be an assent and then it has to be reserved for consideration. The whole argument, as contended by Mr. Trivedi, is found to be fallacious. Reliance was placed on the judgement of the Supreme Court in the case of **State of Bihar vs. Kameshwar Singh reported in AIR 1952 SC 252**. The relevant paras 10, 17 and 178 were specifically relied upon. According to Mr. Trivedi, one of the three courses with the Governor is to reserve the Bill for consideration of the President. The law does not contemplate the Governor giving an assent and when the Bill has become a full fledged law, reserving it for consideration of the President. The word “law” is sometimes loosely worded in referring to a Bill. What is referred to as a “law” is not “law” after assent by Governor and what is to be sent for reservation is the Bill before it receives the assent.

8.32 The other subsidiary submission made by Mr. M.C. Bhatt

is that not to look at the Statement of Objects and Reasons of the Amending Act, is also, according to Mr. Trivedi, a submission which must be brushed away. Mr. Trivedi submits that the SOR offers an indepth source of guidelines and gives what is the history, logic and guides the delegated authority of what must go into making of the legislation. He submitted that the Statement of Objects and Reasons being the integral part of the Bill is a good guide for finding out – (a) the reason/purpose and the objective, behind the enactment of the State Act, 2016 and (b) the guidelines. In support of this submission, reliance was placed on the following decisions :

(a) Smt. Radhabai vs. State of Maharashtra reported in AIR 1970 Bombay 232, reliance was placed on paras 20 to 22 of the judgement. According to Mr. Trivedi, it is the Statement of Objects and Reasons which throws the flood of light upon what was intended to be achieved by the amendment.

(b) Utkal Contractors and Joinery Pvt. Ltd vs. State of Orissa and Others reported in (1987) 3 SCC 279, paras 1 to 5. The Statement of Objects and Reasons of the Amending Act provide the colour to the legislation.

(c) District Mining Officers and Others vs. Tata Iron and Steel Company and Another reported in (2001) 7 SCC 358. Para 18 of the judgement was read out. It is the Statement of Objects and Reasons which clearly enunciates the chartered course of the legislation.

8.33 Mr. Trivedi then answered the submission on behalf of the petitioners that Section 10A suffers from the vice of excessive delegation as it essentially delegates a legislative function. He submitted that delegation bereft of guidelines is known as *"excessive delegation"* and *"essential legislative function"* means the determination of choice of legislative policy and formally enacting a policy into binding rule of delegation, which, if delegated, amounts to *"delegation of essential legislative function"*.

8.34 Mr. Trivedi submitted that it is settled legal position that in spite of very wide power being conferred on the delegatee by virtue of any provision, such a provision will not be ultra vires on the ground of excessive delegation, if some guidelines could be gathered either from preamble, the Statement of Objects and Reasons, other provisions of the Act as well as surrounding circumstances and history. Mr. Trivedi submitted that in the present case, Statement of Objects and Reasons and Section 10A of the State Act of 2016 provide sufficient guidelines as to when and in respect of what kind of projects, the exemption may be granted from the applicability of Chapters II and III of the Central Act, 2016, which task has not been delegated and that the choices have been statutorily offered to the delegated authorities.

8.35 Mr. Trivedi submitted that while taking into consideration the history it may be noted that similar was the philosophy on the part of the Central Government when it had come out with the issuance of the first Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance,

2014 ending with last Ordinance dated 30.05.2015 (page no. 114 of Special Civil Application No. 17653/18) providing for Section 10A in the Central Act, 2013 which was exactly similar to the present section 10A of the State Act, 2016.

8.36 It is submitted that Mr. M.C. Bhatt read the judgement in Re: **Delhi Laws Act reported in AIR 1951 SC 322,** relatively. Mr. Trivedi read paragraph 90 of the judgement to support his submission that the action of the State cannot be set aside on the ground of excessive delegation.

8.37 Mr. Trivedi reiterated his submission that Section 10A does not suffer from the vice of excessive delegation. Similarly, in exercise of Executive authority by issuing notification dated 06.02.2018, such notification also is legal and cannot be termed as having been so passed in exercise of excessive delegation. In the submission of Mr. Trivedi, sufficient guidelines have been laid down in Sections 105 and 113 read with the Removal of Difficulties Order which provides a road map to the issuance of the notification and exercise of powers under Section 10A of the Amending Act and also grant of exemption to the Project under Section 10A of the State Act 2016.

8.38 Mr. Trivedi submitted that Section 9 of the Central Act, 2013 (i.e. urgency provision) is in Chapter II thereof and Section 40 of the Central Act, 2013 being integrally inter linked therewith, does not and cannot debar the exercise of power of granting exemption under Section 10A of the State Act, 2016. Mr. Trivedi has relied on a decision in the case of **Harishankar Bagla and Another vs. State of Madhya**

Pradesh reported in AIR 1954 SC 465. Inviting our attention to paragraphs no. 2, 8 and 9 of the judgement, Mr. Trivedi submitted that the principle of law is clear that when there is sufficient guidance in the Statement of Objects and Reasons and also in the Act of 2013, and the legislative policies laid down in Section 10A, it is not open for the subordinate authority to work out the policy details within the framework of such policy. In such exercise of power, the notification under Section 10A dated 06.02.2018 has been issued. He therefore submitted that the contention of the petitioners that Section 10A gives unbridled power to the Executive authority is misconceived.

8.39 Reliance was placed on a decision in the case of **Registrar of Co-operative Societies, Trivandrum and Another vs. K. Kunhambu and Others reported in (1980) 1 SCC 340**. He took us to paragraphs no. 5 and 9 to 13 to contend that a good deal of latitude can be given to exercise powers of delegated legislation and when there are sufficient guidelines empowering such delegation, which is in accordance with the scheme of the Act, such delegated legislation is valid. Drawing support from the judgement of the Supreme Court, Mr. Trivedi submitted that in the facts of that case, the legislation was skeletal as compared to far superior provisions in the present case i.e. Section 10A of the Amending Act of 2016.

8.40 It is submitted by Mr. Trivedi that the petitioners having realised that the provisions of the Amending Act of 2016 have been exercised in accordance with the powers within the framework of delegated legislation, they have focused their

attack on the validity of the assent under Article 254(2) of the Constitution, knowing fully well that otherwise they would fail to assail the validity of the legislation.

8.41 Reliance has been placed on a decision of the Apex Court in the case of **Consumer Action Group vs. State of Tamil Nadu and Others reported in (2002) 7 SCC 425**. Placing reliance on paragraphs no. 1, 5, 13 to 21 and 41 of the judgement, Mr. Trivedi pointed out that if guidelines could be gathered from the preamble, objects and reasons of other provisions of the Acts and Rules, the courts while deciding the validity of such provisions have to discover whether there is any legislative policy, purpose of the statute or indication of any clear will through its provisions. If there is such satisfaction that itself is a guiding factor to be exercised by the delegatee. In the facts on hand, this test is satisfied and therefore there is no reason why the Amending Act suffers from the vice of delegated legislation.

8.42 Next Mr. Trivedi relied on another decision of the Apex Court in the case of **K.T. Plantation Pvt. Ltd. and Another vs. State of Karnataka reported in (2011) 9 SCC 1.** Reliance was placed on paragraphs no. 25 to 32, 53, 54, 60, 61, 67, 68, 119, 120, 163, 164, 182 and 189. Mr. Trivedi taking us to the provisions under challenge in the judgement submitted that the law is well settled. That the Court shall not invalidate a legislation on the ground of delegation of essential legislative function or on the ground of unguided, uncontrolled and vague powers upon the delegatee without taking into account the preamble of the Act. If the legislative policy is formulated by the legislature, the function of

supplying details may be delegated to the Executive. Looking to the Statement of Objects and Reasons of the Act of 2016, Mr. Trivedi submitted that it is apparent that the Amending Act of 2016 has kept in mind the public purpose, the aspect of compensation and the machinery of hearing the objections and there are provisions akin to the Act of 2013 which makes it possible for the Act to stand the test of validity. While exercising powers of delegated legislation, sufficient care has been taken keeping in mind provisions of Sections 105 and 113 of the Act of 2013. It is evident that the project on hand is a project linear in nature. The Executive has been guided by the preamble of the Act and thus guidelines have been followed, the notification dated 06.02.2018 is also valid.

8.43 Adverting to the challenge in the context of Article 258 of the Constitution of India, Mr. Trivedi submitted that if the provisions of Section 3(e)(i) and 3(e)(iv) are taken into consideration, both the notifications dated 09.04.2018 issued under Section 11 of the Act of 2013 and the subsequent notification validating the Act are legal. Section 3(e)(i) admittedly suggests that it is the State Government which is the appropriate Government. At the point of time it was the State Government which was the appropriate authority. Reading clause (iv) of sub-section (e) of Section 3, it is the contention that since the State Government is consulted by the Central Government as the appropriate Government, the State Government has equally a decisive role and therefore the notification dated 09.04.2018 is valid.

8.44 Refuting the contention of the petitioners that the notification dated 08.10.2018 was issued pending the petition,

having realised their mistake, Mr. Trivedi submitted that it cannot be ignored that the State Government is equally an appropriate Government in our federal structure and the Central Government has as such no supremacy in this field. Annexures to the notification and the letters exchanged would show that the Central Government and the State Government have been in active consultation with each other.

8.45 With regard to the submission of Mr. Joshi that Articles 258 and 73 of the Constitution of India go hand in hand, Mr. Trivedi submitted that in fact both the Articles are mutually exclusive. Extensively reading the provisions of Article 73 of the Constitution and thereafter Article 258 of the Constitution, Mr. Trivedi submitted that the argument of Mr. Joshi that the President cannot act and validate and exercise or entrust powers of the Executive in the domain where the borders of the Concurrent List begin, is incorrect. Article 258 stands exclusively on its own and since it begins with a non-obstante clause, the expression "save as expressly provided" in Article 73 would not in any manner implead the execution or entrustment under Article 258 of the Constitution of India. Mr. Trivedi submitted that the Presidential notification dated 08.10.2018 issued under Article 258 of the Constitution of India entrusting the State Government, the executive functions of the Union relating to land acquisition in question, cannot be said to be beyond the authority of Article 258 of the Constitution of India inasmuch as, the proviso to Article 73(1) of the Constitution does not restrict the entrustment of the executive power of the Union in the matters of the Concurrent List, more particularly, in view of the non-obstante clause used at the outset in Article 258(1) of the Constitution. This

apart, Article 258 of the Constitution clearly provides extent of executive power of the Union to any matter to which such powers apply whereby the rigor of proviso to Article 73(1) has been diluted.

8.46 Extensive reliance was placed on '**Constitutional Law of India : A critical commentary' by Shri. H.M. Seervai** by stating that the pending words of Article 258(1) justify the conferment of executive power on a State with its consent in respect of all matters in list III. Article 258(1) contemplates a situation where notwithstanding anything in the Constitution, the President may, with the consent of the State, entrust conditionally or unconditionally to the State Government or its officers, functions in relation to any matter to which the executive power of the Union extends.

8.47 Reliance was placed on several other decisions. The first decision that was pressed into service was in the case of **M/s. Tinsukia Development Corporation Ltd. vs. State of Assam reported in AIR 1961 Assam 133.** Paragraphs no. 4 & 8 of the judgement was read to support his stand that Article 73 operates in a restrictive manner and submission of Mr. Joshi is not correct and in fact has been negated by the judgement under reference. Recourse to Article 298 as per the judgement would suggest that the executive power of the Union shall extend to carry on with regard to acquisition etc.

8.48 Judgement in the case of **Zubeda Begum and others vs. Union of India reported in AIR 1971 Allahabad 452** has been relied upon in context of paragraphs no. 1 and 5 on the similar lines. Decision in the case of **Nandkumar s/o**

Madhukar vs. Union of India reported in AIR 1989 MLJ 833 with reference to paragraphs no. 8 & 9 was pressed into service to contend that the non obstante clause in Article 258 can operate despite the proviso to Article 73(1) of the Constitution of India. In the case of **Jayantilal Amrit Lal Shodhan vs. F.N. Rana** reported in **AIR 1964 SC 648**, paragraphs no. 1 to 4, 8,13 to 16 and 35 were relied upon. It was Mr. Trivedi's submission that the term 'entrust' in Article 258 depends upon the field in which it operates. He submitted that Article 258(1) enables the President to make a blanket provision by issuing a notification in exercise of powers of the legislature and entrust functions to the officers on behalf of the President. By such entrustment of powers under the statute, the notification merely authorizes the State or an officer of the State under the circumstances within the limits prescribed. That the Act can be validated is apparent from such exercise of power vested in Article 258 of the Constitution of India. Mr. Trivedi relied on a decision of the Apex Court in the case of **Samsher Singh vs. State of Punjab and Another reported in (1974) 2 SCC 831**. Our attention was drawn to paragraphs no. 41 and 43 of the judgement. This was to suggest that the judgement in the case of **Jayantilal Shodhan (supra)** was followed by the Apex Court in this decision.

8.49 To the submission of the petitioners that there cannot be any retrospective operation or validation of the past notification of 09.04.2018 by issuing notification of 08.10.2018, great emphasis was laid by Mr. Trivedi to suggest that this was not a retrospective validation. Drawing our attention to the notification dated 08.10.2018 in support of his

submission, he stated that the notification clearly suggested that all actions taken by the Government of Gujarat in relation to the acquisition of land shall be deemed to have been taken for and on behalf of the Central Government and shall be deemed to be legal and valid for all purposes. This is in accordance with the judgement in the case of **Nandkumar (supra)** of the Bombay High Court.

8.50 This is a clear case where it is not a retrospective validation but a ratification of an Act which it was otherwise empowered to do. Reliance was placed on a decision in the case of **Maharashtra State Mining Corporation vs. Sunil reported in (2006) 5 SCC 96**, where it was held that ratification is approval of an Act which was unauthorizedly performed at the first instance. Mr. Trivedi submitted that in this case if the President has ratified the entrustment, it cannot be said to be in any manner bad because he was otherwise empowered to do which has been done. Both governments were competent to issue notifications. At best, by the ratification if an Act or authority which was otherwise competent has been ratified as permissible by the plenary legislation, it cannot be said that it has been done for validation restrospectively of an Act which was otherwise not permissible.

8.51 The next judgement cited by Mr. Trivedi was in the case of **I.N. Saxena vs. State of Madhya Pradesh reported in (1976) 4 SCC 750, paragraphs no. 5, 7, 9, 21 and 22.** This judgement was relied upon by Mr. Trivedi in support of his submission that it is open for the legislature and/or the executive authority to validate and remove the defect which

may have occurred while enacting a previous law.

8.52 Mr. Trivedi further submitted that the word "entrust" cannot be restricted only qua present or future acts. The power of the President is akin to the power exercised by the legislature and even when something of the past is ratified, such entrustment is valid.

8.53 Mr. Trivedi then focused his arguments on the provisions of Section 26 of the Act of 2013. He submitted that the contention of Mr. Joshi that three parameters of Section 26 i.e. (a), (b) and (c) essentially depend on Section 26(1)(a) of the Act. If the correct ASR value is not available, then an assessment on all three fronts i.e. (a), (b) and (c) of Section 26(1) would fail. Mr. Trivedi submitted that this submission is misconceived. In the event the correct market value under Section 26(1)(a) is not available on the ground that the jantri prices have not been revised after 2011, the Land Acquisition Officer has the discretion to assess the market value as on the date of the notification. It is in this context that the 3rd proviso to Section 26 has to be read. The 3rd proviso cannot be read to mean that the notification issued under Section 11 of the Act of 2013 would fail if the Collector has failed to take steps to revise and update the market value of the land. In his submission, the 3rd proviso to Section 26 in no manner governs the three parameters of sub-section (1) of Section 26.

8.54 Mr. Trivedi submitted that it is only when all the options prescribed under sub-sections (1) and (2) of Section 26 of the Central Act, 2013 are not available that sub-section (3) of Section 26 will come in play, wherein its 3rd proviso requires

the revision of market value of the land on the basis of prevalent market rate in that area. One cannot import into the said provision, the revision of the last Annual Statement of Rates (ASR). It merely means determination of updated market value of land in a particular area where the land is being acquired.

8.55 Mr. Trivedi has further relied on a decision of the Apex Court in the case of **Commissioner of Sales Tax, Uttar Pradesh vs. Atmaram Misra reported in (1990) 2 SCC 388**. This was in context of the submission that it is open for the authorities to come to the market value of the land on assessment of either of the three parameters, whichever is higher. Paragraphs no. 7 and 9 to 11 were relied on to contend that the provision contemplates a comparison of either of the three clauses and of the three whichever is higher coupled with the fact of the Land Acquisition Officer having discretion to determine the value regardless of ASR is always open. Reliance was also placed on the decision of the Apex Court in the case of **Narayan Chandra Ghosh vs. UCO Bank reported in (2011) 4 SCC 548.** Paragraphs no. 6 & 9 of the judgement were pressed into service in support of his submission with regard to Section 26. He even otherwise submitted that in any case if the landholder is aggrieved, there are remedies available.

8.56 Mr. Trivedi submitted that even otherwise, sufficient remedies are available under the Central Act, 2013 by virtue of the provisions of Sections 64, 69 and 74 i.e. reference to the authority to examine sufficiency and insufficiency of the compensation determined by the Collector and appeal before

the High Court respectively.

8.57 Adverting to the challenge of the petitioners to Section 31A of the Act with regard to objection of fixation of a ceiling of 50%, Mr. Trivedi submitted that he makes it very clear that the State is going to follow all the provisions right from Sections 16 to 31 of the Act of 2013. The parameters of Schedule II will be taken care of. Even otherwise, it is wrong for the petitioners to contend that the provisions of Section 31A only provides competence to the State Government to pay 50% as rehabilitation and resettlement. In the event, it is found that such an amount is less, there is a provision under Rule 29(3) to follow the Schedule. The ground of challenge that the figure of 50% is low or illusory is not correct. A concrete situation has not arisen to gauge whether such a situation is illusory. Reading Section 31A of the Act, Mr. Trivedi submitted that it is "competent" for the State Government and therefore reading such 'competence' together with Rule 29(3), it is evident that in no case the lumpsum amount will be less than one contemplated under Schedule II of the Act.

8.58 Reliance was placed on a decision in the case of **Jhilubhai Nanbhai Khachar vs. State of Gujarat reported in 1995 Supp(1) SCC 596, para 52**. The mandate of the law to determine compensation will be followed without prejudice. The argument that 50% is not justified itself cannot make the provision unconstitutional. Under Section 31A, it is competent for the State Government to determine compensation. He submitted that a legislation, fixing the amount of compensation, cannot be questioned on the ground

that the amount so fixed is illusory since it is for the Legislature to decide what should be the cut-off point for the purpose of classification.

8.59 On the challenge in the petition to contend that the law or the Amending Act is arbitrary, Mr. Trivedi submitted that it is the case of the petitioners that the law is manifestly arbitrary. The submission of the petitioners is that once the acquisition is composite i.e. it is for the lands within the State of Gujarat, Maharashtra and Dadra & Nagar Haveli, to follow the Social Impact Assessment chapter in Dadra & Nagar Haveli and not in Gujarat is violative of Article 14 of the Constitution of India. Mr. Trivedi negated this submission by saying that it is an admitted position that the State can enact a law repugnant to that of the Central law and if the assessment is held to be valid there is no need to look at the legislative policy of the Central act. One cannot attack the legislation on such a ground.

8.60 Mr. Trivedi submitted that the legislation made by one State cannot be held to be discriminatory in nature merely because similar legislation/s have not been made by the other States. The citizens of the State of Gujarat cannot be said to be deprived of Social Impact Assessment which is to take place in the State of Maharashtra and the UT of Dadra & Nagar Haveli, more particularly when the Legislative Policy of the State Act, 2016 is not to provide for such Social Impact Assessment and hence, the exemption is granted from the legislative policy of the Central Act, 2013 in regard to the conduct of such Social Impact Assessment in the matter of acquisition. The State Act, 2016 duly assented by the

President overrides the above referred provisions of the Central Act, 2013 within the territory of the State. Thus, two laws enacted by two different Governments and by two different legislatures can be read neither in conjunction nor by comparison for the purpose of finding out if they are discriminatory.

8.61 Reliance was placed on a decision in the case of **Javed vs. State of Haryana reported in (2003) 8 SCC 369, paragraphs no. 3, 12 and 14**. Drawing our attention to the decision of the Hon'ble Supreme Court in the Triple Talaq case rendered in **Shayara Bano vs. Union of India reported in (2017) 9 SCC 1**, Mr. Trivedi invited our attention to paragraphs no. 101 and 106 of the judgement and submitted that it cannot be said that the legislation is manifestly arbitrary. Manifestly arbitrary means when the legislation is either capricious or unpredictable. This is not shown by the petitioners. He submitted that the provisions of the State Act, 2016 cannot be termed as manifestly arbitrary inasmuch as except for Chapters II and III of the Central Act, 2013, all the remaining provisions thereof and more particularly with reference to compensation, rehabilitation and resettlement are applicable to the acquisition in question whereby the landowners will not be deprived of just, fair and reasonable compensation as provided in the 1st Schedule as well as the elements of Rehabilitation & Resettlement as provided in the 2nd Schedule to the Central Act, 2013.

8.62 In support of his submission, he also relied on a decision in the case of **State of Bihar and others vs. Bihar Distillery Ltd. reported in (1997) 2 SCC 453, paragraphs**

no. 17 to 21 to contend that the Court must recognize fundamental nature and importance of the legislative process and accord due regard and deference to such process. Presumption must always be in favour of the constitutionality of the law. He submitted that while examining the challenge to the constitutionality of an enactment, one is to start with the presumption of constitutionality and the Court should always put efforts to uphold the constitutionality of a statute by giving purposive interpretation to the provisions, rather than striking them down.

8.63 Summarizing his arguments, Mr. Trivedi stated that :

(a) The State has a valid assent. The assent is not justiciable. The judgement in the case of **Kaiser-I-Hind (supra)** is not applicable because requisition in the present case is for a general assent and not a specific one. The local conditions need not be looked into and as read in paragraph no. 27 of the judgement, the scope of inquiry with regard to the Presidential assent is limited. If the assent is valid, even if the State Act is regpugnant, the petitioners have no locus to challenge such an Act.

(b) With regard to challenge of the vice of excessive legislation, Mr. Trivedi submitted that there are sufficient guidelines discerning from Section 10A itself. Sections 5 and 113 of the Act of 2013 and the Removal of Difficulties Order, when read in the context of the Statement of Objects and Reasons of the Amending Act, laid down the guiding principles which need to be

followed in executing projects which are linear in nature.

(c) Delegation of a legislative function is valid as the Section namely Section 10A of the Act of 2013 itself says what the legislative policy envisages.

(d) Under Section 10A of the Act of 2013, it is open for the State to issue an exemption, and it cannot be said that the project is only of the Central Government. Requiring/Acquiring body consists of the State Government. The project therefore is equally of the State and therefore exemptions from the provisions viz-a-viz the territories of Gujarat can be granted. The contention of the petitioners that under Article 254 only the law and not the bill can be sent for the assessment is misconceived.

(e) With regard to question of how the appropriate government is, it is apparent on reading Section 3(e)(iv) that the Central Government acts in consultation with the State Government and therefore it is open for the State to make a law when both the governments are in sync of either.

(f) Section 26 challenge has been dealt with by him and it is not necessary that on absence of revision of ASRs the notification under Section 11 should fail.

(g) With regard to Articles 73 and 258 of the Constitution of India, he has made submissions that

powers under Article 258 of the Constitution of India are wide.

(h) There is no pre-determination in exempting such projects from Chapters II & III as it is evident that since the project is linear in nature, there is minimum impact on displacement and other such factors. Provisions of Section 8(2) are complied with. When Section 16(31) provisions will be followed, the contention of the petitioners that the law should fail on the test under Article 300A should fail. The law is not manifestly arbitrary.

9. Mr. R.N. Singh and Ms. Archana Amin, learned advocates appearing for NHSRCL and Railways respectively pointed out that the railway corporation has a shareholding of 25% shares each of Gujarat and Maharashtra. Gujarat is an equal stakeholder and therefore the appropriate government is the State of Gujarat. Attention was drawn to pages 187 and 211 of the affidavit-in-reply in Special Civil Application No. 17653 of 2018 to suggest that the entire spirit of the Social Impact Assessment is being taken care of.

10. Mr. Mihir Joshi, learned Senior Counsel appearing for the petitioners, in rejoinder to the submissions made by the learned Advocate General, on behalf of the State answered them as under:

10.1 He reiterated that the challenge to Section 10A of the Amendment Act of 2016 was on two grounds, namely that firstly the assent was not validly obtained and if it was validly

obtained then the exercise of such powers suffered from the vice of excessive delegation.

10.2 To the State's response that they have the absolute right to legislate and bring in a legislation, inconsistent with the Central Act, he submitted that such a proposition disputed and in fact clearly indicates that the State admits that the Amending Act is inconsistent. However, what is significant is that if the State law is inconsistent, then the law made by the Parliament must prevail and the State law must give way to the Parliamentary law.

10.3 Reiterating his submissions made on the basis of the judgement in the case of **Kaiser-I-Hind (supra)**, Mr. Joshi submitted that obtaining of an assent is not a meaningless exercise or an empty formality. The exercise is to be made looking to the fact that it provides for an exception to the Constitutional scheme and therefore as a necessary sequitur the President must be apprised of the exact facts and the specific points on which the assent is sought. If the assent has to be meaningful, exact details of how the Act is inconsistent or repugnant to the central legislation and what is the need for buying in such a law are factors which need to be placed before the President.

10.4 Emphasizing the language of Article 254 of the Constitution of India, Mr. Joshi submitted that the Article was specific. It was an exercise of giving an assent after it being reserved for consideration. Therefore it is not a mere formality. The State has failed to point out whether actual facts having the nexus with the project, relevance and the

objectives thereof need to be established to uphold the sustainability of the decision on such objective facts. That if relevant facts are not taken into consideration the assent should be held to be invalid on the ground that there has been no application of mind.

10.5 Under Article 254 of the Constitution of India, the President exercises vast constitutional powers. Since the subject is on the Concurrent List, the exercise of power by the President becomes more relevant in the context of primacy of the Parliament. It is incumbent to show what it is inconsistent with and why and for what reasons the legislature of the State wants the law. Such issues have to be apprised of to the President, when seeking his assent.

10.6 Mr. Joshi referring to the judgement in the case of **Kaiser-I-Hind (supra)** pointed out that the judgement specifically referred to the judgement of the Bombay High Court in **Kaiser-I-Hind (supra).** Drawing our attention to the Bombay High Court judgement reported in **AIR 1955 Bom 35**, Mr. Joshi submitted that the principle is that the State legislature if it wants to depart from the provisions of law laid down by the Parliament it could do so provided it satisfies the condition namely it reserves the Bill for consideration of the President and he has given the assent. The President should apply his mind to the local conditions. The State cannot wish away the two factors i.e. it has to be reserved for consideration and receive its assent after looking into the local conditions.

10.7 Refuting the claim of the State, that what was sought for

was general assent and not specific, Mr. Joshi, extensively relied on various paragraphs in the judgement of **Kaiser-I-Hind (supra)** to point out how and in what context can the assent be said to be general assent. If there is an insertion of few sections by way of an Amending Act of the State, the same cannot be bringing out an entirely new State Act viz-a-viz the Central legislation and therefore, when only specific sections viz-a-viz the Central Act are amended, specific attention must be drawn to the Sections sought to be inserted and how and in what manner they are repugnant to the Parliamentary legislation. The assent therefore has to be specific and can never be general.

10.8 Mr. Joshi drew our attention to paragraph no. 10 at page 196 of the judgement in the case of **Kaiser-I-Hind (supra)** which lay down the essentials of Article 254 of the Constitution of India. Inviting our specific attention to paragraph no. 14 of the judgement, Mr. Joshi submitted that the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President and the repugnancy must be pointed out between the proposed State law. There should be a consideration as to the necessity of having the state law which is repugnant to the central law. According to Mr. Joshi, the question before the Hon'ble Supreme Court in **Kaiser-I-Hind (supra)** was whether the provisions of the Bombay Rent Act, 1947 having been re-enacted after 1971 by the State Legislature with the assent of the President must prevail in the State of Maharashtra over the provisions of the **PP Eviction Act**? Drawing our attention to paragraph no. 20 of the judgement, he distinguished and submitted that it was not restricted to

the specific assent as canvassed by the State. The context of specific assent was in relation to a specific law A or law B. however, it was undisputed that the proposal of the State pointing out repugnancy between the State law and the law made by the Parliament was a sine qua non for "consideration" and "assent". The contention of the State that the Statement of Objects and Reasons provides sufficient guidelines, is misconceived.

10.9 The concept of general assent has to be seen on the appreciation in context of a entire new State law brought out in juxtaposition of the Central law. This is not the case here. Here is a case where specific provisions are sought to be inserted by way of the Amending Act and therefore specific attention has to be drawn of how the inserted amendments are repugnant to the parallel provisions of the Central Act. He emphasized that the assent of the President under Article 254 is not an idle formality. According to Mr. Joshi, when the State concedes that paragraph no. 27 of the judgement lays down the ratio that applies to the case, admittedly the three ingredients have not been followed and the assent should therefore fail.

10.10 Mr. Joshi then sought to distinguish the judgement relied upon by the Advocate General Mr. Trivedi in the case of **Rajiv Sarin (supra).** He submitted that the judgement in fact supports him by saying that the President has at least to be apprised of the reason why his assent is sought. Reading of the proposal sent in the facts of the case indicates absence of such material. The term "general" or "specific" assent has to be in context of a particular Act for which assent is sought.

When the assent of a specific section for a specific purpose is sought, consideration of general assent would not weigh. Ambit of the assent here would suggest that it had to be specific.

10.11 Referring to the decision of the Supreme Court in the case of **Yogendra Kumar Jaiswal reported in (2016) 3 SCC 183** and distinguishing the facts therein, it is submitted that in that case the letter of the State did not point out repugnancy of provisions of one law with the provisions of certain other Acts, whereas, in the case on hand, what was essential to be pointed out is that letter ought to have drawn how the State Act's amending provisions were repugnant to the sections of the legislation/law containing the provisions of the Central law occupying the same field. He drew our attention to the letters in the present set of facts, particularly letters dated 26.04.2016 and 21.05.2016 which showed that there was absence of any material to show how there was repugnancy.

10.12 Drawing our attention to the chart annexed with the letters, Mr. Joshi submitted that selective amendments have been made to the Central Act. No specific attention has been drawn to the provisions of the the Central Act such as Sections 9 and 40, which provisions would make the provisions of the State Act repugnant. The local needs are sought to be answered by relying on the Statement of Objects and Reasons. A justification is given by treating that the exemption of Social Impact Assessment is a "procedural part". What Section 10A chalks out are the same projects which are shown as ones under Section 2 of the Act of 2013 and

therefore the scope of "public purpose" is restricted as per the spirit of the Central Act. If that be so, Section 10A which lays down same projects cannot claim exemptions from Social Impact Assessment except that such justification is sought to be made on ground of carrying out linear projects. The justification of such projects finds its mention only in Section 31A of the Amending Act which deals with the aspect of compensation only.

10.13 The other aspect is that the concept of linear projects is only viz-a-viz the food security. Justification cannot be sought to the enactment by reading the Statement of Objects and Reasons or by supplementing such reasons by an affidavit. The justification to do away with Social Impact Assessment because it is a lengthy procedure, is no ground. The language of Section 10A present a fait accompli as projects are already proposed to be exempted.

10.14 It is no defence to the challenge on the ground of excessive delegation for the State to justify it by saying that the SOR provides discernible guidelines. Inviting our attention to the judgement reported in **Consumer Action Group (supra),** Mr. Joshi submitted that while exercising delegated legislation unless the legislature declares the policy of law and the legal principles and must provide a standard to guide the officials. In absence thereof, the Act of legislative delegation must fail.

10.15 The Amending Act of 2016 of Gujarat has no preamble. Direct incorporation of Section 10A which shows all projects which are also prevalent in the Central Act. There

is no legislature policy that can be evinced to show guidance to seek exemption. Under what discernible principles is the concept of "public purpose" under the Central Act different from the Amending Act of 2016 of Gujarat and "public purpose" thereunder, is absent, when the projects are overlapping. If both speak of same projects then under what circumstances, the heart of the Central Act i.e. the Social Impact Assessment and rehabilitation and resettlement is being given a go-by is not stated.

10.16 Referring to the judgement of the Apex Court in the case of **K.T. Plantation Pvt. Ltd. (supra),** Mr. Joshi submitted that present is a case of unguided, uncontrolled powers of delegation.

10.17 The exemption notification is issued on an assumption that Section 10A is valid. Once the challenge to Section 10A is valid, the notification will go. On reading the notification dated 06.02.2018 no principles of guiding factors are discernible. The exemption is project specific under the cloak of public purpose.

10.18 It is difficult to comprehend that SOR talks of exemption from Social Impact Assessment as the procedure of land acquisition is lengthy whereas to pay obeisance to an agreement, a private agency which has no relevance is making an assessment report. The report cannot be justified to be one akin to Social Impact Assessment as there is a mere statistical data collection without the active involvement of stakeholders in accordance with the provisions of the Act of 2013. Rather than undertake such an exercise, under the

pretext of a lengthy procedure, which has taken over three years it could have been carried out under the Rehabilitation and Resettlement Act and this shows that the entire study is carried out and the collection of data is only a mere formality.

10.19 Private players are even contemplated as is evident on reading Section 7 of the Act of 2013. There is a provision for study by expert groups. There is no reason why procedure under the Chapters II and III through the machinery was not followed.

10.20 M/s. Arcadis has been commissioned at the instance of NHSCR. It is no substitute to the Social Impact Assessment under the Act. Violation of Article 14 is writ large when Social Impact Assessment is carried out for Dadra and Nagar Haveli lands and not for Gujarat. The dichotomy of Section 10A is evident. Section 10A has no application to interstate projects whereas the project which is interstate exempts Gujarat from Social Impact Assessment.

10.21 As far as the judgement of the Supreme Court in the case of **Consumer Action Group (supra)** is concerned, Mr. Joshi submitted that the judgement is a compendium of case laws on delegated legislation and he reiterated the three principles on which the test whether the delegated legislation is excessive or not needs to be seen. Mr. Joshi submitted that the nature of the power exercised by the State in bringing in Section 10A and exempting of projects pole vaults into giving exemption over all without any limits. The enactment can be set aside and should be, as it does not have any guidelines to the manner in which it could operate and therefore is bound

to be abused.

10.22 Mr. Joshi invited our attention to Rule 7 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2013. Particular attention of ours was drawn to Rule 7 to suggest that while undertaking public hearing, the administrator has a mandate to take into account Social Impact Assessment report and in the present circumstances has been give a go-by.

10.23 On the submission of the learned Advocate General in connection with Article 258 of the Constitution of India, Mr. Joshi submitted that it is submission of the State that they have ratified, by bringing in the notification dated 08.10.2018, acts which were otherwise invalid. He reiterated his submission that if the language of Article 258 is seen, the word is "entrustment" and as far as the State is concerned, there is no entrustment as per their submission too. Even the State says that it is ratification. If the sub-clause (b) of the notification dated 08.10.2018 is read, Mr. Joshi pointed out that the language of sub clause (b) suggests that what the State has done is only giving a declaration that what actions the Government of Gujarat has taken shall be deemed to have been taken for and on behalf of the Central Government. That is no ratification but a declaration. In any case, according to Mr. Joshi, can such an exercise be called entrustment as the spirit of Article 258 would suggest. According to Mr. Joshi, in any case, it runs contrary to the definition of appropriate government in Section 3(e)(iv) of the Act of 2013. There cannot be a validation of something which is impermissible. The terminology "deemed" is in conflict with the term

"entrust". If it is validation, then it is certainly no permissible and it goes against the definition of "appropriate government" and what was submitted can never be intended to be so.

10.24 With regard to the judgement in the case of **Maharashtra State Mining Corporation vs. Sunil (supra),** Mr. Joshi submitted that this judgement would not apply in the present case as it did not deal with ratification of an action taken in exercise of statutory powers. He relied on a decision of the Apex Court in the case of **Marathwada University vs Seshrao Balwant Rao Chavan reported in (1989) 3 SCC 132**. He read paragraphs no. 25 and 27 of the judgement to suggest that the principles of ratification do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab-initio void and cannot be ratified. If that is accepted, then it is not entrustment as canvassed by the State.

10.25 On the decision in the case of **I.N. Saxena (supra),** Mr. Joshi submitted that there is an essential distinction between ratification and validation. Validation is removal of a defect. In the present case, when it is apparently not within the power of the State to issue a notification there can be no validation and such act would not cure the defect. Exemption granted under Section 10A would not stand validated by exercise of powers under Article 258 of the Constitution. Powers under Section 10A can only be exercised if the State had the authority. Evidently, the State has no authority and therefore such power is not validly

exercised.

10.26 On the judgement cited by Mr. R.N. Singh, learned advocate appearing for the Railways in the case of **Bondu Ramaswamy vs. Bangalore Development Authority reported in (2010) 7 SCC 129**, Mr. Joshi distinguished the said judgement. With regard to the contention that the notification under Section 11 is valid even if it is issued by the State to say that Article 258 has been followed out of abundant caution is misconceived. To the submission with regard Section 3(e)(iv) of the Act when the learned Advocate General submitted it is not only the Central Government but the Central Government in consultation with the State, that itself would according to Mr. Joshi not bestow powers on the State also to exercise powers of the appropriate government. It does not give the jurisdiction of the consultor. In support of this submission, Mr. Joshi relied on the decision of the Apex Court in the case of **Madan Mohan Chaudhary vs. State of Bihar and Others reported in (1999) 3 SCC 396 paragraph no. 27 (Page 409)** of the judgement to suggest that the consultor cannot delegate his function. He also relied on a decision of the Apex Court in the case of **Ram Tawakya Singh and Others vs. State of Bihar and Others** reported in **(2013) 16 SCC 206, para 29** to suggest that it is the consultor that is the Central Government which is the final decidor.

10.27 Mr. Joshi argued that Section 26 provides for determination of market value. The market value has to be determined from either of the three namely sub-clause (a), (b)

or (c) whichever is higher. The State's definition that there need not be revision of the annual statement rate because they are taking care of the market value of the land through the indexation formula as referred to in their affidavit, is not the answer. According to Mr. Joshi, there can be no independent valuation sans Section 26 of the Act. The section provides for valuation from either of the three components whichever is higher and as per clause (a) the true market value of the land will never be reflected unless the ASR is revised. It is not open for them to show that they are doing what the law requires them to do, i.e. assessing the market value of the land in accordance with the formula reiterated in their affidavit-in-reply. Indexation and calculation of compensation on such formula is not the answer to compliance of Section 26 of the Act. It is very clear that the higher amounts of the compensation, as per the resolutions is only applicable in awards passed by consent. The suggestion is very clear that if you consent you get a higher amount otherwise not. The contention of the State that the 3rd proviso does not apply to the components of clauses (a), (b) and (c) is misconceived because if the proviso is read it its true spirit it speaks of the Collector to revise and update the market value before initiation of any land acquisition proceedings. Obviously, therefore, the criteria envisages under sub-section (1) of Section 26 and the proviso are co-related.

10.28 Mr. Joshi submitted that the decisions cited at the bar in the case of **Commissioner of Sales Tax, Uttar Pradesh (supra)** and in the case of **Narayan Chandra Ghosh (supra),** do not apply to the interpretations for the purposes of Section 26. Both these are for the question of

compulsory pre-deposit under the taxation laws. They have no connection to such beneficial provisions of assessment of the true market value in context of the Acquisition Act of 2013.

11. Mr. A.J. Yagnik, learned advocate invited our attention to Section 23 of the Land Acquisition Act, 1894. In accordance with the section, in determining the award of compensation to be awarded for land acquired under the old Act, the Court shall take into consideration the market value of the land on the date of the publication of the notification. Section 26 of the Act of 2013, according to Mr. Yagnik, suggests that the Collector has to adopt a criteria for assessing and determining the compensation. In assessing and determining the market value of the land, he has to take into consideration registration of sale deeds, as the case may be. In such valuation process, naturally therefore, the Collector has to fall back on the annual statement of rates/jantri. Even under Section 109, the authority has power to make rules. If the power of the appropriate government to make rules is seen under Section 109, the State Government is not invested with powers to make resolutions viz-a-viz Section 26 of the Act. Revision of jantri is a *sine qua non* for awarding fair compensation. He invited our attention to paragraph no. 3 of the statement of objects and reasons and suggested that even while enacting the Act of 2013, the fears that the Land Acquisition Act of 1894 was a lengthy process, was taken care of and it was with these fears in mind that the Act of 2013 was enacted.

11.1 The State's philosophy in bringing in the Amending Act

of 2016 is therefore not different from the philosophy of the Union. All facets which the State wishes to bring in with regard to the procedure has been taken care of by the Central Government and therefore there is no need for bringing in the Amending Act of 2016. Inviting our attention to clauses 20 to 24 of the Statement of Objects and Reasons, he insisted that emphasis has been laid in the Act for taking care of the Scheduled areas under the Panchayat and the basic minimum that all projects leading to displacement of people who have a Social Impact Assessment through a participatory and a transparency process.

11.2 Mr. Yagnik handed over a separate compilation of relevant documents inviting our attention to the resolution dated 18.04.2011. He submitted that the last revision of ASR was done in the year 2011 and no further revision has been done. He invited our attention to the notification bringing in the Gujarat Stamp Rules, 1984 dated 21.03.2016 and as per Rule 5 there is a mandate that the State government shall prepare annual statement of rates which has not been done. Such amendment has been made with a purpose and therefore the State has a statutory obligation which it has not followed. Relevant pages of the report of the Comptroller and Auditor General were brought to our notice that the impact the State's revenue has had because there has been no revision of the annual statement of rates. Our attention was also drawn to the judgement of this Court (Coram : Hon'ble Mr. Justice A.S. Dave) rendered in Special Civil Application No. 6647 of 2008. He invited our attention to paragraphs no. 12 & 15 of the judgement and suggested that the jantri relevance has been explained and how revision of jantri is

relevant.

11.3 Relying on a decision of the Apex Court in the case of **Arun Kumar Agrawal vs. Union of India and Others reported in (2013) 7 SCC 1**, Mr. Yagnik relied on paragraphs no. 54 to 70 of the judgement pointing out that they deal with a situation as to how the Comptroller and Auditor General's report has to be dealt with. Pointing out relevant paragraphs, especially, paragraph no. 68 of the judgement, Mr. Yagnik submitted that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside.

11.4 Mr. Yagnik drew our attention to the compilation at pages 100 and 104 of the paper book, more particularly to the FAQs. Our special attention was drawn to question no. 10 at page 106 which dealt with the question of how will the properties acquired for the project be compensated. There also the base was the jantri rate which will be the one prevailing. According to him this is what the National High Speed Railway Project had assured and they are not following such assurances. At page 122, according to Mr. Yagnik, a tabulation is given as to how the amounts are calculated for making a consent award which also is based on jantri.

11.5 Reliance was placed on the Division Bench judgement of this Court in **Special Civil Application No. 7215 of 2018 rendered on 26.11.2018** wherein this Court though did not get into the merits of the case which was in context of acquisition of lands for the National Highway Authority, he suggested that though the jantri rates were Rs.193/-, when

the lands were acquired for the railways, the computation was at Rs.2403/-. Drawing the analogy to the proviso to Section 32A of the Gujarat Stamp Act, Mr. Yagnik submitted that the proviso would suggest that when the government deals with properties, the market value on such dealing on the part of the government would be the correct market value. If that was so, in case of National Highways Authority, the same analogy would apply to rail projects where lands are almost adjacent to in most of the areas.

11.6 Mr. Yagnik further submitted that they do not press the challenge to Section 40 of the Amending Act of 2016.

12. Mr. Trivedi suggested that he would need to clarify in respect of four things that the advocate for the petitioners have argued in the rejoinder namely with respect to (1) assent (2) excessive delegation (3) on the question of Article 258 and (4) and with regard to Section 32A of the Stamp Act.

12.1 Drawing our attention to the judgement of the Apex Court in the case of **P.N. Krishna Lal and Others vs. Govt. Of Kerala and Another reported in (1995) Supp 2 SCC 187**, more particularly paragraphs no. 12 to 14, he suggested that this judgement is good law. This judgement talks of the requirement as provided under Article 254 of the Constitution of India. In Mr. Trivedi's submission, it is not necessary that each and every specified provision of the Central Act or the Acts on the inconsistency or repugnancy of such provision should be pointed out to the President. It is submitted that once the assent of the President is sought and given to the State Amendment, though to some extent inconsistency or

repugnancy exists between any provision, part or parts of any Act or Acts, the repugnancy or inconsistency ceases to operate in relation to the State in which the assented State enacts law. He stated that when the communications addressed to the President in the case of **Kaiser-I-Hind (supra)** or **Yogendra Kumar Jaiswal (supra)** are compared to those of the present, it is apparent that the concern of local needs is reflected in the Statement of Objects and Reasons.

12.2 Talking about excessive delegation, Mr. Trivedi pointed our attention to the judgement in the case of **Consumer Action Group (supra) paragraph no. 13.** It was submitted by Mr. Trivedi that it was wrong for Mr. Joshi, learned advocate for the petitioners to rely on paragraph no. 14 of the judgement because in fact what was recorded in paragraph no. 14 were the contention of learned counsel in the case of **Harishankar Bagla and Another (supra).** He invited our attention to the judgement in the case of the **Harishankar Bagla and Another (supra)** and suggested that in fact after recording the contention the Court negated the said contention and submitted that when there is sufficient guidance to the Central Government, the delegated legislation has to be upheld. In this case it is so. The exemption orders in judgement of **Consumer Action Group (supra)** cannot be compared vis-a-vis the once in the case on hand. He invited our specific attention to paragraph no. 23 of the judgement and submitted that there is nothing to show in the facts of the case that the orders are contrary to the State Act and that the exemption notifications cannot be said to be running against the State. He submitted that the said judgement in the case

of **Consumer Action Group (supra)** cannot be relied upon by the petitioners to invalidate the said exemption notification inasmuch as in the said case, as observed in para 23 of the said judgement, the exemption orders were passed in utter disregard of the policy of the Act and in contravention of the provisions thereof of the Act and that too, without assigning any reason. However, in the present case, exemption notification dated 06.02.2018 and other such similar notifications have been issued in furtherance of the policy of the State Act, 2016 and the same do not run contrary to any of the provisions of the State Act, 2016.

12.3 As far as submission with regard to Article 258 of the Constitution of India is concerned, Mr. Trivedi submitted that the judgements cited did have relevance. The words 'ratification' and 'validation' though used in a different context inasmuch as it will be the executive Acts which will be ratified and the legislative, validated, the net result is the same.

12.4 Inviting our attention to the judgement in the case of **Jayantilal Amrit Lal Shodhan (supra), paragraph no. 16,** he reiterated that under Article 258 of the Constitution of India, the President has blanket powers enabling him to issue a notification to exercise the power which the legislature could exercise by legislation, to entrust functions to the officers to be specified in that behalf by the President. Whatever the President does under Article 258 of the Constitution is in fact what the legislature could do. Inviting our attention to the minority view in paragraph no. 33 of the judgement, Mr. Trivedi submitted that the word 'entrust' or

'entrustment' is also when functions of the State Governments or its officers are delegated by creating agency to carry out executive powers of the Union which vests in the process. In other words, it is possible to clarify entrustment both as executive as well as legislative.

12.5 Inviting our attention to the notification dated 08.10.2018 at page 146 of the reply in Special Civil Application No. 17653 of 2018, Mr. Trivedi submitted that it is wrong for Mr. Joshi to contend and rely only on clause (b). 'Entrustment' is apparent when one reads clause (a) which says that the function of the Central Government as appropriate government under the Act may be performed by the Government of Gujarat. This is entrustment of function as envisaged under Article 258 of the Constitution. Clause (a) is therefore exercise of power to remove the defect and therefore the contention that the defect cannot be cured because the Act itself is void is incorrect. The notification dated 09.04.2018 issued by the State as an appropriate government is valid and by exercise of powers and issuing a notification of 08.10.2018 what is done is that the defect is removed by entrustment of power as per clause (a). He invited our attention to paragraph no. 6 of the judgement in the case of **Punjab University and Others vs. V.N. Tripathi and Another reported in (2001) 8 SCC 179, paragraphs no. 6 to 8** and submitted that the ratification has the effect of relating back to the time when action was taken by the authority. In his submission, the judgement in the case of **Marathwada University (supra)** would not apply to the facts of the case and is misconceived inasmuch as in the said case as discussed in paragraph no. 23, the statute had barred

such a ratification whereunder, the Executive Council could not have ratified the action of Vice-Chancellor under Section 24(1)(xii) of Marathwada University Act, 1974, without the approval of the Chancellor. Such a bar is not available under Article 258 of the Constitution. Exercise of powers by the President available under Article 258 of the Constitution is blanket and not conditional or subject to any approval. He submitted that this is very well explained in the case of **Punjab University and Others (supra).**

12.6 Mr. Trivedi further submitted that when the judgement in the case of **I.N. Saxena (supra)** is seen particularly paragraphs no. 3 & 9 read with paragraph no. 23 what it suggests is that what was not earlier a part of the clause is inserted by way of an amendment subsequently, a valid legislation has been brought and by introducing such an Act, the memorandum effectively cures the defect. Such is the case on hand and therefore exercise of powers under Article 258 is valid.

12.7 In other words, Mr. Trivedi submitted that by virtue of issuance of the presidential notification, mainly two actions came to be taken, viz.

(a) Removal of defect vide clause (a) of the said Notification by entrusting the functions of the Union to the Government of Gujarat, in the absence whereof, defect had occurred in issuing a Preliminary Notification dated 09.04.2018 by the State Government under Section 11 of the Central Act, 2013 and,

(b) Validation of the said defect with retrospective effect i.e. all the actions taken by the State Government right from 11.04.2018 have stood validated.

12.8 Mr. Trivedi submitted that the objective of Social Impact Assessment as provided under Section 8(2) of the Central Act, 2013 is to enable the appropriate Government to recommend such area of acquisition, which ensures - (i) minimum displacement of people, (ii) minimum disturbance to infrastructure and ecology; and (iii) minimum adverse impact on the individuals affected. The aforesaid objective has otherwise been taken care of in the present matter in view of similar district-wise Social Impact Assessment already carried out by an independent agency, M/s. Arcadis Pvt. Ltd. appointed by NHSRCL under the supervision of JICA coupled with the fact that the project in question is admittedly linear in nature.

12.9 As regards the submission made by Mr. Yagnik on Section 32A of the Gujarat Stamp Act, it was submitted by Mr. Trivedi that it just provides a rough guide.

12.10 As regards argument that the entire procedure for coming to assessment of fair compensation is concerned, it was submitted that the stage has yet not come. In accordance with and keeping in mind the provisions of Section 15 of the Act, public hearing shall be given and care will be taken to see that rehabilitation and resettlement will certainly be in compliance of the provisions of the Act of 2013.

12.11 With regard to the Comptroller and Auditor

General's reports, Mr. Trivedi relied on judgement of the Apex Court in the case of **Pathan Mohammed Suleman Rehmatkhan vs. State of Gujarat and Others reported in (2014) 4 SCC 156 paragraphs no. 7 and 12** thereof to suggest that whether the report of the CAG itself can legally be made the basis of relief of the petition. It was submitted that it would not be proper to refer to the findings and conclusions contained in such report. He submitted that the CAG report being subject to scrutiny by Public Accounts Committee and the Joint Parliamentary Committee, its findings and conclusions cannot be referred to and relied upon in any collateral proceedings. Reliance was also placed on a decision in the judgement of the Apex Court in the case of **Centre for Public Interest Litigation and Others vs. Union of India and Others reported in (2012) 3 SCC 1, paragraph no. 71**.

PART - II

13. We have extensively heard learned Counsels appearing for the respective parties and have gone through the documents placed on record. Before we proceed further, it would be relevant to notice certain provisions and sections of the Act of 2013, which are relevant for our purpose, to address the issue involved in the present petitions. The same are reproduced hereinbelow for ready reference.

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.

INTRODUCTION

The Land Acquisition Act, 1894 was a 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 was 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 did not address the issues of rehabilitation and resettlement to the affected persons and their families. There had been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. However, there was growing public concern on land acquisition, especially multi-cropped irrigated land. There was no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement were two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement was necessary.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 addresses 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.

This Act represents a change in the legislative approach to land acquisition. It introduces for the first time provisions for social impact analysis, recognizes non-owners as affected persons, a mode of acquisition requiring consent of the displaced and statutory entitlements for resettlement. In addition, it has restricted the grounds on which land may be acquired under the urgency clause.

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 “pubic 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 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 06th 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, alongwith 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. Provisions of public facilities or infrastructure often require 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 rights particularly in case of the weaker sections of the society including members of the Scheduled 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 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. There 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 State Governments have their own Rehabilitation and Resettlement Policies. 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, no more than 10 per cent of the net sown area of the district will be acquired.

13. To ensure comprehensive 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 upto 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 allowance 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 centres, 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 Bills have been made fully compliant with other laws such as the Panchayats (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 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 Act. The provisions of this Act can be applied to these existing enactments by a notification of the 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 ll 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.

ACT 30 of 2013

The Right to Fair Compensation and Transparency in Land Acquisition Resettlement Bill having been passed by both the Houses of Parliament received the assent of the President on 26th September, 2013. It came on the Statute Book as THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 (30 of 2013) (came into force on 1-1-2014).

Preamble :

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 industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected 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.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:--

Section 2 :

(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:--

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:--

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, heath care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:--

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in

sub-section (1);

(b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for--

(i) private companies, the prior consent of at least eighty per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3,

shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,--

(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government, through private negotiations with the owner of the land in accordance with the provisions

of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by the private company and acquired by the Government for the project as a whole.

SECTION 3

(c) "affected family" includes--

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood

for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;

(e) "appropriate Government" means,--

(i) in relation to acquisition of land situated within the territory of, a State, the State Government;

(ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;

(iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry;

(iv) in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and

(v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;

(i) "cost of acquisition" includes--

(i) amount of compensation which includes solatium, any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court and interest payable thereon and any other amount determined as payable to the affected families by such Authority or Court;

(ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;

(iii) cost of acquisition of land and building for settlement of displaced or adversely affected families;

(iv) cost of development of infrastructure and amenities at the resettlement areas;

(v) cost of rehabilitation and resettlement as determined in accordance with the provisions of this Act;

(vi) administrative cost,--

(A) for acquisition of land, including both in the project site and out of project area lands, not exceeding such percentage of the cost of compensation as may be specified by the appropriate

Government;

(B) for rehabilitation and resettlement of the owners of the land and other affected families whose land has been acquired or proposed to be acquired or other families affected by such acquisition;

(vii) cost of undertaking 'Social Impact Assessment study';

(k) "displaced family" means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area;

(o) "infrastructure project" shall include any one or more of the items specified in clause (b) of sub-section (1) of section 2;

(u) "market value" means the value of land determined in accordance with section 26;

(za) "public purpose" means the activities specified under sub-section (1) of section 2;

(zb) "Requiring Body" means a company, a body corporate, an institution, or any other organisation or person for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land is for public purpose to a company, body corporate, an institution, or any other organisation, as the case may be, under lease, licence or through any other mode of transfer of land;

(zc) "Resettlement Area" means an area where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government;

CHAPTER II

SECTION 5

Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

SECTION 6 - Publication of Social Impact Assessment study

(1) The appropriate Government shall ensure that the Social Impact Assessment study report and the Social Impact Management Plan referred to in sub-section (6) of section 4 are prepared and made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government.

(2) Wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorised by the Central Government to carry out environmental impact assessment:

Provided that, in respect of irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law for the time being in force, the provisions of this Act relating to Social Impact Assessment shall not apply.

SECTION 7 - Appraisal of Social Impact Assessment report by an Expert Group

(1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.

(2) The Expert Group constituted under sub-section (1) shall include the following, namely:--

(a) two non-official social scientists:

(b) two representatives of Panchayat. Gram Sabha, Municipality or Municipal Corporation, as the case may be;

(c) two experts on rehabilitation; and

(d) a technical expert in the subject relating to the project.

(3) The appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

(4) If the Expert Group constituted under sub-section (1), is of the opinion that,--

(a) the project does not serve any public purpose; or

(b) the social costs and adverse social impacts of the project outweigh the potential benefits.

it shall make a recommendation within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps to acquire the

land will be initiated in respect of the same:

> Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision:
>
> Provided further that where the appropriate Government, inspite of such recommendations, proceeds with the acquisition, then, it shall ensure that its reasons for doing so are recorded in writing.

(5) If the Expert Group constituted under sub-section (1), is of the opinion that,--

> (a) the project will serve any public purpose; and
>
> (b) the potential benefits outweigh the social costs and adverse social impacts,

it shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available:

> Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision.

(6) The recommendations of the Expert Group referred to in sub-sections (4) and (5) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such

manner as may be prescribed and uploaded on the website of the appropriate Government.

SECTION 8 - Examination of proposals for land acquisition and Social Impact Assessment report by appropriate Government

(1) The appropriate Government shall ensure that--

(a) there is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified;

(b) the potential benefits and the public purpose referred to in clause (a) shall outweigh the social costs and adverse social impact as determined by the Social Impact Assessment that has been carried out;

(c) only the minimum area of land required for the project is proposed to be acquired;

(d) there is no unutilised land which has been previously acquired in the area;

(e) the land, if any, acquired earlier and remained unutilised, is used for such public purpose and make recommendations in respect thereof.

(2) The appropriate Government shall examine the report of the Collector, if any, and the report of the Expert Group on the Social Impact Assessment study and after considering all the reports, recommend such area for acquisition which would ensure minimum displacement of people, minimum

disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.

(3) The decision of the appropriate Government shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that where land is sought to be acquired for the purposes as specified in sub-section (2) of section 2, the appropriate Government shall also ascertain as to whether the prior consent of the affected families as required under the proviso to sub-section (2) of section 2, has been obtained in the manner as may be prescribed.

SECTION 9 - Exemption from Social Impact Assessment

Where land is proposed to be acquired invoking the urgency provisions under section 40, the appropriate Government may exempt undertaking of the Social Impact Assessment study.

CHAPTER III

SECTION 10 - Special provision to safeguard food security

(1) Save as otherwise provided in sub-section (2), no irrigated multi-cropped land shall be acquired under this Act.

(2) Such land may be acquired subject to the condition that it is being done under exceptional

circumstances, as a demonstrable last resort, where the acquisition of the land referred to in sub-section (1) shall, in aggregate for all projects in a district or State, in no case exceed such limits as may be notified by the appropriate Government considering the relevant State specific factors and circumstances.

(3) Whenever multi-crop irrigated land is acquired under sub-section (2), an equivalent area of culturable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food-security.

(4) In a case not falling under sub-sect ion (1), the acquisition of the agricultural land in aggregate for all projects in a district or State, shall in no case exceed such limits of the total net sown area of that district or State, as may be notified by the appropriate Government:

Provided that the provisions of this section shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.

SECTION 11 - Publication of preliminary notification and power of officers thereupon

(1) Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:--

(a) in the Official Gazette;

(b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;

(c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government;

(e) in the affected areas, in such manner as may be prescribed.

(2) Immediately after issuance of the notification under sub-section (1), the concerned Gram Sabha or Sabhas at the village level, municipalities in case of municipal areas and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, shall be informed of the contents of the notification issued under the said sub-section in all cases of land acquisition at a meeting called especially for this purpose.

(3) The notification issued under sub-section (1) shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under section 43.

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the

land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.

(5) After issuance of notice under sub-section (1), the Collector shall, before the issue of a declaration under section 19, undertake and complete the exercise of updating of land records as prescribed within a period of two months.

SECTION 15 – HEARING OF OBJECTIONS

(1) Any person interested in any land which has been notified under sub-section (1) of section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to--

(a) the area and suitability of land proposed to be acquired;

(b) justification offered for public purpose;

(c) the findings of the Social Impact Assessment report.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section

11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.

SECTION 26 - DETERMINATION OF MARKET VALUE OF LAND BY COLLECTOR

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:--

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the dale for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.--The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.--For determining the average sale price referred to in Explanation I, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.--While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.--While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that--

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent. of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

SECTION 31 - REHABILITATION AND RESETTLEMENT AWARD FOR AFFECTED FAMILIES BY COLLECTOR

(1) The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

(2) The Rehabilitation and Resettlement Award shall include all of the following, namely:--

(a) rehabilitation and resettlement amount payable to the family;

(b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;

(c) particulars of house site and house to be allotted, in case of displaced families;

(d) particulars of land allotted to the displaced families;

(e) particulars of one time subsistence allowance and transportation allowance in case of displaced families;

(f) particulars of payment for cattle shed and petty shops;

(g) particulars of one-time amount to artisans

and small traders;

(h) details of mandatory employment to be provided to the members of the affected families;

(i) particulars of any fishing rights that may be involved;

(j) particulars of annuity and other entitlements to be provided;

(k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided:

Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as ''not applicable":

Provided further that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.

SECTION 40 – SPECIAL POWERS IN CASE OF URGENCY TO ACQUIRE LAND IN CERTAIN CASES

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) The powers of the appropriate Government

under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) Before taking possession of any land under sub-section (1) or sub-section (2). the Collector shall tender payment of eighty per cent. of the compensation for such land as estimated by him to the person interested entitled thereto.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1) of section 11.

(5) An additional compensation of seventy-five per cent. of the total compensation as determined under section 27. shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section:

Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of

the State or relations with foreign States.

SECTION 41 – SPECIAL PROVISIONS FOR SCHEDULED CASTES AND SCHEDULES TRIBES

(1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.

(2) Where such acquisition does take place it shall be done only as a demonstrable last resort.

(3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:

Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

(4) In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families. a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.

(5) The Development Plan shall also contain a programme for development of alternate fuel,

fodder and non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.

(6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land.

(7) The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.

(9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.

(10) The affected Scheduled Tribes other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

(11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent. rehabilitation and resettlement benefits to which

they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.

SECTION 105 - PROVISIONS OF THIS ACT NOT TO APPLY IN CERTAIN CASES OR TO APPLY WITH CERTAIN MODIFICATIONS

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or,

as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

SECTION 107 – POWER OF STATE LEGISLATURES TO ENACT ANY LAW MORE BENEFICIAL TO AFFECTED FAMILIES.

Nothing in this Act shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act.

SECTION 113 – POWER TO REMOVE DIFFICULTIES

(1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SECOND SCHEDULE

[See sections 31(1), 38(1) and 105(3)]

ELEMENTS OK REHABILITATION AND RESETTLEMENT ENTITLEMENTS FOR ALL THE AFFECTED FAMILIES (BOTH LAND OWNERS AND THE FAMILIES WHOSE LIVELIHOOD IS PRIMARILY DEPENDENT ON LAND ACQUIRED) IN ADDITION TO THOSE PROVIDED IN THE FIRST SCHEDULE.

Serial Number	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/provision (if provided, details to be given)	Whether provided or not
(1)	(2)	(3)	(4)
1.	Provision of housing units in case of displacement	(1) If a house is lost in rural areas a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sq.mts. in plinth area. (2) The benefits listed above shall also be extended to any affected family which is without homestead land and which has been residing in the area continuously for a period of not less than three years preceding the date of notification of the affected area and which has been involuntarily displaced from such area: Provided that any such family in	

urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, which shall not be less than one lakh fifty thousand rupees:

Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house:

Provided also that no family affected by acquisition shall be given more than one house under the provisions of this Act.

Explanation.--The houses in urban areas may, if necessary, be provided in multi-storied building complexes.

2. Land for Land In the case of irrigation project, as far as possible and in lieu of compensation to be paid for land acquired, each affected family owning agricultural land in the affected area and whose land has been acquired or lost, or who has, as a consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer or landless, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, a minimum of one acre of land in the command area of the project for which the land is acquired:

Provided that in every project those persons losing land and belonging to the Scheduled Castes or the Scheduled Tribes will be provided land equivalent to land acquired or two and a one-half acres, whichever is lower.

THE FOURTH SCHEDULE

(See section 105)

LIST OF ENACTMENTS REGULATING LAND ACQUISITION AND REHABILITATION AND RESETTLEMENT

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).

2. The Atomic Energy Act, 1962 (33 of 1962).

3. The Damodar Valley Corporation Act, 1948 (14 of 1948).

4. The Indian Tramways Act, 1886 (11 of 1886).

5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).

6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).

7. The National Highways Act, 1956 (48 of 1956).

8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).

9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).

10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).

11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).

12. The Electricity Act, 2003 (36 of 1903).

13. The Railways Act, 1989 (24 of 1989).

14. Similarly, the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 by which the provisions of the Act of 2013 have been extended to apply is reproduced hereinbelow.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (REMOVAL OF DIFFICULTIES) ORDER, 2015

Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, inter alia, amending section 105 of the RFCTLARR Act to extend the provisions of the Act

relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance 2015 (4 of 2015);

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

As whereas, as per the provisions of article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Scheduled to the RFCTLARR Act as extended to the land owners under the said Ordinance;

And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13

enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 113 of the Right to Fair Comparative and Transparency in Labd Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and

infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

15. It shall also not be out of place at this juncture to reproduce the relevant provisions of the Constitution of India which we are required to consider while deciding the issue involved in these petitions.

Article 73

73. Extent of executive power of the Union

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend
(a) to the matters with respect to which Parliament has power to make laws; and
(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws
(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers

Article 200

200. Assent to Bills

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative

Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President: Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom: Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill

Article 201 - Bill reserved for consideration

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom: Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration Procedure in Financial Matters

Article 254 - Inconsistency between laws made by

Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

258. Power of the Union to confer powers, etc, on States in certain cases

(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends
(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof
(3) Where by virtue of this article powers and duties

have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties

16. The relevant notifications which are relied upon and discussed by learned advocates appearing for the respective parties are also reproduced hereinbelow for the sake of convenience and easy reference.

Notification dated 06.02.2018

Notification
Revenue Department
Government of Gujarat
Sachivalaya, Gandhinagar

(The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) (30 of 2013)

District :-Surat
No:-AM-2018-100-M-LSU-1218-59-GH Dated – 6.2.18

Whereas it appears to the Government of Gujarat, that the land specified in the SCHEDULE annexed hereto, is likely to be needed for public purpose viz. for the purpose of construction of the infrastructure project of "Mumbai – Ahmedabad High Speed Railway Project"

(1) Now therefore in exercise of the powers conferred by sub-section (1) of section 2 of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (herein after referred to as "The Act") and the Rules made there-under, it is hereby notified that the Government of

Gujarat intends to acquire the said land for the public purpose of the specified above.

2. Now whereas a proposal is made for acquisition of the above mentioned scheduled land for the purposed project of "Mumbai-Ahmedabad High Speed Railway Project" the bare minimum area of land to be acquired, as per SCHEDULE for the Project is H.A. **7- 44-12 Sq.mtr.** and is situated within the boundary limit of **Village : Kathor Taluka : Kamrej District :- Surat**

3. Now whereas it appears to the State Government, that it is expedient to exempt in public interest to the area of H.A. **7-44-12 sq.mtr.** of land to be acquired for the above stated infrastructure project, from the application of the provision of chapter ll and lll of the Act.

4. Now therefore in exercise of the power conferred by section 10(A) of The Act I inserted by section 3 of The RFCTLARR (Gujarat Amendment) Act-2016) (Gujarat Act No. 12 of 2016) The Government of Gujarat, hereby exempt in public interest the area of H. A. **7-44-12 sq.mtr** land comprised in below mentioned SCHEDULE to be acquired for the "Mumbai-Ahmedabad High Speed Railway Project" from the application of the provision of chapter ll and lll of The Act

Notification dated 09.04.2018

Notification
Revenue Department,
Sachivalaya, Candhinagar.
Date:- **9 APR 2018**

(The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) (30 of 2013)

No. AM-2018-276-M-LSU-1218-59-GH

In exercise of the powers conferred by sub-section (l) of section ll of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 20l3

(No. 30 of 2013)(hereinafter referred to as "the Act"), the Government of Gujarat hereby declares that the land / lands mentioned in the Schedule annexed hereto is / are required for the purpose of acquisition for the public purpose of Mumbai-Ahmedabad High Speed Rail Project;
(2) It is notified that, -

(l) The area ofland / lands required for the above project **7-44-12** hector are.sq.mtrs. and is at Kathor Village of Kamrej Taluka of Surat District;
(2) The public purpose involved in the above project is construction of the infrastructure project of "Mumbai-Ahemedabad High Speed Rail Project"
(3) The reasons necessitating the displacement of the affected persons are -
Due to acquisition of the Land, specified in the SCHEDULE for public purpose of construction of the infrastructure project of "Mumbai- Ahemedabad High Speed Rail Project"
(4) Under Section l0A of the Cujarat Act of 12 of 2016, exemption is given under Section l0A of the Act vide Revenue department, Government Of Gujarat Notification No: - **AM -2018-100-M-LSU-1218-59-GH. Dated :- 06/02/2018** it is not required for the summary of the Social Impact Assessment Report.
(5) The particulars of the Administrator appointment under section 43 of the Act are as under- Special Land Acquisition Officer Branch no -4, Surat.

(3) All the persons interested in these lands are hereby notified not to obstruct and disturb any Surveyor or other staff to enter upon and survey the land. Any transaction in respect of whole or part of these lands in whatsoever manner including by sale, lease, mortgage, change of name, exchange entered into after the date of this Notification made without permission ofthe Collector shall not be taken into consideration by the officer assessing the compensation under section 27 of the Act for a particular portion of the land as may be finally acquired.

(4) The Government of Gujarat, if satisfied about acquisition of the land for aforesaid public purpose, may publish final declaration under section 19 of the Act in this regard in the manner and timeframe so prescribed under the Act. In case the acquisition is dropped partially or entirely, such facts shall be notified in a proper manner as provided under the Act.

(5) In exercise of the powers under clause (g) of section 3 of the Act read with Revenue Department's Government Order No: NMK:102017-1238-D-1 Dated: 25/04/2017 the State Government is pleased to designate Special Land Acquisition Officer Branch no -4, Surat to function and discharge the duties as Collector under the provisions of the Act in respect of these lands.

Second Ordinance 2015

MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 30th May, 2015/Jyaistha 9, 1937 (Saka)

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) SECOND ORDINANCE, 2015

NO. 5 OF 2015

Promulgated by the President in the Sixty-sixth Year of the Republic of India.

An Ordinance further to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

WHEREAS the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013) was promulgated by the President on the 31st day of December, 2014;

AND WHEREAS , the RFCTLARR (Amendment) Bill, 2015 was introduced on the 24th February, 2015 in the House of the People to replace the said Ordinance and the said Bill was passed alongwith amendments on the 10th March, 2015 in the House of the People, but the same could not be passed by the Council of States and is pending in that House;

AND WHEREAS , the RFCTLARR (Amendment) Ordinance, 2015 incorporating the amendments made by the House of the People was promulgated by the President on 3rd April, 2015;

AND WHEREAS , the RFCTLARR (Amendment) Second Bill, 2015 was introduced in the House of the People on 11th May, 2015;

AND WHEREAS , the House of the People referred the RFCTLARR (Amendment) Second Bill, 2015 to the Joint Committee of the Houses;

AND WHEREAS , it is considered necessary to give continued effect to the provisions of the RFCTLARR (Amendment) Ordinance, 2015;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance, 2015.

(2) It shall be deemed to have come into force on the 31st day of December, 2014.

2. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the principal Act), for the words "private company" wherever they occur, the words "private entity" shall be substituted.

3. In the principal Act, in sub-section (2) of section 2, after the second proviso , the following proviso shall be inserted, namely: —
"Provided also that the acquisition of land for the projects listed in sub-section (1) of section 10A and the purposes specified therein shall be exempted from the provisions of the first proviso to this sub-section.".

4. In the principal Act, in section 3,—
(i) in clause (j), in sub-clause (i), for the words and figures "the Companies Act, 1956", the words and figures "the Companies Act, 2013" shall be substituted;

(ii) after clause (y), the following clause shall be inserted, namely: —
" (yy) "private entity" means any entity other than a Government entity or undertaking and includes a proprietorship, partnership, company, corporation, non-profit organisations or other entity under any law for the time being in force;'.

5. In the principal Act, after Chapter III, the following Chapter shall be inserted, namely:—

"CHAPTER IIIA
PROVISIONS OF CHAPTER II AND CHAPTER III NOT TO APPLY TO CERTAIN PROJECTS

10A. (1) 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 this 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 set up by the appropriate Government and its undertakings (in which case the land shall be acquired up to one kilometer on both sides of designated railway line or roads for such industrial corridor); and
(e) Infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government:

Provided that the appropriate Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project.

(2) The appropriate Government shall undertake a survey of its wasteland including arid land and maintain a record containing details of such land, in such manner as may be prescribed by the appropriate Government.

6. In the principal Act, in section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose, shall be excluded.".

7. In the principal Act, in section 31, in sub-section (2), in clause (h), after the words "affected families", the words "including compulsory employment to at least one member of such affected family of a farm labourer" shall be inserted.

8. In the principal Act, in section 46, in sub-section (6), in the Explanation, in clause(b), the words "any person other than" shall be omitted.

9. In the principal Act, after section 67, the following section shall be inserted, namely—

"67A. The Authority shall, after receiving reference under section 64 and after giving notice of such reference to all parties concerned, hold the hearing in the district where the land acquisition takes place for settlement of the objections raised in the reference.".

10. In the principal Act, for section 87, the following section shall be substituted, namely:—

> *"87. Where an offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be, at the time of commission of such alleged offence, the court shall take cognizance of such offence provided the procedure laid down in section 197 of the Code of Criminal Procedure, 1973 is followed."*

11. In the principal Act, in section 101, for the words "a period of five years", the words, "a period specified for setting up of any project or for five years, whichever is later," shall be substituted.

12. In the principal Act, in section 105,—

(i) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";

(ii) sub-section (4) shall be omitted.

13. In the principal Act, in section 109, in sub-section (2),after clause (d), the following clause shall be inserted, namely:—

> *" (dd) the manner of undertaking a survey of waste land including arid land and maintenance of the record containing the details of such land under sub-section (2) of section 10A;'.*

14. In the principal Act, in section 113, in sub-section (1),—

(i) for the words "the provisions of this Part", the words "the provisions of this Act" shall be substituted;

(ii) in the proviso, for the words "a period of two years", the words "a period of five years" shall be substituted.

15. (1) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

STATEMENT OF OBJECTS AND REASONS

The Central Government has enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Gujarat is an industrially progressive State and more and more investment is coming to the State. The State Government aims to provide all basic facilities and infrastructure to the entrepreneurs. However, it has been experienced that after coming into force of the said Act which has very stringent provisions for acquiring the land, land acquisition has become a very lengthy and difficult proposition. It is, therefore, considered necessary to make the procedural part of the land acquisition smooth and easy without interfering with the rights of the persons whatsoever whose lands are acquired.

Accordingly, it is proposed to exempt certain projects from the application of the provisions of the Chapter II of the Act which relates to determination of social impact and public purpose as also from the provisions of Chapter III of the Act which relates to special provision to safeguard food security. These projects *inter alia* include the projects which are vital to national security or defence of India, rural infrastructure including electrification, affordable housing and housing for the poor people, etc. It is also proposed to insert a provision to the effect that in case where the person interested in the land who have appeared before him have agreed in writing on the matters to be included in the award then the Collector may without making further inquiry, make an award

according to the terms of agreement. Section 24 (2) of the said Act provides that where an award under the old Act that is Land Acquisition Act, 1894 has been made five years or more prior to the commencement of the Act of 2013 but the physical possession of the land has not been taken or the compensation has not been paid, the said proceeding shall be deemed to have lapsed. It is proposed to insert a provision to the effect that for computing the said period of five years, any period or periods for which the acquisition of land was held up on account of any stay or injunction of the court or such period where possession has been taken but the compensation has been lying deposited in any court for this purpose shall be excluded. It is also proposed to insert a provision to the effect that it would be competent for the State Government to pay where the land is to be acquired for its own use amounting to less than one hundred acres or where the land is to be acquired for projects which are linear in nature, such lump sum amount equal to fifty per cent of the amount of compensation to the affected families as Rehabilitation and Resettlement cost.

This Bill seeks to amend the said Act to achieve the aforesaid objects.

NITIN PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respect:-

Clause 1: Sub-clause (2) of this clause empowers the State

Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 3: **New section 10A proposed to be inserted by this clause empowers the State Government to exempt, by notification in the *Official Gazette*, certain projects from the applications of Chapter II and Chapter III of the Act.**

Clause 4: **New section 23A proposed to be inserted by this clause empowers the State Government to prescribe by rules, the form in which the Collector shall make an award without inquiry where the persons interested have agreed to the matters to be included in the award.**

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 22nd February, 2016 **NITIN PATEL.**

[Emphasis Supplied]

The 2016 Gujarat Bill

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (GUJARAT AMENDMENT) BILL, 2016

GUJARAT BILL NO. 5 OF 2016

A BILL *further to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in its application to the State of Gujarat.*

It is hereby enacted in the Sixty-seventh Year of the Republic of India as follows:-

Short title and commencement.

1. (1) This Act may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Act, 2016.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Amendment of section 2 of __ of 2013

2. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the principal Act"), in section 2, in sub-section (2), after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that the acquisition of land for the projects listed in section 10A and the purposes specified therein shall be exempted from the provisions of the first proviso to this sub-section."

Insertion of new section 10A in __ of __ of 2013

3. In the principal Act, after section 10, the following section shall be

2013 inserted, namely:-

Power of State Government to exempt certain projects

"10A. The State Government may, in the public interest, by notification in the *Official Gazette*, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this 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 set up by the State Government and its undertakings (in which case the land shall be acquired up to one kilometre on both sides of designated railway line or roads for such industrial corridor); and

(e) Infrastructure projects including projects under public-private partnership

where the ownership of land continues to vest with the Government;

Provided that the State Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project."

Insertion of new section 23A in 30 of 2013

4. In the principal Act, after section 23, the following section shall be inserted, namely:-

Award of Collector without enquiry in case of agreement of interested persons.

"**23A**. (1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(2) The determination of

compensation for any land under sub-section (1) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

16 of 1908

(3) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (1) shall be liable to registration under that Act".

Amendment of section 24 of 30 of 2013.

5. In the principal Act, in section 24, in sub-section (2), after the existing proviso, the following proviso shall be inserted, namely:-

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained

for this purpose, shall be excluded."

Insertion of new section 31A in 30 of 2013

6. In the principal Act, after section 31, the following section shall be inserted, namely:-

Payment of lump sum amount by State Government for its linear nature projects.

31A. Notwithstanding anything contained in this Act, it shall be competent for the State Government to pay, whenever the land is to be acquired for its own use amounting to less than one hundred acres or whenever the land is to be acquired in case of projects which are linear in nature as referred to in proviso to sub-section (4) of section 10, as Rehabilitation and Resettlement cost, such lump sum amount equal to fifty per cent of the amount of compensation as determined under section 27 to the affected families".

Amendment of section 40 of 30 of 2013

7. In the principal Act, in section 40, in sub-section (2), after the words "approval of Parliament", the words "or to comply with the directions given by the Central Government to the State

Government" shall be added.

Amendment of section 46 of 30 of 2013

8. In the principal Act, in section 46, in sub-section (6), in the Explanation, in clause (b), sub-clause (i) shall be deleted.

Substitution of section 87 of 30 of 2013

9. In the Act, for section 87, the following section shall be substituted, namely:-

"87. Where any offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be, at the time of commission of such alleged offence, the court shall take cognizance of such offence provided the procedure laid down in section 197 of the Code of Criminal Procedure, 1973 is followed."

2 of 1974

Notification dated 11.09.2018

Regarding consideration of 'Indexation Formula' while declaring Award under the Land Acquisition Act,2013 (Gujarat Amendment-2016)

Government of Gujarat
Revenue Department
Resolution No. LAQ/2018/1976/GH
Sachivalaya, Gandhinagar
Dated 11/09/2018

Read: (1) Resolution No. LAQ/22-2014/179/GH dated 29/07/2016 of Revenue Department.

(2) Resolution No. LAQ/22-2014/54/GH dated 04/04/2018 of Revenue Department.

RESOLUTION

By virtue of the Gujarat State Amendment Bill, 2016, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Act, 2016 has been brought into force with effect from 15/08/2016, effecting certain amendments in the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement 2013 for the smooth implementation of the provisions of the Act, keeping in mind the object that the Act does not permit less compensation than as provided under the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013.

Section 26 of the Land Acquisition Act, 2013 provides for the following procedure for determination of compensation:

(1) The amount of compensation (Jantri Rate, as specified in the Stamp Act, 1889 for registered sale deed/Banakhat/Agreement of sale.
(2) Value of similar such lands situated in the nearby area/villages.
(3) Price determined for the acquisition of private land by consent.

Provision is to determine the compensation of the amount whichever is higher amongst the above three.

There is provision to multiply the factor mentioned in Schedule-I with the market value which may be determined as per the provisions of sub-section (2) of section 26 and sub-section (1). Vide Government Resolution dated 29/07/2016, for urban areas

factor 1 (one) and for rural areas factor 2 (two) should be the multiplier and compensation should be determined accordingly.

It has been under the consideration of the Government that despite the aforesaid factum, for the important projects of the Government, where, it is imperative to take the possession of the land under the acquisition, 'Indexation Formula' declared by the Income Tax Department of Government of India, has been applied to the Jantri value of 2011 for determination of the compensation. Considering the above, it is resolved that in the cases where farmers are ready and willing to offer their land by consent award as provided vide Government Resolution dated 04/04/2018 and the acquiring body is willing to offer compensation as per 'indexation formula' for determining the compensation, compensation be determined accordingly.

This Resolution has been issued as per the file of even number of the Revenue Department, in concurrence dated 21/08/2018 of the Finance Department.

By order and in the name of the Governor of Gujarat.

(H.J. Rathod)
Under Secretary
Revenue Department,
Government of Gujarat.

Ministry of Railways Notification dated 08.10.2018

MINISTRY OF RAILWAYS
NOTIFICATION
New Delhi, the 8th October, 2018

S.O. 5181(E) . - WHEREAS certain parcels of land, specified in the Schedule annexed hereto and located in the States of Gujarat, are required for public purpose, namely, "Mumbai-Ahmedabad High Speed Rail Project" and the Government of Gujarat is required to acquire the land situated within its territory.

AND WHEREAS the Government of Gujarat, on the request of the Central Government, has issued several notifications under sub-section (1) of section 11 of the Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (the said Act) for acquisition of land for the aforesaid public purpose and also appointed Land Acquisition Officers by designating them as Competent Authority for Land Acquisition for the said public purpose:

AND WHEREAS in relation to acquisition of land situated within the territory of Gujarat the Government of Gujarat, is the appropriate Government and in relation to acquisition of land for public purpose in more than one State, the Central Government in consultation with the concerned State Government, is the appropriate Government under sub-clauses (i) and (iv) of clause (e) of section 3 of the said Act, respectively;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 258 of the Constitution, the President, with the consent of the Government of the State of Gujarat, hereby directs-

(a) that the functions of the Central Government as appropriate Government under the said Act may be performed by the Government of Gujarat subject to the condition that the Central Government may itself, at any time, perform the functions of the appropriate Government under the said Act if it deems fit to do so:

(b) that all the actions taken by the Government of Gujarat in relation to acquisition of land within the territory of Gujarat for the aforesaid purpose shall be deemed to have been taken for and on behalf of the Central Government and shall be deemed to be legal and valid for all purposes; and

(c) that the Government of Gujarat, while performing any function under this notification, shall comply with such general and special directions as the Central Government may, from time to time, give.

[Emphasis Supplied]

LETTER DATED 26.04.2016 BY PRINCIPAL SECRETARY TO the GOVERNOR OF GUJARAT

No.
Guj./Bill/5/2016/1516/91/C

Legislative and Parliamentary
Affairs Department

4/4, Sardar Bhavan,

Sachivalaya,

Gandhinagar.

Dated the 26th April, 2016.

To,
The Principal Secretary to Hon'ble the
Governor of Gujarat,
Raj Bhavan, Gandhinagar.

Subject : The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016.

Sir,

In pursuance of article 200 of the Constitution of India, I am directed to forward herewith for being presented to the Governor, the authentic copy (in triplicate) of **the Right to**

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016 (Guj. Bill No. 5 of 2016) which was read for the third time and passed by the Gujarat Legislative Assembly at its meeting held on the 31st March, 2016.

2. The subject matter of the Bill falls under Entry 42 in List III of the Seventh Schedule to the Constitution of India. As the provisions of the Bill are repugnant to the provisions of **the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2013** which is an existing law falling under entry 42 in the Concurrent list. **It is therefore, necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution.**

3. I also forward herewith six copies of each of the items Nos. 1 and 2 and three copies of item No. 3 of the papers noted in the margin. The copy of item No. 4 will be sent afterward. The Bill was not referred to a Select

Committee.

1. Bill as introduced in the Gujarat Legislative Assembly with the Statement of Objects and Reasons and Memorandum Regarding Delegated Legislation. 2. Bill as read for the third time and passed by the Gujarat Legislative Assembly. 3. The form of certificate to be signed by the Principal Secretary to the Governor and the documents stated therein as required under the Government of India, Ministry of Home Affairs latter No. 17/23/72/Judl. Dated the 3rd August, 1972.

4. I am, therefore, to request you to move to the

Government of India to obtain the assent of the President to the said Bill and communicate to the State Government.

Yours faithfully,

sd/-

(C.J. Gothi)
Secretary to Government

CERTIFICATE

Subject: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016. (Guj. Bill No. 05 of 2016)

Certified that the following documents in connection with the above mentioned legislative proposal have been attached herewith-

1. Six copies of the letter of the State Government forwarding the proposed legislation.

2. Three authentic copies of the legislation printed on parchment paper, each endorsed by the Governor reserving the legislation for the consideration of the President, and leaving sufficient space below the Governor's signature for appropriate endorsement by the President of India.

3. Six other copies of the Bill passed by the State legislature.

4. Six other copies of the Bill as introduced with the Statement of Objects and Reasons and Memorandum Regarding Delegated Legislature thereof.

5. The Legislation is an amending one. One upto-date copy of the Principal Act, note on the clause of the proposed legislation and a comparative statement showing relevant clauses as it exists and as it would read after the proposed amendment, are also attached.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (GUJARAT AMENDMENT) BILL, 2016
(Guj. Bill No. 05 of 2016)

Note on clauses of the proposed legislation

The Statement of Objects and Reasons of the Bill Contains notes on the provision of the Bill.

Tel. No.(079) 23243171-72-73 **OFFICE OF THE SECRETARY TO**
Fax No. (079) 23231121 **THE GOVERNOR OF GUJARAT**
Website : rajbhavan.gujarat.gov.in
E-mail:**sec-rajbhavan@gujarat.gov.in** **Raj Bhavan, Gandhinagar–382020**

Important

No : GCP-1816-G-GS-3687 Dated : 21st May, 2016

To

The Secretary
Ministry of Home Affairs,
Government of India,
North Block,
Jaisalmer House,
NEW DELHI.

Sub: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016. (Guj. Bill No. 5 of 2016)

Sir,

I am directed to forward herewith the authentic copy (in triplicate) of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016** (Gujarat Bill No. 5 of 2016). It was read for the 3rd time and passed by the Gujarat Legislative Assembly at its meeting held on 31st March, 2016.

State Government in the **Legislative & Parliamentary Affairs Department**, vide its letter dated 26th April, 2016, had submitted the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016** (Gujarat Bill No. 5 of 2016) for the kind consideration of the **Hon. Governorshri of Gujarat** for reserving it under **Article 200** of the **Constitution of India** and for its onward submission to the **Home Ministry** for the kind consideration and assent of the **Hon. President of India** with reference to Clause (2) of **Article 254** of the **Constitution of India.**

State Government in the **Legislative and Parliamentary Affairs Department** had made the following observations with reference to the said **Bill** :

> 1. The **Bill** was passed by the Gujarat Legislative Assembly at its meeting held on 31st March, 2016.
> 2. The subject matter of the **Bill** falls under **Entry 42** in List III of the VIIth Schedule to the **Constitution of India**.
> 3. The Bill was not referred to the **Select Committee**.
> 4. AS the provisions of the **Bill** are repugnant to the provisions of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,** which is an existing law falling under entry 42 in the **Concurrent List**, the State Government has opined that it is necessary to reserve the **Bill** for the kind consideration of the **Hon. President of India** with reference to **Clause (2)** of **Article 254** of the **Constitution of India.**

The Statement of Objects & Reasons attached to the Bill gives the background under which the State Government thought it necessary to introduce the Bill under reference in the Gujarat Legislative Assembly. Since it was necessary to reserve the Bill for the kind consideration of the Hon. **President of India, Shri O.P. Kohli, Hon. Governorshri of Gujarat,** has considered the relevant provisions of the Bill and has reserved it. He has also directed the undersigned to submit it to the Government of India in the Ministry of Home Affairs for further process at the Ministry's end so that the kind assent of the Hon. **President of India** could be obtained.

In view of the above, I am directed for forward herewith the Form of Certificate duly signed by me and the documents stated therein, as required under the Government of India, Ministry of Home Affairs' letter No.17/23/72/judicial dated 3rd August, 1972. Extracts from the proceedings of the Gujarat Legislative Assembly dated 31st March, 2016 would be sent hereafter in due course.

In view of the above, I would like to request you to move the Government of India for obtaining the kind assent of the Hon. **President of India** to the Bill under reference at the earliest.

Regards.

Yours faithfully,

sd/-
(ARVIND JOSHI)
Principal
Secretary to the Hon.
Governorshri

Encl : As above]

I reserve the Bill for consideration of the President under article 200 of the Constitution of India.

(O.P. Kohli)
GOVERNOR OF GUJARAT

Dated the 20/05/2016

GUJARAT LEGISLATURE SECRETARIAT

GUJARAT BILL NO. 5 OF 2016

A BILL

further to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in its

application to the State of Gujarat.

[SHRI NITIN PATEL,
MINISTER FOR HEALTH]

(As read for a third time and passed by the Legislative Assembly on 31st March, 2016.)

D.M PATEL,
Secretary,
Gujarat Legislative Assembly.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR

Tel. No.(079) 23243171-72-73 OFFICE OF THE SECRETARY TO
Fax No. (079) 23231121 THE GOVERNOR OF GUJARAT
Website : rajbhavan.gujarat.gov.in
E-mail:**sec-rajbhavan@gujarat.gov.in** **Raj Bhavan, Gandhinagar–382020**

IMPORTANT

TO
Shri C.J. Gothi,
Secretary to the Government of Gujarat,
Legislative & Parliamentary Affairs Department,
Sachivalaya, Gandhinagar – 382 010.

Subject : The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Gujarat Amendment Bill, 2016. (Gujarat Bill No. 5 of 2016)

Sir,

Kindly refer to the State Government in the Legislative &

Parliamentary Affairs Department's leter no. GUJ/Bill/5/2016/1516/91/C dated 26/04/2016. The **Bill** sent by the State Government was reserved for the consideration of the **Hon. President of India** as suggested by the Government.

As per the **Ministry of Home Affairs, Government of India's letter No. 17/36/2016-JUDL & PP** dated **10/08/2016**, the Ministry has returned two authenticated copies of the **Bill** with the Hon. President's assent dated 8/8/2016 signifying thereon under **Article 201** of the constitution of India.

Receipt of this letter and two authenticated copies of the Bill may kindly be acknowledged.

Yours Faithfully,
sd/-
(D.P. Shah)
Section Officer

Encl : As Above

Sr. No.	Existing provisions	Clause No. of the Bill	Section as would appear after incorporating amendment in the existing provisions
1.	**2. Application of Act.** (1) xxx xxx xxx (2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate	2.	**2. Application of Act.** (1) xxx xxx xxx (2) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, Shall also apply, when the appropriate Government acquires land for the following purposes, namely:- (a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public

	Government acquires land for the following purposes, namely:- (a) for public private partnership projects, where the ownership of the land continues to vest with the government, for public purpose as defined in sub-section (1): (b) for private companies for public purpose, as defined in sub-section (1): Provided that in the case of acquisition for- (i) private companies, the prior consent of atleast eighty percent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of Section 3; and (ii) public private		purpose as defined in sub-section (1); (b) for private companies for public purpose, as defined in sub-section (1): Provided that in the case of acquisition for- (i) private companies, the prior consent of atleast eighty percent. of those affected families, as defined in sub-clause clause (i) and (v) of clause (c) of section 3; and (ii) public private partnership projects; the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as may be prescribed by the appropriate Government: Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4: Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas: **Provided also that the acquisition of land for the projects listed in sub-section (1) of section 10A and the purposes specified therein shall be exempted from the provisions of the first proviso to this sub-section.** (3) xxx xxx xxx

	partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of Section 3, shall be obtained through a process as may be prescribed by the appropriate Government: Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in Section 4: Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.		

	(3) xxx xxx xxx		
2.	**Insertion of new section 10A.**	**3.**	**10A. Power of State Government to exempt certain projects.** The State Government may, in the public interest, by notification in the *Official Gazette*, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this 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 set up by the State Government and its undertakings (in which case the land shall be acquired up to one kilometer on both sides of designated railway line or roads for such industrial corridor); and (e) infrastructure projects including projects under public-private partnership where the ownership of land continues to vest with the Government: Provided that the State Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project.".
3.	**Insertion of new section 23A.**		**23A. Award of Collector without enquiry in case of agreement of**

		16 of 1908.	**interested persons.** (1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement. (2) The determination of compensation for any land under sub section (1) shall not in any way affect the determination of compensation in respect of other lands elsewhere in accordance with the other provisions of this Act. (3) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (1) shall be liable to registration under that Act.
4.	**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.** (1) XXX XXX XXX (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the	**5.** **1 of 1894**	**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.** (1) XXX XXX XXX (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be

	Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to		deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act: **Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the taking possession or such period where possession has been taken but in any period specified in the award of a Tribunal for the compensation is lying deposited in a court or designated account maintained for this purpose, shall be excluded.**

	compensation in accordance with the provisions of this Act.		
5.	**Insertion of new section 31A.**	**6.**	**31A. Payment of lump- sum amount by State Government for its linear nature projects.** Notwithstanding anything contained in this Act, it shall be competent for the State Government to pay, whenever the land is to he acquired for its own use amounting to less than one hundred acres or whenever the land is to be acquired in case of which are linear in nature as referred to in proviso to sub-section (4) of section 10, as Rehabilitation and Resettlement cost, such lump sum amount equal to fifty per cent. of the amount of compensation as determined under section 27 to the affected families
6.	**40. Special powers in case of urgency to acquire land in certain cases.** (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon	**7.**	**40. Special powers in case of urgency to acquire land in certain cases.** (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. (2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament **or to comply with the directions given by the Central**

	vest absolutely in the Government, free from all encumbrances. (2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament: Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to		**Government to the State Government:** Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience. (3) to (5) XXX XXX XXX

	enable such occupier to remove his movable property from such building without unnecessary inconvenience. (3) to (5) XXX XXX XXX		
7.	**46. Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons.** (1) Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more such limits, as may be notified by the appropriate Government considering the relevant State specific factors and circumstances for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of (a) intent to purchase; (b) purpose	8. **21 of 1860**	**46. Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons.** (1) Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more such limits, as may be notified by the appropriate Government, considering the relevant State specific factors and for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of (a) intent to purchase; (b) purpose for which such purchase is being made; (c) particulars of lands to be purchased. (2) to (5) XXX XXX XXX (6) If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from

	for which such purchase is being made; (c) particulars of lands to be purchased. (2) to (5) XXX XXX XXX (6) If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent. of the compensation paid for such land acquired shall be shared with the original land owners. Explanation. - For the purpose of this section, the expression- (a) "original land owner" refers to the owner of the land as on the 5th day of September, 2011; (b) "specified		the date of commencement of this Act, then, forty per cent. of the compensation paid for such land acquired shall be shared with the original land owners. Explanation.- For the purpose of this section, the expression- (a) "original land owner" refers to the owner of the land as on the 5th day of September, 2011; (b) "specified persons" includes any person other than- **(i) deleted;** (ii) Government company; (ii) association of persons or trust or society as registered under the Societies Registration Act, 1860, wholly or partially aided by the appropriate Government or controlled by the appropriate Government.

	persons" includes any person other than- (i) appropriate Government; (ii) Government company; (iii) association of persons or trust or society as registered under the Societies Registration Act, 1860, wholly or partially aide by the appropriate Government or controlled by the appropriate Government.		
8.	**87. Offences by Government departments.** (1) Where an offence under this Act has been committed by any department of the Government, the head of the department, be deemed to be guilty of the offence and shall be liable to proceeded against and punished accordingly Provided that nothing contained in this section shall render any person	**9.** **2 of 1974**	**87. Offences by Government Officials.** **Where any offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be, at the time of commission of such alleged offence, the court shall take cognizance of such offence provided the procedure laid down in section 197 of the Code of Criminal Procedure, 1973 is followed.**

	liable to any punishment if such person proves offence was committed without his knowledge or that exercised all due diligence to prevent the offence that the such person commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.		

17. Having thus reproduced the relevant provisions of Constitution of India, Central Act, 2013, Amendment Act, 2016, communications of the State and Central Government

above, we shall now proceed to analyse the chronology of important events which as such are not in dispute. The same are as under:

Sr. No.	Date	Particulars	Page No. in SCA No. 9864	Page No. i SCA No. 1765
1	May, 2013	An announcement came to be made for carrying out a joint feasibility study on Mumbai-Ahmedabad High-Speed Rail Project [`the Project' for short to be co-financed by Government of India and Government of Japan through its governmental agency i.e. Japan International Cooperation Agency [`JICA' for short] was made.	178	81
2	01.01.2014	Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [`the Central Act of 2013' for short] came into effect.		
3	3.12.2014	The Central Government issued an Ordinance called “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014”.	–	82
4	30.05.2015	The Central Government issued the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and	–	114

		Resettlement (Amendment) Second Ordinance, 2015.		
5	July, 2015	JICA, after considering various options, submitted its Joint Feasibility Report, wherein a dedicated route for the Project, also came to be decided.	179	81
6	28.05.2015	Central Government issued a `Removal of Difficulties Order, 2015 under Section 113(2) of the Central Act of 2013.		
7	31.08.2015	The aforesaid Ordinance dated 30.05.2015 came to be lapsed.	–	82
8	August to December, 2015	Various developments took place wherein the Government of Japan offered assistance package for the Project followed by formation of an Empowered Committee on Innovative Collaboration under the Chairmanship of Vice-Chairman, Niti Ayog.	179	82
9	December, 2015	Memorandum of Cooperation was signed between the Government of Japan and Government of India for implementation of the Project providing, inter alia, for transfer of Technology, Make-in India for High Speed Rail trains and establishment of Training Institute for High Speed Rail.	179	82
10	12.02.2016	With a view to facilitate the implementation and execution of the said linear Project, the Government of India and participating State Governments formed a Joint Venture Company called `National High-speed Corporation Ltd.'	179	83

		(`the Corporation' for short) consisting of the Central Government, Government of Gujarat and Government of Maharashtra with a main object viz. to plan, design, develop, build, commission, maintain, operate and finance High-Speed Rail Services between the State of Maharashtra and State of Gujarat.		
11	**31.03.2016**	**The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016 came to be passed in the Legislative Assembly.**	268	83
12	March to December, 2016	Several rounds of meetings of the said different committees and working groups viz. (1) Joint Committee, (ii) Working Group, (iii) Technical Group, etc. took place for finalizing the detailed plans for implementation and execution of the Project.	179	83
13	26.04.2016	A communication was addressed to the Hon'ble Governor, requesting to reserve the aforesaid State Bill of 2016 for kind consideration of the Hon'ble President for the reasons stated therein.	271	160
14	21.05.2016	A communication came to be addressed by the office of the Hon'ble President along with the copies of the aforesaid Bill and its Statement of Objects and Reasons with the explanation of the	286	175

		nature of repugnancy, etc. and the reasons for the amendment, for the grant of assent.		
15	**08.08.2016**	**After the receipt of the request by the office of the Hon'ble the Governor for the assent to the Bill of 2016, ultimately the same came to be accorded by the Hon'ble the President to the said Bill of 2016, whereupon the said Bill got culminated into the Right to Fair Compensation & Transparency in Land Act, Rehabilitation and Resettlement (Gujarat Amendment) Act, 2016 (`the State Amendment Act of 2016' for short) and which then came into effect on 15.08.2016.**	–	120
16	12.01.2017	Memorandum of Understanding came to be arrived at between the Government of Gujarat through Gujarat Infrastructure Development Board on one hand and the Corporation on the other for efficient implementation / development of the project and it was agreed that Government of Gujarat would facilitate the acquisition of the land for the Project.	193	124
17	31.03.2017	The Government of India, Ministry of Railways, Railway Board, addressed a communication to the Chief Secretary,	196	127

		Government of Gujarat, stating, inter alia, that the State Government may nominate in each District, Dedicated Land Acquisition Officers along with required support staff with a view to seeing that the land acquisition process can be initiated as soon as the land plan is submitted.		
18	25.04.2017	In view of the above, the State Government passed an order appointing Land Acquisition Officers for land acquisition for 8 districts (as mentioned in the letter) by designating them as `Competent Authority for Land Acquisition' for the project.	198	129
19	14.09.2017	Hon'ble Prime Minister and his Janapese counterpart Mr. Shinzo Abe laid foundation stone in the city of Ahmedabad for the country's first 508 kms, High Speed Rail Project between Mumbai and Ahmedabad.	181	84
20	17.09.2017	Loan agreements came to be signed between JICA on one hand and Government of India on the other, providing Japanese ODA loans of 85.974 billion yen to be repaid in 50 years with 15 years grace, with interest at the rate of 0.1%.	–	85
21	09.10.2017	A letter inter alia requesting the Chief Secretary of the State Government was addressed by the Corporation that it is	199	130

		planning to submit the Land Acquisition Papers to the respective Land Acquisition Officers progressively during the month and that it is expected that all the papers for the land acquisition would be submitted to the concerned Government Authorities during the month, more particularly in view of the size of the linear project, whose success largely depends upon timely acquisition inasmuch as the Project has been desired to be delivered in August, 2022.		
22	22.12.2017	The State Government thereafter, in its Roads & Buildings Department constituted a High Power Committee for various issues, viz. for land acquisition, forest & environment, power supply, utility shifting for implementation of the Project.	181	85
23	December, 2017 to July, 2018	An independent agency called M/s. Arcadis carried out district-wise impact survey under the supervision of JICA.	–	92
24	02.02.2018	A communication was addressed to all the concerned authorities by the State Government informing about the convening of the first meeting of the High Power Committee under the Chairmanship of the Chief Secretary of the Government of Gujarat, along with various Central as well as the State Authorities.	200	131

25	06.02.2018	The Under Secretary, Revenue Department of the State Government issued various taluka / village-wise notifications in exercise of the powers conferred under Section 10A of the State Amendment Act of 2016.	142	86
26	16.02.2018	In view of the above, the meeting was conducted for the issues relating to the project, including the issue relating to the land acquisition, as per the agenda attached therewith.	181	85
27	20.03.2018	The minutes of the meeting dated 16.02.2018 were sent to all the authorities.	204	135
28	09.04.2018	The State Government at the behest of the Central Government issued various taluka / village-wise notifications under Section 11(1) of the Central Act of 2013, declaring that the lands mentioned in the Schedule annexed to the said notifications are required for the designated public purpose i.e. Project in question.	55	86
29	10.08.2018	In view of the survey conducted by M/s. Arcadis, a report namely `Resettlement Action Plan – Mumbai Ahmedabad High Speed Railway Project' containing a detailed Social Impact Assessment Study, was submitted.	–	92
30	11.09.2018	State Government in its Revenue Department issued two Government	222	151

		Resolutions, clarifying the issues as regards the parameters to be observed while determining the compensation under the Central Act of 2013.		
31	**08.10.2018**	**A Presidential Notification under Article 258 of the Constitution of India came to be issued, entrusting the State Government to execute functions relating to the land acquisition, while ratifying all actions taken by the State Government in relation to acquisition of lands within the territory of Gujarat.**	145G	140

18. We may now refer to decision of the Constitution Bench in the case of **Synthetics and Chemicals Ltd. & Ors. v. State of U.P. & Ors. [(1990)1 SCC 109]** about basic tenets of construing provisions of the Constitution and in para 67, the Apex Court held as under:

> "67. It is well to remember that the meaning of the expressions used in the Constitution must be found from the language used. We should interpret the words of the Constitution on the same principle of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. A Constitution is the mechanism under which laws are to be made and not merely an Act which declares what the law is to

be. It is also well-settled that a Constitution must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest possible amplitude of its power, must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should, however, be so read as not to rob it of entire content. A broad and liberal spirit should, therefore, inspire those whose duty it is to interpret the Constitution, and the courts are not free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory. Constitutional adjudication is not strengthened by such an attempt but it must seek to declare the law but it must not try to give meaning on the theory of what the law should be, but it must so look upon a Constitution that it is a living and organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. It has also to be borne in mind that where division of powers and jurisdiction in a federal Constitution is the scheme, it is desirable to read the Constitution in harmonious way. It is also necessary that in deciding whether any particular enactment is within the purview of one Legislature or the other, it is the pith and substance of the legislation in question that has to be looked into. It is well-settled that the various entries in the three lists of the Indian Constitution are not powers but fields of legislation. The power to legislate is given by Art. 246 and other Articles of the Constitution. The three lists of the 7th Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which the appropriate legislatures can operate. It is well-settled that widest amplitude should be given to the language of the entries in three lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular Legislation in question. Each general word would be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be

reasonable to import any limitation by comparing or contrasting that entry with any other in the same list. It has to be interpreted as the Constitution must be interpreted as an organic document in the light of the experience gathered. In the Constitutional scheme of division of powers under the legislative lists, there are separate entries pertaining to taxation and other laws. The aforesaid principles are fairly well-settled by various decisions of this Court and other courts. Some of these decisions have been referred to in the decision of this Court in civil appeal No. 62(N)/ 70-- The India Cement Ltd. etc. v. The State of Tamil Nadu etc."

In para 68, the very judgment refers to a decision in the case of **M.P.V.Sundararamier & Co. v. State of A.P. [AIR 1958 SC 468]** where the Court laid down liberal approach while considering legislative entries and it is held as under:

"68 .....

[i] legislative entries are to be liberally construed. But when a topic is governed by two entries, then they have to be reconciled. It cannot be that one entry is to be liberally construed and the other entry is not to be liberally construed.

[ii] under the Constitutional scheme of division of powers under legislative lists, there are separate entries pertaining to taxation and other laws. A tax cannot be levied under a general entry.

[iii] a Constitution is an organic document and has to be so treated and construed.

[iv] if there is a conflict between the entries, the first principle is to reconcile them. But the Union power will prevail by virtue of Article 246(1) & (3). The words "notwithstanding" and "subject to" are important and give primacy to

the central legislative power."

[Emphasis Supplied]

[b] The Apex Court in the case of **Kaiser-I-Hind Pvt. Ltd. and Ors., etc. v. National Textile Corporation Ltd. & Ors., etc. [AIR 2002 SC 3404]** in paras 10 and 11 referred to essentials of Article 254 of the Constitution of India, in para 12 reference is made to clause (2) of Article 254 and in para 13 narrated the ingredients. Paragraphs 10, 11, 12 , 13 and 14 of the said judgment read as under:

"**Essentials of Article 254**

10 For deciding the controversy, we found first refer to Article 254, which reads thus:-

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.--(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

2. Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by

Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending varying or repealing the law so made by the Legislature of the State."

[Emphasis supplied]

11. It is apparent that language of Clause (1) of Article 254 gives supremacy to the law made by the Parliament, which Parliament is competent to enact. It inter alia provides [subject to the provisions of Clause (2)] that -

[a] if any provision of law made by the Legislature of State is repugnant to any provision of a law made by the Parliament which the Parliament is competent to enact, then the law, made by the Parliament whether passed before or after the law made by the Legislature of such State shall prevail and the law made by Legislature of the State shall, to the extent of repugnancy, be void; or

[b] if any provision of a law made by the legislature of State is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void.

12 For the purpose of the present case, Clause (2) requires interpretation, which on the analysis provides that where a law:--

[a] made by the legislature of a State;

[b] with respect to one of the matters enumerated in the Concurrent List;

[c] contains any provision repugnant to the provisions of an earlier law made by the Parliament or existing law with respect to that matter;

then, the law so made by the legislature of the State shall-

[1] if it has been 'reserved for consideration of the President'; and

[2] has received 'his assent';

would prevail in that State.

13. Hence, it can be stated that for the State law to prevail, following requirements must be satisfied-

> ***[1] law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;***
>
> ***[2] it contains any provision repugnant to the provision of an earlier law made by the Parliament or an existing law with respect to that matter;***
>
> ***[3] the law so made by the Legislature of the State has been reserved for the consideration of the President; and***
>
> ***[4] it has received 'his assent'.***

14 In view of aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State legislature is in respect of one of the matters enumerated int eh Concurrent List by mentioning entry/entries of Concurrent List and that it contains provision or provisions

repugnant to the law made by the Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law, in facts and circumstances of the matter, which is repugnant to a law enacted by the Parliament prevailing in a State. The word 'consideration' would main feast that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by the Parliament, the President may grant assent. This aspect is further reaffirmed by use of word "assent" in Clause (2) which implies knowledge of the President to the repugnancy between the State law and the earlier law made by the Parliament on the same subject matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State."

[Emphasis Supplied]

By referring to *Corpus Juris Secundum* about Assent and referring to its dictionary meaning in Shorter Oxford Dictionary, Bouvier's Law Dictionary, Law Lexicon of British India by P. Ramanatha Aiyer, Websters' 3rd New International Dictionary [Vol.I], Random House Dictionary, and Words & Phrases Judicial Dictionary, in paras 15 and 16 held as under:

"15. The learned counsel Mr. Ravichandran has rightly pointed out the different meanings given to the word "**assent**" in various dictionaries, which are as under:-

Corpus Juris Secundum-
Assent (As a Noun) - A passive act of concurrence; the act of the mind in admitting or agreeing to anything; the act of agreeing or consenting to accept some proposition; and, by context, "acceptance". It also has been defined as agreement or approval;..... "Assent" implies knowledge of some kind in the party assenting to that to which he assents; also permission on the part of the party assenting....As used in some statutes, however,the term has been held to require affirmative, positive action on the apart of the party assenting.. It has been said that the term indicates the meeting of the minds of the contracting parties, and that the word is applicable only to conduct before or at the time of the doing of an act and hence does not include an approval after the commission of an act.... **Assent--(As a Verb)--** The verb implies affirmative action of some sort as distinguished from mere silence and inaction; and has been defined as meaning to accept, agree to or consent, to accord agree, concede, or yield; to express and agreement of the mind to what is alleged or proposed; to express one's agreement acquiescence, or concurrence; also to admit a thing as true; to approve, ratify, or confirm; and sometimes to authorize or empower.

Shorter Oxford Dictionary-
Assent – [1] The concurrence of the will compliance with a desire. [2] Official, judicial,or formal sanction; the action or instrument that signifies such sanction ME. [3] Accord. [4] Opinion. [5] Agreement with a statement, or matter of opinion; mental acceptance.

Bouvier's Law Dictionary-
Assent--Approval of something done. An undertaking to do something in compliance with a request...

Law Lexicon of British India by P. Ramanatha Aiyar – Assent - The act of the mind in admitting or agreeing to the truth of a proposition proposed for acceptance; consent, agreeing to; to admit, yield, or conceded: to express an agreement of the mind to what is alleged or proposed, (as) Royal assent or

Viceeroy's assent to an enactment passed in the Legislative Assembly; Executor's assent to a legacy; assent of a corporation to bye-laws.

Royal Assent, in England, the approbation given by the Sovereign in Parliament to a bill which has passed both houses, after which it becomes law. This assent may be given in two ways; (a) in person, when the Sovereign comes to the House of Peers, the Commons are sent for, and the titles of all the bills which have passed are read. The royal assent in declared in Norman. French by the Clerk of the Parliament. (b) By letters patent, under the great seal signed by the Sovereign, and notified in his or her absence.

Websters' 3rd New International Dictionary (Vol.I) - Assent-1. common accord; general approval a concurrence with approval: [2] the accepting as true or certain of something (as a doctrine or conclusion) proposed for belief..

Random House Dictionary--
Assent – [1] To agree or concur, subscribe to)often fol. By to): to assent to a statement. [2] To give in; yield; concede; assenting to his demands, she did as she was told-n. [3] Agreement as to a proposal; concurrence. [4] Acquiesence; compliance.

Words & Phrases Judicial Dictionary - Mitra-

Assent - Assent means agreeing to or recognizing a matter...etc. Wharton's Law Lexicon.

16. Applying the aforesaid meaning of the word assent' and form the phraseology used in Clause (2) the object of Article 254(2) appears that even though the law made by the Parliament would have supremacy, after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and earlier law made by the Parliament, the President may give his assent to the law made by the State legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a

law, which is repugnant to the law made by the Parliament. The word assent is used purposefully indicating affirmative action of the proposal made by the State for having law repugnant to the earlier law made by the Parliament. It would amount to accepting or conceding and concurring to the demand made by the State of such law. This cannot be done without consideration of the relevant material. **Hence the paras used is reserved for consideration, which under the Constitution cannot be an idle formality but would require serious consideration on the material placed before the President. The 'consideration' could only be to the proposal made by the State. "**

[Emphasis Supplied]

Then, the Apex Court referred to various decisions and in paras 25 to 30 held as under:

"25 In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by the Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the extent that whether the State has sought assent qua particular earlier law or laws made by the Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the 'assent' granted by the President. In the present case, the assent was given after considering extent and nature of repugnancy between the Bombay Rent Act and Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by the Parliament for which no assent was sought for nor which was reserved for the consideration of the

President.

26 The learned senior counsel for the appellant further referred to the decision of Madras High Court in Bapalal and Co. v. P. Thakurdas and Ors. wherein the Court held thus:-

> "...In this case the assent is sought to be invalidated on the ground that the President was not made aware of the repugnancy between the proposed State Law (Rent Control Act) and the existing Central Law (the Transfer of Property Act) in Ex.P.12, which does indicate the extent to which the State law is repugnant to the earlier existing Central Law. **It is said that in this case Ex.P.12 does not exactly indicate how far the proposed State Act is repugnant to the provisions of the existing Central law and any assent given without considering the extent and the nature of the repugnancy should be taken to be no assent at all. However, a perusal of Ex.P.12 shows that Section 10 of the Act has been referred as a provision which can be said to be repugnant to the provisions of the Civil Procedure Code and the Transfer of Property Act which are existing laws on the concurrent subject. Further, a copy of the Bill has been reserved for the consideration of the President under Article 254(2) of the Constitution. Therefore, even if the State Legislature did not point out the provisions of the Bill which are repugnant to the existing Central Law, the President should be presumed to have gone through the Bill to see whether any of the provisions is repugnant to the Central Law and whether such a legislation is to be permitted before giving assent to the Bill . Merely because the State Government when seeking the assent of the President does not indicate the exact provisions which are repugnant to the earlier Central Law under Concurrent List, the assent**

given by the President cannot be said to be invalid. According to the learned Advocate-General inconsistency between the proposed law and the existing Central Law has been pointed out under Ex.P.12, and the Bill has been sent for scrutiny and that the Central Government should be taken to know its job while considering the question as to whether the assent is to be given or withheld, and, therefore, there is no room for any contention that the assent in this case is not valid."

27. In that case, the Court also observed thus:-

"The assent given by the President to the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960 cannot be held to be invalid for two reasons (i) the inconsistency between the State Law and the Central Law on the subject was in fact pointed out while seeking the assent of the President and - (ii) even otherwise the Bill having been sent for the scrutiny of the President, the President should be taken to have scrutinised the bill before giving his assent with the assistance of his legal advisers."

28. In this case, we have made it clear that we are not considering a question that the assent of the President was rightly or wrongly given. We are also not considering the question that-whether 'assent' given without considering the extent and the nature of the repugnancy should be taken as no assent at all. Further, in the aforesaid case, before Madras High Court, also the relevant proposal made by the State was produced. The Court had specifically arrived at a conclusion that Ex.P.12 shows that Section 10 of the Act has been referred to as the provision which can be said to be repugnant to the provisions of Code of Civil Procedure and the Transfer of Property Act, which are existing laws on the concurrent subject. After observing that, the Court has raised the presumption. We do not think that it was necessary to do so. In any case as discussed above, the essential ingredients of Article

254(2) are -- (1) mentioning of the entry/entries with respect to one of the matters enumerated in the Concurrent List; (2) stating repugnancy to the provisions of an earlier law made by the Parliament and the State law and reasons for having such law; (3) thereafter it is required to be reserved for consideration of the President; and (4) receipt of the assent of the President.

29 In this view of the matter, it cannot be said that the High Court committed any error in looking at the file of the correspondence Ex.F collectively for finding out - for what purpose 'assent' of the President to the Extension of Acts extending the duration of Bombay Rent Act was sought for and given. After looking at the said file, the Court considered relevant portion of the letter, which referred to the Bill passed by the Maharashtra Legislative Council and the Maharashtra Legislative Assembly extending the duration of the Bombay Rent Act for 5 years from Ist April, 1986. The letter stated: ***"As the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 are repugnant to the provisions of the Transfer of Property Act, 1882 and the Presidency Small Cause Courts Act, 1882, which are the existing laws relating to entries 6, 13 and 46 in the Concurrent Legislative List, and as Clause 2 of the Bill is intended to extend the life of the principal Act for a period of five years, it is necessary to reserve the Bill for the consideration and assent of the President with reference to Article 254(2) of the Constitution of India. The Governor has reserved the Bill for the consideration of the President under Article 200 of the Constitution of India.***" A telegraphic message dated 25th February, 1986 sent by the Special Commissioner, New Delhi, addressed to two Secretaries of the State of Maharashtra and the Secretary to the Governor of the State of Maharashtra shows that the President accorded his assent to this Bill on 23rd February, 1986. Thereafter, the Court rightly relied upon the decision in Gram Panchayat's case (supra) for arriving at the conclusion that the assent

of the President was sought to the Extension Acts for the purpose of overcoming its repugnancy between the Bombay Rent Act on the one hand and the Transfer of Property Act and the President Small Cause Courts Act on the other. The efficacy of the President's assent was limited to that purpose only. Therefore, the P.P. Eviction Act would prevail and not the Bombay Rent Act.

30 We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of President such as contemplated under Article 123 but is part of legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court."

[Emphasis Supplied]

[c] On the aspect of retrospective / retroactive operation / retrospectivity of a statute, the Apex Court in the case of **State of Rajasthan & Ors. v. Basant Agrotech (India) Ltd. [(2013)15 SCC 1]** laid down certain principles while distinguishing from power of retrospective delegated legislation vis-à-vis Article 245 of the Constitution of India and in paragraphs 21 to 24 observed as under:

"21 There is no dispute over the fact that a legislature can make a law retrospectively or prospectively subject to justifiability and acceptability within the constitutional parameters. A subordinate legislation can be given retrospective effect if a power in this behalf is contained in the principal Act. In this regard we may refer with profit to the decision in Mahabir Vegetable Oils (P) Ltd. and another v. State of Haryana and Others [(2006)3 SCC 620], wherein it has been held that : [SCC p.633, para 41-42]-

"41 We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne[14])."

23. In MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and Others [(2006)8 SCC 702], the question arose whether under Section 10 (3) of the Kerala General Sales Tax Act, 1963 power was conferred on the Government to issue a notification retrospectively. This Court approved the view expressed by the Kerala High Court in M. M. Nagalingam Nadar Sons v. State of Kerala[16], wherein it has been stated that in issuing notifications under Section 10, the Government exercises only delegated powers while legislature has plenary powers to legislate prospectively and retrospectively, a delegated authority like the Government acting under the powers conferred on it by the enactment concerned, can exercise only those powers which are specifically conferred. In the absence of such conferment of power the Government, the delegated authority, has no power to issue a notification with retrospective effect.

23 In Vice-Chancellor, M.D. University, Rohtak v. Jahan Singh[17], it has been clearly laid down that in the absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.

25. In Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla and others [(1992)3 SCC 285], a three-Judge Bench has ruled thus: -

> "7... in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power."
> [Emphasis Supplied]

The Apex Court no doubt referred to certain decisions cited by learned counsel appearing for the State in paras 28 and 32 including the decision in the case of **D.G.Gose and Co. (Agents) (P) Ltd. v. State of Kerala, (1980)2 SCC 410]** where meaning of retrospective was produced from Craies on Statute Law. Paras 28 to 32 of the judgment read as under:

> “28. In A. Thangal Kunju Musaliar [AIR 1956 SC 246], the Constitution Bench, apart from other facets, was dealing with the validity of the notification dated 26.7.1949 as it had brought the Travancore Taxation on Income (Investigation, Commission) Act into force with effect from 22.7.1949. The said notification was challenged on the ground that it was bad as it had purported to bring the Act into operation from retrospective effect. It was urged that Government could not, in the absence of express provision authorizing in that behalf, fix the commencement of the Act retrospectively and further the courts

disfavoured retrospective operation of laws which prejudicially affect vested rights.

29 Repelling the said submission, the Constitution bench stated thus : [A.Thangal Kunju Musaliar case, [AIR 1956 SC 246] -

> "39 .....No such reason is involved in this case. Section 1(3) authorises the Government to bring the Act into force on such date as it may, by notification, appoint. In exercise of the power conferred by this section the Government surely had the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can, therefore, be no objection to the notification fixing the commencement of the Act on 22.7.1949 which was a date subsequent to the passing of the Act.
>
> **So the Act has not been given retrospective operation, that is to say, it has not been made to commence from a date prior to the date of its passing. It is true that the date of commencement as fixed by the notification is anterior to the date of the notification but that circumstance does not attract the principle disfavouring the retroactive operation of a statute."**

After so stating, their Lordships proceeded to advert to the aspect whether the notification was retrospective or not and in that regard ruled thus : [A.Thangal Kunju Musaliar case, [AIR 1956 SC 246] -

> **"39 ...The operation of the notification itself is not retrospective. It only brings the Act into operation on and from an earlier date. In any case it was in terms authorised to issue the notification bringing the Act into force on any date subsequent to the passing of the Act and that is all that the Government did."**

30. On a seemly appreciation of the ratio laid down in that case, we have no trace of doubt in our mind

that the said decision has no applicability to the facts in the case at hand. **As is evident, the notification giving effect to the enactment was prior to the date of issue of notification but much after the legislature had passed the enactment and further the language employed in the Act was quite different. Hence, it can be stated with certitude that the said decision does not further the point urged by the learned counsel for the State.**

31. The authority in D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala [(1980)2 SCC 410], has been commended to us by the learned counsel for the State, as we understand, to substantiate the point that a levy can always be imposed at any point of time even from the retrospective date unless it is grossly unreasonable. He has specifically drawn inspiration from paragraphs 13 and 14 of the said decision. Be it noted, in the said case, the controversy related to the Kerala Building Tax Act, 1961. The said Act was eventually passed after lot of changes on 2.4.1975 by which tax was imposed on buildings. However, the imposition of tax on buildings was made with retrospective effect from 1.4.1973.

32 One of the challenges pertained to retrospective application of the law. In that context, the Constitution Bench, speaking through Shinghal, J., in paragraphs 14 to 16, stated thus : D.G. Gose and Co. (Agents) Pvt. Ltd. v. State of Kerala [(1980)2 SCC 410] -

> "14. Craies on Statute Law, seventh Edn., has stated the meaning of "retrospective" at p. 367 as follows:
>
> > "A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute 'is not properly called a retrospective

> statute because a part of the requisites for its action is drawn from a time antecedent to its passing'."
>
> It has however, not been shown how it could be said that the Act has taken away or impaired any vested right of the assessees before us which they had acquired under any existing law, or what that vested right was. It may be that there was no liability to building tax until the promulgation of the Act (earlier the Ordinances) but mere absence of an earlier taxing statute cannot be said to create a "vested right", under any existing law, that it shall not be levied in future with effect from a date anterior to the passing of the Act. Nor can it be said that by imposing the building tax from an earlier date any new obligation or disability has been attached in respect of any earlier transaction or consideration. The Act is not therefore retrospective in the strictly technical sense.
>
> "15 What it does is to impose the building tax from April 1, 1973. But as was held in Bradford Union v. Wiltshire[23], if the language of the statute shows that the legislature thinks it expedient to authorise the making of retrospective rates, it can fix the period as to which the rate may be retrospectively made.
>
> 16 This Court had occasion to examine the validity of the retrospective levy of Sales Tax in Tata Iron and Steel Co. Ltd. v. State of Bihar[24] and it was held that that was not beyond the legislative competence of the State legislature."
>
> [Emphasis Supplied]

Then the Apex Court also considered Three Judges Bench decision in the case of State of **State of M.P. v. Tikamdas [(1975)2 SCC 100]** wherein the Apex Court held that there is no doubt that unlike legislation made by a

sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule-making power in the statute concerned expressly or by necessary implication confers power in this behalf.

Thus, what is required to be seen is whether rule making powers expressly or any necessary implication confers power about giving retrospective effect to the statute.

[d] In the case of **A.A.Padmanabhan v. State of Kerala & Ors. [(2018)4 SCC 537]** the Apex Court in paragraphs 30, 31, 35, 38 and 40, held as under:

> *"30. The principles for ascertaining the inconsistency / repugnancy between two statutes were laid down by this Court in Deep Chand Vs. State of U.P and others, AIR 1959 SC 648. K. Subba Rao, J. speaking for the Court stated following in paragraph 29 : [AIR p.665]*
>
> > *"29.....Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:*
> >
> > *[1] Whether there is direct conflict between the two provisions;*
> >
> > *[2] Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and*
> >
> > *[3] Whether the law made by Parliament and the law made by the State Legislature occupy the same field."*

31 This Court in State of Kerala and others Vs. Mar Appraem Kuri Company Limited and another, (2012) 7 SCC 106, in paragraph 47 held that : [SSC p.130]

> *"47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1)".*

There cannot be any dispute to the proposition laid down by this Court to the State of Kerala case [(2012)7 SCC 106].

35 Even if it is assumed that, in working of two legislations which pertain to different subject matters, there is an incidental encroachment in respect of small area of operation of two legislations, it cannot be held that one legislation overrides the other. When we look into the pith and substance of both the legislations, i.e., Act, 1958 and Act, 2013, it is clear that they operate in different fields and it cannot be said that Act, 1958 is repugnant to Act, 2013. It is also relevant to note that under Section 15(2) it is provided that where any school has vested in the Government under sub-section (1), compensation shall be paid to the persons entitled thereto on the basis of the market value thereof as on the date of the notification.

38 Applying the ratio as laid down by this Court in the above noted cases, we conclude that Act, 1958 and Act, 2013 operate in different fields and Section 15 of the Act, 1958 in no manner is overridden or repugnant to Act, 2013. There was no invalidity in the exercise of the power of the State Government under Section 15 to take over the schools. The owners being entitled to compensation at the market

rate on the date of notification, the procedure for taking over the property is in full compliance of requirement of Article 300A of the Constitution of India. We, thus, do not find any merit in this submission of learned counsel for the appellant.

40. This Court dismissed the appeal filed by the Council and had made the observation that right to property is not only a constitutional or a statutory right but also a human right. Therefore, in case the person aggrieved is deprived of the land without making the payment of compensation, it would be tantamount to forcing the said uprooted persons to become vagabond. There cannot be any dispute to the proposition laid down by this Court as above. For the land acquired under the Land Acquisition Act compensation determined under the provisions of the Land Acquisition Act, 1894 is required to be paid to the land owner. The order granting interim relief to the appellant was held to be just order in which this Court refused to interfere."

[e] In the case of **Rajiv Sarin & Anr. v. State of Uttarkhand & Ors [(2011)8 SCC 708]**, the Apex Court in paragraphs 29, 33, 34, 35, 45, 49, 56, 59, 63, 66, 67, 70, 73, 78, 79, 85 & 86 read as under:

"Repugnancy and Article 254 of the Constitution

29 Learned senior counsel appearing for the appellants raised two contentions in the context of the inter-relation of the Indian Forest Act 1927 and the KUZALR Act; firstly, the case of alleged discrimination in as much as the Central Act i.e. the Indian Forests Act provides for compensation under the Land Acquisition Act 1894, which is higher; and secondly, the case of alleged repugnancy.

33 It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule of the Constitution. Under Article 254 of the Constitution, a

State law passed in respect of a subject matter comprised in List III i.e. the Concurrent List of the Seventh Schedule of the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by the Parliament and that too only in a situation if both the laws i.e. one made by the State legislature and another made by the Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by the Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by the Parliament and of State legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject matter or different.

34 It is by now a well-established rule of interpretation that the entries in the list being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach**. This Court in the cases of Navinchandra Mafatlal v. CIT, reported in AIR 1955 SC 58 and State of Maharashtra v. Bharat Shanti Lal Shah, reported in (2008) 13 SCC 5 held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. **In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature.

35 As and when there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it would also be necessary for the courts to examine the true nature and character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme.

45 For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of the both legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject.

46 Repugnancy in the context of Article 254 of the Constitution is understood as requiring the fulfillment of a "Triple test" reiterated by the Constitutional Bench in M. Karunanidhi v. Union of India, (1979) 3 SCC 431 @ page 443-444, which reads as follows:-

> ***"24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency***

between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

> ***"1 That there is a clear and direct inconsistency between the Central Act and the State Act.***
>
> ***2 That such an inconsistency is absolutely irreconcilable.***
>
> ***3 That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."***

In other words, the two legislations must cover the same field. This has to be examined by a reference to the doctrine of pith and substance.

49 This Court succinctly observed as follows in **Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 4 SCC 45**, at page 88 : [SCC para 67]:

> "67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is `repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. **To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if**

> **the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject**. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). *The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the `same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See Zaverbhai Amaidas v. State of Bombay; M. Karunanidhi v. Union of India and T. Barai v. Henry Ah Hoe."*

56 In a Full Bench decision of this Court in the case of ***State of Maharashtra v. Bharat Shanti Lal Shah, (2008) 13 SCC 5****, this Court observed as follows at page 23 -24 : [SCC para 48]*

> "48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by Parliament and the State Legislature. The question of repugnancy under Article 254 will arise when a law made by

> Parliament and a law made by the State Legislature occupies the same field with respect to one of the matters enumerated in the Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in connection with subjects enumerated in the Concurrent List. In such situation the provisions enacted by Parliament and the State Legislature cannot unitedly stand and the State law will have to make way for the Union law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that the State law is repugnant to the Union law."

Presidential Assent and Article 254(2) of the Constitution

59 The issue argued was whether "General Assent" can always be sought and obtained by the State Government. Reference was made to a Constitutional Bench decision of this Court in Gram Panchayat Jamalpur v. Malwinder Singh, (1985) 3 SCC 661; which was subsequently further interpreted and followed in the case of P.N. Krishna Pal v. State of Kerala, (1995) Suppl. 2 SCC 187.

63 *It is in this context, that the finding of this Court in Kaiser-I-Hind (P) Ltd.* at para 65 becomes important to the effect that **"pointed attention"** of the President is required to be drawn to the repugnancy and the reasons for having such a law, despite the enactment by Parliament, has to be understood. It summarizes the point as follows at page 215-16 as follows:

> *"65. The result of the foregoing discussion is:*

1 It cannot be held that summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.

2[a] Article 254(2) contemplates "reservation for consideration of the President" and also "assent".

Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.

[b] The word "assent" used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

[c] In case where it is not indicated that "assent"
is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3 Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require assent of the President in case of repugnancy."

Article 300A of the Constitution and Compensation

66 After passing of the Constitution (Forty Forth) Amendment Act 1978 which deleted Article 19(1)(f) and Article 31 from the Constitution and introduced Article 300A in the Constitution, the Constitution (44th Amendment) Act inserted in Part XII, a new chapter: "Chapter IV - Right to Property" and inserted a new Article 300A, which reads as follows:-

> “300-A Persons not to be deprived of property save by authority of law - No person shall be deprived of property save by authority of law"

67 It would be useful to reiterate paragraphs 3, 4 and 5 of the Statement of Objects and Reasons of the Constitution (44th Amendment) Act which reads as follows:-

> *"3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one Amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to Article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.*
>
> *4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.*
>
> *5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law."*

70 Under Indian Constitution, the field of legislation covering claim for compensation on deprivation of one's property can be traced to Entry 42 List III of the

Seventh Schedule of the Constitution. The Constitution (7th Amendment) Act, 1956 deleted Entry 33 List I, Entry 36 List II and ***reworded Entry 42 List III relating to "acquisition and requisitioning of property"****. The right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution.*

73 It was further submitted that the inherent powers of public purpose and eminent domain are embodied in Article 300A, and Entry 42 List III, "Acquisition and Requisitioning of Property" which necessarily connotes that the acquisition and requisitioning of property will be for a public use and for compensation and whenever a person is deprived of his property, the limitations as implied in Article 300A as well as Entry 42 List III will come into the picture and the Court can always examine the legality and validity of the legislation in question. It was further submitted that awarding nil compensation is squarely amenable to judicial review under Articles 32 and 226 of the Constitution of India.

78 When the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision is generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It must be understood in this context that the acquisition of the property by the State in furtherance of the Directive Principles of State Policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It is true that the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory.

79 Further, it is to be clearly understood that the stand taken by the State that the right, title or interests of a hissedar could be acquired without payment of any compensation, as in the present case, is contrary to the express provisions of KUZALR Act itself. Section 12 of the KUZALR Act, 1960 states that every hissedar whose rights, title or interest are acquired under Section 4, shall be entitled to receive and be paid compensation. Further, Section 4A of the KUZALR Act makes it clear that the provisions of Chapter II (Acquisition and Modifications of existing rights in Land), including Section 12, shall apply mutatis mutandis to a forest land as they apply to a khaikhari land."

85 That being so, the omission of the Section 39(1) (e) (ii) of the UPZALR Act 1950 as amended in 1978 is of no consequence since the UPZALR Act leaves no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law.

86 In view of the above, the present appeal is partly allowed while upholding the validity of the Act and particularly Sections 4A, 18(1) (cc) and 19 (1) (b) of the KUZALR Act, we direct the second respondent, i.e. Assistant Collector to determine and award compensation to the appellants by following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in light of the aforesaid law enunciated by this Court hereinabove.

[f] In the case of **Sidharth Sarawgi v. Board of Trustees for the Port of Kolkata & Ors. [(2014)16 SCC 248],** the Apex Court considered about delegation of legislative function / power and extent of permissible delegation and in paras 2, 3, 4 and 5 discussed a subtle distinction between delegation of legislative powers and delegation of non-legislative / administrative powers. Paras 2 to 5 of the judgment read a under:

"2. Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black's Law Dictionary as

> **"the act of entrusting another with authority by empowering another to act as an agent or representative". In P. Ramanatha Aiyar's, The Law Lexicon, "delegation is the act of making or commissioning a delegate. Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself".**

3 Justice Mathew in Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Assistant Commissioner of Sales Tax and Others [(1974)4 SCC 98], has succinctly discussed the concept of delegation. Paragraph 37 reads as follows:

> **"37. ... Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is**

never renounced."

4 There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well-settled: the said power cannot be sub-delegated. The Legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct [Harishankar Bagla v. State of M.P. (AIR 1954 SC 465). Subordinate legislation which is generally in the realm of Rules and Regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the Legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

5 Regarding delegation of non-legislative / administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy (Khambhalia Municipality v. State of Gujarat, AIR 1967 SC 1048). So long as the essential functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision

already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorized officers. **The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself."**

[Emphasis Supplied]

The Apex Court in para 9 of the above judgment held as under:

"9 The Constitution confers power and imposes duty on the Legislature to make laws and the said functions cannot be delegated by the Legislature to the executive. The Legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the Legislature and laying the guiding policy, the Legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate."

[g] In the case of **State of Jammu and Kashmir v. Lakhwinder Kumar & Ors. [(2013)6 SCC 333]** in the

context of subordinate / delegated legislative and rule-making power in the statute, when the power is conferred in general and thereafter in support of enumerated matters, the particularization in respect of the specified subject is construed as merely illustrative and does not limit the scope of general power, the Apex Court in para 24 referred to a decision in the case of **King Emperor v. Sibnath Bajerji [AIR 1945 PC 156] and in para 25 referred to a decision in the case of Afzal Ullah v. State of U.P. [AIR 1964 SC 264],** and held as under:

> "24 The Privy Council applied this principle in the case of Emperor v. Sibnath Banerji, AIR 1945 PC 156, to uphold the validity of Rule 26 of the Defence of India Rules, which though was found in excess of the express power conferred under enumerated provision, but covered under general power. Relevant portion of the judgment reads as under:
>
> > "Their Lordships are unable to agree with the learned Chief Justice of the Federal Court on his statement of the relative positions of sub-sections (1) and (2) of Section 2, Defence of India Act, and counsel for the respondents in the present appeal was unable to support that statement, or to maintain that R.26 was invalid. In the opinion of their Lordships, the function of sub- section (2) is merely an illustrative one; the rule-making power is conferred by sub-section (1), and "the rules" which are referred to in the opening sentence of sub-section (2) are the rules which are authorized by, and made under, sub-section (1); the provisions of sub-section (2) are not restrictive of sub-section (1), as indeed is expressly stated by the words "without prejudice to the generality of the powers conferred by sub-section (1)." There can be no doubt – as the learned Judge himself appears to have thought – that the general language of sub-section (1) amply justifies the terms of R.26, and avoids any of the criticisms which the learned

Judge expressed in relation to sub-section (2).

Their Lordships are therefore of opinion that Keshav Talpade v. Emperor, I.L.R. (1944) Bom. 183, was wrongly decided by the Federal Court, and that R.26 was made in conformity with the powers conferred by sub-section (1) of Section 2, Defence of India Act."

25 A constitution Bench of this Court in the case of Afzal Ullah v. State of Uttar Pradesh, AIR 1964 SC 264, quoted with approval the law laid down by the Privy Council in the case of Sibnath Banerji (supra) and held that enumerated provisions do not control the general terms as particularization of topics is illustrative in nature. It reads as follows:
[Afzal Ullah v. State of Uttar Pradesh, AIR 1964 SC 268, para 13]

> "13. Even if the said clauses did not justify the impugned bye- law, there can be little doubt that the said bye-laws would be justified by the general power conferred on the Boards by Section 298(1). It is now well-settled that the specific provisions such as are contained in the several clauses of Section 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by Section 298(1), vide Emperor v. Sibnath Banerji, AIR 1945 PC 156. If the powers specified by Section 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under Section 298(2)control the general words used by Section 298(1). These latter clauses merely illustrate and do not exhaust all the powers conferred on the Board, so that any cases not falling within the powers specified by Section 298(2) may well be protected by Section 298(1), provided, of course, the impugned bye-law can be justified by-reference to the requirements of Section 298(1). There can be no doubt that the impugned bye-laws in regard to the markets framed by Respondent No. 2 are for the furtherance of municipal administration under the Act, and so, would attract the provisions of Section

298(1). Therefore, we are satisfied that the High Court was right in coming to the conclusion that the impugned bye-laws are valid."

26 In view of what we have observed above it is evident that Rule 41 of the Rules has been made to give effect to the provisions of the Act. In our opinion, it has not gone beyond what the Act has contemplated or is any way in conflict thereof. Hence, this has to be treated as if the same is contained in the Act. Wide discretion has been given to the specified officer under Section 80 of the Act to make a choice between a Criminal Court and a Security Force Court but Rule 41 made for the purposes of carrying into effect the provision of the Act had laid down guidelines for exercise of that discretion. Thus, in our opinion, Rule 41 has neither gone beyond what the Act has contemplated nor it has supplanted it in any way and, therefore, the Commanding Officer has to bear in mind the guidelines laid for the exercise of discretion."

[Emphasis Supplied]

[h] In the context of **doctrine of pith and substance** vis-à-vis Article 245 of the Constitution of India and repugnancy between Central Act and State Act certain principles are laid down by the Apex Court in the case of **I.T.C. Ltd. & Ors. v. State of Karnataka & Ors. [1985 (supp) SCC 476]** in paras 17 and 18, which read as under:

"17 It is also not disputed that under s. 2 of the 1975 Act the entire tobacco industry was taken over by the Central Government. Having thus narrated the admitted facts I would now proceed to the merits of the appeals. To begin with, I might indicate the cardinal principles justifying the competency of the respective legislatures with respect to the entries concerned:-

[1] Entries in each of the Lists must be given the most liberal and widest possible interpretation and

no attempt should be made to narrow or whittle down the scope of the entries. This is a well settled principle of law and was reiterated in a recent decision of this Court in S.P. Mittal v. Union of India Ors. [(1983)1 SCC 51] where this Court observed thus : [SCC p.80, para 64]

> "It may be pointed out at the very outset that the A function of the Lists is not to confer powers. They merely demarcate the legislative fields. The entries in the three Lists are only legislative heads or fields or legislation and the power to legislate is given to appropriate legislature by Articles 245 and 248 (sic 246) of the Constitution.
>
> [2] The application of the doctrine o f pith and substance really means that where a legislation falls entirely within the scope of an entry within the competence of a State legislature then this doctrine will apply and the Act will not be struck down, the doctrine of pith and substance has been summarised in the case of Delhi Cloth General Mills Co. Ltd. v. Union of India & Ors. [(1983)4 SCC 166] where Desai, J. speaking for the Court made the following observations : [SCC p.192, para 33]
>
> > "To resolve the controversy if it becomes necessary to ascertain to which entry in the three Lists, the legislation is referable, the Court has evolved the doctrine of pith and substance. If in pith and substance, the legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence."

[3] The consideration of encroachment or entrenchment of one List in another and the extent thereof is also well established. If the entrenchment is minimal and does not affect the dominant part of

some other entry, which is not within the competence of the State Legislature, the Act may be upheld as constitutionally valid.

[4] The nature and character of the scope of the entries having regard to the touch stone of the provisions of Arts. 245 and 246.

[5] The doctrine of occupied field has a great place in the interpretation as to whether or not a particular legislature is competent to legislate on a particular entry. This means that when the field is completely occupied by List I, as in this case, then the State legislature is wholly incompetent to legislate and no entrenchment or A encroachment, minimal or otherwise, by a State legislature is permitted. In other words, where the field is not wholly occupied, than a mere minimal encroachment would not affect the validity of the State legislation.

18 Thus, in my opinion, the five principles have to be read and construed together and not in isolation- where however, the Central and the State legislation cover the same field then the central legislation would prevail. it is also well settled that where two Acts, one passed by the Parliament and the other by a State legislature, collide and there is no question of harmonising them, then the Central legislation must prevail."

[i] About the approach of a writ court while interpreting non obstante clause, the Apex Court in the case of **Indra Kumar Patodia & Anr. V. Reliance Industries Limited & Ors. [(2012)13 SCC 1]** held in paras 18 and 19 as under:

"18 It is clear that the non obstante clause has to be given restricted meaning and when the section containing the said clause does not refer to any particular provisions which intends to over ride but refers to the provisions of the statute generally, it is not

permissible to hold that it excludes the whole Act and stands all alone by itself. In other words, there requires to be a determination as to which provisions answers the description and which does not. While interpreting the non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. We have already referred to the definition of complaint as stated in Section 2(d) of the Code which provides that the same needs to be in oral or in writing. The non obstante clause, when it refers to the Code only excludes the oral part in such definition.

19 According to us, the non obstante clause in Section 142(a) is restricted to exclude two things only from the Code i.e. (a) exclusion of oral complaints and (b) exclusion of cognizance on complaint by anybody other than the payee or the holder in due course. Section 190 of the Code provides that a Magistrate can take cognizance on a complaint which constitutes such an offence irrespective of who had made such complaint or on a police report or upon receiving information from any person other than a police officer or upon his own knowledge. Non obstante clause, when it refers to the core, restricts the power of the Magistrate to take cognizance only on a complaint by a payee or the holder in due course and excludes the rest of Section 190 of the Code. In other words, none of the other provisions of the Code are excluded by the said non obstante clause, hence, the Magistrate is therefore required to follow the procedure under Section 200 of the Code once he has taken the complaint of the payee/holder in due course and record statement of the complainant and such other witnesses as present at the said date. Here, the Code specifically provides that the same is required to be signed by the complainant as well as the witnesses making the statement. Section 200 of the Code reads thus:

> “200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Mere presentation of the complaint is only the first step and no action can be taken unless the process of verification is complete and, thereafter, the Magistrate has to consider the statement on oath, that is, the verification statement under Section 200 and the statement of any witness, and the Magistrate has to decide whether there is sufficient ground to proceed. It is also relevant to note Section 203 of the Code which reads as follows:

"203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

It is also clear that a person could be called upon to answer a charge of false complaint/perjury only on such verification statement and not mere on the presentation of the complaint as the same is not on oath and, therefore, need to obtain the signature of the person. Apart from the above section, the legislative intent becomes clear that "writing" does

not pre-suppose that the same has to be signed. Various sections in the Code when contrasted with Section 2(d) clarify that the legislature was clearly of the intent that a written complaint need not be signed. For example, Sections 61, 70, 154, 164 and 281 are reproduced below:

"**61. Form of summons**.

Every summons issued by a court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the court.

* * *

70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a court under this Code shall be in writing, signed by the presiding officer of such court and shall bear the sea] of the court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

* * *

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

* * *

164. Recording of confessions and statements.

> xxx (4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect-
>
> * * *
>
> **281. Record of examination of accused**.
>
> [1] Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the court and such memorandum shall be signed by the Magistrate and shall form part of the record....."
>
> A perusal of the above shows that the legislature has made it clear that wherever it required a written document to be signed, it should be mentioned specifically in the section itself, which is missing both from Section 2(d) as well as Section 142."

[j] That in the case of **Krishna District Co-operative Marketing Society Limited, Vijayawada v. N.V.Purnachandra Rao & Ors. [(1987)4 SCC 99]** the Apex Court while dealing the conflict between special provisions of an earlier Act and general provision of a later law and by referring Maxwell on Interpretation of Statutes wherein case of Earl of Selborne L.C. in The Vera Cruz [(1884)10 AC 59] was discussed, and in paragraphs 8, 9, 10 and 11 held as under:

> "8 We shall now proceed to consider the merits of the

contention that the State Act which is a later Act and which has received the assent of the President should prevail over the provisions of Chapter V-A of the Central Act. The above contention is based on Article 254(2) of the Constitution and the argument is that the provisions of section 40 which deal with termination of service, in a shop or an establishment contained in the State Act which is enacted by the State Legislature in exercise of its powers under Entry 22 of List III of the Seventh Schedule to the Constitution being repugnant to the provisions contained in Chapter V-A of the Central Act which is an earlier law also traceable to Entry 22 of the List II1 of the Seventh Schedule to the Constitution should prevail as the assent of the President has been given to the State Act. It is true that the State Act is a later Act and it has received the assent of the President but the question is whether there is any such repugnancy between the two laws as to make the provisions of the Central Act relating to retrenchment ineffective in the State of Andhra Pradesh. It is seen that the State Act does not contain any express provision making the provisions relating to retrenchment in the Central Act ineffective insofar as Andhra Pradesh is concerned. We shall then have to consider whether there is any implied repugnancy between the two laws. Chapter V-A of the Central Act which is the earlier law deals with cases arising out of lay-off and retrenchment. Section 25J of the Central Act deals with the effect of the provisions of Chapter V-A on other laws inconsistent with that Chapter. Sub-section (2) of section 25J is quite emphatic about the supremacy of the provisions relating to the rights and liabilities arising out of lay-off and retrenchment. These are special provisions and they do not apply to all kinds of termination of services. Section 40 of the State Act deals generally with termination of service which may be the result of misconduct, closure, transfer of establishment etc. If there is a conflict between the special provisions contained in an earlier law dealing with retrenchment and the general provisions contained in a later law generally dealing with terminations of service, the existence of repugnancy between the two laws cannot be easily presumed. In Maxwell on the Interpretation of Statutes, (12th Edn.) at page 196 it is observed thus:

"Now if anything be certain it is this, "said the Earl

> of Selborne L.C. in The Vera Cruz, (1884) 10 App. Cas, 59 at p. 68 "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." In a later case, Viscount Haldane said: "We are bound ..... to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to."

9 We respectfully agree with the rule of construction expounded in the above passage. By enacting section 25J(2) Parliament, perhaps, intended that the rights and liabilities arising out of lay-off and retrenchment should be uniform throughout India where the Central Act was in force and did not wish that the State should have their own laws inconsistent with the Central law. If really the State Legislature intended that it should have a law of its own regarding the rights and liabilities arising out of retrenchment it would have expressly provided for it and submitted the Bill for the assent of the President. The State Legislature has not done so in this case. Section 40 of the State Act deals with terminations of service generally. In the above situation we cannot agree with the contention based on Article 254(2) of the Constitution since it is not made out that there is any implied repugnancy between the Central law and the State law.

10 The result of the above discussion is that if the

employees are 'workmen' and the management is an 'industry' as defined in the Central Act and the action taken by the management amounts to 'retrenchment' then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Central Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under section 41(1) and section 41(3) of the State Act.

11 We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting section 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual work- man. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and

> labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment."

[k] In the case of **K.T.Plantation Pvt. Ltd. & Anr. V. State of Karnataka [AIR 2011 SC 3430]**, the Apex Court held in para 66 that when the repugnancy between the Central and State Legislations is pleaded the court has to first examine whether the two legislations cover or relate to the same subject matter and the test for determining the same is to find out the dominant intention of the two legislations and if the dominant intention of the two legislations is different, they cover different subject matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field. That a provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). In other word, both the legislations must be specifically on the same subject to attract Article 254.

The Apex Court also considered Article 300A of the Constitution of India and term "eminent domain" (jus or dominium eminens) in subsequent paras and also public purpose vis-à-vis compensation. In the context of Article

31A(1)(1) of the Constitution of India and arguments dealing with term "eminent domain", the Apex Court held in paras 84 to 134 as under:

> "**EMINENT DOMAIN**
>
> 84. **Hugo Grotius** (a Dutch Jurist who also developed Natural Law) is credited with the invention of the term **"eminent domain"** (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. Germany, America and Australian Constitutions bar uncompensated takings. Canada's constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law, the same is the situation in United Kingdom which does not have a written constitution as also now in India after the 44th Constitutional Amendment.
>
> 85. Canada does not have an equivalent to the Fifth Amendment taking clause of the U.S. Constitution and the federal or provincial governments are under any constitutional obligation to pay compensation for expropriated property. Section 1(a) of the Canadian Bill of Rights does state that, "The right of the individual to life, liberty, security of a person and enjoyment of property and the right not to be deprived thereof except by due process of law."
>
> 86. In Australia, Section 51 (xxxi) of the Constitution permits the federal government to make laws with respect to "the acquisition of property on just terms from any State or persons for any purpose in respect of which the Parliament has powers to make laws."
>
> 87. Protocol to the European Convention on Human Rights and Fundamental Freedom, Article 1 provides

that every natural or legal person is entitled to the peaceful enjoyment of his possession and no one shall be deprived of his possessions except in public interest and subject to the conditions provided by law and by the several principles of International law.

88. Fifth Amendment of the U.S. Constitution says that the government shall not take private property for public use without paying just compensation. This provision referred to as the eminent domain, or taking clause has generated an enormous amount of case laws in the United States of America.

89. The US Supreme Court in Hawaii Housing Authority v. Midkiff, 467 US 229 (1984) allowed the use of eminent domain to transfer land from lessor to lessees. In that ruling the court held the government does not itself have the use the property to legitimate taking, it is a takings purpose and not its mechanics that must pass the muster under the public use clause. The US Supreme Court later revisited the question on what constitute public use in Kelo v. City of New London (545 US 469 (2005). In that case the Court held that a plan of economic development, that would primarily benefit a major pharmaceutical company, which incidentally benefited the public in the nature of increased employment opportunities and increased tax benefits was a `public use'. The Court rejected the arguments that takings of this kind, the Court should require a `reasonable certainty' that the respective public benefits will actually accrue.

90. Eminent domain is distinguishable alike from the police power, by which restriction are imposed on private property in the public interest, e.g. in connection with health, sanitation, zoning regulation, urban planning and so on from the power of taxation, by which the owner of private property is compelled to contribute a portion of it for the public purposes and from the war-power, involving the destruction of private property in the course of military operations. The police power fetters rights of property while eminent domain takes them away. Power of taxation does not necessarily involve a taking of specific property for public purposes, though analogous to eminent domain as regards the purposes to which the contribution of the taxpayer is to

be applied. Further, there are several significant differences between regulatory exercises of the police powers and eminent domain of deprivation of property. Regulation does not acquire or appropriate the property for the State, which appropriation does and regulation is imposed severally and individually, while expropriation applies to an individual or a group of owners of properties.

91 The question whether the "element of compensation" is necessarily involved in the idea of eminent domain arose much controversy. According to one school of thought (See Lewis, Eminent Domain, 3rd Edition, 1909) opined that this question must be answered in the negative, but another view (See Randolph Eminent Domain in the United States (Boston 1894 [AWR]), the claim for compensation is an inherent attribute of the concept of eminent domain. Professor Thayer (cases on Constitutional law Vol 1.953), however, took a middle view according to which the concept of eminent domain springs from the necessity of the state, while the obligation to reimburse rests upon the natural rights of individuals. Right to claim compensation, some eminent authors expressed the view, is thus not a component part of the powers to deprive a person of his property but may arise, but it is not as if, the former cannot exist without the other. Relationship between Public Purpose and Compensation is that of "substance and shadow". Above theoretical aspects of the doctrine have been highlighted only to show the reasons, for the inclusion of the principle of eminent domain in the deleted Article 31(2) and in the present Article 30(1A) and in the 2nd proviso of Article 31A of our Constitution and its apparent exclusion from Article 300A.

92 Our Constitution makers were greatly influenced by the Western doctrine of eminent domain when they drafted the Indian Constitution and incorporated the right to property as a Fundamental Right in Article 19(1)(f), and the element of public purpose and compensation in Articles 31(2). Of late, it was felt that some of the principles laid down in the Directive Principles of State Policy, which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied. The Directive Principles

of the state policy lay down the fundamental principles for the governance of the country, and through those principles, the state is directed to secure that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Further, it was also noticed that the fundamental rights are not absolute but subject to law of reasonable restrictions in the interest of the general public to achieve the above objectives specially to eliminate Zamindari system.

93 While examining the scope of the Bihar Land Reforms Act, 1950 conflicting views were expressed by the Judges with regard to the meaning and content of Article 19(1)(f) and Article 31 as reflected in Sir Kameshwar Singh's case (supra). Suffice it to say that the Parliament felt that the views expressed by the judges on the scope of Articles 19(1)(f) and 31 might come as a stumbling block in implementing the various welfare legislations which led to the First Constitutional Amendment 1951 introducing Articles 31A and 31B in the Constitution.

94 Article 31A enabled the legislature to enact laws to acquire estates which also permitted the State in taking over of property for a limited period either in the `public interest' or to `secure the proper management of the property', amalgamate properties, and extinguish or modify the rights of managers, managing agents, directors, stockholders etc. Article provides that such laws cannot be declared void on the grounds that they are inconsistent with Articles 14 and 19. Article 31B protected the various lands reform laws enacted by both the Parliament and the State Legislatures by stating that none of these laws, which are to be listed in the Ninth Schedule, can become void on the ground that they violated any fundamental right.

95 This Court in a series of decisions viz. in State of West Bengal v. Bella Banerjee & Others AIR 1954 SC 170 and State of West Bengal v. Subodh Gopal Bose AIR 1954 SC 92 took the view that Article 31, clauses (1) and (2) provided for the

doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of his property if he was "substantially dispossessed" or his right to use and enjoy the property was "seriously impaired" by the impugned law. The Court held that under Article 31(1) the State could not make a law depriving a person of his property without complying with the provisions of Article 31(2). In Bella Banerjee's case (supra), this Court held that the legislature has the freedom to lay down principles which govern the determination of the amount to be given to the owners of the property appropriated, but the Court can always, while interpreting Article 31(1) and Article 31(2), examine whether the amount of compensation paid is just equivalent to what the owner had been deprived of.

96 The Parliament, following the above judgment, brought in the Fourth Amendment Act of 1955 and amended clause (2) of Article 31 and inserted clause (2-A) to Article 31. The effect of the amendment is that clause (2) deals with acquisition or requisition as defined in clause (2-A) and clause (1) covers deprivation of a person's property by the state otherwise than by acquisition or requisition. The amendment enabled the State to deprive a person of his property by law. Under amended clause (2), the property of a citizen could be acquired or requisitioned by law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined. However, it was also provided that no such law could be called in question in any court on the ground that the compensation provided by that law was not adequate.

97. This Court in Kavalappara Kottarathil Kochuni's case (supra) held that Articles 31(1) and (2) are different fundamental rights and that the expression `law" in Article 31(1) shall be a valid law and that it cannot be a valid law, unless it imposes a reasonable restriction in public interest within the meaning of Article 19(5) and therefore be justiciable.

98. The Constitution was again amended by the

Seventeenth Amendment Act of 1964, by which the State extended the scope of Article 31A and Ninth Schedule to protect certain agrarian reforms enacted by the Kerala and Madras States and Jagir, Inam, muafi or any other grant, janmam, ryotwari etc. were included within the meaning of "estate". It also added the 2nd proviso to clause (1) to protect a person of being deprived of land less than the relevant land ceiling limits held by him for personal cultivation, except on payment of full market value thereof by way of compensation.

99. This Court in P. Vajravelu Mudaliar's case (supra) examined the scope of the Land Acquisition (Madras Amendment) Act 1961 by which the lands were acquired for the purpose of building houses which move was challenged under Articles 31 and 14. The Court held that if the compensation fixed was illusory or the principles prescribed were irrelevant to the value of the property at or about the time of acquisition, it could be said that the Legislature had committed a fraud on power and therefore the law was inadequate. Speaking for the Bench, Justice Subha Rao stated that "If the legislature, through its ex facie purports to provide for compensation or indicates the principles for ascertaining the same, but in effect and substance takes away a property without paying compensation for it, it will be exercising power it does not possess. If the Legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and so arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its powers." Justice Subha Rao reiterated his view in Union of India v. Metal Corporation of India Ltd. & Another AIR 1967 SC 637.

100. In Shantilal Mangaldas's case (supra), the validity of Bombay Town Planning Act 1958 was challenged before this Court on the ground that the owner was to be given market value of land at date of declaration of scheme, which was not the just equivalent of the property acquired, the Court held that after the Fourth Amendment resulting in the changes to Article 31(2) the

question of `adequacy of compensation' could not be entertained. Justice Hidayatullah stated that the stance taken in the previous case by Justice Subha Rao as "obiter and not binding". The validity of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1969 came up for consideration before the eleven judges Bench of this Court in Rustom Cowasjee Cooper v. Union of India (1970) 2 SCC 298. The Act, it was pointed out, did lay down principles for determination and payment of compensation to the banks, which was to be paid for in form of bonds, securities etc., and compensation would not fulfill the requirement of Article 31(2). A majority of the judges accepted that view and held that both before and after the amendment to Article 31(2) there was a right to compensation and by giving illusory compensation the constitutional guarantee to provide compensation for an acquisition was not complied with. The Court held that the Constitution guarantees a right to compensation - an equivalent in money of the property compulsorily acquired which is the basic guarantee and, therefore, the law must provide compensation, and for determining compensation relevant principles must be specified; if the principles are not relevant the ultimate value determined is not compensation.

101. The validity of Articles 19(1)(f) and (g) was also the subject matter ofI.C. Golaknath and Others v. State of Punjab, AIR 1967 SC 1643. In that case, a large portion of the lands of Golak Nath family was declared surplus under the Punjab Security of Land Tenures Act 1953. They challenged the act on the grounds that it denied them their Constitutional Rights to acquire and hold property and practice any profession. Validity of Articles 19(1)(f) and (g), the 17th Amendment, the 1st Amendment and the 4th Amendment were also questioned. Chief Justice Subha Rao speaking for the majority said that the Parliament could not take away or abridge the Fundamental Rights and opined that those rights form `basic structure' of the Constitution and any amendment to the Constitution can be made to preserve them, not to annihilate.

102. The Parliament enacted the (24th Amendment) Act 1971, by which the Parliament restored to the amending power of the Parliament and also extended the

scope of Article 368 which authorised the Parliament to amend any part of the Constitution.

103. Parliament then brought in the 25th Amendment Act, 1971 by which Article 31(2) was amended by which private property could be acquired on payment of an "amount" instead of "compensation". A new Article 31(C)was also inserted stating that "no law giving effect to the policy of the State towards acquiring the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14,Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

104. The constitutionality of the above amendments was also the subject matter in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Another (1973) 4 SCC 225, which overruled the principles laid down in Gokalnath's case (supra) and held that a Constitutional amendment could not alter the basic structure of the Constitution, and hence Article 19(1)(f) was not considered to be the basic structure of the Constitution, as later explained in Indira Nehru Gandhi v. Raj Narain (1975) Supp. SCC 1.

105. We are in these cases, primarily concerned with the scope of the Forty Fourth Amendment 1978, which deleted Article 19(1)(f) and Article 31from the Constitution of India and introduced Article 300A, and its impact on the rights of persons, who are deprived of their properties. We have extensively dealt with the scope of Articles 19(1)(f) and Article 31 as interpreted in the various decisions of this Court so as to examine the scope and content of Article 300A and the circumstances which led to its introduction. The Forty Fourth Amendment Act, inserted in Part XII, a new chapter: "Chapter IV - Right to Property and inserted Article 300A, which reads as follows:-

> "No person shall be deprived of property save by authority of law."

106. Reference to the Statement of Objects and Reasons of the 44th Amendment in this connection may be apposite. Paragraphs 3, 4 and 5 of the Statement of Objects and Reasons reads as follows:

> "3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one Amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to Article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.
>
> 4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.
>
> 5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law."

107 In Jilubhai Nanbhai Khachar & Others v. State of Gujarat & Another(1995) Supp. 1 SC 596, this Court examined whether Section 69-A, introduced by the Gujarat Amendment Act 8 of 1982 in the Bombay Land Revenue Code which dealt with vesting mines, minerals and quarries in lands held by persons including Girasdars and Barkhalidars in the State violated Article 300A of the Constitution. The Court held that the `property' in Article 300A includes mines, minerals and quarries and deprivation thereof having been made by authority of law was held to be valid and not violative of Article 300A.

108. Article 300A, when examined in the light of the circumstances under which it was inserted, would reveal the following changes:

> 1. Right to acquire, hold and dispose of property

has ceased to be a fundamental right under the Constitution of India.
2. Legislature can deprive a person of his property only by authority of law.
3. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a Constitutional right.
4. Right to Property, since no more a fundamental right, the jurisdiction of the Supreme Court under Article 32 cannot be generally invoked, aggrieved person has to approach the High Court under Article 226 of the Constitution.

109. Arguments have been advanced before us stating that the concept of eminent domain and its key components be read into Article 300A and if a statute deprives a person of his property unauthorizedly, without adequate compensation, then the statute is liable to be challenged as violative of Articles 14, 19 and 21 and on the principle of rule of law, which is the basic structure of our Constitution. Further it was also contended that the interpretation given by this Court on the scope of Article 31(1) and (2) in various judgments be not ignored while examining the meaning and content of Article 300A.

110. Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression `Property' in Art.300A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law. This Court in State of W. B. & Others v. Vishnunarayan & Associates (P) Ltd & Another (2002) 4 SCC 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300A that the State or executive offices cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights. Article 300A, therefore, protects private property against executive action. But the question that looms large is as to what extent their

rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of `public purpose' and `compensation' in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of entry 42, List III, as well and, hence, would apply when the validity of a statute is in question. On the other hand, it was the contention of the State that since the Constitution consciously omitted Article 19(1)(f), Articles 31(1) and 31(2), the intention of the Parliament was to do away the doctrine of eminent domain which highlights the principles of public purpose and compensation.

111 Seervai in his celebrated book `Constitutional Law of India' (Edn. IV), spent a whole Chapter XIV on the 44th Amendment, while dealing with Article 300A. In paragraph 15.2 (pages 1157-1158) the author opined that confiscation of property of innocent people for the benefit of private persons is a kind of confiscation unknown to our law and whatever meaning the word "acquisition" may have does not cover "confiscation" for, to confiscate means "to appropriate to the public treasury (by way of penalty)". Consequently, the law taking private property for a public purpose without compensation would fall outside Entry 42 List III and cannot be supported by another Entry in List III. Requirements of a public purpose and the payment of compensation according to the learned author be read into Entry 42 List III. Further the learned author has also opined that the repeal of Article 19(1)(f) and 31(2) could have repercussions on other fundamental rights or other provisions which are to be regarded as part of the basic structure and also stated that notwithstanding the repeal of Article 31(2), the word "compensation" or the concept thereof is still retained in Article 30(1A) and in the second proviso to Article 31A(1)meaning thereby that payment of compensation is a condition of legislative power in Entry 42 List III.

112. Learned senior counsel Shri T.R. Andhyarujina, also referred to the opinion expressed by another learned author Prof. P.K. Tripathi, in his article "Right to

Property after 44th Amendment - Better Protected than Ever Before" (reported in AIR 1980 J pg. 49-52). Learned author expressed the opinion and the right of the individual to receive compensation when his property is acquired or requisitioned by the State, continues to be available in the form of an implied condition of the power of the State to legislate on "acquisition or requisition of property" while all the exceptions and limitations set up against and around it in Article 31, 31A and 31B have disappeared. Learned author opined that Article 300Awill require obviously, that the law must be a valid law and no law of acquisition or requisitioning can be valid unless the acquisition or requisition is for a public purpose, unless there is provision in law for paying compensation, will continue to have a meaning given to it, by Bela Banerjee's case (supra).

113. Learned author, Shri S.B. Sathe, in his article "Right to Property after the 44th Amendment" (AIR 1980 Journal 97), to some extent, endorsed the view of Prof. Tripathi and opined that the 44th amendment has increased the scope of judicial review in respect of right to property. Learned author has stated although Article 300A says that no one shall be deprived of his property save by authority of law, there is no reason to expect that this provision would protect private property only against executive action. Learned author also expresses the wish that Article 21 may provide viable check upon Article 300A.

114. Durga Das Basu in his book "Shorter Constitution of India", 13th Edition, dealt with Article 300A in Chapter IV wherein the learned author expressed some reservation about the views expressed by Seervai, as well as Prof. Tripathi Learned author expressed the view, that after the 44th amendment Act there is no express provision in the Constitution outside the two cases specified under Article 30(1A) and the second proviso to 31(1A) requiring the State to pay compensation to an expropriated owner. Learned author also expressed the opinion that no reliance could be placed on the legislative Entry 42 of List III so as to claim compensation on the touchstone of fundamental rights since the entry in a legislative list does not confer any legislative power but only enumerates fields of

legislation. Learned counsel on the either side, apart from other contentions, highlighted the above views expressed by the learned authors to urge their respective contentions.

115. Principles of eminent domain, as such, is not seen incorporated in Article 300A, as we see, in Article 30(1A), as well as in the 2nd proviso to Article 31A(1) though we can infer those principles in Article 300A.Provision for payment of compensation has been specifically incorporated in Article 30(1A) as well as in the 2nd proviso to Article 31A(1) for achieving specific objectives. Constitution's 44th Amendment Act, 1978 while omitting Article 31 brought in a substantive provision Clause (1A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31A(1) prohibits the Legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which follows that a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered void.

116. Looking at the history of the various constitutional amendments, judicial pronouncements and the statement of objects and reasons contained in the 44th Amendment Bill which led to the 44th Amendment Act we have no doubt that the intention of the Parliament was to do away with the fundamental right to acquire, hold and dispose of the property. But the question is whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300A of the Constitution.

PUBLIC PURPOSE

117. Deprivation of property within the meaning of

Art.300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known. The concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation. Public purpose is, therefore, a condition precedent, for invoking Article 300A.

COMPENSATION

118. We have found that the requirement of public purpose is invariably the rule for depriving a person of his property, violation of which is amenable to judicial review. Let us now examine whether the requirement of payment of compensation is the rule after the deletion of Article 31(2).Payment of compensation amount is a constitutional requirement under Article 30(1A) and under the 2nd proviso to Article 31A(1), unlike Article 300A. After the 44th Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article 300A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

119. Before answering those questions, let us examine whether the right to claim compensation on deprivation of one's property can be traced to Entry 42 List III. The 7th Constitutional Amendment Act, 1956 deleted Entry 33 List I, Entry 36 List II and reworded Entry 42 List III relating to "acquisition and requisitioning of property". It

was urged that the above words be read with the requirements of public purpose and compensation. Reference was placed on the following judgment of this Court in support of that contention. In State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. (1959) SCR 379 at 413), this Court considered Entry 48 List II of the Government of India Act, 1935, "tax on sales of goods", in accordance with the established legal sense of the word "sale", which had acquired a definite precise sense and held that the legislature must have intended the "sale", should be understood in that sense. But we fail to see why we trace the meaning of a constitutional provision when the only safe and correct way of construing the statute is to apply the plain meaning of the words. Entry 42 List III has used the words "acquisition" and "requisitioning", but Article 300A has used the expression "deprivation", though the word deprived or deprivation takes in its fold "acquisition" and "requisitioning", the initial presumption is in favour of the literal meaning since the Parliament is taken to mean as it says.

120. A Constitution Bench of this Court in Hoechst Pharmaceuticals Ltd.'s case (supra), held that the various entries in List III are not "powers" of Legislation but "fields" of Legislation. Later, a Constitution Bench of this Court in State of West Bengal & Another v. Kesoram Industries Ltd. & Others AIR 2005 SC 1646, held that Article 245 of the Constitution is the fountain source of legislative power. It provides that subject to the provisions of this Constitution, the Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. The legislative field between the Parliament and the Legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Seventh Schedule, called the Union List and subject to the said power of the Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the Concurrent List. **Subject to the above, the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the**

State List. Under Article 248, the exclusive power of the Parliament to make laws extends to any matter not enumerated in any Concurrent List or State List.

121. We find no apparent conflict with the words used in Entry 42 List III so as to infer that the payment of compensation is inbuilt or inherent either in the words "acquisition and requisitioning" under Entry 42 List III. Right to claim compensation is, therefore, cannot be read into the legislative Entry 42 List III. Requirement of public purpose, for deprivation of a person of his property under Article 300A, is a pre-condition, but no compensation or nil compensation or its illusiveness has to be justified by the state on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

122. Article 300A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300A Parliament has only borrowed Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms

of Articles 14, 19(1)(g), 26(b), 301, etc. Thus in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above. At this stage, we may clarify that there is a difference between "no" compensation and "nil" compensation. A law seeking to acquire private property for public purpose cannot say that "no compensation shall be paid". However, there could be a law awarding "nil" compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the government to establish validity of such law. In the latter case, the court in exercise of judicial review will test such a law keeping in mind the above parameters.

123. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300A is immune from challenge before a Constitutional Court for violation of Articles 14, 21 or the overarching principle of Rule of Law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300A, unlike Article 30(1A) and the 2nd proviso to Article 31A.

124. Article 31A was inserted by the 1st Amendment Act, 1951 to protect the abolition of Jamindari Abolition Laws and also the other types of social, welfare and regulatory legislations effecting private property. The right to challenge laws enacted in respect of subject matter enumerated under Article 31A(1)(a) to (g) on the ground of violation of Article 14 was also constitutionally excluded. Article 31B read with Ninth Schedule protects all laws even if they are violative of the fundamental rights, but in I.R. Coelho's case (supra), a Constitution Bench of this Court held that the laws added to the Ninth Schedule, by violating the constitutional amendments after 24.12.1973, if challenged, will be decided on the touchstone of right to freedom guaranteed by Part III of the Constitution and with

reference to the basic structure doctrine, which includes reference under Article 21 read with Articles 14, 15 etc. Article 14 as a ground would also be available to challenge a law if made in contravention of Article 30(1)(A).

125. Article 265 states that no tax shall be levied or collected except by authority of law, then the essential characteristics of tax is that it is imposed under statute power, without tax payer's consent and the payment is enforced by law. A Constitution Bench of this Court in Kunnathat Thathunni Moopil Nair's case (supra) held that Sections 4, 5-A and 7 of the Travancore-Cochin Land Tax Act are unconstitutional as being violative of Article 14 and was held to be in violation of Article 19(1)(f). Of course, this decision was rendered when the right to property was a fundamental right. Article 300A, unlike Articles 31A(1) and 31C, has not made the legislation depriving a person of his property immune from challenge on the ground of violation of Article 14 or Article 21 of the Constitution of India, but let us first examine whether Article 21 as such is available to challenge a statute providing for no or illusory compensation and, hence, expropriatory.

126. A Constitution Bench of this Court in Ambika Prasad Mishra v. State of U.P. & Others (1980) 3 SCC 719, while examining the constitutional validity of Article 31A, had occasion to consider the scope of Article 21 in the light of the judgment of this Court in Maneka Gandhi's case (supra). Dealing with the contention that deprivation of property amounts to violation of the right guaranteed under Article 21 of the Constitution of India, this Court held as follows:

> "12. Proprietary personality was integral to personal liberty and a mayhem inflicted on a man's property was an amputation of his personal liberty. Therefore, land reform law, if unreasonable, violates Article 21 as expansively construed in Maneka Gandhi. The dichotomy between personal liberty, in Article 21, and proprietary status, in Articles 31 and 19 is plain, whatever philosophical justification or pragmatic realisation it may possess in political or juristic theory. Maybe, a penniless proletarian, is unfree in his movements and has

> nothing to lose except his chains. But we are in another domain of constitutional jurisprudence. Of course, counsel's resort to Article 21 is prompted by the absence of mention of Article 21 in Article 31-A and the illusory hope of inflating Maneka Gandhi to impart a healing touch to those whose property is taken by feigning loss of personal liberty when the State takes only property, Maneka Gandhi is no universal nostrum or cure-all, when all other arguments fail!"

127. The question of applicability of Article 21 to the laws protected under Article 31C also came up for consideration before this Court in State of Maharashtra & Another v. Basantibai Mohanlal Khetan & Others (1986) 2 SCC 516, wherein this Court held that Article 21 essentially deals with personal liberty and has little to do with the right to own property as such. Of course, the Court in that case was not concerned with the question whether the deprivation of property would lead to deprivation of life or liberty or livelihood, but was dealing with a case, where land was acquired for improving living conditions of a large number of people. The Court held that the Land Ceiling Laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution. This Court in Jilubhai Nanbhai Khachar's case (supra) took the view that the principle of unfairness of procedure attracting Article 21does not apply to the acquisition or deprivation of property under Article 300A.

128. Acquisition of property for a public purpose may meet with lot of contingencies, like deprivation of livelihood, leading to violation of Art.21, but that per se is not a ground to strike down a statute or its provisions. But at the same time, is it the law that a Constitutional Court is powerless when it confronts with a situation where a person is deprived of his property, by law, for a private purpose with or without providing compensation? For example, a political party in power with a massive mandate enact a law to acquire the property of the political party in opposition not for public purpose, with or without compensation, is it the law, that such a statute is immune from challenge in a

Constitutional Court? Can such a challenge be rejected on the ground that statute does not violate the Fundamental Rights (due to deletion of Art.19(1)(f) and that the legislation does not lack legislative competence? In such a situation, is non-availability of a third ground as propounded in State of A.P. & Others v. Mcdowell & Co. & Others (1996) 3 SCC 709, is an answer? Even in Mcdowell's case (supra), it was pointed out some other constitutional infirmity may be sufficient to invalidate the statute. A three judges Bench of this Court in Mcdowell & Co. & Others case (supra) held as follows:

> **"43. .....The power of Parliament or for that matter, the State Legislature is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground..... No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom....."**

129. A two judges Bench of this Court in Union of India & Another v. G. Ganayutham (1997) 7 SCC 463, after referring to Mcdowell's case (supra) stated as under:

> **"that a statute can be struck down if the restrictions imposed by it are disproportionate or excessive having regard to the purpose of the statute and that the Court can go into the question whether there is a proper balancing of the fundamental right and the restriction imposed, is well settled."**

130. Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy.

131. In Dr. Subramanian Swamy v. Director, CBI & Others (2005) 2 SCC 317, the validity of Section 6-A of the Delhi Special Police Establishment Act, 1946, was questioned as violative of Article 14 of the Constitution. This Court after referring to several decisions of this Court including Mcdowell's case (supra), Khoday Distilleries Ltd. & Others v. State of Karnataka & Others (1996) 10 SCC 304, Ajay Hasia & Others v. Khalid Mujib Sehravardi & Others (1981) 1 SCC 722, Mardia Chemicals Ltd. & Others v. Union of India & Others (2004) 4 SCC 311, Malpe Vishwanath Achraya & Others v. State of Maharashtra & Another (1998) 2 SCC 1 etc. felt that the question whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness being facets of Article 14 of the Constitution are available or not as grounds to invalidate a legislation, is a matter requiring examination by a larger Bench and accordingly, referred the matter for consideration by a Larger Bench.

132. Later, it is pertinent to note that a five- judges Bench of this Court in Ashok Kumar Thakur v. Union of India & Others (2008) 6 SCC 1 while examining the validity of the Central Educational Institutions (Reservation in Admission) Act, 2006 held as follows:

> 219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the

> legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law....."
>
> Court also generally expressed the view that the doctrines of "strict scrutiny", "compelling evidence" and "suspect legislation" followed by the U.S. Courts have no application to the Indian Constitutional Law.

133. We have already found, on facts as well as on law, that the impugned Act has got the assent of the President as required under the proviso to Article 31A(1), hence, immune from challenge on the ground of arbitrariness, unreasonableness under Article 14 of the Constitution of India.

134. Statutes are many which though deprives a person of his property, have the protection of Article 30(1A), Article 31A, 31B, 31C and hence immune from challenge under Article 19 or Article 14. On deletion of Article 19(1(f) the available grounds of challenge are Article 14, the basic structure and the rule of law, apart from the ground of legislative competence. In I.R. Coelho's case (supra), basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the court held that statutes mentioned in the IXth Schedule are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered, by the IXth Schedule."

[Emphasis Supplied]

[l] In the case of **Samsher Singh v. State of Punjab and Anr. [1974)2 SCC 831]** the Apex Court referred to a

decision in the case of Jayantilal Amritlal Shodhna v. F.N.Rana [AIR 1964 SC 648] wherein validity of notification issued by President under Article 258(1) of the Constitution of India entrusting with the consent of the Government of Bombay to the Commissioners of Divisions in the State of Bombay, the functions of the Central Government under the Land Acquisition Act in relation to the acquisition of land for the purpose of the Union within the territorial jurisdiction of the Commissioners, was considered and in paragraphs 41 to 43, the Apex Court observed as under:

> "41 This Court in Jayantilal Amritlal Shodhan v. F. N. Rana & Ors. [1964] 5 S. C. R. 294 considered the validity of a notification issued by the President under Article 258(1) of the Constitution entrusting with the consent of the Government of Bombay to the Commissioners of Divisions in the State of Bombay the functions of the Central Government under the Land Acquisition Act in relation to the acquisition of land for the purposes of the Union within the territorial jurisdiction of the Commissioners. The notification issued by the President was dated 24 July, 1959. The Commissioner of Baroda Division, State of Gujarat by notification published on 1 September, 1960, exercising functions under the notification issued by the President notified under Section 4(1) of the Land Acquisition Act that certain land belonging to the appellant was needed for a public purpose. On 1 May, 1960 under the Bombay Reorganization Act, 1960 two States were carved out, viz., Maharashtra and Gujarat. The appellant contended that the notification issued by the President under Article 258(1) was ineffective without the consent of the Government of the, newly formed State of Gujarat.
>
> 42 This Court in Jayantilal Amritlal Shodhan's case (supra) held that Article 258 enables the President to do by notification what the Legislature could do by legislation, namely, to entrust functions relating to

matters to which executive power of the Union extends to officers named in the notification. The notification issued by the President was held to have the force of law. This Court held that Article 258 (1) empowers. the President to entrust to the State the functions which are vested in the Union, and which are exercisable by the President on behalf of the Union and further went on to say that Article 258 does not authorize the President to entrust such power as are expressly vested in the President by the Constitution and do not fall within the ambit of Article 258(1). This Court illustrated that observation by stating that the power of the President to promulgate Ordinances under Articles 268 to 279 during an emergency, to declare failure of constitutional machinery in States under Article 356, to declare a financial emergency under Article 360; to make rules regulating the recruitment and conditions of service of persons appointed to posts and services in connection with the affairs of the Union under Article 309 are not powers of the Union Government but are vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body or authority under Article 258 (1).

43 The ratio in Jayantilal Amritlal Shodhan's case (supra) is confined to the powers of the President which can be conferred on States under Article 258. The effect of Article 258 is to make a blanket provision enabling the President to exercise the power which the Legislature could exercise by legislation, to entrust functions to the Officers to be specified in that behalf by the President and subject to the conditions Prescribed thereby. The result of the notification by the President under Article 258 is that wherever the expression appropriate Government" occurs in the Act in relation to provisions for acquisition of land for the purposes of the Union, the words "Appropriate Government or the Commissioner of the Division having territorial jurisdiction over the area in which the land is situate" were deemed to be substituted."

Further, in paras 48 and 144, the Apex Court has taken

note role of the President as well as Governor in the Constitution of India. Paras 48 and 144 read as under:

> ***"48 The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercise all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor."***
>
> 144 Some observations in the ruling relied upon, namely Jayantilal Amritlal Shodhan v. F N. Rama [supra] apparently seem to support the conclusion reached in Sardarilal,(Supra) but it must be remembered that the actual case turned on the constitutionality of the President delegating executive powers conferred on him by Art. 258 to a government of a State. In that case a distinction was made between functions with which the Union

Government is invested and those vested in the President. The Court took the view that Art.258 (1) did not permit the President to part with powers and functions with which he is, by express provisions of the Constitution qua President, invested. The particular observations relied upon in Sardarilal may well be extracted here:

> "**The power to promulgate Ordinances under Art. 123; to suspend the provisions of Arts. 268 to 279 during an emergency; to declare failure of the Constitutional machinery in States under Art. 356; to declare a financial emergency under Art. 360 to make rules regarding the recruitment and conditions of service of persons appointed to posts and services in connection with the affairs of the Union under Art. 309-to enumerate a few out of the various powers-are not powers of the Union Government; these are powers vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body or authority under Art. 258 (1). The plea that the very nature of these powers is such that they could not be intended to be entrusted under Art. 258 (1) to the State or officer of the State, and, therefore, that clause must have a limited content, proceeds upon an obvious fallacy. Those powers cannot be delegated under Art. 258(1) because they are not the powers of the Union and not because of their special character. There is a vast array of other powers exercisable by the President-to mention only a few appointment of judges; Art. 124 & 217, appointment of Committees of Official Languages Act, Art. 344, appointment of Commissions to investigate conditions of backward classes; Art. 340, appointment of Special Officer for Scheduled Castes and Tribes; Art. 338, exercise of his pleasure to terminate employment; Art. 310 declaration that in the interest of the**

> **security of the State it is not expedient to give a public servant sought to be dismissed an opportunity contemplated by Art. 311 (2)-these are executive powers of the President and may not be delegated or entrusted to another body or officer because they do not fall within Art. 258"**.
>
> [Emphasis Supplied]

19. We have given our thoughtful consideration to the exhaustive submissions made by learned counsel appearing for the petitioners and learned Advocate General appearing for the State of Gujarat and also learned counsels appearing for NHSRCL and Railways. Keeping in mind the Object and Reasons of the Act 2013 namely expropriate piece of legislation which provides for a humane, participative, informed and transparent process for land acquisition for **Industrialization, Development of Essential Infrastructural facilities and Urbanisation with least disturbance to the owners of the land and other affected families and also provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired and also to see that such affected persons are rehabilitated and resettled** and simultaneously facilitating land acquisition for avowed objects of industrialization, infrastructure and urbanization projects in a timely and transparent manner and also principles governing the interpretation of Constitution of India as emerging on reading of the Constitution Bench judgement of the Apex Court in the case of **Synthetics and Chemicals Ltd. & Ors. (supra)** that the Constitution is a living thing and

must adapt itself to the changing situations and pattern in which it has to be interpreted and further various entries in the three lists of the Indian Constitution are not powers but fields of legislation and requirement of liberal approach while considering legislative entries as held in the case of **M.P.V.Sundararamier & Co. (supra),** we reiterate that essentials of Article 254 of the Constitution of India as held in paragraph no. 10 in the case of **Kaiser-I-Hind (supra)** namely about inconsistencies between laws made by Parliament and laws made by Legislation of States, following requirements are to be satisfied:

> (I) Laws made by the Legislature of State should be with respect to one of the matters enumerated in the Concurrent List;
> (II) It contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter;
> (III) The law so made by the Legislature of the State has been reserved for the consideration of the President and lastly;
> (IV) It has received the President's assent.

19.1 The assent is interpreted as reflected from the earlier paragraphs wherein the Apex Court has noted various meaning attributed in ***Corpus Juris Secundum*** **about Assent and referring to its dictionary meaning in Shorter Oxford Dictionary, Bouvier's Law Dictionary, Law Lexicon of British India by P. Ramanatha Aiyer, Websters' 3rd New International Dictionary [Vol.I],**

Random House Dictionary, and Words & Phrases Judicial Dictionary (supra) as per the emphasis supplied therein. In the facts of this case, if we notice the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat amendment) Bill, 2016 namely Gujarat Bill No. 5 of 2016, it has inserted Section 10A , Section 23A, proviso after the existing proviso in sub-section (2) of Section 24 and Section 31A with regard to grant of exemption of Chapter II & III of Act, 2013 in case of certain projects to be undertaken by the State Government and clause (j) thereof is about infrastructure projects including projects under public private partnership where the ownership of land continues to vest with the Government. The above Section 10A enumerates broad legislative policy and guidelines and the same is reproduced hereunder once again:

> **"10A. The State Government may, in the public interest, by notification in the *Official Gazette*, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this Act, namely:-**
>
> (f) Such projects vital to national security or defence of India and every part thereof, including preparation for defence or defence production;
>
> (g) Rural infrastructure including electrification;
>
> (h) Affordable housing and housing for the poor people;
>
> (i) Industrial corridors set up by the State Government and its undertakings (in which case the land shall be

acquired up to one kilometre on both sides of designated railway line or roads for such industrial corridor); and

(j) Infrastructure projects including projects under public-private partnership where the ownership of land continues to vest with the Government;

Provided that the State Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project."

[Emphasis Supplied]

19.2 It is pertinent to note that in order to achieve minimum consequential impact in terms of displacement amongst other needs, the funding agency involved in the entire project has already in advance decided about the two main aspects (I) selection of a particular route (II) bare minimum extent of land i.e. patch of land having width of 17.5+5+5 meters only for accommodating elevated corridor.

19.3 By letter dated 26.04.2016 addressed by the Secretary of Legislative & Parliamentary Affairs Department of the State of Gujarat to the Principal Secretary to the Hon'ble the Governor of Gujarat, in pursuance of Article 200 of the Constitution of India an authentic copy in triplicate of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat amendment) Bill, 2016 which was passed by the Gujarat Legislative Assembly on 31.03.2016 was presented to the Honourable Governor of Gujarat. The subject matter of the

Bill admittedly falls under Entry No. 42 in List III of the Seventh Schedule of the Constitution of India and it categorically mentions that provisions of the Bill are repugnant to the provisions of the Gujarat Amendment Bill, 2013 and existing law falling under Entry No. 42 in the Concurrent List. As per the above communication, request was made to Honourable the Governor of Gujarat to move to the Government of India to obtain assent of the President to such Bill. The above communication is accompanied with a certificate that certain documents were attached. The Bill, 2016 also contained a note on clauses of the proposed legislation.

19.4 Apropos the above, the office of the Honourable Governor addressed a communication to the Principal Secretary to the State, Ministry of Home Affairs, Government of India, New Delhi on 21.05.2016 with the following categorical observations:

> 1. The **Bill** was passed by the Gujarat Legislative Assembly at its meeting held on 31st March, 2016.
> 2. The subject matter of the **Bill** falls under **Entry 42** in List III of the VIIth Schedule to the **Constitution of India**.
> 3. The Bill was not referred to the **Select Committee**.
> 4. AS the provisions of the **Bill** are repugnant to the provisions of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,** which is an existing law falling under entry 42 in the **Concurrent List**, the State Government has opined that it is necessary to reserve the **Bill** for the kind consideration of the **Hon. President of India** with reference to **Clause (2)** of **Article 254**

of the **Constitution of India.**

19.5 The above communication also referred to the Statement of Objects and Reasons attached to the Bill which also gives background under which the State Government considered it necessary to introduce the Bill. Upon due deliberation and consideration, the Honourable Governor of Gujarat thought it fit and necessary to reserve the Bill for the kind consideration of the President of India and further directed to submit it to the Government of India in the Ministry of Home Affairs for further process so that finally kind consent of the Honourable President of India could be obtained.

19.6 As per communication of Ministry of Home Affairs, Government of India dated 10.08.2016, the Honourable President of India had assented the Bill on 08.08.2016 as per powers conferred under Article 201 of the Constitution of India. The enclosures reveal that the Honourable President was apprised of the existing provisions of the Act and Sections as would appear after incorporating the amendments in the existing provisions. Thus, pointedly it was brought to the notice of the President of India about the repugnancies/inconsistencies in the Bill that was passed by the Gujarat State Legislative Assembly namely Gujarat Amendment Bill, 2016. For the sake of convenience, we may again reproduce the nature of repgunancies/inconsistencies brought to the notice of the Honourable President of India in a tabular form by pointing out existing provisions of central legislation namely Central Act, 2013, respective clause nos. of the Bill, section as would appear after incorporating amendment in the existing provisions which clearly go to

show that the President was presented with the inconsistencies in the respective Acts upon Gujarat Amendment Bill, 2016 presented to the Honourable President of India which was reserved by the Governor for assent of the Honourable President.

Sr. No.	Existing provisions	Clause No. of the Bill	Section as would appear after incorporating amendment in the existing provisions
1.	**2. Application of Act.** (1) xxx xxx xxx (2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:- (a) for public private partnership projects, where the ownership of the land continues to vest with	2.	**2. Application of Act.** (1) xxx xxx xxx (2) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, Shall also apply, when the appropriate Government acquires land for the following purposes, namely:- (a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1); (b) for private companies for public purpose, as defined in sub-section (1): Provided that in the case of acquisition for- (i) private companies, the prior consent of atleast eighty percent. of those affected families, as defined in sub-clause clause (i) and (v) of clause (c) of section 3; and

	the government, for public purpose as defined in sub-section (1): (b) for private companies for public purpose, as defined in sub-section (1): Provided that in the case of acquisition for- (i) private companies, the prior consent of atleast eighty percent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of Section 3; and (ii) public private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of Section 3, shall be obtained through a process as may be prescribed by		(ii) public private partnership projects; the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, shall be obtained through a process as may be prescribed by the appropriate Government: Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4: Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas: **Provided also that the acquisition of land for the projects listed in sub-section (1) of section 10A and the purposes specified therein shall be exempted from the provisions of the first proviso to this sub-section.** (3) xxx xxx xxx

	the appropriate Government: Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in Section 4: Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas. (3) xxx xxx xxx		
2.	**Insertion of new section 10A.**	**3.**	**10A. Power of State Government to exempt certain projects.** The State Government may, in the public interest, by notification in the *Official Gazette*, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this 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 set up by the State Government and its undertakings (in which case the land shall be acquired up to one kilometer on both sides of designated railway line or roads for such industrial corridor); and (e) infrastructure projects including projects under public-private partnership where the ownership of land continues to vest with the Government: Provided that the State Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project.".
3.	**Insertion of new section 23A.**	**16 of 1908.**	**23A. Award of Collector without enquiry in case of agreement of interested persons.** (1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement. (2) The determination of

			compensation for any land under sub section (1) shall not in any way affect the determination of compensation in respect of other lands elsewhere in accordance with the other provisions of this Act. (3) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (1) shall be liable to registration under that Act.
4.	**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.** (1) XXX XXX XXX (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and	**5.** **1 of 1894**	**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.** (1) XXX XXX XXX (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance

	the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.		with the provisions of this Act: **Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the taking possession or such period where possession has been taken but in any period specified in the award of a Tribunal for the compensation is lying deposited in a court or designated account maintained for this purpose, shall be excluded.**
5.	**Insertion of new section 31A.**	**6.**	**31A. Payment of lump- sum amount by State Government for its linear nature projects.** Notwithstanding anything contained in this Act, it shall be competent for the State Government to pay, whenever the land is to he acquired for its own use amounting to less than one hundred acres or whenever the land is to be acquired in case of which are linear in nature as

			referred to in proviso to sub-section (4) of section 10, as Rehabilitation and Resettlement cost, such lump sum amount equal to fifty per cent. of the amount of compensation as determined under section 27 to the affected families
6.	**40. Special powers in case of urgency to acquire land in certain cases.** (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. (2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of	7.	**40. Special powers in case of urgency to acquire land in certain cases.** (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. (2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament **or to comply with the directions given by the Central Government to the State Government:** Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience. (3) to (5) XXX XXX XXX

	India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament: Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience. (3) to (5) XXX XXX XXX		
7.	**46. Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified**	**8.**	**46. Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons.**

	persons. (1) Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more such limits, as may be notified by the appropriate Government considering the relevant State specific factors and circumstances for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of (a) intent to purchase; (b) purpose for which such purchase is being made; (c) particulars of lands to be purchased. (2) to (5) XXX XXX XXX (6) If any land has been purchased through private negotiations by a	**21 of 1860**	(1) Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more such limits, as may be notified by the appropriate Government, considering the relevant State specific factors and for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of (c) <u>intent to purchase;</u> (d) <u>purpose for which such purchase is being made;</u> (c) particulars of lands to be purchased. (2) to (5) XXX XXX XXX (6) If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent. of the compensation paid for such land acquired shall be shared with the original land owners. Explanation.- For the purpose of this section, the expression- (a) "original land owner" refers to the owner of the land as on the 5th day of September, 2011; (b) "specified persons" includes any person other than- **(i) deleted;** (ii) Government company; (ii) association of persons or trust or society as registered under the Societies Registration

	person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent. of the compensation paid for such land acquired shall be shared with the original land owners. Explanation. - For the purpose of this section, the expression- (a) "original land owner" refers to the owner of the land as on the 5th day of September, 2011; (b) "specified persons" includes any person other than- (i) appropriate Government; (ii) Government company; (iii) association of persons or trust or society as registered under the Societies Registration Act, 1860, wholly or partially aide		Act, 1860, wholly or partially aided by the appropriate Government or controlled by the appropriate Government.

	by the appropriate Government or controlled by the appropriate Government.		
8.	**87. Offences by Government departments.** (1) Where an offence under this Act has been committed by any department of the Government, the head of the department, be deemed to be guilty of the offence and shall be liable to proceeded against and punished accordingly Provided that nothing contained in this section shall render any person liable to any punishment if such person proves offence was committed without his knowledge or that exercised all due diligence to prevent the offence that the such person commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where	**9.** **2 of 1974**	**87. Offences by Government Officials.** **Where any offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be, at the time of commission of such alleged offence, the court shall take cognizance of such offence provided the procedure laid down in section 197 of the Code of Criminal Procedure, 1973 is followed.**

	any offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.		

19.7 Therefore, on the facts of the present case, there is limited scope to undertake microscopic exercise of scrutiny of satisfaction of the Honourable President qua such repugnancies/inconsistencies when the same were brought to the notice of the Honourable President of India.

20. Thus, pursuant to the Honourable President being satisfied about the repugnancies/inconsistencies and after having given his assent on 08.08.2016, all actions were taken including issuance of notification dated 06.02.2018 under sub-section (1) of Section 2 of the Act of 2013 and also issuance of notification under sub-section(1) of Section 11 of the Act of 2013. Accordingly, requirement of Article 254(2) of the Constitution of India is complied with and a Bill which was reserved by the Governor received assent of the Honourable

President of India and it became an Act being Act, 2016 and State Law will prevail over Central Law to the extent of inconsistency as laid down and which has been discussed hereinafter in the case of **M. Karunanidhi (supra)**.

21. However, during the pendency of writ petitions powers conferred by clause (1) of Article 258 of the Constitution of India and the President with the consent of the Government of State of Gujarat directed (a) that the functions of the Central Government as the appropriate government under the said Act may be performed by the Government of Gujarat subject to the condition that the Central Government may itself, at any time, perform the functions of the appropriate Government under the said Act if it deems fit to do so and (b) that all the actions taken by the Government of Gujarat in relation to acquisition of land within the territory of Gujarat for the aforesaid purpose shall be deemed to have been taken for and on behalf of the Central Government **and shall be deemed to be legal and valid for all purposes**; and (c) that the Government of Gujarat, while performing any function under this notification, shall comply with such general and special directions as the Central Government may, from time to time, give.

22. Submissions made by learned advocate for the petitioners about width and amplitude of exercise of Presidential power under Article 258 of the Constitution of India is subject to limitations imposed under Article 73 of the Constitution of India if considered with principles of interpretation of constitutional provisions and also of statutes namely the Court has to adhere to golden rule of

interpretation that provisions are to be interpreted by adhering to plain, simple and grammatical interpretation. Article 258 begins with non-obstante clause "Notwithstanding anything to the contrary" while Article 73 has a phrase "subject to the provisions of the Constitution of India" and proviso therein contains restriction to the extent of "Save as expressly provided in this Constitution or in any law by the Parliament" and therefore what is expressly provided in the Constitution is clearly powers conferred by the President to entrust certain functions in relation to any matter to which the executive power of the Union intends. Therefore, Article 258 as such governs the field stand alone and even if read in juxtaposition to Article 73 of the Constitution of India, no limitations are prescribed in Article 73 except that express provisions in the Constitution are provided for entrusting such functions. Article 73 and Article 258 of the Constitution of India are mutually exclusive.

22.1 Article 258 provides for a blanket provision enabling the Hon'ble President of India to exercise the power which the legislature could exercise by Legislation and which includes even the validation or ratification of past actions. This very aspect is explained by the Apex Court in the case of **Samsher Singh (supra)** wherein the judgement in the case of **Jayantilal Amritlal Shodhan (supra)** was followed. We have reproduced the relevant paragraphs in the case of **Samsher Singh (supra)** as above.

23. Having so interpreted Article 258 of the Constitution of India, we may advert to the contentions raised about powers exercised by the President of India under Article 258

belatedly during the pendency of writ petitions before this Court to which we are of the considered opinion that no malice or any arbitrariness can be attributed to the President of India and further entrustment of functions either conditionally or unconditionally to the State Government and its officers cannot be interpreted as prospective but it relates back to earlier period also. What is entrusted is functions in relation to any matter to which the executive powers of the Union extends and once such entrustment is held legal, consequences and effect thereof are irrelevant and it operates with retrospective effect when such functions are taken by the State Government and its officers. Therefore, in our view all the actions taken by the officers and the authorities of the State of Gujarat under the Gujarat Amendment Bill/Act, 2016 upon receiving assent of the President under Article 254 of the Constitution of India and further receiving ratification by way of entrustment under Article 258 of the Constitution of India confers legality and validity of all actions taken by the officers and authorities of the State pursuant to the Bill/Act, 2016.

24. Once this Court holds that Gujarat Amendment Bill has received due assent of the President under Article 254 of the Constitution of India and further ratification under Article 258 altogether is sufficient enough to reject the contention of learned advocate for the petitioners that Gujarat Amendment Bill/Act, 2016 is ultra vires the provisions of the central legislation viz Act, 2013 and Constitution of India. That repugnancy with the Amendment Act, 2013 is admitted in the contents of the bill itself. What is to be seen by this Court is whether the Bill was reserved by the Governor of Gujarat for

presidential assent and the President was pointedly apprised about such repugnancy that prevailed in the existing law and the proposed law by State of Gujarat and satisfaction of the President arrived at upon due deliberation and consideration cannot be a subject matter of judicial review by the Court as held in the decisions to which reference is made in the earlier paragraphs in the cases of **Rajiv Sarin (supra) and Yogendra Jaiswal (supra)**.

25. Moreover, it is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. We have also not lost sight of the fact that while examining the challenge to the constitutionality of an enactment, one is to start with the presumption of constitutionality and the Court should always put efforts to uphold the constitutionality of a statute by giving purposive interpretation to the provisions rather than striking them down. The Apex Court in the case of **Bihar Distillery Ltd (supra)** has specifically held that the equality of three wings viz. Executive, Legislature and Judiciary should be recognised and that Judiciary should give due regard to the fundamental nature and importance of legislative process. It is further held therein that presumption should be in favour of a constitutionality of a statute and the Court should try to sustain its validity to the extent possible by ironing out defects, if any, in drafting and that an act should be declared as void only if its unconstitutionality is clearly established.

26. In the case of **M. Karunanidhi (supra)**, the Apex Court has clarified as to when repugnancy may result and in para 8

has observed as under:

> 1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
>
> 2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.
>
> 3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List 264 the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential.
>
> 4**. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law**

made by the State Legislature under the proviso to Article 254.

[Emphasis Supplied]

26.1 Further, the Apex Court has in the aforesaid case also observed that before any repugnancy can arise, certain conditions must be satisfied. They are as under:

> 1. That there is a clear and direct inconsistency between the Central Act and the State Act.
>
> 2. That such an inconsistency is absolutely irreconcilable.
>
> 3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

27. Thus, we find that the State has a valid assent. The Apex Court in the case of **P.N. Krishna Lal and Others (supra)**, lays down the requirement as provided under Article 254 of the Constitution of India. In the present case, all the essential ingredients of Article 254(2) as specified in paragraph no. 27 of **Kaiser-I-Hind (supra)**, have stood complied with inasmuch as pointed attention of Hon'ble the President was drawn **(i) by referring Entry 42 of the Concurrent List (ii) by sending the whole Bill relating to the State Act containing the repugnant provisions (iii) by indicating the reasons for having such a law in the Statement of Objects and Reasons attached thereto (iv) reserving the said Bill for consideration of the Hon'ble**

President and (v) accord of the assent of the Hon'ble President on 08.08.2016. Once the assent of the President is sought and given to the State Amendment, though to some extent inconsistency or repugnancy exists between any provision, part or parts of any Act or Acts, the repugnancy or inconsistency ceases to operate in relation to the State in which the assented State enacts law. When the communications addressed to the President as referred in the case of **Kaiser-I-Hind (supra)** as Ex. P12 and correspondence as Ex. F collectively, they did not indicate the extent to which State law was repugnant if compared to those with the case on hand. It is apparent that the concern of local needs is reflected in the Statement of Objects and Reasons along with pointed repugnancies in the amending State law viz-a-viz Central Law, 2013 and specifically brought to the notice of Honourable President of India. The Honourable President of India cannot be expected to be unmindful and unaware of the central legislation namely Central Act, 2013 and thus facts of present case to which we have referred to hereinabove collectively lead to the only conclusion which is even tested on the touchstone of parameters laid down in the decision in the case of **Kaiser-I-Hind (supra)** that the Amending Act, 2016 and the assent so received along with entrustment of power by the Honourable President of India upon conjoint reading of Articles 73, 200, 201, 245, 246, 254 and 258 of the Constitution of India and Amendment Act, 2016 stand up to the scrutiny of this Court on the touchstone of constitutionality.

28. Having satisfied ourselves to the requirement of mandate of constitutional provisions to be followed by the

respective constitutional dignitaries namely the Governor and the Honourable President of India, we may just reiterate the import highlights of the project in question which is a major infrastructural project as per Section 10A(j) with a public purpose with least displacement and Social Impact Assessment as reflected from the SOR of the Amendment Act, 2016 and accordingly we reproduce paragraph no. 3.4 of the affidavit-in-reply as under:

> "3.4 The important highlights of the project have been set out in paragraph no. 5 of the reply which highlights are as under:
>
> > "5. Before proceeding further, I may set out hereunder the important highlights of the Project in question.
> >
> > (j) Total length of **Mumbai - Ahmedabad High Speed Train Corridor** is going to be around **508 kms,** out of which a portion of **350.53 kms** is going to be in the State of Gujarat, **2 kms** in Union Territory of Dadra & Nagar Haveli, and **155.64 kms** in the State of Maharashtra.
> >
> > (k) Pertinently, most of the portion of the aforesaid corridor is going to be elevated, except **21 kms** (approx) which would be underground tunnel, of which **7 kms** will be under sea.
> >
> > (l) It is for the purpose of having the said elevated corridor, that requirement of land is of a patch

having width of **17.5 mtrs** for the train track at all places other than Station and Depot areas.

(m) There will be one parallel road having width of 4 mtrs, which would be constructed all along the track (except on bridges, tunnels and special occasions) within the patch of 17.5 mtrs, which would be available for the local public for the usage. Within a range of 5 mtrs, from the edge of the said patch of 17.5 mtrs on both the sides, people will be at liberty to construct after having intimated to the Corporation and after having taken requisite permission of concerned developmental authorities.

(n) One of the main objectives of the project in question is to reduce traffic pollution and to strengthen intraregional connectivity and to enhance wide - ranging economical development of the target areas.

(o) There will be going to be two types of trains, out of which, one would be covering the distance between Ahmedabad - Mumbai in about **2 hours** with 4 stations and another within 3 hours with 12 stations, in such a fashion that there will be **35 pairs of such trains** which would be running between two destinations and would be available at the interval of every 30 minutes during the normal hours and every 20 minutes during the peak hours.

(p) Total area of land to be acquired under the State of Gujarat for the project is in the order of about **966 hectares**, out of which **753 hectares** represent private owned land, **89 hectares** of land belong to the State and State Authorities, **124 hectares** belong to Indian Railways and **0.7 hectares** is the forest land.

(q) Pursuant to the requirement of JICA, an independent agency called **M/s Arcadis** was short listed by the Corporation with the concurrence of JICA to carryout district wise impact survey under the supervision of JICA, which was accordingly carried out during the period from December, 2017 to July, 2018, followed by submission of "Resettlement Action Plan - Mumbai - Ahmedabad High Speed Railway Project" dated 10.08.2018, wherefrom, the following information can be gathered:

(i) Total project affected household - 13006 (8472 - Guj);

(ii) Total Structures likely to be affected - 3683 (1904 - Guj).

(r) 2nd Schedule to the Central Act of 2013 deals with various elements of rehabilitation and resettlement entitlements for the affected families. For the project in question, elements referred to as Sr. Nos. 4, 5, 6, 7, 8, 10 and 11 are being pressed in services as per the eligibility criteria of the affected

> families. At the time of passing the Award under section 43 of the Central Act of 2013 by the administrator i.e. Acquisition Officer, the provisions of section 31A of the State amendment Act, 2016 will also be taken into account, which provides for the grant of lump sum amount of compensation equivalent to 50% of the amount of compensation determined under section 27 as Rehabilitation and Resettlement Cost."

Thus, these above features reveal that the project in question is an infrastructural project as per Section 10A(j) of the Act, 2016 and serves public purpose.

29. One of the grounds under challenge in the present petitions is completely doing away with the Social Impact Assessment and Consent Clause/s, on the ground that Gujarat is an industrially progressive State and more and more investment is coming to the state and hence the state government aims to provide all basic facilities and infrastructure to the entrepreneurs. It is necessary to mention at this stage that a similar exercise like Social Impact Assessment was carried out by M/s. Arcadis Pvt. Ltd. appointed by NHSRCL in the State of Gujarat under the supervision of JICA by undertaking district-wise impact survey during the period from December 2017 to July 2018. During the course of such an exercise, M/s. Arcadis has captured all the details and information which are ordinarily available as a result of the conduct of the Social Impact Assessment like (i) estimation of affected families and their number of members;

(ii) extent of land acquired, such as agricultural land, private land or common properties; (iii) issues as regards the land compensation, livelihood, rehabilitation and resettlement of the population. In the above contextual facts and contention about dispensation of Social Impact Assessment as per Chapter II, we can safely refer to an exhaustive survey carried out by M/s. Arcadis which meets with almost all important requirements of Chapter II about Determination of Social Impact and Public Purpose which includes in Part-A which is about preliminary investigation for determination of social impact and public purpose and Part-B is about appraisal of social impact assessment report by an expert group. For the sake of convenience, paragraph no. 7.7 of the affidavit-in-reply which contains district wise project impact, distribution of land area by ownership, district wise common property resources affected, vulnerability status of project affected households, project affected households with breakup of title holders and non-title holders is reproduced once again:

(ii) Table 1-1 indicating '**District wise Project Impact**'.

SN	District	Area in (Ha)	Private Land (Ha)	Number of total Land Parcel	Number of Land Parcel Surveyed *	Percentage of Land Parcel Survey*	Actual Data		Estimated Data		Percentage of Actual PAH to Estimated	No of CPR	
							PAH	Structures	PAH	Structures			
1	Ahmedabad	160.59	30.24	541	441	81.52	804	231	928	243	86.64	1	
2	Kheda	106.18	96.52	815	765	93.87	771	109	783	121	98.47	9	
3	Anand	52.35	48.2	434	433	99.77	898	140	901	143	99.67	4	
4	Vadodara	166.94	115.42	1738	1620	93.21	1783	502	1828	505	97.54	9	
5	Bharuch	140.33	128.18	921	724	78.61	830	62	1015	72	81.77	4	
6	Surat	160.14	139.17	833	394	47.30	458	30	639	130	72.00	0	
7	Navsari	87.76	79.53	836	704	84.21	916	288	1045	301	87.66	3	
8	Valsad	128.33	107.2	861	851	98.84	2012	542	2046	548	98.34	6	
9	Palghar	279.87	188.26	1341	1035	77.18	3498	1551	4396	1581	80.00	1	
10	Thane	139.07	78.69	437	318	72.77	915	159	1166	179	78.47	0	
11	DNH	8.12	7.26	118	100	84.75	121	68	137	68	88.32	0	

12	Mumbai	4.6	3.7	3	3	100.00	0	1	0	1	0.00	0	
	Total	**1434.28**	**1022.37**	**8878**	**7388**	**83.22**	**13006**	**3683**	**14884**	**3892**	**87.38**	**37**	

(ii) Table 2-1 indicating '**Distribution of land area by Ownership**'.

SN	District/ UT	No of villages	Land plots affected (No.)					Land area (Ha)				
			Pvt.	Govt.	Forest	IR[1]	Total	Pvt.	Govt.	Forest	IR	Total
1.	Ahmedabad	16	410	78	0*	53	541	30.24	23.2	0.19	106.95	160.59
2.	Kheda	22	691	122	0*	2	815	96.52	9.22	0.26	0.18	106.18
3.	Anand	11	367	67	0*	0	434	48.2	3.91	0.24	0	52.35
4.	Vadodara	35	1422	264	0*	52	1738	115.42	21.64	0.1	29.78	166.94
5.	Bharuch	27	729	191	0*	1	921	128.18	11.09	1	0.06	140.33
6.	Surat	28	641	191	0*	1	833	139.17	20.47	0.38	0.12	160.14
7.	Navsari	28	681	154	0*	1	836	79.53	7.72	0.47	0.04	87.76
8.	Valsad	30	679	173	9	0	861	107.2	17.66	3.46	0	128.33
9.	Palghar	73	911	336	91	3	1341	188.26	30.51	60.63	0.456	279.87
10.	Thane	22	329	68	37	3	437	78.69	41.7	17.36	1.32	139.07
11.	Mumbai Sub	2	2	1	0	0	3	3.7	0.9	0	0	4.6
12.	DNH	2	101	17	0	0	118	7.26	0.86	0	0	8.12
	Total	**296**	**6963**	**1662**	**137**	**116**	**8878**	**1022.37**	**188.88**	**84.09**	**138.906**	**1434.28**
	Percentage (%)		**78**	**19**	**2**	**1**	**100.00**	**71**	**13**	**6**	**10**	**100.00**

(iii) Table 2-8 indicating '**District wise Common Property Resources affected**'.

District	CPR	Area of CPR (sqm)		
		Total	Affected	Extent of impact (%)
Ahmedabad	Property on Gauchar	No area available		
Kheda	Pond	157	140	89.17
	School	288	72	25
	Toilet of school	7	2	28.57
	Toilet	21	21	100
	Pond	200	150	75
	Temple	182	182	100
	Pond	252	33	13.1

	Panchayat plot - 2 No	NA	NA	NA
Anand	Temple	90	81	90
	Pond	100	80	80
	Pond	200	120	60
	School	360	72	20
Vadodara	Temple	75.845	75.845	100
	Temple	152.625	152.625	100
	Temple	20.14	20.14	100
	Hanuman temple		NA	NA
	School		NA	NA
	Panchayat land – 3 No		NA	NA
	Property on gauchar land		NA	NA
	Society common Plot		NA	NA
Bharuch	Graveyard – 2 No		NA	NA
	Property on		NA	NA
	Government land			
	Mosque		NA	NA
Navsari	Temple	2.7	2.7	100
	Temple	6.67	6.67	100
	School	10000	500	5
Valsad	Handpump	4	4	100
	Water Tank	7.29	7.29	100
	Water Storage Tank	6.384	6.384	100
	Panchayat land -2 No		NA	NA
	Small portion of school		NA	NA
Palghar	Temple	120	120	100

(iv) Table 2-9 indicating '**Vulnerability Status of Project Affected Households**'.

Particulars	Vulnerable		Vulnerability Category										
	Yes	No	BPL	WHH	Disable	Destitute	Orphan	Landless	Elderly person without dependent	ST	SC	> 1 category	Others
Ahmedabad	565	362	30	68	14	2	1	16	5	103	316	4	6
Kheda	240	543	84	38	23	11	2	7	0	18	55	2	0
Anand	324	577	108	120	24	2	20	10	3	5	19	11	2
Vadodara	634	1194	105	171	41	4	2	7	9	71	130	19	75
Bharuch	351	665	71	138	20	2	0	5	5	51	37	6	16
Surat	56	584	6	3	1	0	0	0	1	14	29	2	0
Navsari	504	541	11	115	11	2	0	24	32	14	36	17	15

			2							0			
Valsad	944	1102	90	158	25	3	1	4	5	589	60	4	5
Palghar	1286	3110	99	93	15	5	3	6	4	887	136	32	6
Thane	279	887	36	8	0	0	0	3	19	168	32	7	8
DNH	79	58	1	3	2	0	1	1	0	51	19	1	0
Mumbai	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	**5262**	**9622**	**742**	**915**	**176**	**31**	**30**	**83**	**83**	**2097**	**869**	**105**	**133**
Percentage	**35.4**	**64.6**	**14.10**	**17.39**	**3.34**	**0.59**	**0.57**	**1.58**	**1.58**	**39.85**	**16.52**	**2.00**	**2.53**

(v) Table 2-10 indicating '**Project Affected Households with breakup of Title Holders and Non - Title holders**'.

District	PAH Ownership						Total
	TH	NTH					
		Encroacher	Squatter	Tenant	Others	Total	
Ahmedabad	284	39	563	21	21	644	928
Kheda	740	12	18	2	11	43	783
Anand	875	5	5	1	15	26	901
Vadodara	1378	296	17	79	58	450	1828
Bharuch	961	21	15	0	18	54	1015
Surat	584	13	17	25	0	55	639
Navsari	988	18	24	3	12	57	1045
Valsad	1621	54	220	148	3	425	2046
Palghar	2048	1197	353	771	27	2348	4396
Thane	717	175	58	182	33	449	1166
DNH	109	0	21	0	7	28	137

30. Thus, the above exercise undertaken by the State Government by appointing M/s. Arcadis – a well known expert in the field even though requirement of Chapter II about Social Impact Assessment is dispensed with takes care of the provisions of Chapter II specifying the purport and object behind carrying out Social Impact Assessment. It is an elaborate exercise undertaken by the agency appointed by the State of Gujarat – M/s. Arcadis to carry an exhaustive survey about likelihood of effect of acquisition and requisition of the land for the project concerned. The same reveal that the

State Government was alive and conscious of the situation which may arise upon acquisition of the land for the project of national importance and falling within category (j) of the legislation policy enumerated in Section 10A of the Act, 2016. As we have reproduced the Statement of Objects and Reasons of the Bill, 2016 in earlier paragraphs it refers to the State of Gujarat as an industrially progressive State and attracting more and more investment and so as to provide all basic facilities and infrastructure to the entrepreneurs and considering stringent provisions of the existing Act, 2016 only with a view to make procedural part of the land acquisition smooth and less cumbersome the proposed bill was presented to the State Assembly by enumerating adequate guidelines to which also reference is made earlier.

We are therefore of the view that exemption granted by the impugned amendment from the purview of the said Chapters II and III of the Central Act, 2013 namely about Social Impact Assessment and Food Security is therefore legal and valid and cannot be said to be unconstitutional.

31. Moreover, the purpose for which Social Impact Assessment is required to be carried out under the Central Act of 2013, is otherwise being taken care of in view of the project in question being linear in nature which also cannot be lost sight of. Further, Section 9 of the Central Act of 2013 grants exemption from Social Impact Assessment where land is proposed to be acquired invoking the urgency provisions under Section 40. Thus, Section 40 of the Central Act, 2013 is inter linked with Section 9 of the Act.

32. In fact relying on provisions of Section 9 and Section 40

of the Act of 2013 it was submitted by learned advocate for the petitioners that linear projects cannot claim justification from the exemption of Social Impact Assessment. So far as the said contention of learned counsel for the petitioners about exercise undertaken by State Government of exempting Chapter II pertaining to determination of Social Impact Assessment by taking recourse to proviso to Section 10A of Central Legislation, 2013 is illegal inasmuch as proviso as above only exempts linear projects and that also for the purpose of Food Security Chapter III only and no exemption could have been granted of Chapter II Social Impact Assessment. We have carefully gone through provisions of Section 9 and Section 40 vis-a-vis Section 10 of the Central Act and the fact remains that powers to enact a law flows from Entry No. 42 of the Concurrent List. The Union and State are both empowered to enact law relating to "acquisition and reacquisition" and the exercise of insertion of Sections 10A and 31A are in direct conflict with the provisions of Chapter II of the Act of 2013 and Sections 9 and 40 of the Act of 2013 but at the same time Section 9 refers to Section 40 about invocation of the urgency clause and the above inconsistencies were brought to the notice of the Honourable the President of India and having gone through such inconsistencies, assent is accorded. Therefore, the contention about lack of power with the State Government to exempt Chapter II pertaining to Social Impact Assessment by insertion of Section 10A of the Amendment Act, 2016 pales into insignificance. The above reasoning will also hold true qua challenge to insertion of Section 31A wherein also inconsistency was brought to the notice of the Honourable President of India and assent was given. Therefore, the

challenge to insertion of Article 10A as well as Article 31 A also fails and is accordingly rejected.

33. In Mr. Joshi, learned advocate for the petitioner's submission, no public purpose or public interest is served for providing basic infrastructural facilities and because the Act of 2013 has stringent provisions, it cannot be a ground to do away with Social Impact Assessment. The inherent powers of public purpose and eminent domain are embodied in Article 300A, and Entry 42 List III, "Acquisition and Requisitioning of Property" which necessarily connotes that the acquisition and requisitioning of property will be for a public use and for compensation and whenever a person is deprived of his property, the limitations as implied in Article 300A as well as Entry 42 List III will come into the picture and the Court can always examine the legality and validity of the legislation in question. The arguments dealing with term "eminent domain", has been considered extensively by the Apex Court in the case of **K.T. Plantations (supra)** which paragraphs have been reproduced hereinabove. Public purpose is, therefore, a condition precedent, for invoking Article 300A. The Statement of Objects and Reasons of the Act of 2016, makes it clear that the aspect of public purpose, compensation and the machinery of hearing the objections are taken care of.

34. Hugo Grotius is the person behind the development of Natural Law and the invention of the term ***'eminent domain'***, which means that public rights always overlap with the private rights to property and in case of public utility, public rights take precedence. There are two conditions to be taken

care of while exercising the power of eminent domain; (i) Public purpose and (ii) compensation from public funds be made, if possible, to the one who has lost his right. In **K.T.Plantation Pvt. Ltd. (supra)**, one of the arguments advanced was that the concept of eminent domain and its key components be read into Article 300A and if a statute deprives a person of his property unauthorizedly, without giving adequate compensation, then the statute is liable to be challenged as violative of Articles 14, 19 and 21 and on the principle of rule of law, which is the basic structure of the Constitution. It was further held that Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. Answering the question, whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300A of the Constitution, it was held that deprivation of property within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. Any law, which deprives a person of his private property for private interest, will be unlawful, unfair and undermines the rule of law and can be subjected to judicial review and the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known. It was further held that the concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation and public purpose is, therefore, a condition precedent, for

invoking Article 300A. Thus, the power of eminent domain being inherent in the Government, can be exercised in public interest and for public purpose.

35. Moreover, except for Chapters II and III of the Central Act, 2013, all the remaining provisions thereof, particularly compensation, rehabilitation and resettlement are applicable to the acquisition in question whereby the landowners will not be deprived of just, fair and reasonable compensation as provided in the 1st Schedule as well as the elements of Rehabilitation & Resettlement as provided in the 2nd Schedule to the Central Act, 2013. Considering the law laid down by the apex court in the case of **Javed (supra), paragraphs no. 3, 12 and 14** and the decision of the Hon'ble Supreme Court in the Triple Talaq case rendered in **Shayara Bano (supra)**, the contention that the legislation is manifestly arbitrary cannot be accepted. Manifest arbitrariness must be something done by the Legislature capriciously, irrationally, excessively, disproportionately and/or without adequate determining principles. No such ground is made out in the present case so as to lay down that the Act is manifestly arbitrary. The decision in the case of **E. Aboobacker (supra)** shall not be applicable on the facts of the present case.

36. Even Section 105 of the Central Act, 2013 provides that the Act is not to apply in certain cases or to apply with certain modifications and such enactments, 13 in number, are inserted in the Fourth Schedule, which, are pertaining to establishment and development of basic infrastructure whether industrial or otherwise and of national importance which includes the Metro Railways (Construction and Works)

Act, 1978, The National Highways Act, 1956, The Petroleum and Minerals Guidelines (Acquisition of Right of User in Land) Act, 1962 and Railways Act, 1989. The present project - Mumbai Ahmedabad High Speed Rail Project is linear in nature and also for industrial growth and other ancilliary benefits including manufacturing of various components and generating employment needs a special treatment and timely execution of the project undertaken by JICA.

37. The present impugned Act, 2016 of the State Government in our view is akin to legislations included in sub-section (3) of Section 105 of the Central Act of 2013 read with Order No.2368(e) dated 28.08.2015 issued under Section 113 of the Act of 2013 and Removal of Difficulties cumulatively provide to the effect that only the provisions relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructural amenities in accordance with the Third Schedule shall apply to the cases of land acquisition under the aforesaid 13 enactments of the Fourth Schedule. This means that the provisions of Chapter II relating to "Determination of Social Impact and public purposes" and Chapter III relating to "Special Provisions to safe guard Food Security" shall not apply to the cases of the land acquisition under the aforesaid legislations. The Parliament has chosen not to make applicable the provisions of the Central Act of 2013 including the provisions of Chapter II and Chapter III thereof to the acquisition of lands for the Projects which are linear in nature under various enactments referred to above. We do not find the State Legislature in error while exempting the Projects

which are not only linear in nature, but are also very much similar to the Projects contemplated under the aforesaid legislations, from the provisions of Chapter II and Chapter III of the Central Act of 2013. The amendment of 2016 of State Government charters on the same path adopted by the Central legislation 2013 for exempting about 13 legislations enumerated in Schedule 4 to sub-section (3) of Section 105 of the Act, 2013.

38. It is apparent on reading Section 3(e)(iv) of the Act of 2013 which is reproduced in the earlier paragraphs, that in relation to acquisition of land for public purpose in more than one State, the Central Government in consultation with the State Government is the appropriate Government. Therefore, it is not the Central Government alone. We have been persuaded to accept Mr. Trivedi's submission that this does not and cannot debar the applicability of Section 10A of the State Act, 2016 to the acquisition of lands situated in the State of Gujarat. However, the argument canvassed about appropriate government in case when the land is acquired in more than one State is the concerned State Government is also of no consequence in view of the entrustment and ratification under Article 258 of Constitution of India of executive action of the State Government in issuing notification under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and all such actions are therefore legal and valid. The project in question is admittedly an infrastructural project as referred to in Section 10A.

39. About fair compensation and requirement of following provisions of Section 26 of the Act, 2013, we have carefully gone through the formula for computation of compensation as found in the affidavit-in-reply and emphasised by learned Advocate General that the notification dated 11.09.2018 takes care of just and fair compensation. It cannot be termed as unfair, unjust and opaque procedure. What is awarded in case of acquisition of land of adjoining area by other authorities under Railways Act or The National Highways Act, 1956 can be presented to concerned authorities in case if the compensation of land so awarded by the authorities under the Gujarat Amendment Act, 2016 and Act of 2013 is found inadequate to higher authorities in accordance with the provisions of Section 64 namely reference to authorities and also under Section 74 of the Constitution of India, a provision for appeal to the High Court is provided under the Act. Merely because one of the three options provided by sub-section (1) of Section 26 is not available, the petitioners would not lose out thereupon because of the usage of the words "whichever is higher" and the market value can very well be determined on the basis of the available options. Along with all provisos to Section 26, the section is to be read comprehensively.

40. The State Government has issued Government Resolution, dated 11.9.2018, *inter alia*, clarifying the issues as regards the parameters to be observed while determining the compensation under the Central Act of 2013. By way of Government Resolution No.LAQ/2018/1976/GH dated 11.9.2018, the State Government has clarified that the farmers who are willing to offer their lands with consent as

contained in the Government Resolution dated 4.4.2018 of the Revenue Department and if the acquiring body is ready and willing to pay compensation by adopting '**indexation formula'**, then in those cases, indexation formula be applied to the Annual Statement of Rates, 2011 i.e. 2011 Jantri. The aforesaid indexation formula is carved out from the "**Cost Inflation Index** (CII)" notified by the Central Government for the F.Y. 2018-19 at Rs.280, with the Base Year 2001-02 (with Cost Inflation Index at Rs.100) vide notification No. S.O.1790 (E) dated 05.06.2017. As we have seen from the hypothetical situation given by the respondents, if the aforesaid Cost Inflation Index formula is applied to Annual Statement of Rates, the farmers will be getting compensation approximately 50-60% on higher side. At the cost of repetition, we reproduce hereinbelow the same:

> Suppose, the total Jantri of the parcel of land is Rs.10,00,000/- in the Financial Year 2011-12, then in that case, its present day i.e. 2018-2019 value i.e. Compensation amount can be worked out as under:

Indexation of FY 2018-19 (A)	Rs.280 (which value was taken as Rs.100 in the year 2001-02)
Indexation of FY 2011-12 (B)	Rs.184 (which value was taken as Rs.100 in the year 2001-02)
Jantri Value of FY 2011-12 (C)	Rs.10,00,000/-
Compensation to be awarded (C X A ÷ B)	$\frac{10,00,000 \times 280}{180}$ = Rs.15,21,739/-
Percentage Increase	**52.17%**

40.1 Further, as far as the contention regarding non-revision of jantri rates is concerned, it is required to be borne in mind that the annual survey of jantri rates is basically for the purpose of determination of market value of the property under the Gujarat Stamp Act, 1958 and rules made thereunder. Non revision of ASR itself will not be a ground to hold that compensation will be inadequate, unfair and unjust. On the contrary various resolutions passed from time to time by the Department of Revenue, State of Gujarat reveal that pro-rata increase is given in the ASR. In short, non-revision of ASR from 2011 cannot be a ground to declare the Act as unconstitutional. It is not necessary that on absence of revision of ASRs, the notification under Section 11 should fail.

41. With regard to the contention that initiation of land acquisition process was without revising and updating the market value of the lands in question as mandated by Section 26 of the Central Act, 2013 is concerned, it is required to be seen that sub-section (1) of Section 26 of the Central Act of 2013, read with Explanation 1 thereto provides that **in assessing and determining the market value of the land, any of the criteria as indicated in clause (a), clause (b) or clause (c) may be adopted**. If we read the entire section, it is quite clear that the Act provides for sufficient guidelines to be adopted for assessing and determining the market value of land to be acquired. It is not necessary for the land acquiring authorities to follow all three criterias as indicated in the clauses for determination of market value, if but, it is noticed that according to either of the criterias, the market vaule is higher then they can adopt that particular criteria.

42. Moreover, so far as section 32A of the Stamp Act is concerned, it provides for determination of market value of property according to which, when any instrument or conveyance, etc. is produced before the authority for registration, and if registering authority has reason to believe that the consideration set forth therein is not approximate to the market value of the property, then in that case, same is to be referred to the Collector of the District where the property is situated for determining the true market value of such property and the appropriate duty payable on the instrument. The said challenge of the petitioners does not hold any ground.

43. Mr. A.J. Yagnik, learned counsel for the petitioners has not pressed amendment of Section 40A of 30 of 2013 of Gujarat Amendment Act, 2016 whereby in the principle Act, in sub-section (2) of Section 40, after the words ""approval of Parliament", the words "or to comply with the directions given by the Central Government to the State Government" shall be added is ultra vires to Section 40 of the Act, 2013.

44. One of the contentions of learned advocate for the petitioners about consent not obtained of Governor but of Government is a printer's devil so far as the book from which reference is made. In fact the official copy of the Constitution of India as provided in the gazette to which we have already made reference in earlier paragraph, mentions assent of Government and not of Governor in Article 258 of the Constitution of India and in the facts of this case consent of

Government of Gujarat was obtained before issuance of notification by the President of India in exercise of powers under Article 254 entrusting executive functions of Central Government upon authorities of the State Government.

45. So far as the contention raised that what was sent for the assent of the President was a bill and that Article 254 provides that what is to be sent for the assent of the President is the "law" and therefore in absence of a law being sent for assent, the entire exercise of the amendment is bad is concerned, in view of the decisions of the Apex Court in the cases of **Smt. Salubhai Ramchandra and Others (supra) as well as Kameshwar Singh (supra)**, the said contention is misconceived.

46. With regard to challenge of the vice of excessive legislation, it is required to be noted that there are sufficient guidelines discerning from Section 10A itself. Sections 105 and 113 of the Act of 2013 and the Removal of Difficulties Order, when read in the context of the Statement of Objects and Reasons of the Amending Act, lay down the guiding principles which need to be followed in executing projects which are linear in nature. Delegation of a legislative function is valid as Section 10A of the Act of 2016 itself says what the legislative policy envisages. Under Section 10A of the Act of 2016, it is open for the State to issue an exemption, and it cannot be said that the project is only of the Central Government. Requiring/Acquiring body consists of the State Government. The project therefore is equally of the State and therefore exemptions from the provisions viz-a-viz the territories of Gujarat can be granted. The contention of the

petitioners that under Article 254 only the law and not the bill can be sent for the assessment is misconceived.

47. It is trite that the State Act was repugnant to the Central Act, however, it cannot be said that the law would not prevail as it was repugnant because once reserved for consideration and given an assent such a repugnant law would prevail. The Statement of Objects and Reasons when read give an outline as to what the law needs to formulate. An edifice is created based on which the law is structured. The legislative function so performed cannot be termed as bad on the principle of excessive delegation. In view of the above, Section 10A of the State Act, 2016 cannot be said to be suffering from the vice of excessive delegation and also cannot be said to be delegating the essential legislative function.

48. In this regard, we are of the view that the landmark decision in the case of **In Re: The Delhi Laws Act (supra)** wherein the question having arose therein was with regard to the limits of delegation and the grounds for the same was explained, is required to be considered minutely. In **Delhi Laws Act (supra)**, which was Presidential Reference under Article 143 of the Constitution of India, following three questions were referred to the Supreme Court of India for its consideration and report:

> "1 Was section 7 of the Delhi Laws Act, 1912, or any of the provisions thereof and in what particular or particulars or to what extent ultra vires the Legislature which passed the said Act ?
>
> 2 Was the Ajmer Merwara (Extension of Laws) Act, 1947, or any of the provisions thereof and in

what particular or particulars or to what extent `ultra vires' the Legislature which passed the said Act?

3 Is section 2 of the Part C States (Laws) Act, 1950, or any of the provisions thereof and in what particular or particulars or to what extent ultra vires the Parliament ?"

48.1 As per learned Chief Justice Kania, upon discussion of Government of India Act, 1915, 1935 as amended by the Indian Independence Act, 1947 and referring to a basic difference between the Constitutions of the United States and Britain found at page 15 of the book, English Administrative Law by Sir Cecil Cart, and Article 149 following Vol. VI of Halsbury's Laws of England, and distribution of legislative powers between the center and the different provinces in the context of case law cited by learned counsel on decision taken by the Privy Council and Supreme Courts of Canada and Australia in the case of `Queen v. Burah' 5 IA 178, and Council of the Governor General of India for making laws and regulations was an act to remove the Garo Hills from the jurisdiction of tribunals established under the General Regulations and acts passed by any legislation by British India make various provisions, noticed that the decisions carefully and deliberately did not endorse the contention that the power of delegation was within powers of legislation.

48.2 Learned Judge also referred to decision in the case of **`King Emperor v. Benoari Lal Sarma', 72 I.A. 57** where the question arose about special Criminal Courts Ordinance II 1942 under the powers vested in Governor General on the delegation of an emergency on the outbreak of war and the validity of such Ordinance was challenged, which was

observed by their Lordships in the above decision that the Governor General himself must discharge the duty of legislation and cannot transfer it to other authorities. But the Governor General had not delegated his legislative powers at all. It was considered to be uncommon arrangement by which the local application of the provision of a statute is determined by the judgment of a local administrative body as to its necessity, and their Lordships disagreed with the majority view of the Federal Court that what was done was delegation of legislative function. The decision in the case of `**Russell v. The Queen', 1882(7) AC 829** was referred. That another decision in the case of `**The Queen v. Burah', 5 IA 178** was also quoted. In para 17 of judgment in Delhi Laws Case, learned Chief Justice held that all those decisions instead of supporting the proposition urged by the Attorney-General impliedly that contention is negatived viz. the contention of learned Attorney General that power of delegation was contained in the power of legislation. Learned Chief Justice also referred to decision in the case of `**Hodge v. The Queen', (1884) 9 AC 117** wherein appeal from the Court of Appeal, Ontario, Canada, a question about the validity of the Liquor Licences Act arose. Learned Chief Justice also referred to certain decisions of Supreme Court of Australia in the case of `**Victoria Stevedoring and General Contracting Company v. Dignan', 46 C.L.R. 73**, where the question was whether delegation of legislative power was according to the Constitution came to be examined by the High Court of Australia. After considering Canadian and Australian constitutions and decisions of the Privy Council, learned Chief Justice also noticed statutory construction

authored by Crawford so as to examine position according to the USA Constitution and referred to case laws of `**Hampton & Co. v. United States', (1928) 276 US 394**, wherein earlier decision of the Supreme Court of Ohio in **Cincinnati W & Z.R. Co. v. Clinton County Commissioners'** , was referred to wherein it was held that, "The true distinction therefore is between the delegation of power to make the law which necessarily involves a discretion as to what it shall be and conferring an authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.

48.3 Further, what was stated in `**Locke's Appeal', (1983) 72 Pa. 491**, was referred to and also famous quote of Chief Justice Hughes in the case of **Panama Refining Co. v. Ryan, 293 US 388**, and also syllogism of Prof. Cushman's, and in paras 33 and 35 held as under:

> "33 The complexity of this question of delegation of power and the consideration of the various decisions in which its application has led to the support or invalidation of Acts has been somewhat aptly put by Schwartz on American Administrative Law. After quoting from Wayman v. Southend, (1825) 10 Wheat 1, the observations of Marshall C.J. that the line has not been exactly drawn which separates those important subjects which must be entirely regulated by the legislature itself from those of less interest in which a general provision may be made and power given to those who are to act under such general provision to fill up details, the author points out that the resulting judicial dilemma, when the American courts finally were squarely confronted with delegation cases, was resolved by the judicious choice of words to describe the word "delegated power". The authority transferred was, in Justice Holmes'

felicitous phrase, "softened by a quasi", and the courts were thus able to grant the fact of delegated legislation and still to deny the name.

“This result is well put in Prof. Cushman’s syllogism:

"Major premise:

Legislative power cannot be constitutionally delegated by Congress.

Minor premise:

It is essential that certain powers be delegated to administrative officers and regulatory commissions.

Conclusions:

Therefore the powers thus delegated are not legislative powers. They are instead administrative or quasi-legislative powers.”

35. A fair and close reading and analysis of all these decisions of the Privy Council, the judgments of the Supreme Courts of Canada and Australia without stretching and straining the words and expressions used therein lead me. to the conclusion that while a legislature, as a part of its legislative functions, can confer powers to make rules and regulations for carrying the enactment into operation and effect, and while a legislature has power to lay down the policy and principles providing the rule of conduct, and while it may further provide that on certain data or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation, the power to delegate legislative functions generally is not warranted under the Constitution of India at any stage. In cases of emergency, like war where a large latitude has to be necessarily left in the matter of enforcing regulations to the executive, the scope of the power to make regulations is very wide,

> but. even. in those cases the suggestion that there was delegation of "legislative functions" has been repudiated. Similarly, varying according to the necessities of the case and the nature of the legislation, the doctrine of conditional legislation or subsidiary legislation or ancillary legislation is equally upheld under all the Constitutions. In my opinion, therefore, the contention urged by the learned Attorney-General that legislative power carries with it a general power to delegate legislative functions, so that the legislature may not define its policy at all and may lay down no rule of conduct but that whole thing may be left either to the executive authority or administrative or other body, is unsound and not supported by the authorities on which he relies. I do not think that apart from the sovereign character of 792 the British Parliament which is established as a matter of convention and whose powers are also therefore absolute and unlimited, in any legislature of any other country such general powers of delegation as claimed by the Attorney General for a legislature, have been recognised or permitted.

48.4 However, learned Chief Justice answered question No.1 that Section 7 of the Delhi Laws Act contains an entirely different quality of power from the quality of power conferred by sections 8 and 9 of Act XXII of 1869 and to the extent Section 7 of the Delhi Laws Act permits the Central Executive Government to apply any law passed by the provincial legislature to the province of Delhi the same is ultra vires the Central Legislature. To that extent the Central Legislature abdicated its function, and therefore, the Act to the extent is invalid and on the same logic and rationale question 2 of Ajmer Merwara Act, 1947 was also held ultra vires and lastly question No.3 so far as Section 7 permits the Central Government to extent laws made by any legislature on Part A State to the Province of Delhi, the Section is held ultra vires.

48.5 So is the case with the historic dissent of Justice V.D. Mahajan. As per Justice Mahajan, referring to all three questions it was held in para 205 that, by enacting section 7 the legislature virtually abdicated its legislative power in favour of the executive and that was not warranted by the Indian Councils Act, 1861, or by any decision of the Privy Council or on the basis of any legislative practice. Therefore, Section 7 was ultra vires the Indian Councils Act, 1861. On two main premises that the legislatures not competent to make laws for Delhi and it clothed the executive with co-extensive legislative authority in the matter of modification of laws made by legislative bodies in India, the second question about Section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947, which was also held to be ultra vires for the reasons given for holding Section 7 of the Delhi Laws Act as ultra vires the Constitution by applying same rationale. The third question that Section 2 of the Part C States (Laws) Act, 1950, was held to be ultra vires to the Constitution.

48.6 As per majority view, so far as Section 7 of the Delhi Laws Act, 1912 is concerned, 5 learned Judges have held the aforesaid provision to be intra vires and 2 judges have held the same to be ultra vires. As far as Section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947 is concerned, 4 learned Judges have held the aforesaid provision to be intra vires and 3 learned Judges have held the same to be ultra vires.

48.7 After addressing three questions which fell into consideration pursuant to Presidential Reference while dealing with these questions, three possible answers were

considered by Justice Fazl Ali viz. (1) A legislature which is sovereign in a particular field has unlimited power of delegation and the content of its power must necessarily include the power to delegate legislative functions; (2) Delegated legislation is permissible only within certain limits; and (3) Delegated legislation is not permissible at all by reason of certain principles of law which are well-known and well-recognised. Justice Fazl Ali also considered all the above decisions and referred to classified instances of delegation upheld in America under the following 8 heads:

> "1 Delegation of power to determine facts or conditions on which operation of statute is contingent.
> 2 Delegation of non-legislative or administrative functions.
> 3 Delegation of power to make administrative rules and regulations.
> 4 Delegation to municipalities and local bodies.
> 5 Delegation by Congress to territorial legislature or commission.
> 6 Delegation to private or non-official persons or corporations.
> 7 Vesting discretion in judiciary.
> 8 Adopting law or rule of another jurisdiction."

48.8 Ultimately, Justice Fazl Ali, in para 74, held as under:

> "74 The conclusions at which I have arrived so far may now be summed up:
>
> (1) The legislature must normally discharge its primary legislative function itself and not through others. (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a

particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation. (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside 831 agency, it must see that such agency, acts as a subordinate authority and does not become a parallel legislature. (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American courts to check undue and excessive delegation but the courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement".

48.9 In para 90, Justice Fazl Ali held as under:

“90. Before I conclude, I wish to make a few general observations here on the subject of "delegated legislation" and its limits, using the expression once again in the popular sense. This form of legislation has become a present-day necessity, and it has come to stay - it is both inevitable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a selfcontained and complete Act straightaway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of

flexibility becomes necessary, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilize the results of its investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise. There are examples in the Statute books of England and other countries, of laws, a reference to which will be sufficient to justify the need for delegated legislation. The British Gold Standard (Amendment) Act, 1931, empowered the Treasury to make and from time to time vary orders authorising the taking of such measures in relation to the Exchanges and otherwise as they may consider expedient for meeting difficulties arising in connection with the suspension of the Gold Standard. The National Economy Act, 1931, of England, empowered "His Majesty to make Orders in Council effecting economies in respect of the services specified in the schedule" and proved that the Minister designated in any such Order might make regulations for giving effect to the Order. The Food-stuffs (Prevention of Exploitation) Act, 1931, authorised the Board of Trade to take exceptional measures for preventing or remedying shortages in certain articles of food and drink. It is obvious that to achieve the objects which were intended to be achieved by these Acts, they could not have been framed in any other way than that in which they were framed. I have referred to these instances to show that the complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. But while emphasizing that delegation is in these days inevitable, one should not omit to refer to the dangers attendant upon the injudicious exercise of the power of delegation by the legislature. The dangers involved in defining the delegated power so

> loosely that the area it is intended to cover cannot be clearly ascertained, and in giving wide delegated powers to executive authorities and at the same time depriving a citizen of protection by the courts against harsh and unreasonable exercise of powers, are too obvious to require elaborate discussion."

48.10 As per Justice Patanjali Shastri, the answer was given to three questions, as reflected in para 130, which reads as under:

> "130 In the result, I hold that section 7 of the Delhi Laws Act, 1912, section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947, and section 2 of the Part C States (Laws) Act, 1950, are in their entirety constitutional and valid and I answer the reference accordingly."

48.11 As per Justice Mukherjea, all three questions were dealt in detail and in para 276 it is held as under:

> "276 The result is that, in my opinion, the answer to the three questions referred to us would be as follows : (1) Section 7 of the Delhi Laws Act, 1912 is in its entirety `ultra vires' the legislature which passed it & no portion of it is invalid. (2) The Ajmer0Merwara (Extension of Laws) Act, 1947 or any of its provisions are not `ultra vires' the legislature which passed the Act. (3) Section 2 of Part C States (Laws) Act, 1950, is `ultra vires' to the extent that it empowers the Central Government to extend to Part C States laws which are in force in Part A States, even though such laws might conflict with or affect laws already in existence in the area to which they are extended. The power given by the last portion of the section to make provisions in any extended enactment for the repeal or amendment of any corresponding provincial law, which is for the time being applicable to that Part C States, is, therefore, illegal and `ultra vires'.

48.12 Justice Das in para 348 answered all the three questions, which read as under:

> "348 The result, therefore, is that I answer the question s as follows:
>
> `Question ' 1 : Section 7 of the Delhi Laws Act, 1912 was valid and no part thereof was `ultra vires' the legislature that passed it.
>
> `Question' 2 : Ajmer-Merwara (Extension of Laws) Act, 1947 was valid and no part thereof was `ultra vires' the legislature that passed it.
>
> `Question' 3 : Section 2 of the Part C States (Laws) Act, 1950 is valid and no part thereof is `ultra vires' the Parliament."

48.13 As noted above about various opinions given by learned Judges, it will not be out of place to reproduce the observations of Justice Bose in paragraph 384 wherein his Lordship has succinctly opined about difficulty to deduce any logical principle from catena of decisions. The said observations read as under:

> **"384. An anxious scrutiny of all the many authorities and books which were referred to the arguments, and of the decisions which I have analysed here, leads me to the conclusion that it is difficult to deduce any logical principle from them. In almost every case the decision has been ad hoc and in order to meet the exigencies of the case then before them, judges have placed their own meaning on words and phrases which might otherwise have embodies a principle of general application. I have therefore endeavoured as far as I possibly could to avoid the use of these disputable terms and have preferred to accept the legacy of the past and deal with this question in a**

> **practical way. My conclusion is that the Indian Parliament can legislate alone the lines of The Queen v. Burah, that is to say, it can leave to another person or body the introduction or application of laws which are or may be in existence at that time in any part of India which is subject to the legislative control of Parliament, whether those laws were enacted by Parliament or by a State Legislature set by the Constitution. That has been the practice in the past. It has weighty reasons of practical nature to support it and it does not seem to have been abrogated by the Constitution.**"
>
> [Emphasis Supplied]

48.14 Justice Bose, thereafter, in para 390 answered all the three questions, which read as under:

> "390 My answers to the reference are as follows : (1) Section 7 of the Delhi Laws Act, 1912, is `intra vires' of the Legislature which passed it and so also section 2 of the Ajmer-Merwara (Extension of Laws) Act, 1947. (2) Section 2 of the Part C States (Laws) Act, 1950, is also `intra vires' except for the concluding sentence which runs as follows:
>
> "and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State".
>
> In my judgment, this portion is `ultra vires' but as it can be separated from the rest of the Act, the remainder is good."

48.14 We apply the above ratio as laid down in the case of **In Re: The Delhi Laws Act (supra)** decided by the Apex Court and we hold that the Gujarat Amendment Act of 2016 does not suffer from vice of excessive delegation and

therefore cannot be termed as unconstitutional and/or arbitrary exercise of powers.

48.15 Inter alia, it was contended that even if delegation is valid, exercise of powers under such delegation is arbitrary but once we have held that assent is given under Article 201 keeping in mind inconsistencies so placed before the Honourable President of India as required under Article 254(2) of the Constitution of India and subsequent entrustment of executive functions under Article 258 of the Constitution of India upon state authorities on issuance of notification by the state authorities subsequent thereto coupled with exercise undertaken by M/s. Arcadis of Social Impact Assessment and PESA and considering number of minimum displacement of persons and property affected by determining criteria of computation of compensation and rehabilitation and resettlement is to be undertaken in accordance with law, we find that there is no arbitrary exercise of powers.

49. During the course of arguments, our attention was drawn to para 2.0 which as the heading “Land Acquisition and Resettlement Practice” suggests that various alternatives have been explored from the beginning by the State for finalization of alignment. One of the prime criteria of selection of final alignment has been least resettlement impacts particularly on residential structures. A table showing the distribution of land area by ownership and a table of detail of structures identified comprising of shops, cattle sheds has been shown in such a compilation. The contentions of the petitioners that the provisions of PESA is

given a go-by cannot sustain in view of the fact that appropriate level consultation before making acquisition of the land in the scheduled area for development purpose is being undertaken. The same is borne out from page 81 of the compilation. Further, learned Advocate General has also assured that the State is going to follow all provisions right from Sections 16 to 31 of the Act of 2013.

50. So far as the decision in the case of **Consumer Action Group (supra)** as relied by learned advocate for the petitioners is concerned, we have found that the reliance on paragraph 14 would not be applicable on the facts of the present case in view of the fact that the same are contentions raised by learned counsel in the case of **Harishankar Bagla and Another (supra)**. Similarly, in the case of **Basantilal Banarsilal (supra)** as cited by learned advocate for the petitioners, it is held that President while giving assent should apply his mind to the local conditions prevailing in a particular State and if he is satisfied that judging the local conditions a particular State may be permitted to make a provision of law different from the provision made by Parliament. However, the decision in the case of **Kaiser-I-Hind (supra)** states that local conditions may be one of the factors and cannot be termed as essential ingredient.

51. Having elaborately discussed the provisions of law and the legislations including the amended act, we are of the considered opinion that the challenge to validity of Section 10A read with Section 2(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016 cannot be

accepted and held to be unconstitutional or illegal. Further, the preliminary notification issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat) Act, 2013 by the respondent State cannot be termed to be in contravention of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the preliminary notification dated 9th April 2018 issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by the respondent State is held to be issued by the appropriate government, in the present case the State Government. Further the notifications issued by respondent State under Section 10(A) read with Section 2(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement [Gujarat Amendment] Act, 2016 and notification issued under Article 258(1) dated 08.10.2018 by the respondent cannot be held to be unconstitutional. The other reliefs of following mandate of Section 26 of the Act, 2013 also stands rejected keeping it open for them to raise the same before the competent appellate authorities. Thus, we do not find that any of the prayer clauses deserve consideration by this Court and we answer them accordingly.

52. For the foregoing reasons, the petitions are bereft of merit and are accordingly required to be dismissed. Accordingly, petitions are dismissed. However, it is clarified that this judgement shall have no bearing on future issues which may arise about adequacy of compensation. Further, the State Government, is expected to keep in mind that the

most important factor which should weigh with the authorities is about fair, adequate and reasonable compensation to be paid by following a transparent procedure under the provisions of the Amended Act read with Central Act, 2013 when the land is acquired for public purpose keeping in mind provisions of Article 300A of Constitution of India and further to be borne in mind that such compensation is paid in respect of similar types of land situated in the immediate adjoining areas when it was acquired by National Highways Authority or any such Central or State Government authorities. Civil Applications for joining party are rejected. No costs.

sd/-

(ANANT S. DAVE, J)

sd/-

(BIREN VAISHNAV, J)

DIVYA