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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1945 of 2015

(Arising out of notification dated 27-6-2015 issued by the Office of the Collector, Distt. Bilaspur, Chhattisgarh cum Ex Officio Deputy Secretary, Govt. of Chhattisgarh, Revenue and Disaster Management Department under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 published in the Official Gazette on 14-8-2015)

Order reserved on: 1-9-2017

Order delivered on: 20-9-2017

Rohit Singhania, S/o Lalit Kumar Singhania, aged about 34 years; R/o "MANJUSHA" 15/480, Rajbhawan Road, Civil Lines, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Revenue and Public Work Department, Mahanadi Bhawan, Naya Raipur, Raipur (C.G.)

2. Collector, Bilaspur, District Bilaspur (C.G.)

3. Officer In-charge, Land Acquisition Branch, Collectorate, Bilaspur (C.G.)

4. Sub-Divisional Officer, Revenue-cum-Land Acquisition Officer, Bilha, District Bilaspur (C.G.)

5. Executive Engineer, Department of Water Resources, Kota, District Bilaspur (C.G.)

---- Respondents

Writ Petition (C) No.1882 of 2016

1. Deendayal Kaushik, aged 72 years, S/o Shri Chaturgun Kaushik,

2. Keshav Prasad Kaushik, aged 77 years, S/o Shri Shiv Puri,

3. Hetram Kaushik @ Bharat Lal, aged 48 years, S/o Shri Mohpat,

4. Khelan Bai, aged 42 years, S/o Shri Radheshyam,

5. Kanhaiya Yadav, aged 63 years, S/o Late Shri Ramadhar Yadav,

6. Bhaiya Lal Kaushik, aged 66 years, S/o Shri Devnath,

7. Sunderlal Sahu, aged 63 years, S/o Shri Chait Ram,

8. Ram Bahoran Dubey, aged 39 years, S/o Shri Dilharan Prasad,

9. Rajkumari Dubey, aged 69 years, W/o Shri Shri Dilharan Prasad,

10. Judawan Das, aged 35 years, S/o Shri Mohan Das Manikpuri,

11. Ghurau Prasad Suryawanshi, aged 57 years, S/o Shri Motiram Suryawanshi,

12. Keshla Das, aged 64 years, S/o Shri Nand Das,

13. Jawaher Lal Maitri, aged 68 years, S/o Shri Panchram,

14. Rameshwar Rao, aged 70 years, S/o Shri Hulas Rao,

15. Mannulal Kaushik, aged 59 years, S/o Derha Ram,

All are R/o Village Chichirda, Tahsil Takhatpur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. The State of Chhattisgarh, through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhavan, New Raipur, Raipur (C.G.)

2. The Collector, Bilaspur, District Bilaspur (C.G.)

3. The Land Acquisition Officer-cum-Sub Divisional Officer (Revenue), Kota, District Bilaspur (C.G.)

4. The Executive Engineer, Department of Water Resources, Kota, District Bilaspur (C.G.)

---- Respondents

Writ Petition (C) No.1885 of 2016

1. Ram Kumar Dubey, aged 60 years, S/o Shri Bhushan Lal,

2. Heeramani Dubey, aged 35 years, S/o Shri Ram Kumar Dubey,

Both are R/o Village Chichirda, Tahsil Takhatpur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. The State of Chhattisgarh, through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhavan, New Raipur, Raipur (C.G.)

2. The Collector, Bilaspur, District Bilaspur (C.G.)

3. The Land Acquisition Officer-cum-Sub Divisional Officer (Revenue), Bilha, District Bilaspur (C.G.)

4. The Executive Engineer, Department of Water Resources, Kota, District Bilaspur (C.G.)

---- Respondents

Writ Petition (C) No.1883 of 2016

1. Raj Kumar Sharma, aged 42 years, S/o Shri Dwarika Prasad,

2. Ram Kumar Dubey, aged 60 years, S/o Shri Bhushan Lal Dubey,

3. Shakuntala Dubey, aged 54 years, D/o Shri Bhushan Lal Dubey,

4. Santosh Kumar Dubey, aged 57 years, S/o Shri Bhushan Lal Dubey,

5. Itwari Ram Kewat, aged 41 years, S/o Shri Gopal Prasad,

6. Rameshwar Prasad, aged 59 years, S/o Shri Ram Khilawan,

7. Bhagwat Prasad, aged 63 years, S/o Shri Sidh Ram,

8. Jamuna Bai, aged 59 years, W/o Shri Bhagwat Prasad,

9. Madhu Sharma, aged 60 years, W/o Shri Ramawatar Sharma,

10. Mordhaj Sahu, aged 27 years, S/o Shri Budh Ram,

11. Ramkumar Kaushik, aged 53 years, S/o Shri Shyam Lal,

12. Durga Prasad Kaushik, aged 48 years, S/o Shri Sidh Ram,

13. Umend Ram Sahu, aged 56 years, S/o Shri Khadru Sahu,

14. Venkat Rao, aged 75 years, S/o Shri Ganpat Rao,

All are R/o Village Chichirda, Tahsil Takhatpur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. The State of Chhattisgarh, through the Secretary, Department of

Revenue and Disaster Management, Mahanadi Bhavan, New Raipur, Raipur (C.G.)

2. The Collector, Bilaspur, District Bilaspur (C.G.)

3. The Land Acquisition Officer-cum-Sub Divisional Officer (Revenue), Bilha, District Bilaspur (C.G.)

4. The Executive Engineer, Department of Water Resources, Kota, District Bilaspur (C.G.)

---- Respondents

AND

Writ Petition (C) No.2221 of 2016

1. Kaushal Prasad Kaushik, aged 62 years, S/o Shri Mohanlal Kaushik,

2. Salik Ram Kaushik, aged 62 years, S/o Dukhu Ram,

3. Janak Ram Suryawanshi, aged 60 years, S/o Shri Premlal,

4. Ramamdhar Kaushik, aged 65 years, S/o Puranlal,

5. Net Ram Kaushik, aged 72 years, S/o Peman,

6. Sita Ram Sahu, aged 63 years, S/o Milon Sahu,

7. Dhelau Ram Kaushik, aged 74 years, S/o Shri Dukhu Ram,

All are R/o Village Samalpuri, Tahsil Takhatpur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. The State of Chhattisgarh, through the Secretary, Department of Revenue and Disaster Management, Mahanadi Bhavan, New Raipur, Raipur (C.G.)

2. The Collector, Bilaspur, District Bilaspur (C.G.)

3. The Land Acquisition Officer-cum-Sub Divisional Officer (Revenue), Kota, District Bilaspur (C.G.)

4. The Executive Engineer, Department of Water Resources, Kota, District Bilaspur (C.G.)

---- Respondents

For Petitioners:	Mr. Somnath Verma and Mr. Ashish Surana, Advocates.
For Respondents/State:	Mr. Shashank Thakur, Govt. Advocate and Mr. Gary Mukhopadhyay, Deputy Govt. Advocate.
For Intervener:	Miss Shiksha Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, in this batch of writ petitions, the writ petitioners in respective petitions have called in question the preliminary notification issued by the appropriate Government under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') along with land acquisition proceedings initiated therein impugning the same as unsustainable and bad in law.

2. Essential facts requisite to judge legality, validity and correctness of the impugned notification are as under: -

(Facts in W.P.(C)No.1945/2015, which is the lead case, are taken)

3. Arpa Bhaisajhar Barrage Project at Village Hirri, Tahsil Bilha, Distt. Bilaspur is one of the ambitious projects of the State Government for providing irrigation facilities to 102 villages of Bilaspur District which is being constructed by investing ₹ 606.43 crores and proposed to irrigate 25,000 hectares of land. In order to implement the said project, number of preliminary notifications under Section 11 of the Act of 2013 have been issued and in this batch of writ petitions, the notification issued under Section 11 of the Act of 2013

and consequent compliance proceeding has been called in question on various grounds that the provisions of Chapter-II and Chapter-III of the Act of 2013 have not been complied with by the appropriate Government and there is vital difference in the notification published in the official gazette and the two daily newspapers regarding exemption of application of the provisions contained in Chapter-II and Chapter-III of the Act of 2013 to the public purpose for which the petitioners' land is to be acquired and there is non-compliance of the provisions contained in Chapter-II and Chapter-III before issuance of the impugned notification. No Environmental Impact Assessment Study has been undertaken for construction of canal at Village Hirri and no specific notification has been issued exempting the Arpa Bhaisajhar Barrage Canal as contemplated under Section 10-A from application of the provisions of Chapter-II and Chapter-III of the Act of 2013. No satisfaction has been arrived at by the Government before exempting the application of Chapter-II and Chapter-III as contemplated in Section 10-A of the Act of 2013., therefore, the impugned notification deserves to be quashed being unsustainable in law.

4. Return has been filed opposing the writ petitions stating inter alia that the provisions of Chapter-II and Chapter-III of the Act of 2013 would not be applicable by virtue of the provisions contained in the Act of 2013, there is substantial compliance of the Act and the project in question falls under the forest land and proposal for diversion of forest land was undertaken under the Forest

(Conservation) Act, 1980 as such, for irrigation canals proviso to Section 10 of the Act of 2013 would be applicable and Chapter-III is not required to be followed while notifying the notification under Section 11 of the Act of 2013. Therefore, there is substantial compliance of the provisions of the Act of 2013 and the Rules made thereunder and as such, the writ petitions are liable to be dismissed.

5. Mr. Somnath Verma, learned counsel for the petitioners, would submit the provisions contained in Section 4(1), 4(5), 6, 7 and 8 of the Act of 2013 have not been complied with, they are mandatory in nature. Section 11 of the Act of 2013 is also mandatory in nature, as neither Section 11 nor Section 15 has been complied. He would further submit that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014 as well as the Chhattisgarh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment, Consent and Public Hearing) Rules, 2016 have not been followed. Therefore, the entire land acquisition deserves to be quashed.

6. Mr. Ashish Surana, learned counsel for the petitioner in W.P.(C) No.1945/2015, submits that there is substantial difference in the notification published in the official gazette under Section 11 of the Act of 2013 and in two newspapers regarding exemption of application of the provisions contained in Chapter-II and Chapter-III

of the Act of 2013 to the public purpose for which the land is to be acquired. He further submits that the notification published in the official gazette is final and if there is any discrepancy then it has to struck down and relied upon the decision of the Supreme Court in the matter of **I.T.C. Bhadrachalam Paperboards and another v. Mandal Revenue Officer, A.P. and others**[1]. He also submits that the respondents have not complied with Chapter-II and Chapter-III of the Act of 2013 before issuance of notification under Section 11 which is mandatory in nature and renders the notification void. No specific notification has been issued exempting the Arpa Bhaisajhar Barrage Canal as contemplated under Section 10-A from application of the provisions of Chapter-II and Chapter-III of the Act of 2013. Therefore, the notification issued under Section 10-A of the Act of 2013 on the basis of ordinance has come to an end by virtue of the decision of the Supreme Court in the matter of **Krishna Kumar Singh and another v. State of Bihar and others**[2]. He would further rely upon the decisions of the Supreme Court in the matters of **Ram Narain Sons Ltd. and others v. Asst. Commissioner of Sales Tax and others**[3] and **Nagar Palika Nigam v. Krishi Upaj Mandi Samiti and others**[4]. In these circumstances, the impugned notification deserves to be quashed and the writ petitions deserve to be allowed.

7. Mr. Shashank Thakur, learned Government Advocate, while

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1 (1996) 6 SCC 634
2 (2017) 3 SCC 1
3 AIR 1955 SC 765
4 AIR 2009 SC 187

replying to the submissions advanced on behalf of the petitioners would submit as under: -

1. The Environmental Impact Assessment Study has been done under the notification of 2006 issued under the Environmental (Protection) Act, 1986 and the Environmental Impact Assessment has been filed as Annexure R-3. Therefore, by virtue of the provisions contained in the proviso to sub-section (2) of Section 6 of the Act of 2013, the Arpa Bhaisajhar Barrage Canal is an irrigation project in which the Environmental Impact Assessment has already been conducted under the Environmental (Protection) Act, 1986 as such, Chapter-II of the Act of 2013 would not be applicable to the Arpa Bhaisajhar Barrage Canal.
2. The land is being acquired for construction of irrigation canal which is a part of Arpa Bhaisajhar Barrage Canal and therefore by virtue of proviso to sub-section (4) of Section 10 of the Act of 2013, the provisions of Chapter-III shall not apply to the instant project.
3. The State Government by notification dated 27-5-2015 had already exempted the rural infrastructure projects from operation of Chapter-II and Chapter-III in exercise of the provisions contained in Section 10-A of the Ordinance dated 3-5-2015 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance, 2015.

4. In the official gazette, notification under Section 11 of the Act of 2013 has already been published, it has been published in two newspapers Haribhoomi and Agradoot and it has also been displayed in the office of the Sub Divisional Officer (Revenue), Bilha and also in the locality of such area the same has been made known to the general public by beat of drums. Thus, the provisions of the Act of 2013 have been complied with substantially. The notification clearly states public purpose and there is displacement of any affected person. Chapter-II Social Impact Assessment determination is not applicable to the present project and in the newspapers, particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under Section 43 has already been given.

5. While replying to Section 11 (2) of the Act of 2013, he would submit that in the locality it has been fairly informed and the said provision of consultation is directory in nature as there is no consequence provided for non-informing the said provision, and therefore for that, the notification cannot be declared void.

6. Rules as relied upon by Mr. Verma would not be applicable to the facts of the present case as it is the case of the State Government that the provisions of Chapter-II and Chapter-III would not be applicable by virtue of the provisions contained in the Act of 2013.

8. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record carefully and minutely as well.

9. In the considered opinion of this Court, following issues arise for consideration: -

    1. Whether the impugned land acquisition notification is unsustainable in law for non-compliance of Chapter-II of the Act of 2013 which deals with Determination of Social Impact Assessment Study?

    Or

    Whether the provisions of Chapter-II of the Act of 2013 relating to Social Impact Assessment Study will not apply to the subject acquisition by virtue of the provisions contained in the proviso to Section 6(2) of the Act of 2013 or exempted from compliance of the said provision by Section 10-A of the Act of 2013 by notification dated 27-5-2015?

    2. Whether the impugned acquisition is exempted from complying with Chapter-III of the Act by virtue of the provisions contained in the proviso to Section 10 of the Act of 2013?

    3. Whether the impugned acquisition notification is unsustainable in law for non-compliance of the provisions contained in sub-sections (1) to (3) of Section 11 of the Act of 2013?

Issue No.1

10. The case of the petitioners is that the provisions of Chapter-II of the Act of 2013 have not been complied with while issuing notification under Section 11 of the Act of 2013 rendering the entire land acquisition vulnerable for non-compliance of Chapter-II of the Act whereas, it is the case of the respondents / State that Chapter-II of

the Act is not applicable in the present case, as for Social Impact Assessment, the provisions of the Environmental (Protection) Act, 1986 with rules made thereunder and the Environmental Impact Assessment Regulations, 2006 as amended in 2009 would be applicable.

11. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to set out the provisions contained in Section 6 of the Act of 2013 with proviso thereof which states as under: -

> "**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."

12. A focused glance of the aforesaid provisions would reveal that the appropriate Government is obliged to ensure preparation of the Social Impact Assessment study report and the Social Impact Management Plan referred to in sub-section (6) of Section 4 of the

Act of 2013 and same should be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, unless exempted by proviso to the said provision, as proviso to Section 6 of the Act of 2013 provides that sub-sections (1) and (2) of Section 6 shall not be applicable 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. Thus, proviso to Section 6 of the Act of 2013 makes the provisions of sub-sections (1) and (2) of Section 6 inapplicable in case where the project in question is an "irrigation project" making Section 6 inapplicable or inoperative. At this stage, it would be appropriate to consider what is the object of "proviso" of a particular provision/section.

13. Way back in the year 1966, in the matter of **The Sales-tax Officer, Circle I, Jabalpur v. Hanuman Prasad**[5], the Supreme Court while delineating the object of proviso has held that it is well recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the Legislature desires should be excluded.

14. The object of proviso has to be read inconsonance with the main provision which is a substantive one. A proviso is not a separate and independent enactment. When the language of the main enactment is clear, a limited interpretation cannot be given to a proviso destroying the same. The proviso is not to be taken in a

5 AIR 1967 SC 565

strict literal sense, but, in aid of the main provision in particular, and the enactment, in general. Considering the scope of the proviso to a main provision, the Supreme Court in a recent judgment in the matter of **Dashrath Rupsingh Rathod v. State of Maharashtra and another**[6] held as under: -

> "44. Also pertinent is a four-Judge Bench decision of this Court in Dwarka Prasad v. Dwarka Das Saraf[7] where this Court was examining whether a cinema theatre equipped with projectors and other fittings ready to be launched as entertainment house was covered under the definition of "accommodation" as defined in Section 2(1)(d) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947. The proviso provided for some exception for factories and business carried in a building. It was held that sometimes draftsmen include proviso by way of overcaution to remove any doubts and accommodation would include this cinema hall: (SCC p. 137, para 18)
>
> > "18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context' Thompson v. Dibdin[8]. If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. *To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso.* A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

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6 (2014) 9 SCC 129
7 (1976) 1 SCC 128
8 1912 AC 533 (HL)

> 'The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.
>
> *The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.*' (Maxwell on Interpretation of Statutes, 10th Edn., p. 162)"
>
> (emphasis supplied)

15. In the matter of **Sreenivasa General Traders v. State of A.P.**[9] another three-Judge Bench of the Supreme Court examined the role of a proviso while interpreting Rule 74(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969:

> "46. ... The normal function of a proviso is to except something out of the main enacting part or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. Proviso to Rule 74(1) is added to qualify or create an exception." (SCC p. 388, para 46)

16. In **Nagar Palika Nigam** (supra), the Supreme Court highlighting the object of proviso held that proviso carves out an exception and observed as under: -

> "The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been

9 (1983) 4 SCC 353

acted as a proviso and to no other."

17. Thus, it is held that the proviso is an exception to the main provision and a proviso will have to be construed in tune with the main provision and the object and rationale beyond the enactment. In the instant case, the effect of proviso is to make the provisions contained in Section 6 of the Act of 2013 inapplicable in respect of irrigation project.

18. Now, the question would be whether the Arpa Bhaisajhar Barrage Project is an "irrigation project" within the meaning of proviso to Section 6 of the Act of 2013. In order to consider the question, we have to go back to the background of the Arpa Bhaisajhar Barrage Project for which the land is sought to be acquired.

19. The Arpa Bhaisajhar Barrage project is proposed across Arpa river, a major tributary of Seaonath river in Mahanadi basin near village Bhaisajhar, Tahsil Kota, District Bilaspur in Chhattisgarh. The proposed project falls in Seaonath sub basin. The Seonath River originates near village Panabaras in the Rajnandgaon District. The basin is located between latitudes $20^0$16'N to $22^0$41'N and longitude $80^0$25' E to $82^0$35'E. The basin area of river up to confluence with the Mahandi River is 30,860 Sq Km. The river traverses a length 380 Km. The main tributaries of Seonath river are Tandula, Kharun, Arpa, Hamp, Agar and Maniyari Rivers. The mean annual rainfall in the basin varies from 1005 mm to 1255 mm. The Arpa Bhaisajhar Barrage project proposed over the Arpa river and is located near Left Bank village Bhaisajhar, Block H.Q.

Kota (-12 Km, Bilaspur Kota State Highway) and District Bilaspur (-44 Km) of Chhattisgarh. The coordinates of the barrage are $22^0$18'00"N and $82^0$05"00"E. The proposed project includes construction of a 147 m long and 12.35 high barrage near the village Bhaisajhar on river Arpa along with guide bund 880 m long on right side and 330 m long on left side. The length of main canal and Branch canal is 56.6 Km and 27.00 Km respectively. The length of distributaries and minors is 303.30 Km. The catchment area intercepted up to the barrage site is 1693.86 Km^2. The annual irrigation proposed is 25000 ha. of Kharif (paddy). The total cost of the project is estimated as ₹ 606.43 crores with a Benefit Cost ratio considering 10% interest on capital outlay 1:2.81. The Full Tank Level (FTL) of barrage is 302.00 m whereas the afflux bund level will be 305.00 m. The crest level of barrage is at RL 292.20 m. The submergence area at FTL will be 653.59 ha. The barrage structure will be about 12.35 m. height. The deepest foundation level will be 8 m. below the river bed level. The gross storage capacity at RL 302 m. of barrage is 22.168 Mm^3 with live storage capacity 16.409 Mm^3. The length of the reservoir is about 13 km.

20. In aforesaid view of the matter, it can be safely concluded that the Arpa Bhaisajhar Barrage Project is out and out an “irrigation project” designed to accumulate water for the purpose of irrigation in 25,000 hectares (that is equal to 75,000 acres of land) Kharif crop within the meaning of proviso to Section 6 of the Act of 2013. Thus, it will fall within the definition of “irrigation project” as

employed in the proviso to Section 6 of the Act of 2013.

21. This would bring me to the issue whether for the Arpa Bhaisajhar Barrage Project which is an irrigation project, the process of Environmental Impact Assessment is required under the provisions of any other law for the time being in force. It appears from the record that for the said project, the Environmental Impact Assessment is required under the Environmental Impact Assessment Study done under the notification of 2006 issued under the Environmental (Protection) Act, 1986 and the Environmental (Protection) Rules, 2016 made thereunder.

22. The Ministry of Environment and Forests, Government of India by its letter dated 27-2-2013 conveyed the comments of the Environment Appraisal Committee (EAC) for River Valley and Hydro Electric Power Projects which met on 12-13th October, 2012 and 26-27th December, 2012. Based on the recommendations of the EAC and as per the provisions of the Environmental Impact Assessment Notification, 2006 and subsequent amendment 2009, the Ministry of Environment and Forests settled the terms of reference for preparation of Environmental Impact Assessment/ EMP report and approved the terms of reference on 27-2-2013. Thereafter, the proposal was considered by the Expert Appraisal Committee for River Valley and Hydroelectric Power Projects at its meeting held on 26-27th February, 2015. The Expert Appraisal Committee after due consideration of the relevant documents submitted by the project proponent and clarification furnished in

response to its observations recommended grant of Environmental Clearance to the project and accordingly, final clearance has been accorded by the Government of India, Ministry of Environment and Forests by order dated 8-5-2015 as per the provisions of the Environment Impact Assessment Notification, 2006 and its subsequent amendment in 2009 subject to the conditions enumerated therein and which is appealable under Section 10 of the National Green Tribunal Act, 2010.

23. Thus, for the Arpa Bhaisajhar Barrage Project, which is an irrigation project, the provisions of the Environmental (Protection) Act, 1986 read with the Environmental Impact Assessment Regulations, 2006 as amended in 2009 are applicable under which the Environment Impact Assessment is required to be done and it has been done under the Environmental Impact Assessment Notification, 2006 and the rules and regulations made therein. Therefore, the provisions of the Act of 2013 relating to social impact assessment shall be inapplicable. The question is answered accordingly and held that Social Impact Assessment study as required under Section 13 of the Act of 2013 is inapplicable by virtue of the proviso contained in Section 6 of the Act of 2013. In view of this finding, I deem it inappropriate to deal with the notification issued under Section 10-A of the Act of 2013 and that question is left open to be considered at an appropriate proceeding.

Issue No.2: -

24. This would bring me to the question as to whether the provisions of

Chapter-III of the Act of 2013 relating to special provision to safeguard food security would be applicable.

25. Section 10 of the Act of 2013 reads as under: -

> "**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 districts 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-section (1), the acquisition of the agriculture 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."

26. The case of the respondent State is that the provisions of Section 10 of the Act of 2013 shall not apply to the facts of the present case, as the land is being acquired for irrigation canal which is linear in nature. It has already been discussed and held herein-above in the preceding paragraph that the project in question is

irrigation project and the said irrigation project consists of canals and tributaries the details of which are as under: -

Arpa Bhaisajhar Barrage Project

S.No.	Description	Length of canal (in Km.)
1.	Main Canal	56.64
2.	Khamhariya Branch Canal	26.33
3.	Ghutku Distributary	14.78
4.	Uslapur Distributary	14.15
5.	Chorbhathhi Distributary	8.15
6.	Chakarbhatha Distributary	12.30
7.	Sakarra Sub-Distributary	9.09
8.	Dighora Distributary	7.42
9.	Bhojpuri Distributary	10.88
10.	Minors System	237.00
	Total	396.74 Km.

27. Therefore, the project in question also includes construction of canal for irrigation. Thus, in the considered opinion of this Court, Section 10 of the Act of 2013 contained in Chapter-III relating to special provision to safeguard Food Security would not apply in the case of proposed acquisition for the proposed project.

28. The Rules pointed out by Mr. Verma would be inapplicable, as it has already been held that Chapter-II and Chapter-III of the Act of 2013 would not be applicable in the subject-acquisition.

Issue No.3

29. This would bring me to the third issue involved in the writ petition as to whether Section 11 of the Act of 2013 has been complied with while issuing preliminary notification under Section 11. At this stage, it would be pertinent to notice Section 11 of the Act which

reads as under: -

> "**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."

30. Thus, the notification under Section 11 has to be published in the official gazette and in two daily newspapers circulating in the locality of such area of which one shall be in the regional language,

and it has also to be published 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, and it has to be uploaded on the website of the appropriate Government as well and it has also to be published in the affected areas, in such manner as may be prescribed. It is not in dispute that the notification has been published in Dainik Agradoot on 7-9-2015 and in Dainik Haribhoomi on 31-9-2015 and also it has been published in the official gazette on 14-8-2015. It is the case of the petitioners that in the preliminary notification there is huge difference in the official gazette and newspaper publication regarding exemption of application of the provisions contained in Chapter-II and Chapter-III of the Act of 2013 to the public purpose for which the petitioners' land is to be acquired. Reliance has been placed by the petitioners on the matters of **Narendrajit Singh and another v. State of U.P. and another**[10], **Madhya Pradesh Housing Board v. Mohd. Shafi and others**[11] and **Om Prakash Sharma and others v. M.P. Audyogik Kendra Vikas Nigam and others**[12].

31. The notification published in the Rajpatra under Section 11(1) of the Act of 2013, on 27-6-2015 states as under: -

बिलासपुर, दिनांक 27 जून 2015

क्रमांक 12/अ–82/2014–15–चूंकि राज्य शासन को यह प्रतीत होता है कि इससे संलग्न अनुसूची के खाने (1) से (4) में

10 (1970) 1 SCC 125
11 (1992) 2 SCC 168
12 (2005) 10 SCC 306

वर्णित भूमि की अनुसूची के खाने (6) में उसके सामने दिये गये सार्वजनिक प्रयोजन के लिये आवश्यकता है अथवा आवश्यकता पडने की संभावना है। अतः भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 (जिसे एतद् पश्चात् अधिनियम 2013 कहा जायेगा) की धारा 11 की उपधारा (1) के उपबंधो के अनुसार सभी संबंधित व्यक्तियों को इसके द्वारा इस आशय की सूचना दी जाती है कि राज्य शासन इसके द्वारा अनुसूची के खाने (5) में उल्लेखित प्राधिकारी को उक्त भूमि के संबंध में धारा 12 के अंतर्गत दी गयी शक्ति का प्रयोग करने के लिए प्राधिकृत करता हैः–

अनुसूची

भूमि का वर्णन				धारा 12 द्वारा प्राधिकृत अधिकारी	सर्वजनिक प्रयोजन का वर्णन
1	2	3	4	5	6
बिलासपुर	बिल्हा	हिर्री प.ह.नं.24	5.265	कार्यपालन अभियंता, जल संसाधन जिला बिलासपुर (छ.ग.)	अरपा भैंसाार बैराज परियोजना मुख्य नहर निर्माण

भूमि का नक्शा (प्लान) का निरीक्षण अनुविभागीय अधिकारी (राजस्व), बिल्हा के कार्यालय में किया जा सकता है.

32. In the said notification, the only public purpose stated is, it is for the Arpa Bhaisajhar Barrage Project and for construction of main canal and it has been stated that the plan of the land can be inspected in the office of the Sub-Divisional Officer (Revenue), Bilha, whereas the notification published in Dainik Agradoot and Dainik Hariboomi also provide that the provisions of Chapter-II and Chapter-III of the Act of 2013 would not be applicable by the notification dated 27-3-2015, that has not been incorporated in the notification published in the Rajpatra.

33. In a Constitution Bench judgment of the Supreme Court in the matter of **Babu Barkya Thakur v. State of Bombay (now Maharashtra) and others**[13], the Supreme Court has held that in the notification under Section 4 of the old Act, non-mentioning of public purpose is not fatal and observed as under: -

> "... The purpose of the notification under Section 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and if, necessary digging or boring into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under Section 4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated under Section 5A or Section 40 necessarily after the notification under Section 4 of the Act."

34. In the matter of **Union of India v. K. Balaji Jaya Rama Rao and others**[14], it was observed as under: -

> "11. A plain reading of Section 4 shows that all that is required is that a notification has to be published in the Official Gazette, in two daily newspapers circulating in that locality of which one must be in the regional language and a public notice of the substance of such notification has to be given at a convenient place in the locality. Section 4 nowhere contemplates that the name of the owner must be mentioned in the notification. ... Section 4 requires is that the notification be published in the Official Gazette and in two daily newspapers circulating in that locality, one of which shall be in the regional language. The Collector has to give public notice of the substance of such notification at a convenient place in the locality. No other requirement is laid down in Section 4. In this case, as has been

13 AIR 1960 SC 1203
14 (2007) 15 SCC 791

> indicated hereinabove, the notification was published in the Official Gazette, it was published in the daily newspapers as required. Public notice of the substance of the notification was given at a convenient place in the locality and was also announced by beating of *tom toms* in the locality. It could not be disputed that the Section 4 notification contained the correct description of the property. Thus the purpose of giving notice to the person, whose land was intended to be acquired, was fully served. The 1st respondent was aware of the notification. He was not in any doubt that it was his property which was intended to be acquired. He, therefore, appeared and filed his objections under Section 5-A.
>
> 18. ... The person interested who has notice by virtue of the fact that the land is correctly described in the notification and has participated in Section 5-A and the award proceedings, is then precluded from challenging the notification on the ground that the notification was defective. In this case, the notification under Section 4 correctly described the land sought to be acquired. It is an admitted position that the 1st respondent was aware of this notification. It is admitted that he filed his objections under Section 5-A. It is now admitted that he thereafter participated in the award proceedings. ... The purpose of Section 4 notification, to give notice, was clearly fulfilled. The 1st respondent well knew that it was his property which was sought to be acquired. He was under no mistaken belief that some other property was sought to be acquired. Not only that, in the notification the name of his predecessor-in-title was given. ... As stated above, the description of the property was correct. He had purchased the property from Mr Subbaiah. One fails to understand on what basis it could even be argued that the notification was vague or defective."

35. In light of the aforesaid principle of law and also in light of the fact that compliance of Chapter-II and Chapter-III of the Act of 2013 as exempted by the provisions contained in the proviso to Section 6 of the Act and the provisions of Section 10 of the Act, non-mentioning of exemption of the application of the provisions of Chapter-II and Chapter-III in the Government Gazette will not make the notification invalid, particularly when it is preliminary notification and in the two

daily newspapers it has clearly been mentioned and in fact no prejudice has been caused to the petitioners by not mentioning some details regarding the notification in the official gazette, as it has not been established by the petitioners to have suffered prejudice.

36. Mr. Surana is right in contending relying upon **I.T.C. Bhadrachalam Paperboards** (supra) in which the Supreme Court has held that the object of publication in the Gazette is not merely to give information to the public. The Official Gazette, as the very name indicates, is an official document. It is published under the authority of the Government. Publication of an order or rule in the Gazette is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspapers or may be broadcast by radio or television. If a question arises when was a particular order or rule made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media.

37. Apart from this, Section 11(1)(c) of the Act of 2013 has been complied with and the notification has been affixed in the notice board of the office of the Sub-Divisional Magistrate and it has also been uploaded in the website of the appropriate Government and in the affected areas it has been pronounced by beat of drum. Therefore, it cannot be held that there is total non-compliance of Section 11(1) of the Act of 2013.

38. Mr. Surana's next contention is that Section 11(2) of the Act of 2013 has also not been complied with and Gram Sabha of concerned village has not been informed of the contents of the notification under Section 11(1) at a meeting called especially for that purpose. Therefore, the notification under Section 11(1) of the Act of 2013 deserves to be set aside.

39. The aforesaid provision is a provision for consultation with 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 so that they may express their view to the proposed notification subjecting the land in question to the acquisition under the Act of 2013.

40. The question as to the nature of consultation has been considered in great detail in the matter of **Indian Administrative Service (S.C.S.) Association, U.P. and others v. Union of India and others**[15] in which Their Lordships of the Supreme Court have held that consultation is either directory or mandatory. In paragraph 26 the principle of law qua consultation has been laid down as under: -

> "26. The result of the above discussion leads to the following conclusions:
>
> (1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts

15 1993 Supp (1) SCC 730

which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or

> additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Government through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation."

41. True it is that there is no material on record to hold that the provision of Section 11(2) of the Act of 2013 has been complied with in this case by the Land Acquisition Officer after issuing notification under Section 11(1) of the Act of 2013. But a careful glance of the provision would show that the object of consultation is only to apprise of the proposed action of notification for land acquisition inviting objection, if any, on such acquisition, but no opinion has been sought from the said Gram Sabha or Municipal Council, as the case may be, and there is no provision that the opinion is binding upon the appropriate Government. Nothing is there in the said provision to suggest that the opinion of Gram Sabha is binding upon the appropriate Government. Sub-paragraph (5) of paragraph 26 of the decision of the Supreme Court in **Indian Administrative Service (S.C.S.) Association, U.P.** (supra) squarely applies to the facts of the case in which Their Lordships have held that when the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. But the directory provision has to be complied with substantially. (See **Devinder**

Singh and others v. State of Punjab and others[16], para 55.)

42. The Supreme Court in the matter of **Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others**[17] explained the doctrine of "substantial compliance" in following words: -

> "32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.
>
> 34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by

16 (2008) 1 SCC 728
17 (2011) 1 SCC 236

> substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

43. Thus, though there is no material on record that the matter has been informed to the Gram Sabha about the contents of the notification issued under Section 11(1) of the Act of 2013, at a meeting specially called for that purpose, but in substance it has been widely published in the official gazette and in two daily newspapers and also by affixing in the notice board of the concerned panchayat and Sub-Divisional Magistrate and also uploaded on the official website and also by beat of drum in the affected areas. Therefore, the provision stands substantially complied with applying the principle of substantial compliance as laid down in **Commissioner of Central Excise, New Delhi** (supra). Still it is open to the appropriate Government to comply the same, if further proceedings have not taken place in acquisition.

44. To be fair with Mr. Surana, learned counsel, it is held that judgments cited by him, particularly **Narendrajit Singh** (supra), **Madhya Pradesh Housing Board** (supra) and **Om Prakash Sharma** (supra), are clearly distinguishable to the facts of the present case.

45. At this stage, I would revert to importance of purpose for which the land is sought to be acquired that is for irrigation purpose. It would be appropriate to notice a Constitution Bench judgment of the Supreme Court in the matter of **State of Karnataka v. State of**

A.P. and others[18] in which Their Lordships have held that water is a unique gift of nature which has made planet earth habitable. Life cannot be sustained without water. Paragraphs 175 ad 176 of the report are worth reliable which are reproduced herein-below: -

> "175. Water is a unique gift of nature which has made the planet earth habitable. Life cannot be sustained without water. In the National Water Policy issued by the Government of India in 1987, it was declared that water is a prime natural resource, a basic human need and a precious national asset. Water, like air, is the essence for human survival. The history of water availability and its user is tied up with the history of biological evolution in all civilizations. It will not be wrong to say that not only life started in water but rather water is life itself. It is essential for mankind, animals, environment, flora and fauna. There is no denial of the fact that in the ancient times water played an important role in the origin, development and growth of civilization all over the globe. Water is an important factor in the economic development of the countries which ultimately affects the social and human relations between the habitants. Planned development and proper utilisation of water resources can serve both as a cause as well as an effect of the prosperity of a nation. Water on earth is available in the form of frozen snow, rivers, lakes, springs, waterways, waterfalls and aqueducts, etc.
>
> 176. In this galaxy and the environment surrounding the earth, its hydrosphere segment mostly consists of water in the shape of oceans. Out of the total available water on earth 97.3% water is such which cannot be utilised for the benefit of the humanity. Only 2.07% water is available for consumption and mankind's utilization. Out of this consumable water 30% is used for irrigation, 7% for domestic and 12% for industrial purposes. Rest of the water goes waste on account of mismanagement and the lack of facilities of better utilisation. Whereas water is scarce and limited, its users are numerous and ever increasing. With the development in the living standards of the people, the consumption of water is increasing everyday without there being any corresponding increase in its total availability. According to an estimate in *World Book Encyclopaedia*, on an average a person needs about

18 (2000) 9 SCC 572

> 60,600 litres of water during his lifetime and in industrial countries like U.S.A. each person presently is using about 260 litres of water every day. The consumption in our country is however much less. On account of the advancement in the technology and of civilization, water needs are increasing. In their quest to have a comfortable life, people want more and more water. Facilities like ACs, garbage disposals, automatic washers and modern bathrooms, earlier considered as luxury are now deemed as necessities of life of a large human population."

46. The Supreme Court has also expressed concern in **State of Karnataka v. State of A.P.** (supra) that the country is not able to construct more than 3000 large and small dams and thereby most of water otherwise available in the country remains unutilised and observed as under: -

> "177. India is one of the most fortunate countries endowed with an enviable wealth of water resources. The average annual precipitation in this country is higher than that of any other continent in the world with the exception of South America. However, on account of meagre resources and lack of developmental facilities, India uses only 1/10th of the precipitation which it receives annually with the result that the rest of water goes waste into the sea. The sources of water in this country are either the frozen snow which melts in summer or accumulated water in dams during monsoon seasons which is utilised off that season. In the absence of proper water source management, a great population of the people suffers every year on account of either the floods or droughts. Geographically, India has more than 20 major river basins. Some of those, such as Indus, Chenab, Ganga, Brahmaputra and Teestha, though originating from and flowing in India are yet in effect and essence, international rivers as they pass through the territories of other sovereign States.
>
> 178. Despite independence for more than half a century, the country has not been in a position to construct more than 3000 large and small dams with the result that most of the water otherwise available in the country remains unutilised. Almost in all countries of the world, efforts are being made to regulate the user of water resources along with the user of land resources. Water management is required to be

> viewed in the light of the land management. The law relating to water rights has undergone a sea change all over the world. International and inter-State disputes regarding the user of water are sought to be settled by recourse to the process of law in place of the old doctrine or settlement "by war or diplomacy". Water under all prevalent systems of law has been declared to be the property of the public and dedicated to their use, subject to appropriation and limitations as may be prescribed either under law or by settlement or by adjudication. ..."

47. Their Lordships finally concluded that "right to water is a right to life and thus a fundamental right. In India the importance of water is recognised under the Constitution as is evident from Article 262, 7th Schedule List II Entry 17, List I Entry 56, and statutes like the Inter-State Water Disputes Act, 1956 and River Boards Act, 1956".

48. Since right to water is a right to life and thus a fundamental right under Article 21 of the Constitution of India, in the considered opinion of this Court, even if it is held that the petitioners make out a case for interference, the Courts would not interfere unless an extraordinary case is made out.

49. In the National Water Policy 2002, while emphasizing the need for a National Water Policy, it is held that water is a prime natural resource, a basic human need and a precious national asset. In the said policy, Water Allocation Priorities are broadly envisaged as under: -

    1. Drinking water
    2. Irrigation
    3. Hydro-power
    4. Ecology
    5. Agro-industries and non-agricultural industries

6. Navigation and other uses.

50. Similarly, Irrigation has been illustrated in the National Water Policy 2002, in the following manner: -

1. Irrigation planning either in an individual project or in a basin as a whole should take into account the irrigability of land, cost-effective irrigation options possible from all available sources of water and appropriate irrigation techniques for optimising water use efficiency. Irrigation intensity should be such as to extend the benefits of irrigation to as large a number of farm families as possible, keeping in view the need to maximise production.
2. There should be a close integration of water-use and land-use policies.
3. Water allocation in an irrigation system should be done with due regard to equity and social justice. Disparities in the availability of water between head-reach and tail-end farms and between large and small farms should be obviated by adoption of a rotational water distribution system and supply of water on a volumetric basis subject to certain ceilings and rational pricing.
4. Concerted efforts should be made to ensure that the irrigation potential created is fully utilised. For this purpose, the command area development approach should be adopted in all irrigation projects.
5. Irrigation being the largest consumer of fresh water, the aim

should be to get optimal productivity per unit of water. Scientific water management, farm practices and sprinkler and drip system of irrigation should be adopted wherever feasible.

6. Reclamation of water logged / saline affected land by scientific and cost-effective methods should form a part of command area development programme.

51. Keeping in view the judgment of the Supreme Court in **State of Karnataka v. State of A.P.** (supra) that right to water is right to life and is fundamental right and further keeping in view the importance given to irrigation by the National Water Policy, the proposed acquisition for construction of barrage for accumulation of water cannot be quashed even if a legal ground is made out by the petitioners, as it will be against the public interest as by the proposed acquisition, 25,000 hectares of lands of 102 villages of Bilaspur District are proposed to be irrigated.

52. At this stage, it would be appropriate to notice the judgment of the Supreme Court in the matter of **Ramniklal N. Bhutta v. State of Maharashtra**[19], in which while delineating the scope of interference in land acquisition proceeding, Their Lordships held as under: -

> "10. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice

19 (1997) 1 SCC 134

> and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the person interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

53. The principle of law laid down in **Ramniklal N. Bhutta** (supra) has been followed with approval by the Supreme Court in the matter of **Girias Investment Private Limited and another v. State of Karnataka and others**[20] and it was held that though rights of an individual whose property is sought to be acquired must be scrupulously respected, but an acquisition for the benefit of public at large is not to be lightly quashed and extraordinary reasons must exist for doing so.

54. In view of aforesaid discussion, I am of the considered opinion that the petitioners have not been able to make out an extraordinary case for interference in the land acquisition proceeding to exercise the jurisdiction under Article 226/227 of the Constitution of India to quash the preliminary notifications in light of judgments of the

20 (2008) 7 SCC 53

Supreme Court in **Ramniklal N. Bhutta** (supra) and **Girias Investment Private Limited** (supra).

55. As a fallout and consequence of the above-stated discussion, the writ petitions deserve to be and are accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1945 of 2015

Rohit Singhania

- Versus -

State of Chhattisgarh and others
and other connected matters

HEAD NOTE

Land to be acquired for construction of Arpa Bhaisajhar Barrage Project / construction of canal cannot be quashed, as right to water is right to life – fundamental right under Article 21 of the Constitution of India.

अरपा भैंसाझार बॉध परियोजना / नहर के निर्माण हेतु भूमि अधिग्रहित किया जाना निरस्त नहीं किया जा सकता क्योंकि संविधान के अनुच्छेद 21 के अन्तर्गत जल का अधिकार जीवन का अधिकार है।