REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3385 OF 2012

LAXMI DEVI ..... APPELLANT

VERSUS

STATE OF BIHAR & ORS. ..... RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN,J.

1. The legal nodus that we are called upon to unravel in this Appeal is whether the Land Acquisition Act, 1894 (L.A. Act for brevity) as amended from time to time, requires an Award to be passed even in respect of lands expropriated by the State pursuant to the exercise of special powers in cases of urgency contained in Section 17 thereof. It is indeed ironical that what was, as far back as in 1987, perceived as an imperative, urgent and exigent necessity, justifying the steamrolling of the rights of citizens, has proved substantially to be a fallow and ill-conceived requirement even after the passage of three decades; till date, tracts of the acquired land remain unutilized; the initially declared purpose of construction of residential quarters for State officials having novated to portions of the land being used as helipads for 'State Dignitaries'. We must not forget that even though ownership of property has ceased to be conceived of as a Fundamental Right, it continues to receive Constitutional protection. It is also the regrettable reality that Governments are increasingly relying

on rulings of this Court to the effect that even if the public purpose providing the predication for the compulsory acquisition of a citizen's land has proved to be an illusion or misconception, another purpose can conveniently be discovered or devised by the State for retention by it of the expropriated land. Our opinion intends to insulate genuinely urgent projects from lapsing and not to annihilate the constitutional rights of the individual from the might of the State even though it transgresses the essence of the statute. It has become alarmingly commonplace for lands to be expropriated under the banner of urgency or even under the normal procedure, only to be followed by a withdrawal or retraction from this exercise enabling a favoured few to harvest the ill-begotten windfall. The ambivalence or cleavage of opinion of this Court in *Delhi Airtech Services (P) Ltd. vs. State of U.P.* (2011) 9 SCC 354 on the necessity to pay the erstwhile owners of land of even its unilaterally assessed value has emboldened and spurred the State into contending before us that no sooner the urgency mantra is mouthed, no other provision of the L.A. Act has any relevance or efficacy, including the legal necessity of passing an Award.

2. We shall succinctly narrate the salient facts of the Appeal before us. The State Government had by means of Notification No.2/86-87 dated 18.11.1987 and 3/86-87 dated 18.11.1987 initiated steps for acquiring tracts of lands in Mouza Sansarpur and in Hardas Chak. These Notifications had simultaneously excluded the provisions of Section 5A of the L.A. Act from applying to the acquired lands, which, because of the significance of its language, is reproduced below:

> "This Notification is hereby issued under the provisions of section 4 of the Bihar Act No.11, 1961 as amended Act No.1, 1894 for

those persons who are concerned with it.

The map of the above land can be seen in the office of the Land Acquisition Officer, Khagaria. Government of Bihar do hereby authorize the Land Acquisition Officer, Khagaria and his staff and the office bearers of the Executive Engineer Bhawan Nirman Khagaria in the preliminary investigation of this project that they should conduct the survey of the land after entering it and they are directed to all the acts specified under section 2 of the Section 4 of the above Act.

And whereas it is the opinion of the Governor of Bihar that the above mentioned barren land/agricultural land and its part thereof is necessary for immediate acquisition. Therefore, it is directed under sub section 4 of the section 17 of the above Act that the provisions of the section 5A of the above act shall not apply to the above land/lands".

3. This first Notification under Section 4 came to be followed by subsequent Notifications, lucidly illustrating the understanding of the Respondent State that the preceding Notification had lapsed by operation of the statute. The Respondent State issued a Notification under Section 4 of the L.A. Act on 16.9.1999 in respect of which the Appellants filed Objections under Section 5A on a consideration of which the Land Acquisition Officer had opined that the Notification issued in 1987 could not be continued with as the Award had not been passed within the stipulated time period thereby making it necessary to issue the 1999 Notification. This Notification also expired because a Declaration under Section 6 had not been promulgated within one year. Hence yet another Notification was published on 13.8.2001, for which the Appellants filed their Objections under Section 5A yet again. This Notification also lapsed, since the sequence of events as contemplated in the L.A. Act had not been duly completed. Once again, in 2004, fresh steps were initiated for acquisition which also expired for the same reason. The Respondent State now vainly essays to take unfair and ill-founded advantage of decisions and opinions of this Court to contend

that the subject acquisition stands completed in all respects, thereby endeavouring, illegally in our considered opinion, to avoid performance of their statutory obligations of computing compensation and then paying it.

4. The Impugned Order accepts the version of the Respondent that large parcels of these lands have been utilized for constructing residential quarters for senior Officers of the State, and that the Appellant has been paid eighty per cent of the compensation, although twenty per cent supposedly still remains outstanding. Per contra, it is the contention of the Appellant that the incontrovertible position that portions of the land have remained unutilized for decades is clearly indicative of the fact that they are not required by the State any more. Within a week of the publication of the Section 4 Notification, that is on 24.11.1987, notices under Section 17(1) of the L.A. Act were also issued, which resulted in the filing of writ petitions in the following year, in which it was contended that resort to Section 17 of the L.A. Act was mala fide, and that compensation, as envisaged in the statute itself, had not even been tendered to the owners. It is significant that in CWJC No.4007 of 1988, a Division Bench of the High Court of Judicature at Patna had directed on 12.7.1988 that the Award for compensation must be made within four months. It is not in dispute that an Award has, till date, not been passed even though that direction has attained finality. The Writ Petition was disposed of observing - (i) possession of the land had already been taken by the State; (ii) eighty per cent compensation had been paid to the Appellants; (iii) the remainder twenty per cent along with interest would be paid to the owners on their appearance before the Land Acquisition Officer; (iv) they would be entitled to raise

the claim of higher interest considering that the land had been acquired in 1987; and (v) Appellant was entitled to raise objections with respect to the value of the land. In view of these directions, it was palpably clear to all the parties, especially the State Government, that the entitlement to raise objections with respect to the value of the land was possible only once proceedings connected with and preparatory to passing an Award on Section 11 reached its culmination. It seems facially obvious to us that since the State has not assailed these directions it ought not to be permitted to canvas in this Appeal that the passing of an award is unnecessary in cases where the State has taken recourse to the urgency provisions contained in Section 17 of the Act. A perusal of the Counter Affidavit filed on behalf of the State of Bihar makes it patently evident that an award as contemplated in Section 11 of the L.A. Act has not been passed; and that Notifications under Section 4 have again been passed subsequent to the two Notifications detailed above.

5. An overview of the L.A. Act discloses that it is divided into VIII Parts/Chapters. Part II commences with Section 4, which postulates the publication of a preliminary notification, whereupon Officers of the State are authorized to enter and survey the lands proposed to be acquired and carry out activities ancillary to that purpose; and Section 5 obligates the Officials to compensate for damages caused as a consequence thereof. The right to file Objections to the Section 4 Notification, recognized by Section 5A, was introduced into the L.A. Act by Act 38 of 1923, and this provision was again amended by Act 68 of 1984 to mandate that Objection must be filed within thirty days of the issuance of the Notification. Section 5A further

obligates the Collector to submit a Report to the Government in respect of the Objections preferred by persons interested in the land, as well as pertaining to any aspect of the nature of the land proposed to be acquired.

6 The insertion of Section 5A seems to have been spurred on by the decision of the Division Bench of the Calcutta High Court in J.E.D. Ezra vs. The Secretary of State for India (1902-1903) 7 CWN 249. In that case, the properties of Ezra were sought to be acquired under the pre-amended provision for expansion of the offices of the Bank of Bengal. In the challenge to the said acquisition, it was argued that the person whose property was going to be taken away should be allowed a hearing on the principles of natural justice. However the Court held that it could not grant relief in the absence of any provision in the Act enabling or envisaging or mandating that such an opportunity should be made available to the landowners. In order to remedy this shortcoming in Act of 1894, an amendment by way of incorporation of Section 5A was introduced on 11th July, 1923. The Statement of Objects and Reasons for the said Amendment is as follows:

> "The Land Acquisition Act 1 of 1894 does not provide that person having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government." (Gazette of India, Pt. V, dated 14th July, 1923, page 260)

The importance of Section 5A cannot be overemphasised. It is conceived from

natural justice and has matured into manhood in the maxim of *audi alteram partem*, i.e. every person likely to be adversely affected by a decision must be granted a meaningful opportunity of being heard. This right cannot be taken away by a side wind, as so powerfully and pellucidly stated in *Nandeshwar Prasad vs. State of U.P.*, AIR 1964 SC 1217. So stringent is this right that it mandates that the person who heard and considered the Objections can alone decide them; and not even his successor is competent to do so even on the basis of the materials collected by his predecessor. Furthermore, the decision on the Objections should be available in a self contained, speaking and reasoned order; reasons cannot be added to it later as that would be akin to putting old wine in new bottles. We can do no better than commend a careful perusal of *Union of India vs. Shiv Raj* (2014) 6 SCC 564, on these as well as cognate considerations.

7 Section 6 envisages the making of a Declaration by the appropriate Government to the effect that the specified lands are needed for a public purpose, or for a Company; and post 1984, this Declaration has to be made within one year of the date of the publication of the Section 4 Notification. We are not concerned in this Appeal with the Provisos or Explanations to Section 6 or to other sub-Sections and shall therefore not advert to them any further. Thereafter the Collector has to take Orders for the acquisition of land and to mark and measure it. Section 9 enjoins the Collector to cause public notice to be given of his intention to take possession of the land and to entertain claims for compensation. Section 11 postulates the holding of an enquiry by the Collector into Objections on sundry grounds. For the purposes with which we are

presently concerned, amendments to Section 6 and the insertion of the new Section 11A, both of which prescribe a time limit within which requisite action has to be taken by the Government justify special mention. The prefatory note – Statement of Objects and Reasons of Act No.68 of 1984 as are relevant are reproduced: [**Current Central Legislation Vol.10 1984 - 3,5,6,9**]

> Prefatory Note – Statement of Objects and Reasons – With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. **The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them**.
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> The main proposals for amendment are as follows:-
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> (iii) A time-limit of one year is proposed to be provided for completion of all formalities between the issue of the preliminary notification under Section 4(1) of the Act and the declaration for acquisition of specified land under Section 6(1) of the Act.
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> (v) It is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of the land would lapse. He has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.
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> (vi) The circumstances under which the Collector should take possession of the land before the award is made in urgent cases are being enlarged to include a larger variety of public purposes.
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> (ix) Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively

> affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act.
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> (Emphasis added)

8 Section 11A has been introduced by Act 68 of 1984 prescribing a limitation of two years for the making of an Award by the Collector. It is only post this event that Section 16 empowers the Collector to take possession of the land which thereupon vests absolutely in the Government, free from all encumbrances. We may clarify that the word 'vest' has two connotations – the first and primary one relates to possession of land; and the second, an adjunctory one, pertains additionally to the title of that land. But this distinction has not been drawn in India since this Court has held in several cases that 'vesting' in the circumstances with which we are presently concerned, covers and encompasses the possession as well as the title of the land.

9 It is in this progression that the L.A. Act provides for special powers in the case of perceived urgency, in terms of Section 17, which we shall reproduce for facility of reference.

> "**17. Special powers in cases of urgency.** –(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 fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.
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> (2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of

their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government , enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

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 so to do, 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) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for an awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub-section (1) or sub-section 92), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of

compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1)."

Sub-sections (3A) and (3B) have been introduced into the L.A. Act by Act 68 of 1984 with effect from 24.9.1984.

10 The L.A. Act, as amended by the State of Bihar by the Bihar Act 11 of 1961, is also being reproduced below for the purpose of clarity:

"**17. Special powers in cases of urgency.** –(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 fifteen days from the publication of the declaration mentioned in section 6, or with the consent in writing of the person interested, at any time after the publication of the notification under Section 4 in the village in which the land is situated, take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

Explanation.—This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees.

(2)Whenever it becomes necessary for the purpose of protecting life or property from flood, erosion or other natural calamities or for the maintenance of communication other than a railway communication or it becomes necessary for any Railway Administration (other than the Railway Administration of the Union), owing to any sudden change in the channel of any navigable river or other unforeseen emergency for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or providing convenient

> connection with or access to any such station, to acquire the immediate possession of any land, the Collector may, immediately after the publication of the declaration mentioned in s. 6 or, with the consent in writing of the person interested, given in the presence of headman of the village or mukhiya and sarpanch as defined in the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), at any time after the publication of the notification under section 4 in the village in which the land is situated and with the previous sanction of the appropriate Government, enter upon and take possession of such land which shall thereupon vest absolutely in the Government free from all encumbrances:
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> 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.
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> (3) In every case under the proceeding sub-sections the Collector shall, at the time of taking possession offer to the persons interested, compensation for the standing crops on such land and for any damage sustained by them caused by such sudden dispossession and not accepted in section 24; and in case such offer is not accepted, the value of such crops and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.
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> (4) In the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the provisions of section 5A shall not apply where the appropriate Government so directs to where possession of the land has been taken with the consent of the person interested.

Sub-sections (3A) and (3B) have not been amended viz-a-viz the State of Bihar and continue to apply even in that State.

11 Section 17 is not a pandect; it could have been devised by Parliament to be so, inter alia, by the use of a *non obstante* clause, or in the alternative by clear and unequivocal language. In *Union of India v. G.M. Kokil* 1984 (Supp) SCC 196 this

Court has opined that a "*non obstante* clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions." Alternatively, Sections 9, 11, 11A etc. could have been made subject to Section 17, although both cumbersome and clumsy, but has not been so done.

12 The salient concomitants of Section 17(1) deserve enumeration. Firstly, the Section is attracted even though an Award has not been made which, it appears to us, clearly indicates that the completion of this exercise has not been obliterated or dispensed with but has been merely deferred. An unambiguous and unequivocal statement could have been made excluding the requirement of publishing an Award. Secondly, it is available only on the expiration of fifteen days from the issuance of the Section 9 notice. This hiatus of fifteen days must be honoured as its purpose appears to be to enable the affected or aggrieved parties to seek appropriate remedy before they are divested of the possession and the title over their land. The Government shall perforce have to invite and then consider Objections preferred under Section 5A, which procedure as painstakingly and steadfastly observed by this Court constitutes the Constitutional right to property of every citizen; inasmuch as Section 17(4) enables the obliteration of this valuable right, this Court has repeatedly restated that valid and pressing reasons must be present to justify the invocation of these provisions by the Government. Thirdly, possession of the land can be taken only if it is needed for public purpose, which term stands defined in the preceding Section 3(f).

A conjoint reading of Sections 17 and 3(f) makes it apparent to us that urgency provisions cannot be pressed into service or resorted to if the acquisition of land is for Companies; however we must be quick to add that this question does not arise before us. Fourthly, possession of such lands would vest in the Government only when the foregoing factors have been formally and strictly complied with. This Section enables the curtailment of a citizen's Constitutional right to property and can be resorted to only if the provisions and preconditions are punctiliously and meticulously adhered to, lest the vesting be struck down and set aside by the Court in its writ jurisdiction, on the application of the ***Taylor vs. Taylor*** (1875) 1 Ch D 426 and several judgments of this Court which has followed this decision (supra).

13 Section 17(2) enables the use of the urgency provisions in some other contingencies also, which we may term as 'emergency' in contradistinction to 'urgency', with which we are not currently concerned. Section 17(3) consists of myriad ingredients; by using the word "shall" Parliament has clarified that what follows compulsorily requires adherence, the non-compliance of which will lead to vitiating all the action ostensibly taken under this provision. These requirements are that at the time of taking possession of lands under the urgency provision the Collector must offer compensation to the persons interested in those lands. It is relevant to underscore that this provision does not postulate, as of first recourse, depositing compensation with any branch of the Government or for that matter even with the Reference Court. The compensation must first be tendered or offered to the persons interested in the standing crops and trees etc. on the subject land.

14 Section 17(3A) came to be introduced into the statute by Act 68 of 1984. It requires the Collector to tender payment of eighty per cent of the compensation estimated by him, obviously and pointedly, to the person interested in compensation for such land, unless the Collector is precluded or prevented from making such payments because of exigencies enumerated in Section 31 of the L.A. Act. In other words, the Collector cannot by way of first recourse deposit the estimated compensation even in the Court to which the filing of a Reference under Section 18 is provided. The use of the word "shall" indicates that the provisions are *prima facie* mandatory in nature unless the statute or the language employed in the Section indicates otherwise. The language of sub-Section (3A), inasmuch as it commences with the words "Before taking possession of any land.....", makes it incontrovertibly clear that what follows are the prerequisities thereto. It is beyond cavil, therefore, that the statute has ordained a precise and particular methodology which must be adhered to as a precursor to divesting the owner of land of its possession and title. It is axiomatic that if a statute prescribes the manner in which an action is to be performed, it must be carried out strictly in consonance thereto or not at all. This legal principle has been articulated over a century ago in **Taylor v. Taylor** and has admirably and in fact unquestionably withstood the test of time. It was approved by the Privy Council in *Nazir Ahmad v. King Emperor* (1935-36) 63 IA 372 and subsequently applied by three Judge Benches in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* AIR 1954 SC 322, *State of U.P. v. Singhara Singh* AIR 1964 SC 358, *Babu Verghese v. Bar Council of Kerala* (1999) 3 SCC 422 and most recently in *Hussein Ghadially v. State*

of Gujarat (2014) 8 SCC 425. Simply put, but for the statutory enablement, the action could not have been taken; ergo everything surrounding that empowerment must be meticulously performed. Possession of the land can be taken on grounds of urgency if and only if there is contemporaneous payment of eighty per cent of the estimated compensation, otherwise making the acquisition vulnerable to vitiation because of the *Taylor v. Taylor* principle. The use of the word "estimated" in the Section delineates the distinction from "actual" compensation; an estimate always remains a rough or approximate calculation only [Black's Law Dictionary], or an approximate judgment and /or a price specified as that which is likely to be charged. It would do violence to the statute and fly in the face of common sense if an estimate is treated per se as a conclusive calculation. Any doubt that may remain is immediately dispelled upon a perusal of Section 17(3B) which clarifies that the estimated amount tendered/paid under sub-Section (3A) will be taken into account for determining the amount of compensation and thereafter logically permitting the shortfall or the excess to be adjusted. In other words, the amount of compensation has to be determined and computed under the relevant sections of the L.A. Act. A reading of sub-Section (4) sounds the death knell to the arguments put forward for the Respondent State, inasmuch as it allows the option to the appropriate Government to make the provisions of Section 5A inapplicable. Paraphrased differently, even where the urgency provisions contained in Section 17 are resorted to, ordinarily the provisions of Section 5A have to be adhered to, i.e. inviting and then deciding the Objections filed by the landowners. Significantly, sub-Section (4) of Section 17 does not, as it

very easily could have, exempt compliance with the publication of the Declaration under Section 6 and the hearing of parties preparatory to the passing of an Award under Sections 9 to 11 of the Act. There is, therefore, not even an iota of doubt that remains pertaining to the absolute necessity of the passing of an Award under Section 11 of the L.A. Act. We are in no manner of doubt, and we reiterate, that the tender of the estimated compensation is the precondition, the *sine qua non,* enabling the Government to take possession of land under the foregoing subsections; and must be followed by the exercise of computation of compensation in a procedure corresponding to that in Section 11. We shall revert to the question of whether the constraints contained in Section 11A will also apply to acquisitions in which Section 17 has been resorted to.

15 The L.A. Act postulates that the urgency clause can be pressed into service at two stages. Firstly, ordinarily possession can be taken fifteen days after the publication of the Section 9 notice. The decision to procure possession on an urgency basis can be taken by the Government either at the very inception of the proceedings or at any time preceding or contemporaneous to the date of the issuance of the Section 9 notice. In both these contingencies the valuable right of the landowner to file Objections and resist the acquisition by virtue of Section 5A remains unimpaired. Secondly, the Government can invoke sub-Section (4) and dispense with the valuable Section 5A right; in which event, logical, cogent and well-reasoned notings must be simultaneously articulated in writing for taking this momentous and monumental decision. We must immediately clarify that in the case in hand, since the land is

located in the State of Bihar, Section 17(1) enables possession to be taken on the expiry of fifteen days of the publication of the Section 6 Declaration.

16 Since heavy reliance has been placed by the State on ***Satendra Prasad Jain*** *vs. State of U.P.* (1993) 4 SCC 369 and Lt. Governor of Himachal Pradesh v. **Avinash Sharma** (1970) 2 SCC 149, we must sedulously determine their ratios. This would therefore be the apposite time and place for a brief discussion on the contours and connotations of the term *ratio decidendi*, which in Latin means "the reason for deciding". According to Glanville Williams in 'Learning the Law', this maxim "is slightly ambiguous. It may mean either (1) rule that the judge who decided the case intended to lay down and apply to the facts, or (2) the rule that a later Court concedes him to have had the power to lay down." In G.W. Patons' Jurisprudence, *ratio decidendi* has been conceptualised in a novel manner, in that these words are "almost always used in contradistinction to *obiter dictum*." An *obiter dictum*, of course, is always something said by a Judge. It is frequently easier to show that something said in a Judgment is obiter and has no binding authority. Clearly something said by a Judge about the law in his judgment, which is not part of the course of reasoning leading to the decision of some question or issue presented to him for resolution, has no binding authority however persuasive it may be, and it will be described as an *obiter dictum.*" 'Precedents in English Law' by Rupert Cross and JW Harris states - "First, it is necessary to determine all the facts of the case as seen by the Judge; secondly, it is necessary to discover which of those facts were treated as material by the Judge." Black's Law Dictionary, in somewhat similar vein to the aforegoing,

bisects this concept, firstly, as the principle or rule of law on which a Court's decision is founded and secondly, the rule of law on which a latter Court thinks that a previous Court founded its decision; a general rule without which a case must have been decided otherwise.

17 A Constitution Bench has also reflected on the true nature of *ratio decidendi* in Krishena Kumar vs. Union of India, 1990 (4) SCC 207, as is discernable from the following passages:

> **19.** The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required". This was what Lord Selborne said in *Caledonian Railway Co.* v. *Walker's Trustees* and Lord Halsbury in *Quinn* v. *Leathem*. Sir Frederick Pollock has also said : "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision."
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> **20.** In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it.

18 The following paragraph from the determination of the Three-Judge Bench in Sanjay Singh vs. U.P. Public Service Commission, Allahabad, 2007 (3) SCC 720, is instructive and is reproduced for this reason -

> **10.** The contention of the Commission also overlooks the fundamental

> difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every judgment of superior courts has three segments, namely, (*i*) the facts and the point at issue; (*ii*) the reasons for the decision; and (*iii*) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent...

19 We also commend a careful reading of the following paragraphs from the decision of the Constitution Bench in *Islamic Academy of Education vs. State of Karnataka*, 2003 (6) SCC 697, which we shall reproduce for facility:

> 139. A judgment, it is trite, is not to be read as a statute. The *ratio decidendi* of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The *ratio decidendi* of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (See *Executive Engineer, Dhenkanal Minor Irrigation Division* v. *N.C. Budharaj*)
>
> 140. In *Padma Sundara Rao* v. *State of T.N* it is stated: (SCC p. 540, paragraph 9)
>
> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington* v. *British Railways Board*(Sub nom *British Railways Board* v. *Herrington*). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."
>
> (See also *Haryana Financial Corpn.* v. *Jagdamba Oil Mills*)
>
> 141. In *General Electric Co.* v. *Renusagar Power Co* it was held: (SCC p. 157, paragraph 20)
>
> "As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words 'adjudication of the merits of the controversy in the suit' were used by this Court in *State of U.P.* v. *Janki Saran Kailash Chandra* the words were not used to take in every adjudication which brought to an

end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

142. In *Rajeswar Prasad Misra* v. *State of W.B* it was held:

"No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact."

.(See also *Amar Nath Om Prakash* v. *State of Punjab* and *Hameed Joharan* v. *Abdul Salam*)

143. It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

144. In *Keshav Chandra Joshi* v. *Union of India* this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in *Direct Recruit Class II Engg. Officers' Assn.* v. *State of Maharashtra* held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom."

(emphasis supplied)

20 The plea before us from the Appellants is that the land should revert to them under Section 11A, since an Award under Section 11 has still not been made despite the passage of almost three decades from the date of the subject Notification. This Court has continuously held that once land has vested in the State, the question of re-vesting its possession in the erstwhile landowners is no longer available as an option to the State. This legal position was enunciated close to a half century ago in ***Avinash Sharma*** and has been subsequently reiterated in numerous judgments.

Paragraph 4 of the aforementioned Judgment is worthy of reproduction, and its reading will bear out that what was primarily in the contemplation of this Court was the possession of the land in contradistinction to its title.

> "4. In the present case a notification under Section 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under Section 9(1), be deemed to be in the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under Section 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification under Section 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), the possession previously obtained will be deemed to be the possession of the Government under Section 17(1) of the Act and the land will vest in the Government free from all encumbrances".

Ordinarily, possession of land can only be taken after the expiry of fifteen days from the publication of the notice envisaged in Section 9. We mention this for the reason that the Act enables, in this statutory sequence of events, the owner of the land to approach the Court in a challenge to the invocation of the urgency provisions. *Ubi jus ibi remedium*, every grievance has a remedy in law, is a legal maxim which is immediately recalled. We must hasten to add that the apparent infraction of the provisions of Section 9 of the Act do not arise in the present case because of the Bihar Amendment of Section 17.

21 This is also in line with a plain reading of Section 17(1), which states that "once possession of the land is taken by the Government under Section 17, the land vests absolutely in the Government, free from all encumbrances". In Section 48(1) the taking over of the possession of the land is of seminal significance in that the

provision succinctly states that "the Government shall be at liberty to withdraw from the acquisition of any land the possession of which has not been taken". The next sub-Section covers calculation of compensation for the aborted occupation. The same position came to be reiterated in **Satendra Prasad Jain** by a Three Judge Bench of this Court. The acquisition proceedings including the exclusion of Section 5A had obtained the imprimatur of the Allahabad High Court; the urgency and public purpose had received curial concurrence. Possession of the land was taken by the State from the landowners. Previously, the Special Leave Petition filed by the landowners had been dismissed by this Court. Ironically, the subsequent stance of the State was that the acquisition of land under the urgency provisions was required to be set aside for the reason that the State had failed to pass an Award under Section 11 within two years and had also failed to pay eighty per cent of the estimated compensation required under Section 17(3A). Whilst the State endeavoured to withdraw from the acquisition, the erstwhile landowners opposed it. This Court directed the State "to make and publish an award in respect of the said land within twelve weeks from today". The abovementioned discussion bears out that this Court was concerned only with the issue of the land being returned by the State to the erstwhile owner. It does not go so far as to limit or restrict the rights of landowners to fair compensation for their expropriated property, as that is a Constitutional right which cannot be nullified, neutralised or diluted. We think it justified to again refer to the opinion in **Satendra Prasad Jain** that - "Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an

award and pay to the owner the difference between the amount of the award and the amount of eighty per cent of the estimated compensation." The second issue, one that we feel must be kept in mind in the interpretation in the law laid down by this Court, is the factual matrices involved in both **Satendra Prasad Jain** and **Avinash Sharma**. In both these precedents, as well as in innumerable others that have relied upon them, the Government's attempt was to misuse its own omissions to achieve its own oblique purposes. It was in this context that this Court declined to accede to the pleas of the Government. This Court poignantly repelled the State's attempt to nullify the acquisition on the predication of its non-compliance with Sections 16 and 17(3A). The judicial intent was not to cause any loss to landowners, but to protect them. The pernicious practice that was becoming rampant, that is to make partial compliance with the statute and to follow the acquisition procedure in a piecemeal manner, and then to argue that its own lapses rendered its acquisition illegal, was roundly repulsed. Although this strictly constitutes *obiter*, we think it appropriate to clarify that where the landowners do not assail the acquisition, it may be open to them to seek a mandamus for payment to them, after a reasonable period, of the remaining compensation, which will thereupon metamorphose from a mere estimation to the actual compensation for the expropriation.

22 The Constitution Bench of this Court had to interpret Section 17 in *Raja Anand Brahma Shah v. State of U.P.* (1967) 1 SCR 373, but in somewhat different circumstances. The State proposed to take over large tracts of land "for limestone quarry" on urgency basis; by virtue of Section 17(4), Section 5A was held not to be

available. The Collector of Mirzapur was directed by the Notification under Section 17(1) of the Act to take possession of the "waste or arable land" even in the absence of an Award being published. The Constitution Bench held that the limestone quarries belonging to the Appellant, which were proposed to be acquired, could not possibly be conceived of or categorised as "waste or arable land, the acquisition, inasmuch as it proceeded under Section 17, could not pass muster of law. What is very pertinent for the present purposes is that the Constitution Bench had declined issuance of a mandamus commanding the State to restore possession of the land to the Appellant, not because this was inconceivable or impermissible in law or because of any provisions in the L.A. Act, but rather because the lands had validly vested in the State of U.P. under the U.P. Zamindari Abolition and Land Reforms Act, 1951. The conundrum of the restoration of the land had directly arisen before the Constitution Bench and since it declined the prayer for other reasons, it follows that there is no constraint or impediment for the grant of an appropriate Writ in this regard. This will fortify our distillation of the *ratio desidendi* of **Satendra Prasad Jain** which is circumscribed and restricted to the extent that the State is not empowered to withdraw from an acquisition once it has taken possession of the said lands.

23 We do, however, recognize that **Satendra Prasad Jain** has been interpreted more broadly in the past. In Allahabad Development Authority vs. Naziruzzaman (1996) 6 SCC 424, General Manager, Telecommunication vs. Dr. Madan Mohan Pradhan 1995 Supp (4) SCC 268, and Banda Development Authority, Banda vs. Mota Lal Agarwal (2011) 5 SCC 394, this Court has dismissed the landowners' challenges

to the respective acquisitions on the basis of **Avinash Sharma** and **Satendra Prasad Jain.** It is pertinent to note that all three of these cases were brief in their explanations of **Avinash Sharma** and **Satendra Prasad Jain**, and did not examine their *rationes decidendi,* their innate contradictions, their intentions or their consequences at any length. We thus feel it appropriate to rely on our own detailed exploration of these cases, as opposed to simply placing reliance on the largely contradictory case law that has developed over the years. It was for this reason that we had revisited the curial concept of *ratio decidendi*.

24 The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in **Satendra Prasad Jain** and **Avinash Sharma**. The Appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The *raison d'etre* behind the introduction of Section 11A was for the landowners to have a remedy in the event of an award not being passed expeditiously. If **Satendra Prasad Jain** is interpreted to mean that Section 11A will not apply to any acquisition under the urgency provisions, landowners such as the Appellants before us will have no protection, even if they are not paid full compensation for their land for decades. This cannot be in keeping with the legislative intent behind this Section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any other cause can substitute it, especially where the urgency

provisions have been invoked.

25 We feel it imperative to distinguish between the setting aside of an acquisition and the reversion of possession to the erstwhile landowners. While the L.A. Act and the judgments discussed above do not allow for the latter, we are of the considered opinion that this does not necessarily imply that the former is also not an option. Both the abovementioned cases dealt with a factual situation in which the Government was attempting to set the acquisition of the land at naught so that they would not have to pay compensation to acquire it. Setting aside of the acquisition in those cases was tantamount to reverting the possession to the original owners. In this scenario, however, the two do not have to go hand in hand. In allowing the acquisition of land that the Government finds necessary to be set aside, we would not necessarily be holding that the land revert to the Appellants, as the alternative of permitting the Government to keep possession provided it re-acquires the land with a new Section 4 notification exists. This option, particularly in the present factual matrix, does the least violence to the intent and content of the L.A. Act, in that it upholds Section 11A even in cases of acquisition under Section 17 while preserving the requirement of Section 17 that the unencumbered possession of the land remain vested in the Government. It also protects the rights of the landowners, thus fulfilling the intent of Section 11A, while allowing the Government to acquire land in cases of emergencies without its title being challenged, which is the avowed intention of Section 17. Any other interpretation of the law would serve to protect only those landowners who had approached the Court to stop the Government from undoing an emergency

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acquisition, while leaving in the cold equally aggrieved landowners seeking to enforce their right to fair compensation for their land. Even equity demands that the party bearing the consequence of the delay in the Award ought not to be the innocent landowner, but the errant State.

26 While we presently refrain from passing any orders or direction pertaining to or interfering with the possession of the Government over the subject land, the acquisition dated 18.11.1987 is set aside for non-compliance with the provisions of Section 11A of the L.A. Act. As all the subsequent Notifications by the Respondent State having lapsed, the Respondent State is directed to issue a fresh Section 4 Notification within six weeks from today. The Respondent State is restrained from contending that the land is no longer required by it or that it should revert to the Appellants. The Appeal is allowed in these terms.

.....J.
(VIKRAMAJIT SEN)

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.....J.
(ABHAY MANOHAR SAPRE)

New Delhi,
July 03, 2015.